

# Discipline and Conduct Policy

September 2016

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## **Disciplinary Policy Statement**

### **The Aim of the Policy**

1. Discipline is essential for the conduct of the School's affairs and for the safety and wellbeing of all employees and pupils. It is equally the intent of the School that disciplinary action is considered and applied fairly and equitably.

### **Definition of Discipline**

2. To help and encourage all employees to achieve and maintain the necessary standards of conduct, attendance and performance expected by the School.

### **Who the policy applies to**

3. The policy applies to all employees of the School, whether full-time or part-time, permanent or temporary.

### **Commitments**

4. Many potential disciplinary issues can be resolved informally. Early intervention by line managers can prevent an issue from escalating to the point where the formal disciplinary procedure has to be used. Schools are encouraged to involve the Trade Union where necessary to help resolve issues informally. However, where an issue cannot be resolved informally or is of such a serious nature then the formal procedure must be applied.

## Useful Contacts

<b>NUT</b> Tel: 0191 482 77 00 Fax: 0191 482 77 20	<b>NASUWT</b> Tel: 01915195300 email: <a href="mailto:rc-northeast@mail.nasuwt.org.uk">rc-northeast@mail.nasuwt.org.uk</a>  John Hall - 07801567944
<b>ATL</b>  <b>James White</b> Tel: 0191 4104305	<b>NAHT</b>  Tel: 03003030333
<b>ACAS</b> Tel: 03001231100	
<b>UNISON Northern</b>  Tel: 08000857857	<b>GMB</b>  Shaun Duckworth Tel: 07882522105

## INTRODUCTION

1. This procedure will be adopted in all circumstances when dealing with disciplinary matters relating to employees of the Academy. A copy of the disciplinary procedure is provided to all employees when they commence employment with the School.
2. This procedure is concerned with the formal, structured process of taking disciplinary action and is not designed to cover those instances where management may consider it necessary to give an informal warning to an employee with regard to their conduct/performance as part of the normal exercising of supervisory responsibility. Such informal warnings should not be confused with a formal warning as detailed in this procedure.
3. The responsibility for disciplinary matters lies with the Governing Body of the School but the Governing Body has delegated this responsibility to a small panel of Governors. The Head Teacher may be part of this panel if they have not already been part of the disciplinary process.
4. No disciplinary action should be taken against, nor in normal circumstances should there be any suspension of, a shop steward or representative of a trade union or organisation of workers until the circumstances of the case have been discussed with a full time official.
5. This procedure applies to all employees whether occupying a permanent or temporary post or in full time or part time employment except that it will not apply on termination of employment;
  - ◆ At the end of a fixed term contract for which they were specifically engaged
  - ◆ On grounds of redundancy

