

Ascend Learning Trust

# Ascend Learning Trust Disciplinary Policy

Written by:	<b>DPO</b>
Date ratified:	<b>16.03.22</b>
Ascend Learning Trust Responsibility:	<b>MAT/LT</b>
Version Number:	<b>1</b>
Committee Reviewed:	<b>Standards</b>

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## Relevant Legislation

Equality Act 2010  
Employment Relations Act 1999

## Related Policies

Grievance Policy  
Appraisal and Capability Policy (Teachers & Support)  
Behaviour in the Workplace  
Code of Conduct

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## **POLICY STATEMENT**

Trust Bodies have a statutory obligation to adopt formal policies and procedures for dealing with staff conduct and discipline (School Staffing (England) Regulations 2003). A sound standard of discipline is essential for the efficient and effective management of our school.

This procedure is designed to help and encourage all colleagues to achieve and maintain satisfactory standards of behaviour and attendance and comply with the rules of the Trust Board.

It provides a method of dealing with any apparent shortcomings in conduct and can help a colleague to become effective again. It aims to ensure consistent and fair treatment for everyone and for matters to be dealt with speedily.

## **WHO DOES THIS PROCEDURE APPLY TO?**

This procedure applies to all staff within the Trust.

This procedure is based on Sections 35(8) and 36(8) of the Education Act 2002, and the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015. It has been drawn up following consultation with the recognised Trade Unions and Teachers' Professional Associations. It applies to and is designed to help and encourage employees within schools with delegated budgets.

## **CHILD PROTECTION ALLEGATIONS**

Allegations about the safeguarding and protection of children must be handled in accordance with statutory guidance and the procedures of the Local Safeguarding Children Board (LSCB). The role of the Local Authority Designated Officer (LADO) Swindon Council and Designated Officer for Allegations (DOFA) for Wiltshire Council is crucial in handling all allegations and the LADO/DOFA has a statutory duty to ensure that allegations about safeguarding are handled properly and expeditiously.

A strategy meeting, normally arranged within 2 working days of the allegation, will determine whether the allegation should be investigated by the police or by some other agency or by the school under its disciplinary procedure

If the matter is handed back to the school, whether at the first strategy meeting or at some later stage, the school must take account of the recommendations of the strategy meeting and must liaise with the LADO/DOFA and the HR department regarding the next steps.

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Further advice can be found in the Guidance for Headteachers Dealing with Child Protection Allegations against School based staff and the DfE guidance Dealing with Allegations of Abuse against Teachers and Other Staff, available from the HR office.

## **INFORMAL COUNSELLING**

Informal counselling may be a more appropriate response to minor offences rather than formal disciplinary action. If appropriate, counselling will take the form of a discussion with the object of determining and agreeing the improvement required.

A note of the conversation will be sent to the employee and a copy kept on file for three months. Where this informal approach fails to bring about the desired improvement, the formal procedure will then be followed.

## **MEDIATION**

An independent third party or an accredited mediator can sometimes help to resolve disciplinary issues. Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement.

Mediation can be used as either an alternative to formal disciplinary proceedings or to rebuild relationships after a formal dispute has been resolved.

## **WHAT ARE THE PRINCIPLES?**

This procedure is primarily concerned with improving discipline, not applying disciplinary penalties. It aims for an outcome which is fair and constructive. It is not intended that the procedure should replace normal communication between the Headteacher and a member of staff in the day to day running of a school, whereby comments may be made informally.

It is important that staff are made fully aware of the school's standards and expectations of conduct and behaviour and the possible consequences of falling below this.

Employees should be encouraged to seek the advice of a trade union or professional association at an early stage.

At all stages of the procedure the colleague will be informed of their right to be accompanied by a work colleague or trade union representative.

The accompanying person can address the meeting but not answer questions on behalf of the employee.

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**Employees have the right to be accompanied where a disciplinary meeting could result in:**

- a formal warning being issued
- the taking of some other disciplinary action
- the confirmation of a warning

If the subject of a disciplinary matter is an official representative of a trade union/ professional association, this procedure can be followed.

