

EQUITAS ACADEMIES TRUST



Chilwell Croft
Academy

DISCIPLINARY PROCEDURE

Review Date: January 2019
To be Reviewed: January 2021
Agreed: F & GP Board
Policy Lead: Zoe Donnelly

DISCIPLINARY PROCEDURE

1. INTRODUCTION

The aims of this Disciplinary Procedure and its associated Disciplinary Rules are to set out the standards of conduct expected of all staff, and to provide a framework within which Trustees and the Senior Leadership Team within each Academy within the Trust can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.

It is the Trust's policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.

This procedure does not form part of any employee's contract of employment and it may be amended at any time following consultation. The Trust may also vary application of this procedure, including any time scales for action, as appropriate.

2. SCOPE AND PURPOSE OF POLICY

The procedure applies to all employees regardless of length of service excluding those in their probationary period where separate arrangements apply. It does not apply to agency workers or self-employed contractors.

This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases reference should be made to the appropriate policy or procedure available on each Academy website.

Minor conduct issues can often be resolved informally between employees and their line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on the employee's personnel file. In some cases an informal verbal warning or instruction may be given, which will not form part of the disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

Employees will not normally be dismissed for a first act of misconduct, unless the Trust decides that the conduct amounts to gross misconduct or the employee has not completed a probationary period.

As recognisable figures in the local community the behaviour and conduct of staff in the Trust outside of work can impact on their employment. Therefore conduct outside work may be treated as a disciplinary matter if it is considered that it is relevant to the employee's employment (see disciplinary rules).

3. CONFIDENTIALITY

It is the aim of the Trust to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

Employees, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

Employees will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless there is good reason that a witness's identity should remain confidential.

4. ALLEGATIONS

Allegations may be brought to the Trust's attention in a number of ways and through a variety of sources. Appendix 1 sets out the disciplinary rules. As with disclosures made by children and young people, adults need to be aware that in making an allegation it is not always possible to keep the matter confidential. The Headteacher / HR Manager will need to decide upon the most appropriate course of action and may choose to proceed with an investigation even if the person making the allegation does not want them to.

Allegations which involve issues of child protection and/or abuse of children by staff should be referred immediately to the Local Authority Designated Officer (LADO). No further action under this procedure will usually be taken until the LADO has been consulted.

5. INVESTIGATIONS

Upon receiving any allegations against employees it is likely that further information will be required to establish what the next course of action should be. The Headteacher or his/her nominee should seek to establish the basic facts of the situation; this may involve looking at records, speaking to witnesses, reviewing CCTV etc.

Preliminary Investigation meeting

A preliminary investigation meeting may be held with the employee to establish the basic facts of the circumstance and to enable the Investigating Officer to determine whether further investigation is required. Such a meeting can sometimes give a reasonable explanation in response to allegations which then enables the matter to be concluded. A preliminary meeting will not be required in all cases and it is for the Headteacher or his / her nominee to decide if this is appropriate.

Investigating Officer

After a preliminary investigation where it is determined that there is a need for investigation, or if the concerns are serious enough to warrant a full investigation immediately, the Headteacher or his/her nominee will usually appoint an Investigating Officer to carry out the investigation. This will be an appropriate person to the nature of the allegations and the role of the employee. In the case of allegations made against the Executive Director / Headteacher the Chair of the Trust will be responsible for the management of the procedure and determining an appropriate investigating officer, either internally or externally.

Further investigation

The purpose of an investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations made against an employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents and other information.

Interviewing witnesses

It may be necessary to interview witnesses who may have information that is relevant to the allegations. A record of the meeting will be made and the witness will have the opportunity to review the record, make amendments for clarification purposes and sign and date the record. The Trust recognises that some employees may find this difficult or worrying, however all employees are expected to fully participate in any such investigation.

Interviewing the employee

Investigation meetings are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. Employees do not normally have the right to bring a companion to an investigation meeting. However, employees are allowed to bring a trade union representative or work colleague to the investigation meeting if they are available. No rearrangements will be made to the time and date of the investigation meeting to enable a companion to attend. A record of the meeting will be made and the employee will have the opportunity to review the record, make amendments for clarification purposes and sign and date the record.

Employees must co-operate fully and promptly in any investigation. This will include providing the names of any relevant witnesses, disclosing any relevant documents or information and attending investigative interviews if required. As each investigation will vary in length and complexity it will be completed in as short a time frame as possible.