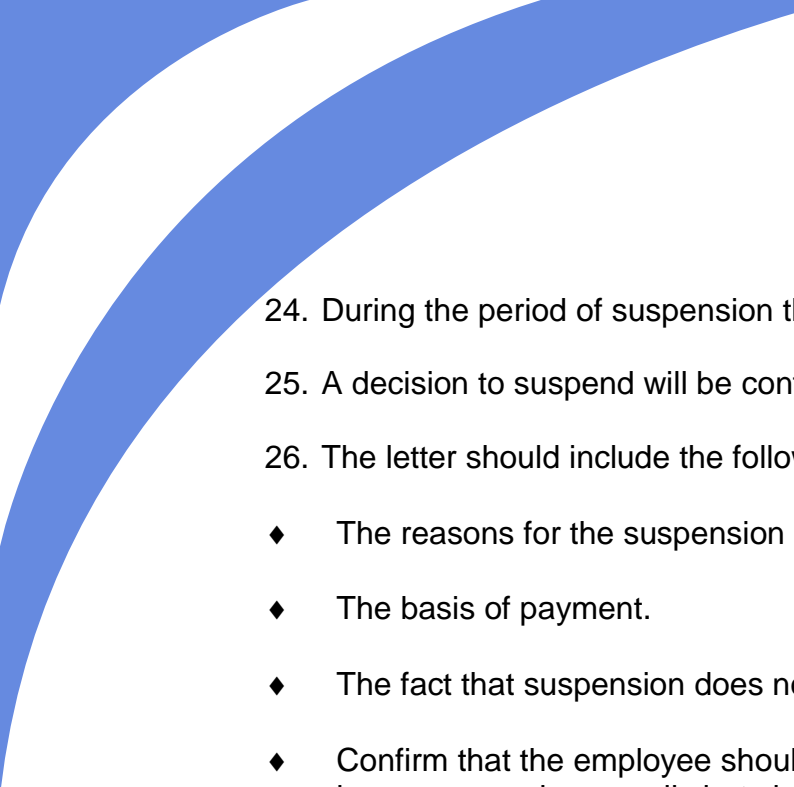

## INVESTIGATION STAGE

6. At all stages of the disciplinary procedure the employee has the right to be accompanied by a trade union representative or work colleague. The employee should be advised of this right as soon as the procedure is commenced.
7. Some disciplinary matters may not require formal investigation because the circumstances/facts are easily established. However where a disciplinary matter has arisen as a result of an employee's performance, conduct or omission, the supervisor, line manager, Assistant Head or Deputy Head should first attempt to establish the facts promptly, taking information in the form of brief statements from witnesses as necessary.
8. Thereafter the matter will be referred to the Head Teacher to appoint a formal investigating officer. At this stage relevant contacts within Strictly Education should be consulted as necessary.
9. The investigating officer will be different to the person who will eventually decide on what formal action, if any, to be taken. The investigating officer will carry out a thorough investigation in order to obtain all the relevant facts. This may include obtaining written and signed statements and relevant documentary evidence. It is important to be impartial when looking for evidence. All corroboration, or contradiction, of the allegations should be noted.
10. Where the matter involves, or is thought to involve, irregularities concerning cash, stores or other property of the School, or any suspected irregularity in the exercise of School functions, internal audit should be contacted and arranged immediately.
11. In taking witness statements, the following should be noted;
  - ◆ Date, time and place of each or any observation or incident.
  - ◆ The opportunity and ability of the witness to observe clearly and with accuracy.
  - ◆ The circumstantial evidence, such as knowledge of a system or arrangement or the reason for the presence of the witness and why certain small details are memorable.

- ◆ Whether the witness has suffered at the hands of the employee or has any other reason to fabricate, whether from personal grudge or any other reason or principle.
  - ◆ All statements are read, signed and dated by the witness.
  - ◆ Witnesses should be informed that they may be asked to attend and give evidence at a disciplinary meeting.
12. If the witness is prepared to attend a disciplinary meeting no problem will arise but a witness cannot be compelled to attend.
13. Further investigation can then take place either to confirm or undermine the information given. Corroboration is clearly desirable.
14. In cases where witnesses may fear reprisals or confidentiality has to be preserved guidelines on the accepted procedure for protection of such persons are as follows;
- ◆ The information given by witnesses should be in writing in one or more statements. Initially these statements should be taken without regard to the fact it may subsequently prove necessary to omit or erase certain parts of the statements before submission to others, in order to prevent identification of persons.
15. Where it is necessary for the purpose of the investigation to formally meet the employee concerned, they will be informed in writing of;
- ◆ The reason for the meeting.
  - ◆ That they will be required to attend.
  - ◆ They may be accompanied by a trade union representative or colleague and encouraged to do so.
16. At such a meeting it should be made clear to the employee that the meeting is purely investigatory and not disciplinary, but that the outcome may be that future disciplinary action be taken.
17. If, after an investigatory meeting, it is decided there will be no further action, the employee will be advised of this and any references to the investigation and the meeting removed from their personal file.

