

*'...those who hope in the LORD will renew their strength.
They will soar on wings like eagles; they will run and not grow weary,
they will walk and not be faint.'* Isaiah 40:31



connect | nurture | aspire | learn | excel | hope

INSERT SCHOOL/ACADEMY LOGO
HERE

Multi Academy Trust Policy

Common Trust Policy, Use as Published

Discipline and Conduct Policy

Date adopted by Trust Board: 28/04/2016

Date of Review: n/a

Date of next Review: 03/2018

Date Adopted by Local Governing Body:

Contents

1.	Introduction and Policy Statement.....	3
2.	When does this policy apply	3
3.	Timescales	4
4.	Who is responsible for the discipline and dismissal?.....	5
5.	Right to Representation.....	6
6.	Dealing with misconduct informally	7
7.	Notifying an Employee of an allegation(s) against them	7
8.	Suspension.....	7
9.	Investigating the allegation	9
10.	Concluding the Investigation.....	9
11.	The Formal Disciplinary Hearing.....	10
	Notification of a Disciplinary Hearing	10
	The Disciplinary Hearing	10
	Witnesses.....	11
	Failure by the Employee to Attend	11
	Procedure to be followed at the hearing	11
	Making the Decision	11
12.	Possible Outcomes	12
13.	Disciplinary Sanctions	12
15.	The Appeal Process.....	14
16.	The Outcome of the Appeal	15
17.	Communicating the Appeal Decision	15
18.	Further misconduct	15
19.	Absence during the duration of the sanction	16
21.	Minuting Hearing and Appeal Meetings	16
22.	Disclosure of formal sanctions in employment references.....	16
23.	Malicious and Vexatious Allegations	17
24.	Advice and support to Employees during the process	17
25.	Ill health and sickness absence during the process.....	17
26.	Concurrent investigations by other agencies	17
27.	Allegations relating to financial irregularities.....	18
28.	Allegations against Trade Union Representatives	18
29.	Criminal Proceedings	18
30.	Other concurrent processes	18
31.	Referral to other agencies.....	18
32.	Confidentiality.....	18
33.	Retention of Written Records	19
	Appendix A: Disciplinary Rules	21
	Appendix B: Guidance for Hearings and Appeals.....	24

1. Introduction and Policy Statement

Aquila, the Diocese of Canterbury Multi Academies Trust (hereafter referred to as the MAT) is the employer of the Academy/ school's teaching and support staff. The MAT, expects that Employees will maintain appropriate standards of conduct and behaviour at all times. The MAT also requires all Employees to comply with relevant Academy rules, working practices and conditions of service.

The MAT and its Academies 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 schools.

This policy has been developed in conjunction with the guidance offered by Schools Personnel Services for use in Academies in Kent. It has been adapted to reflect the MAT as the employer of staff across all member academies. It recognises the principles of natural justice and fair process and is committed to ensuring that confidentiality is maintained for all parties.

No formal disciplinary action will be taken against an Employee until the matter has been fully investigated. Disciplinary investigations will be undertaken without undue delay. The School will undertake as thorough an investigation of the alleged misconduct as is reasonable and appropriate given the circumstances in order to establish the facts relating to the allegation(s).

An Employee will be advised of the allegation(s) against them and be given an opportunity to state their case and any mitigating circumstances.

Where a case to answer is found in relation to misconduct this may be addressed by a formal disciplinary hearing and, should on the balance of probabilities the case be proven, a formal sanction may be imposed.

The nature of the sanction will be determined by the circumstances of the case. A sanction at any level may be imposed should the alleged misconduct warrant.

An Employee will not usually be dismissed for the first incident of misconduct other than in the case of gross misconduct where an Employee may be dismissed without notice.

An Employee is entitled to appeal against any formal sanction.

This procedure has been developed to comply with legal requirements and is in accordance with ACAS guidance.

This policy will be made known to all staff and remain accessible to them, if requested a copy will be made available on request from the MAT Human Resources provider (HR).

2. When does this policy apply

Misconduct involves an employee breaking specific rules about behaviour or conduct. It is conduct that falls below expected standards and is usually wilful. There may be occasions when negligent conduct amounts to misconduct. A list of actions which may constitute Gross Misconduct and Misconduct is at Appendix A.

Concerns relating to performance and capability should be addressed under a separate procedure.