6. CRIMINAL CHARGES

Where conduct is the subject of a criminal investigation, charge or conviction the facts will be investigated before deciding whether to take formal disciplinary action. Disciplinary action will not be automatic and will depend upon the circumstances. Employees should inform the HR Manager immediately if they are involved in a criminal investigation, or are subject to a charge or conviction.

The Trust will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where employees are unable or have been advised not to attend an investigation meeting or disciplinary hearing or say anything about a pending criminal matter, a decision may have to be made based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if it is considered that it is relevant to the employee's employment.

Where a criminal investigation relates to allegations of abuse of children or young people the Trust will co-operate and share information about the employee with other relevant agencies as appropriate.

7. SUSPENSION

In some circumstances it may be necessary to suspend the employee from work. The suspension will be for no longer than is necessary to investigate the allegations and conclude the disciplinary process. The arrangements will be confirmed to the employee in writing as soon as possible.

Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. Employees will continue to receive full salary and benefits during the period of suspension.

Alternatives to suspension, for example re-organisation of duties, work location; temporary redeployment to another role etc. will be explored where relevant before a decision to suspend is made. The nature and severity of the allegations will need to be considered as will the employee's role within the Academy in which they work.

Where allegations are made that involve the protection of children, suspension will not be considered to be automatic. A reasoned decision will be made based on all available information.

The suspension will be kept under review as the investigation progresses. As information is gathered it may become appropriate to lift the suspension during the course of the investigation or prior to any disciplinary hearing.

The decision to suspend an employee can be made by the Headteacher or his / her nominee.

8. DISCIPLINARY HEARING

Following any investigation, if there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing. The employee will be informed in writing of the allegations against them, the basis for those allegations, and what the likely range of consequences will be if it is decided at the hearing that the allegations are true. The following will also be included where appropriate:

- A summary of relevant information gathered during the investigation;
- A copy of any relevant documents which will be used at the disciplinary hearing; and
- A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case as much information as possible will be provided while maintaining confidentiality.

Five working days written notice of the date, time and place of the disciplinary hearing will be given to provide the employee with a reasonable amount of time to prepare their case based on the information that they have been provided with. The hearing will be arranged as soon as is practicably possible.

The HR Department will be responsible for ensuring that all of the arrangements for the hearing are made and that the employee receives the appropriate paperwork and notice of the hearing.

9. ROLE OF COMPANION AT MEETINGS AND HEARINGS

An employee may bring a companion to all meetings under this policy. The companion may be either a trade union representative or a work colleague. The employee must inform the HR Manager conducting the meetings who their chosen companion is, in good time before the hearing.

Should the employee choose to bring a companion to the hearing they will be responsible for making these arrangements and for providing their companion with any paperwork that they require for the hearing.

Acting as a companion is voluntary and your colleagues are under no obligation to do so. If they agree to do so they will be allowed reasonable time off from duties without loss of pay to act as a companion.

If the choice of companion is not available at the time a meeting is scheduled, the employee may propose an alternative time for the meeting to take place and so long as the alternative time is reasonable and within five working days after the original scheduled date, we will postpone the meeting. If the employee's chosen companion will not be available for more than five working days afterwards, we may ask the employee to choose someone else.

A companion may make representations, ask questions, and sum up the employee's position, but will not be allowed to answer questions on the employee's behalf. The employee may confer privately with their companion at any time during a meeting.

The Trust may, at our discretion, allow the employee to bring a companion who is not a colleague or union representative (for example, a member of family) as a reasonable adjustment if the employee has a disability, or if they difficulty understanding English.

10. PROCEDURE AT DISCIPLINARY HEARINGS

If the employee and/or their companion cannot attend the hearing they should inform the HR Manager immediately and consideration will be given to arranging an alternative time. Employees must make every effort to attend the hearing and failure to attend without good reason may be treated as misconduct in itself. Failure to attend without good reason, or persistent inability to do so (for example for health reasons), may lead to a decision being taken based on the available evidence.

If the employee chooses not to attend the hearing they may choose to send a written statement for consideration at the hearing.

The hearing will be chaired by the Headteacher or his/her nominee. The Investigating Officer and/or a member of the Human Resources department will also be present.

At the disciplinary hearing the Investigating Officer will go through the allegations against the employee and the evidence that has been gathered. The employee will be able to respond

and present any evidence of their own. The companion may make representations to the Headteacher or his/her nominee and ask questions, but should not answer questions on the employee's behalf. The employee may confer privately with the companion at any time during the hearing.