Depending on the circumstances however, it is advisable that the matter is discussed at an early stage with an employee of the union, but only after obtaining the colleague's agreement.

No disciplinary action will be taken without a prompt and thorough investigation into the circumstances.

Employees will be informed of the nature of the complaint(s) against them and will be given the opportunity to state their case before any decision is made at a disciplinary investigation meeting.

Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of the disciplinary meeting.

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice (summary dismissal).

The employee will have the right of appeal against any formal disciplinary action under this procedure.

The procedure outlines what disciplinary action may be taken against an employee

The procedure ensures that the employee is given an explanation for any sanction.

The procedure ensures that the employee will be heard in good faith and that there is no pre judgement of the issues. The procedure ensures that where the facts are in dispute, no disciplinary penalty is imposed until the case has been carefully investigated and a decision is taken looking at the balance of probability that events did or did not occur.

The procedure can be started at any stage.

The first stage will depend on the nature of the alleged misconduct.

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Where the Headteacher is the subject of the procedure, the Trust, will replace the Headteacher in initiating any action, which has to be taken. In such cases the Trust should notify and contact their HR provider for advice before any action is taken.

For the purposes of this procedure “Headteacher” means the most senior member of staff who has management responsibility for the colleague concerned.

As a employee faced with possible disciplinary action is likely to find the situation stressful, the Headteacher should make the colleague aware of the ‘wellbeing’ services available, such as Care First

## **RAISING A GRIEVANCE**

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

A discussion will therefore take place between school management, HR and the employee (normally through their trade union representative or directly if they are not represented) about whether or not the disciplinary procedure should be suspended so that the grievance issues can be dealt with separately under the grievance procedure or whether the grievance should be raised by the employee at relevant disciplinary interviews, hearing or appeal.

### **Suspending the disciplinary procedure would normally take place when:**

- the grievance relates to a conflict of interest that the investigator is alleged to have
- bias is alleged in the conduct of the disciplinary meeting
- there is an allegation that management have been selective in the evidence they have supplied to the investigator
- there is possible discrimination.

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## **DISCIPLINARY PROCEDURES TWO MAIN CATEGORIES**

**Misconduct** – Misconduct is defined as wrongful, improper or unacceptable conduct

**Gross misconduct** – Gross misconduct is generally defined as misconduct serious enough to destroy the employment contract between the employer and the employee and to make any further working relationship and trust impossible.

A fundamental breakdown of trust and confidence has occurred.

### **Examples of misconduct include the following. This list is not exhaustive:**

- misuse of school facilities such as email and internet
- poor time keeping
- rude or offensive behaviour
- unauthorised absences
- failure to improve faults that build into a pattern of unacceptable behaviour, performance or attitude
- undermining the achievement of team, service or corporate goals
- wilful failure to adapt to changing technologies, methods and patterns of work (as distinct from inability to adapt which is dealt with under the capability procedure)
- insubordination
- any act or omission that might otherwise, if the context and impact were judged to be more serious, be dealt with as a matter of gross misconduct.

### **Examples of Gross misconduct include the following. This list is not exhaustive:**

- dishonesty, including theft, fraud or deliberate falsification of records or acceptance of bribes
- physical violence or bullying against other employees, pupils or members of the public
- deliberate and serious damage to school property
- misuse of the school's property or name, or bringing the school into disrepute
- serious abuse of the school's computer equipment / software; including deliberately accessing internet sites containing pornographic, offensive or obscene material
- serious insubordination, including serious act(s) or persistent repetition of a failure to comply with a reasonable instruction
- unlawful discrimination or harassment on the grounds of sex, age, marital status, creed, race, religion or belief, ethnic origin, sexuality or disability.
- Off-duty conduct that has a direct adverse effect on the employment
- being under the influence of illegal drugs or alcohol whilst at work
- causing loss, damage or injury through serious negligence
- a serious breach of health and safety rules
- a serious breach of trust and/or confidence

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- breach of any professional code of conduct applicable to the job, which could bring the profession or the school into serious disrepute
  - serious negligence which causes or might cause unacceptable loss, damage or injury
  - a relevant criminal conviction that undermines the school and its confidence in the employee and/or undermines the employee's ability to undertake their work
  - misuse of official position for personal gain

These lists of offences are not intended in any way to be exhaustive or prescriptive.