## SUSPENSION

18. Initial investigation of the facts, or the occurrence of a particular incident, may make it desirable for an employee to be suspended and precluded from attending work whilst investigations continue or commence.
19. Before considering suspension and dependent upon the circumstances every effort must be made to move the employee to another location if necessary and/or undertake other duties. Suspension is not in itself disciplinary action.
20. Suspension should only be considered where;
  - ◆ The possibility of dismissal on the grounds of alleged serious/gross misconduct may arise.
  - ◆ There are grounds for doubt as to the suitability of the employee to continue at work pending certain criminal investigations or proceedings.
  - ◆ The safety of the employee or other people at work could be affected by their continuing presence in the workplace.
  - ◆ To facilitate the conduct of the investigation, it is in the interests of the employee or the School for them not to be present at the workplace.
21. Where it is considered necessary to suspend an employee, they will be interviewed and told the reasons. The employee may wish to be accompanied by a trade union representative or colleague. In certain circumstances this may not be possible.
22. An employee should only be suspended by the Head Teacher or Governing Body, after consultation with a representative of Human Resources. Where an employee is suspended the facts must be placed before the Governors and visa versa and such action shall be reported to the governing body and Academy members via Human Resources.
23. It is accepted that outside normal working hours it may be necessary for other levels of management to suspend employees and to do so without consultation but this should only be done where considered absolutely necessary and matters reported as soon as possible to the Head Teacher and a representative of Human Resources.

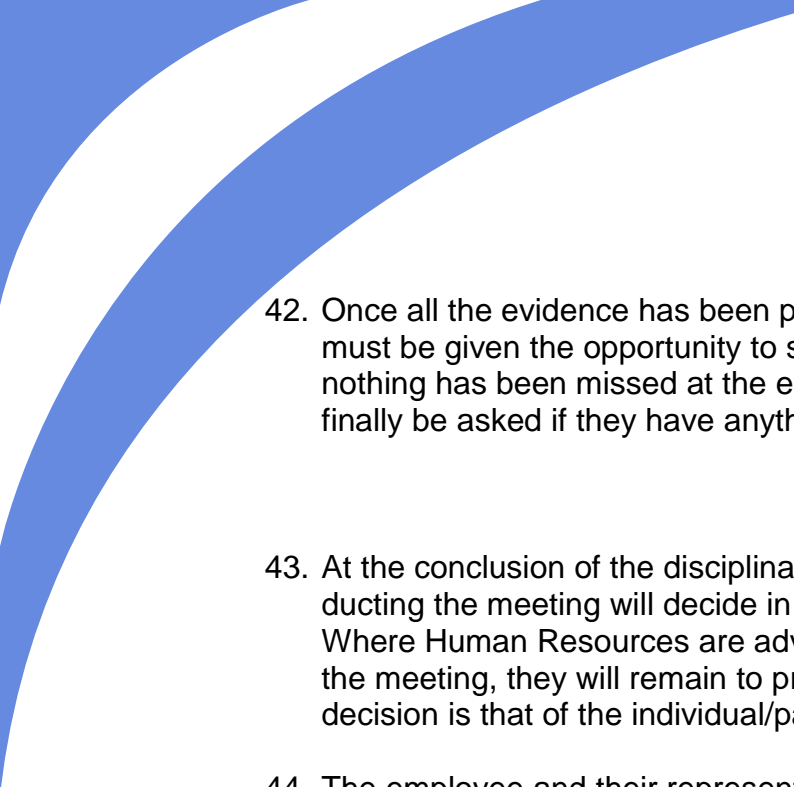
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24. During the period of suspension the employee will remain on full pay.
25. A decision to suspend will be confirmed in writing to the employee.
26. The letter should include the following;
- ◆ The reasons for the suspension and the likely length of the suspension
  - ◆ The basis of payment.
  - ◆ The fact that suspension does not constitute disciplinary action.
  - ◆ Confirm that the employee should refrain from attending School premises or accessing e-mails but should be contactable and be prepared to attend any meeting arranged.
27. The letter should be either hand-delivered to their home or sent by recorded delivery.
28. If at the conclusion of any subsequent disciplinary meeting;
- ◆ It is decided that no disciplinary action should be taken, the suspension will be terminated. Any references to the suspension will be removed from the personal file.
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## DISCIPLINARY MEETING