Relevant witnesses may be asked by the Investigating Officer or the employee to appear at the hearing. The employee must give sufficient advance notice if they wish to call witnesses to ensure that there is time to arrange their attendance. The employee will be given the opportunity to respond to any information given by a witness. However, the employee will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, the Chair decides that a fair hearing could not be held otherwise.

The Chair may adjourn the disciplinary hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points that have been raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The employee will be informed in writing of the decision and the reasons for it, usually within 5 working days of the disciplinary hearing. Where possible this information will also be explained to the employee in person.

11. DISCIPLINARY PENALTIES

The Headteacher or his/her nominee may find that there is no case to answer and may refer the case back to an informal process. Alternatively the Headteacher or his/her nominee (usually a member of the senior leadership team or Trust Board) may give the employee a disciplinary warning or dismiss them.

The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. The Trust aims to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

First written warning. A first written warning may be authorised by the Headteacher or his/her nominee. It will usually be appropriate for a first act of misconduct where there are no other active written warnings on the employee's disciplinary record.

Final written warning. A final written warning may be authorised by the Headteacher or his/her nominee. It will usually be appropriate for:

- Misconduct where there is already an active written warning on the employee's record;
or
- Misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the record.

Dismissal. Dismissal may be authorised by the Headteacher or his/her nominee. It will usually only be appropriate for:

- Any misconduct during the probationary period;

- Further misconduct where there is an active final written warning on the record; or
- Any gross misconduct regardless of whether there are active warnings on the record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal).

In some cases the Headteacher may, at their discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

- Demotion;
- Transfer to another department or job;
- Loss of seniority; or
- Reduction in pay.

12. THE EFFECT OF A WARNING

Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.

A first written warning will usually remain active for six months and a final written warning will usually remain active for twelve months. In exceptional cases verging on gross misconduct or misconduct relating to the safety and welfare of children, a warning may state that it will remain active indefinitely. The conduct will be reviewed at the end of a warning's active period and if it has not improved sufficiently the active period may be extended.

After the active period, the warning will remain permanently on the employee's personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

13. APPEALS AGAINST DISCIPLINARY ACTION

The employee has the right to appeal against the disciplinary action taken against them. This must be in writing, stating the full grounds of appeal and sent to the HR Manager within 5 working days of the date on which the employee was informed of the decision.

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful they will be reinstated with no loss of continuity or pay.

The Chair may adjourn the appeal hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points that have been raised at the hearing. If any new information comes to light this will be provided to the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing is reconvened.

The employee must be given written notice of the date, time and place of the appeal hearing. This will normally be no less than two to seven working days. The employee may bring a companion to the appeal hearing (see paragraph 9).

Appeals against written warnings will normally be conducted by a more senior manager to the manager who issued the warning. Appeals against dismissal will be conducted by a panel of Trustees that have not been previously involved in the case. The hearing may be a complete re-hearing or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the Chair's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.

Following the appeal hearing the Chair of the appeal panel may:

- Confirm the original decision;
- Revoke the original decision; or
- Substitute a different penalty. Ordinarily a penalty will not be increased on appeal unless there is new information or evidence being available that requires further investigation.

The employee will be informed in writing of the decision and the reasons for it, usually within 5 working days of the appeal hearing. Where possible this information will also be explained to the employee in person. There is no further right to appeal.

14. REFERRALS TO EXTERNAL BODIES

In cases where employees are dismissed or resign during a disciplinary process a referral to the Disclosure and Barring Service and Secretary of State will be made where the thresholds for referral are met.

15. REVIEW OF POLICY

This policy is reviewed and amended bi-annually by the HR department.

Date of next review: January 2021

Appendix 1 - Disciplinary rules

1. Policy statement

The aim of the Disciplinary Rules and Disciplinary Procedure is to set out the standards of conduct expected of all staff and to provide a framework within which the Headteacher and Senior Management Teams can work with staff to maintain those standards and encourage improvement where necessary.

If any employee is in any doubt as to their responsibilities or the standards of conduct expected they should speak to their line manager or a member of the HR Department.

2. Rules of conduct

While working for the Trust you should at all times maintain professional and responsible standards of conduct. In particular you should:

- Observe the terms and conditions of your contract, particularly with regard to:
- Hours of work;
- Confidentiality;
- Ensure that you understand and follow the Trust's Code of Conduct;
- observe all of the Trust's policies, procedures and regulations which are included on the intranet or notified to you from time to time by means of notice boards, e-mail, the intranet or otherwise;
- Take reasonable care in respect of the health and safety of colleagues, pupils and third parties and comply with the Trust's Health and Safety Policy;
- Comply with all reasonable instructions given by the Headteacher and Senior Leadership Team; and
- Act at all times in good faith and in the best interests of the Trust and those of our pupils and staff.