The second list does, however, illustrate the types of cases where dismissal without notice - **SUMMARY DISMISSAL** (after full and detailed investigation and consideration of the facts) - can be justified.

Each instance must be assessed on the nature of the conduct and behaviour within the context of the nature of the job, the employee's record and any other relevant circumstances.

## **WHO IS RESPONSIBLE FOR DISCIPLINE AND DISMISSAL?**

The Trust has the overall responsibility for dismissing staff, with powers to delegate to the Headteacher responsibilities up to and including initial staff dismissal decisions.

Under the Education Act 2002 School Staffing (England) Regulations 2003, the Headteacher should be given the delegated responsibility to make decisions up to the initial dismissal decision, (except in certain circumstance, see 3.2 below) following which there is an opportunity to appeal to the Trust.

Dismissal and notice periods are effective from the initial dismissal decision. Should the appeal be successful reinstatement will also be from the original date with no break in continuity.

**Headteachers may therefore lead the process of making the initial dismissal decision unless the following circumstances apply:**

- the Headteacher is unwilling to perform these functions and their previous history at the school did not include any such responsibilities.
- the Headteacher has been directly involved in disciplinary procedures leading to dismissal, has instigated a proposal to dismiss or is a witness of particular conduct giving grounds for the dismissal in question.

In situations where it is not appropriate for the Headteacher to perform these functions (see paragraph 3.2 above), the staff discipline/dismissal committee of the Trust will be responsible for the process of making such decisions.

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However wherever possible the staff discipline/dismissal committee deals with cases of gross misconduct and Headteachers are delegated the responsibility to deal with all other cases.

The Trust should nominate 3 of its members, not staff members, to form the staff discipline/dismissal committee. A different 3 members of the Trust should form the appeals committee.

It is strongly recommended that Headteachers seek advice from HR as early as possible.

## **FORMAL PROCEDURE**

### **Investigation**

Where there is a complaint of misconduct that warrants formal investigation, the Headteacher should arrange for a full investigation, as soon as possible after the allegations have been made.

It is not usually appropriate for the Headteacher to carry out the investigation as they may be required to deal with the matter formally at any stage up to and including dismissal.

The Headteacher should therefore wherever possible nominate a senior member of staff to conduct the investigation.

If the complaint is against the Headteacher or the Headteacher has been involved in the complaint, then the Trust should undertake the investigation themselves or appoint someone else as appropriate, who may be external.

### **Conducting the Investigation**

- The aim of the investigation is to establish the facts of the case as quickly and thoroughly as possible.
- The colleague must be informed in writing:
  - that an investigation is taking place and that they will be given the opportunity to respond to the allegation(s) – date and time of meeting;
  - of the details of the complaint/allegation(s);
  - that they may be accompanied by a work colleague or trade union official to any meetings.



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**Witnesses must be told the following before any investigatory interview:**

- The nature and purpose of the investigation;
- That whilst there is no statutory right to representation at an investigatory interview, an employee may, if they wish, arrange to be accompanied by a trade union representative or work colleague during an investigatory interview but this must not cause undue delay to the conduct of the investigation;
- That a factual statement will be taken and may be used at any subsequent disciplinary hearing;
- That a witness may be called to give evidence at any subsequent disciplinary hearing;
- That the employee accused of misconduct may be given a copy of the statement at some point in the future and will be present at any hearing;
- That if the statement is used in any report submitted to the disciplinary hearing that the original statements will also be made available.