29. If it is decided there is a disciplinary case to answer the employee will be informed in writing that they will be required to attend a disciplinary meeting on a specified date and time. Unless the School and the employee agree otherwise, at least 5 working days notice of such a meeting should be given. The employee concerned may offer an alternative date within 5 days of the original date if they or their chosen trade union representative or colleague cannot attend.
30. Where an employee is persistently unable or unwilling to attend without good cause then a decision should be made on the evidence available.
31. Until the circumstances of the allegations have been discussed with a full-time official of the union or organisation of workers concerned, no disciplinary action will be taken against a shop steward or representative of a trade union. Such discussion should normally take place before any letter is sent inviting the employee to a disciplinary meeting.
32. The employee must be informed in the disciplinary meeting letter of;
  - ◆ The right to be accompanied at the meeting by a trade union representative or colleague.
  - ◆ The subject matter/allegations made.
  - ◆ All relevant evidence from the investigation that is considered necessary.
  - ◆ Only if it is a possible outcome and only if the allegations are proven their potential dismissal.
  - ◆ The requirement to forward to the person conducting the meeting, any documents upon which they intend to rely, prior to the date of the meeting.
  - ◆ To give sufficient notice to allow the attendance of any necessary witness they may wish to call.
33. The letter should be hand-delivered or sent by recorded delivery.
34. At the meeting the person/panel hearing the disciplinary will explain the purpose of the meeting, identify those in attendance and how the meeting will be conducted. They will be assisted by a representative from Human Resources.

35. At the disciplinary meeting the investigating officer must put the allegations and case forward first using any statements, documentary evidence and witnesses.
36. The employee or their representative must be given the opportunity to state their case. It is for the employee to answer any allegations made against them. They should be able to ask questions, present evidence, call witnesses and question them on any statement they have made. The investigating officer may also question them. All parties and witnesses may be questioned by the person/s conducting the disciplinary meeting and any advisers present.
37. Where a witness is unwilling or there is a genuine fear of reprisal if they attend the disciplinary meeting the individual/panel conducting the meeting, should interview the witness and decide what weight is to be given to the information.
38. The School recognises a witness may want to remain anonymous. However to carry out a proper investigation it may not be possible to keep the witness identity confidential and they may need to come forward as a witness at an appropriate time. If it becomes necessary to reveal the witness's identity the School will discuss this with the witness prior to any revelation. The witness will at this point have the option to continue or not.
39. The School encourages witnesses to put their name to allegations. Concerns expressed anonymously are less powerful but they may be considered at the discretion of the School. In exercising this discretion, the factors to be taken into account would include;
  - ◆ The seriousness of the issues raised.
  - ◆ The credibility of the concern.
  - ◆ The likelihood of confirming the allegation from named sources.
40. If an employee who is a witness makes malicious or vexatious allegations, disciplinary action including dismissal may be taken. Similarly if an agency worker, external secondee or volunteer etc. makes malicious or vexatious allegations, the School will consider dispensing with their services.
41. It is particularly important that full and careful notes are taken during the disciplinary meeting and if necessary a separate person should take the necessary notes to allow the other parties to concentrate fully on proceedings.

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42. Once all the evidence has been presented and examined, all parties must be given the opportunity to summarise their main points to ensure nothing has been missed at the end of the meeting. The employee must finally be asked if they have anything further to say.
  43. At the conclusion of the disciplinary meeting the individual/panel conducting the meeting will decide in private what action should be taken. Where Human Resources are advising the individual/panel conducting the meeting, they will remain to provide advice if required. However the decision is that of the individual/panel conducting the meeting.
  44. The employee and their representative and the investigating officer will leave the room but normally will remain 'on hand' to await the decision which should then be communicated to them orally. If it is not practicable or sensible for them to remain 'on hand' during individual/panel deliberations, then they may be asked to return to hear the decision at a later time or be informed that the decision will be communicated in writing and by telephone if requested.