This policy does not include misconduct related to allegations against children for which a separate procedure applies

This procedure does not apply where there are matters of:

- **minor misconduct** that can be settled informally by means of counselling or informal reprimand in order to improve conduct;
- **grievance** which is dealt with under a separate procedure which has been set out by the MAT and/or its Board;
- **competency or capability** for which there is a separate procedure set out by the MAT and/or its Board, unless it is clear that the employee is capable of reaching the required standard and has actively not done so;
- **ill health** for which there is a separate procedure set out by the MAT and/or its Board, unless there is good reason to believe that the absence or ill health is not genuine;
- **bullying, harassment, discrimination and/or victimisation** which are dealt with in the first instance, under the Dignity at Work Policy.

The MAT HR provider will offer advice at all stages of these procedures. It is strongly recommended that the Principal/Headteacher (Executive Principal in cases of the Principal/Headteacher) seek advice from the MAT HR provider as early as possible.

As an employee faced with possible disciplinary action is likely to find the situation stressful, the Principal/Headteacher should make the employee aware of the wellbeing services available details will be provided from the MAT HR provider on request.

Matters relating to the Headteacher

Informal action may be delegated to the Chair of Local Governors.

Formal hearings will be heard by a panel of one or more Local Governors who have had no prior involvement in the matter under consideration.

Appeals will be heard by a further panel of one or more Local Governors who have had no prior involvement in the matter under consideration.

Staff governors should not usually be a member of a governor panel and where they are must ensure that they can deal with the matter impartially and objectively.

Informal Action taken by	Formal hearing heard by	Appeal heard by
Chair of Local Governors	1 or more Local Governors	1 or more Local Governors

In instances where there are insufficient Local Governors available to sit on a hearing or appeal panel, the Academy may co-opt other individuals suitable to hear the case.

3. Timescales

Concerns regarding conduct will be addressed promptly and without undue delay in achieving an outcome.

Timescales stated are for guidance and may vary depending on the circumstances of the case.

Employee notified of investigation	Within 5 working days of the conclusion of the investigation
---	--

outcome	
Hearing	At least 10 working days notice given of hearing date
Written outcome of hearing given	Within 5 working days of the date of the hearing
Appeal to be made	Within 5 working days of receipt of the written outcome of the hearing
Appeal to be heard	Within 10 working days from receipt of written appeal
Written outcome of appeal given	Within 5 working days of the date of the appeal

For the purpose of this procedure 'working day' will normally refer to the 195 days of the Academy year for teachers employed under the terms of the School Teachers' Pay and Conditions Document.

For support staff employed on a term time only basis working days will normally refer to the days worked under their contract or for staff employed on contracts outside of the Academy term will mean all days excluding weekend and bank holiday days.

4. Who is responsible for the discipline and dismissal?

Responsibilities of the MAT

- To make expectations clear regarding conduct and behaviour at work
- To ensure consistency and fairness in the way conduct issues are addressed
- To advise an Employee if their conduct or behaviour is unsatisfactory and give the Employee the opportunity to state their case.

Responsibilities of the Employee

- To ensure they maintain appropriate standards of conduct at all times and comply with any relevant School rules, working practices and conditions of service
- To cooperate with any action taken under this procedure
- To maintain confidentiality in respect of any action taken under this procedure in the interests of all parties involved in the dispute.

The MAT and/or its Board has the overall responsibility for staffing matters and dismissals. However, in all member Academies responsibility for dismissal decisions has been delegated to the Headteacher, therefore formal hearings to consider dismissal may be heard solely by the Headteacher.

A panel of one or more Local Governors may be convened to hear the matter in situations where it is not appropriate for the Headteacher to perform this function.

Appeals will be heard by a panel of one or more Local Governors who have had no prior involvement in the matter under consideration.

It will be usual for a governor panel to be comprised of not less than two members, although this may vary depending on the circumstances.

Staff governors should not usually be a member of a governor panel and where they are must ensure that they can deal with the matter impartially and objectively. A different three LGB members, to form the appeals committee.

The following table sets out the provisions which would normally apply.

Informal Action taken by	Formal hearing heard by	Appeal heard by
Line Manager	Another more senior Manager or Headteacher - for matters short of dismissal Headteacher – where dismissal is a possible outcome	Headteacher or at least 3 Local Governors
Headteacher	At least 3 Local Governors	At least 3 Local Governors

Principals/Headteachers (Executive Principal in cases of the Principal/Headteacher) may therefore lead the process of making the initial dismissal decision unless the following circumstances apply:

- The Principal/Headteacher (Executive Principal in cases of the Principal/Headteacher) is unwilling to perform these functions and their previous history at the school did not include any such responsibilities.
- The Principals/Headteachers (Executive Principal in cases of the Principal/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.