**Note on interviews with students who are possible witnesses in a disciplinary investigation:**

- If it is necessary to interview students as part of an investigation their parents/carers must be advised and consent must be obtained. A parent/carer may accompany a child during the interview but must not significantly contribute to the interview.
- Wherever possible the employee's representative will have the opportunity to be present at an interview with a student to avoid the necessity of interviewing the student more than once, as long as this is not prejudicial to the disclosures likely to be made by the student. If it is established that the presence of another adult may intimidate or inhibit the student the employee's representative will be provided with a transcript of the interview.
- Wherever possible a factual record of the interview will be agreed to avoid the student being called as a witness at any subsequent disciplinary hearing.

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## SUSPENSION

Suspension should never be an automatic approach for an employer when dealing with a potential disciplinary matter. An employee will usually be able to continue doing their normal role while the matter is investigated.

### **Suspension should usually only be considered if there is a serious allegation of misconduct and:**

- working relationships have severely broken down
- the employee could tamper with evidence, influence witnesses and/or sway the investigation into the allegation
- there is a risk to other employees, property or students
- the employee is the subject of criminal proceedings which may affect whether they can do their job.

An employer considering suspending an employee should think carefully and consider all other options.

Even where there are reasons to consider suspension, in most situations a temporary adjustment to the employee's working arrangements can remove the need to suspend.

For example, if tensions between two employees are high then a temporary transfer to a different team can stop them having to work together while an investigation is carried out.

### **Alternatives to suspension could include the employee temporarily:**

- being moved to a different area of the workplace
- working from home
- changing their working hours
- being placed on restricted duties
- working under supervision
- transferring them to a different role within the organisation (the role should be of a similar status to their normal role, but the same terms and conditions of employment).

Only if all other options are not practical, may suspension become necessary.

There should be no assumption of guilt associated with a suspension and suspension must not be used as a disciplinary sanction. However, a suspension can still have a damaging effect on the employee and their reputation.

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Therefore, if a suspension is necessary, the suspension and the reason for it should be kept confidential, where possible. If it is necessary to explain the employee's absence, an employer should discuss with the employee how they would like it to be explained to colleagues and/or customers.

**Other considerations could include whether it is necessary to:**

- escort the employee from the workplace
- remove the employee's workplace pass and/or IT access
- ask the employee to not contact other employees during the investigation.

Suspension will always be on full pay and the decision to suspend will be confirmed in writing within one school day. The suspended employee will be given the name of a manager that they can contact to act as support whilst on suspension.

## **CONCLUDING THE INVESTIGATION**

- After the investigation is complete the person who conducted it will produce a report and presented to the Headteacher to decide whether or not there is a case to answer. The outcome of the investigation will be notified to the colleague. If there is no case to answer, no evidence or the matter is regarded as trivial, then the matter will be closed and the colleague informed in writing. The Headteacher may arrange counselling or take informal action.
- If there is a case of misconduct to answer which will require more than informal measures the matter will be referred to a formal disciplinary hearing before the Headteacher or the staff discipline/dismissal committee of the Governing Body. The colleague will be notified in writing.

## **THE DISCIPLINARY HEARING**

- In accordance with the statutory discipline and dismissal procedure, disciplinary hearings will be convened in writing giving at least 10 working days' notice, giving details of the complaint against the employee. The employee will be given the right to be accompanied by a trade union representative or work colleague. Documents to be referred to during the hearing should be made available to all parties at least five working days in advance. These timescales may be varied with the agreement of all parties.
- Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available in the absence of the employee.
- At any disciplinary hearing the employee or their representative will, in accordance with the statutory discipline and dismissal procedure, be given an opportunity to state their case.

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## MAKING THE DECISION

- The Headteacher or the disciplinary/dismissal committee will deliberate in private, with HR support as appropriate, only recalling the parties to clear points of uncertainty on evidence already given. If a recall is necessary both parties are to return even if only one is concerned with the point giving rise to doubt.
- The decision will be announced at the close of the hearing whenever possible. The Headteacher or chair of the disciplinary committee will confirm the decision in writing within 48 hours of the hearing.

## THE PROCEDURE

### Stage 1 – first warning

If conduct or performance is unsatisfactory, the employee will be given a written warning or performance note. Such warnings will be recorded, but disregarded after up to 24 months of satisfactory service.