## **DISCIPLINARY ACTION**

45. If, at the conclusion of the meeting, the individual/panel conducting the meeting is not satisfied with the employee's account or explanation of the matter, and considers the allegation is justified, disciplinary action will be taken.
46. The employee, when advised of the decision, will also be advised of the right of appeal.
47. The following are the various types and stages of disciplinary action. Their use will vary depending upon the nature and seriousness of the offence and whether the employee already has any current warnings on file.

### **Written Warning**

#### **Misconduct**

48. In cases of misconduct, employees should be given a written warning setting out the nature of the misconduct and the change in behaviour required. The warning should also inform the employee that a final written warning may be considered if there is further misconduct. A record of the warning should be kept, but it should be disregarded for disciplinary purposes after 6 months.

#### **Unsatisfactory performance**

49. In circumstances of unsatisfactory performance, the employee will receive an 'improvement note' which is equivalent to a written warning and that failure to improve could lead to a final written warning and, ultimately, to dismissal. A copy should be kept and used as the basis for monitoring and reviewing performance. The 'improvement note' should set out:

- ◆ The performance problem.
- ◆ The improvement that is required.
- ◆ The timescale for achieving this improvement.

- ◆ A review date.
- ◆ Any support, including identified training, to assist improvement.

## **Final Written Warning**

50. If the employee has a current written warning about conduct or performance then further misconduct or unsatisfactory performance may warrant a final written warning. This may also be the case where first offence misconduct or unsatisfactory performance is sufficiently serious but may not justify dismissal. It should contain the statement that further misconduct or unsatisfactory performance may lead to dismissal. A record of the warning should be disregarded for disciplinary purposes after 12 months (or longer in exceptional circumstances). The person concerned must first consult with Human Resources before any extension is agreed.

### *Dismissal with Notice or with pay in lieu of Notice*

51. Where there have been subsequent offences or a failure to improve sufficiently after the issuing of an earlier warning(s).

## **Gross Misconduct - Dismissal without Notice**

52. For offences which amount to misconduct of a most serious nature/gross misconduct and thus make employees liable to summary dismissal. Gross misconduct will normally lead to dismissal and examples of offences which may lead to this include;

- ◆ Child protection issues.
- ◆ Unauthorised removal or malicious damage of School property.
- ◆ Offences of dishonesty.
- ◆ Fighting.
- ◆ Physical assault.
- ◆ Falsification of time sheets.
- ◆ False subsistence and expenses claims.
- ◆ Theft.

- ◆ Fraud.
- ◆ Misuse of the internet or e mail or accessing Internet sites containing offensive or obscene material.
- ◆ Sexual offences.

53. This list is neither exhaustive nor exclusive. There may be other offences of similar seriousness which could constitute gross misconduct and therefore this list must only be regarded as illustrative.

## **Notes on the disciplinary action stages**

54. The normal practice will be to progress through first written warning, final written warning to dismissal with notice where there has been a failure to improve after the issuing of previous warnings.

55. The stages do not have to be followed in strict order. Circumstances may be such that a warning may need to be repeated or move to dismissal after a first written warning.

56. A decision to dismiss will be taken after consultation with a representative of Human Resources.

57. Following a decision to take any formal disciplinary action, including dismissal, the employee will be informed of the fact by letter notwithstanding the fact that they might already have been notified orally.

58. The employee must be informed in the disciplinary action letter of;

- ◆ Details of the offence stating the grounds for the action taken.
- ◆ The disciplinary action to which they may be liable if they commit further offences or fail to improve their performance satisfactorily.
- ◆ The right of appeal.
- ◆ The duration of the disciplinary sanction and its expiry date.