5. Right to Representation

An Employee has the right to be accompanied to a formal hearing or appeal meeting by either a workplace colleague or trade union representative.

A workplace colleague or trade union representative may also attend a disciplinary investigation meeting.

Due and careful consideration will also be given to any request from an Employee to be accompanied by a workplace colleague or trade union representative at informal meetings. However it should be noted that the presence of a representative does not make the meeting formal.

There is no requirement for a workplace colleague or trade union representative to be present at such a meeting although it may be advisable. The Headteacher may consider inviting the Employee to be accompanied when discussing concerns informally, however the presence of a trade union representative / workplace colleague does not in itself make the meeting formal.

It should be noted that if during the discussion it becomes apparent that the matter may be more serious – the meeting may be adjourned and the matter investigated under the formal disciplinary procedure.

The outcome of the discussion will be confirmed in writing and a record placed on the Employee’s file. This may be termed an ‘informal warning’. However it should be made clear to the Employee that such informal action will not form part of the Employee’s disciplinary record.

There is no right of appeal against informal action.

It is expected that informal action will resolve most minor concerns however an Employee should be advised that if there is a repetition of such misconduct formal disciplinary action may be taken.

6. Dealing with misconduct informally

Managers should monitor and evaluate conduct, behaviour and attendance of all their employees through normal day to day management. Where minor concerns occur these should be raised with the employee on an individual basis to try to restore and maintain a satisfactory standard, addressing the following points:

- Set the standard – the manager should bring to the attention of the employee how they are failing to meet the required standard and of the concerns that exist;
- Seek an explanation - to provide the employee with an opportunity to explain why they are not meeting the standard and to discuss the acceptability of the explanation(s).
- Require improvement - to tell the employee what they are expected to do to bring about improvements in conduct or behaviour. Outline any management action and support and give a time limit within which the employee can reasonably be expected to modify or change their behaviour.
- Warn of the consequences - of failure to improve, to meet and sustain the standard of behaviour, attendance or conduct required, such as formal action under the disciplinary procedure.

The main points discussed should be recorded and a copy provided to the employee.

7. Notifying an Employee of an allegation(s) against them

An Employee will be notified of all allegation(s) or complaint(s) made against them at the earliest practical opportunity and advised of the procedure that will be followed.

Prior to investigating an allegation it may not be possible or appropriate to be specific about the precise nature of the complaint at the outset – however the Employee will be given a broad indication of the nature of the complaint.

Should the matter be addressed through a formal investigation or formal disciplinary action – then the Employee will be advised of the nature of the complaint in writing. They will also be advised that, should the complaint be upheld, formal disciplinary action may be taken.

Should further allegations come to light during the course of the investigation which are also to be investigated – the Employee will be advised of these in writing.

8. Suspension

There may be occasions when it is appropriate to suspend an Employee on full pay pending the outcome of an investigation and / or conclusion of any disciplinary action.

Suspension is not a sanction in itself and does not represent any prejudgement of the outcome of the process.

Suspension should only be initiated after careful consideration and where all other alternatives have been explored – such as arranging a period of authorised absence or temporary change in duties or place of work.

As a guide suspension may be instigated where (this list is not exhaustive):

- Children are considered to be at risk
- The Employee is considered to be at risk
- Where there is evidence to suggest that the Employer's or Employee's reputation may be at risk

- Where the presence of the Employee may impede the investigation or be a disruptive influence in the workplace
- Where the allegations against the Employee may amount to gross misconduct or gross incompetence.

Where practicable a meeting will be arranged with the Employee and their workplace colleague or trade union representative to explain the reason for the suspension and the conditions that will apply. The details of the suspension will be confirmed in writing with the Employee, usually within 5 working days.

In some instances where it is not practicable or possible for the Employee's representative to be present the meeting may still proceed in their absence. In exceptional circumstances where it is not possible or appropriate for the Employee to attend a meeting in the Academy – suspension may be made in writing.

In certain instances it may be necessary for the suspension to be made in writing or without the presence of the Employee's representative.

Suspension will not continue for longer than is necessary and will be kept under review. Where possible the Employee will be given an indication of how long the suspension is likely to last and will be advised should these timescales change.