Failure to maintain satisfactory standards of conduct may result in action being taken under the Disciplinary Procedure.

3. Misconduct

The following are examples of matters that will normally be regarded as misconduct and will be dealt with under the Disciplinary Procedure:

- Minor breaches of the Trust's policies
- Minor breaches of an employee's contract of employment;
- Damage to, or unauthorised use of, the Trust's property;
- Poor timekeeping or time wasting;
- Unauthorised absence from work;
- Refusal to follow instructions;
- Excessive use of the Trust's telephones, email, internet or other property usage for personal reasons;
- Inappropriate or other offensive behaviour, including using obscene language, victimisation or harassment of other members of staff;
- Negligence in the performance of duties;

- Smoking in no-smoking areas, which applies to anything that can be smoked and includes, but is not limited to, cigarettes, electronic cigarettes, pipes (including water pipes such as shisha and hookah pipes), cigars and herbal cigarettes; or
- Poor attendance.

This list is intended as a guide and is not exhaustive.

4. Gross misconduct

Gross misconduct is a serious breach of contract and includes misconduct which, in the opinion of the Trust, is likely to prejudice its business or reputation or irreparably damage the working relationship and trust between the Trust and the employee. Gross misconduct will be dealt with under the Disciplinary Procedure and may lead to dismissal without notice or pay in lieu of notice (summary dismissal).

The following are examples of matters that are normally regarded as gross misconduct:

- Theft, or unauthorised removal of property or the property of a colleague, contractor, pupil or member of the public;
- Fraud, forgery or other dishonesty, including fabrication of expense claims and time sheets, pupil's work, examinations or assessments;
- Actual or threatened violence, or behaviour which provokes violence;
- Deliberate damage to the buildings, fittings, property or equipment of the Trust, or the property of a colleague, contractor, pupil or member of the public;
- Inappropriate conduct with children or young people, including failing to maintain appropriate professional boundaries;
- Serious failure to follow the Trust's safeguarding procedures;
- Making a false declaration or failing to disclose information in relation to the disqualification from childcare requirements, or becoming disqualified from providing childcare (if applicable);
- Serious misuse of the Trust's property or name;
- Deliberately accessing internet sites at work or at home, using Trust equipment, which contain pornographic, offensive or obscene material;
- Repeated or serious failure to obey instructions, or any other serious act of insubordination;
- Bringing the Trust into serious disrepute;
- Being under the influence of alcohol, illegal drugs or other substances during working hours or not being capable of fulfilling your duties because of the effects of alcohol or illegal drugs or other substances.
- Causing loss, damage or injury through serious negligence;
- Serious or repeated breach of health and safety rules or serious misuse of safety equipment;
- Unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure;
- Acceptance of bribes or other secret payments;
- Conviction or caution for a criminal offence that in the opinion of the Trust may affect our reputation or our relationships with our staff, pupils, parents or the public, or otherwise affects your suitability to continue to work for us;
- Possession, use, supply or attempted supply of illegal drugs;

- Serious neglect of duties, or a serious or deliberate breach of your contract or operating procedures;
- Unauthorised use, processing or disclosure of personal data contrary to our Data Protection Policy;
- Harassment of, or discrimination against, employees, pupils, parents or members of the public, related to any of the protected characteristics contrary to our Equal Opportunities Policy or our Anti-harassment and Bullying Policy;
- Refusal to disclose any of the information required by your employment or any other information that may have a bearing on the performance of your duties;
- Giving false information as to qualifications or entitlement to work (including immigration status);
- Making a disclosure of false or misleading information under our Whistleblowing Policy maliciously, for personal gain, or otherwise in bad faith;
- Making untrue allegations in bad faith against a colleague;
- Victimising a colleague who has raised concerns, made a complaint or given evidence information under the Whistleblowing policy, Disciplinary Procedure or otherwise;
- Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of email and the internet) contrary to our ICT user policy;
- Undertaking unauthorised paid or unpaid employment during your working hours;

This list is intended as a guide and is not exhaustive.

In some instances, offences which would normally constitute gross misconduct may be considered as misconduct because of mitigating circumstances. Similarly, issues which would normally be treated as misconduct may, in certain circumstances, be considered so serious that they constitute gross misconduct.