59. The letter should be either hand-delivered to their home or sent by recorded delivery.

60. An additional copy of the letter should always be enclosed for the employee to pass to a trade union representative or colleague, if they so wish.

61. Should any disciplinary action be reconsidered and effectively withdrawn, all written references to it will be deleted from their personal file and the employee notified accordingly.
62. If, at the conclusion of a disciplinary meeting, it is decided that no disciplinary action is to be taken, the employee will have this fact notified or confirmed to them in writing.

## **RIGHT OF APPEAL**

63. An employee who has had formal disciplinary action taken against them has a right of appeal. No person who is involved in taking initial disciplinary action will be involved in hearing an appeal against disciplinary action.
64. Where an employee wants to appeal they must notify the Chair of the Governing Body of this fact in writing within ten working days of receipt of the letter confirming the disciplinary action taken. The employee should state in the letter the reason for the appeal.
65. The Chairperson of the Governing Body should then arrange for the appeal to be heard by an Appeal Panel of the Governing Body. No member of the Governing Body who was part of the disciplinary meeting can be part of the Appeal Panel. Appeals submitted against warnings can only be pursued as far as the Appeal Panel of the Governing Body.
66. If, after an appeal, a decision to dismiss is confirmed (or, after a decision to dismiss is taken and the member of staff does not wish to appeal) the Governing Body must notify the Academy members in writing of the decision to dismiss.
67. The appellant will be informed at least five working days in advance, of the date, time and location of the appeal and their right to be accompanied by a trade union representative or colleague, and of the arrangements for presentation of documentation. At least five working days prior to the appeal, all relevant documentary evidence to be used at the appeal by both parties, including, if applicable, a chronology of events, should be exchanged. The Chair of the Disciplinary will present the case on behalf of the School to the Appeals Panel.
68. At the appeal the Chair of the Disciplinary will put their case, giving the background to and the reasons for the decision and include documentation as previously provided to the appellant. The appellant (or their representative) will have the opportunity to ask questions of the Chair of

the Disciplinary meeting. Members of the Appeal Panel may also ask questions.


69. The appellant (or representative) will put their case, to include documentation as previously provided for the Appeal Panel. The Chair of the Disciplinary will have the opportunity to ask questions of the appellant. Members of the Appeal Panel may also ask questions. The Chair of the Disciplinary and the appellant (or representative), will then sum up their case if they so wish.
70. The Chair of the Disciplinary, appellant and their representative will then withdraw whilst the Appeal Panel deliberates in private assisted by its advisers. Should the Appeal Panel need to recall the Chair of the Disciplinary or the appellant and their representative to clarify matters on which they are uncertain, then both parties are to return notwithstanding only one may be required to comment on the point requiring clarification.
71. Where practicable, the decision of the Appeals Panel should be given orally in the presence of both the appellant and Chair of the Disciplinary but will also be confirmed in writing.
72. The appeal is conducted as a review of the Chair of the Disciplinary decision. However in exceptional circumstances, where it is alleged that there has been some procedural irregularity or flaw in the disciplinary process, the Appeal Panel may consider any such representations and if thought appropriate, proceed with the case by way of a rehearing. In such cases it may be necessary to adjourn the appeal to allow attendance of witnesses. The appeal will be reconvened at the earliest possible date thereafter.

## **EXPIRY OF WARNINGS**

73. In most cases the problem with an employee's performance or conduct which led to the warning will have been an isolated incident which has been appropriately dealt with by the procedure and the warning will have been effective in gaining the desired improvement.
74. In most cases, therefore, warnings should be disregarded for disciplinary purposes after the following time periods;

◆ Written Warning	Six months
◆ Final Written Warning	One year
75. Employees will be notified in the warning letter that the final written warning will be removed after one year but that it may in exceptional circumstances, be kept in place for a longer period. The School concerned





must first consult with the Council before any extension is agreed. An employee has a right of appeal against the decision not to delete a warning.