The employee will also be informed that a final written warning may be considered if there is no sustained satisfactory improvement or change. (Where the first offence is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation, it may be justifiable to move directly to a final written warning.)

### Stage 2 – final written warning

If the offence is serious, or there is no improvement in standards, or if a further offence of a similar kind occurs, a final written warning will be given which will include the reason for the warning and a note that if no improvement results within up to 36 months action at Stage 3 will be taken.

### Stage 3 – summary dismissal, dismissal or action short of dismissal

If the conduct or performance has failed to improve, the employee may suffer demotion, disciplinary transfer, loss of seniority (as allowed in the contract) or dismissal.

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## **GROSS MISCONDUCT**

If, after investigation, it is confirmed that an employee has committed an offence of the following nature (the list is not exhaustive), the normal consequence will be dismissal without notice or payment in lieu of notice:

- Theft, damage to property, fraud, incapacity for work due to being under the influence of alcohol or illegal drugs, physical violence, bullying and gross insubordination.

While the alleged gross misconduct is being investigated, the employee may be suspended, during which time he or she will be paid their normal pay rate. Any decision to dismiss will be taken by the employer only after full investigation.

## **APPEALS**

An employee who wishes to appeal against any disciplinary decision must do so to the named person in the organisation within five working days. The employer will hear the appeal and decide the case as impartially as possible.

In accordance with the statutory discipline and dismissal procedure, if a disciplinary sanction is imposed the employee will be notified of the right to appeal. If the employee wishes to appeal against any disciplinary decision taken by the school, the employee may do so, in the first instance, by lodging an appeal with the Clerk of the meeting within five working days of the disciplinary decision being received. The employee should state the reason for their appeal.

Appeal hearings will be convened in writing giving at least ten working days' notice. Documents to be referred to during the hearing should be made available to all parties at least five working days in advance. These timescales may be varied with the agreement of all parties. At this stage the school's HR provider will be informed of the case and given an opportunity to advise at the hearing.

The CEO or Trustee Panel will hear the case –the panel being made up of at least 3 Colleagues who have had no prior involvement in the case.

The employee will be entitled to attend the appeal hearing to state their case. They may be accompanied by a school work colleague or a union representative who may present the employee's case on their behalf.

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### **The appeal panel may:**

- Uphold the appeal and overturn the disciplinary action taken;
- Reject the appeal and confirm the disciplinary action taken;
- Having considered the appeal, decide to impose a different disciplinary sanction.

The decision of the appeals panel will be final within the disciplinary procedure.

If following dismissal, the employee is re-instated on appeal their salary, pension and NI contributions will be back paid to the date of the original termination.

### **WRITTEN RECORDS**

- **A record of the documentation relating to the case will be retained and will include:**
  - the complaint / problem against the colleague
  - the colleague's views / defence
  - any grievances raised during the disciplinary process
  - findings made and actions taken
  - the reason for actions taken
  - whether an appeal was lodged
  - the outcome of the appeal
  - subsequent relevant developments
  - notes of any formal meetings
- Records will be treated as confidential and be kept in accordance with GDPR regulations so that a colleague has the right to request and have access to relevant information but, in certain circumstances (for example to protect a witness) the Trust may consider it appropriate to withhold some information.

### **REFERRALS**

Where a teacher has been dismissed for serious misconduct (or may have been dismissed for serious misconduct if the teacher had not resigned) the school must refer the circumstances to the National College for Teaching and Leadership.

If a case includes allegations against a teacher that involves both misconduct and safeguarding (i.e. the risk of harm, or actual harm, to a child), the National College for Teaching & Leadership will contact the Disclosure and Barring Service (DBS).

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## **DOCUMENTATION**

Where disciplinary action relates to child protection issues, the relevant documentation should be retained on the employee's personal file until the employee reaches 65 years or 10 years whichever is the longer, but will not form part of any subsequent disciplinary action if it is time-expired.

## HANDLING DISCIPLINE – AN OVERVIEW

The Trust follows the ACAS Code of Practice on disciplinary and grievance procedures  
It may be helpful to consider mediation at any stage