An Employee should be contactable by telephone or other agreed means during their normal working hours while suspended.

An Employee who is suspended must not discuss the details of the allegation(s) with other members of staff (except their workplace colleague or trade union representative), Local Governors, pupils or parents in such a way which could compromise their position or integrity of the investigation without the prior permission of the Headteacher or Chair of Local Governors. This does not prevent an Employee discussing matters with their representative. Clarification should be sought from the Headteacher or Chair of Local Governors if required.

A suspended Employee will be provided with a named contact in the Academy to keep them informed of matters arising during their absence. This individual will not be able to discuss any aspects of the disciplinary investigation.

In addition a suspended Employee may be allocated a named contact from the Academy's personnel provider who will be able to provide advice about procedural aspects of the process.

Care will be given to ensuring a suspended employee receives information from staff meetings during their absence and consideration will be given to alternative arrangements for events such as inset training and CPD.

Suspensions may be made by the Headteacher or governing body. An Employee may be suspended at any point during the investigation should the circumstances warrant.

Suspension may be lifted at any point should the situation change. Suspension may only be ended formally by the governing body. However the Headteacher may provisionally lift the suspension, pending approval of the governing body, so as not to delay a return to work.

Where the allegations involve Child Protection and the alleged behaviour might be criminal, involve harm to a child or put a child at risk of harm, the Executive Principal must be notified immediately. Where appropriate a strategy meeting attended by Executive Principal, the Police, Social Care, the MAT HR provider and the Principal/Headteacher (or designated governor where the allegation is against the Principal/Headteacher) will be convened.

9. Investigating the allegation

Before any formal disciplinary action is taken, allegations of misconduct will be thoroughly and objectively investigated. Investigations will be undertaken without undue delay. The nature and extent of the investigation will be determined by what is reasonable given the circumstances.

The purpose of the investigation is to establish the facts, events and / or actions to determine whether there is a case to answer and not to make any decision about the outcome.

The Headteacher or other appropriate manager will appoint an independent investigating officer. The investigating officer will not have had any prior involvement in the case. On occasion it may be appropriate to identify more than one investigating officer.

The Employee will be invited to a formal investigation meeting with reasonable notice during working hours. At this meeting the Employee will be given a full and fair opportunity to respond to the allegation(s), explain his / her conduct and, where the concern is admitted, any mitigating circumstances. Depending on the circumstances it may be necessary to conduct more than one investigation meeting. A workplace colleague or trade union representative may accompany an Employee to an investigation meeting.

In addition to attending an investigation meeting, the Employee may also make a written statement or present any other relevant written documents that they may wish to be considered as part of the investigation.

The investigating officer may also conduct a formal investigating meeting with other relevant witnesses as soon as possible. The Employee will be given the opportunity to identify witnesses they wish to be interviewed as part of the process.

Witnesses providing evidence to an investigation will be advised that their statement may be shared with the Employee and they may be called to present this and may be questioned regarding their evidence at a disciplinary hearing.

All witnesses should be aware of the confidential nature of investigations and should not discuss any aspect of the meeting or matters under consideration with anyone outside of investigation meeting.

Interviews with pupils will only be conducted with the parent or guardian's consent and they should be given the opportunity to accompany the pupil to the meeting.

The investigating officer may also review documents and other evidence relevant to the allegation.

A written, signed and dated record will be made of all interviews conducted as part of the investigation. The Employee will have the opportunity to check the notes / minutes and comment on the accuracy. Where there are discrepancies between the Employer and Employee that cannot be resolved both version of the minutes will be held on record. An audio record may also be made with the prior consent of the Employee and an audio copy or summary transcript shared with the Employee.

10. Concluding the Investigation

A written report will be produced of the investigation findings and shared with the Headteacher

Based on the findings of the investigation, the Headteacher will determine which course of action is most appropriate:

- That there is no case to answer and no further action is taken
- That a minor concern is identified which is to be addressed through informal action
- That there is a case to answer on a matter of misconduct which warrants consideration of formal disciplinary action.

The investigation outcome will be communicated to the Employee in writing without undue delay and usually within 5 working days of the Headteacher determining the appropriate course of action.

Where informal action is proposed a follow up meeting will be arranged without undue delay to discuss any appropriate management action. The outcome of this discussion may be confirmed in writing and a record placed on the Employee's file – although such a discussion and letter does not constitute a formal disciplinary record.

The investigation report will only be shared with the Employee should formal action be instigated.

11. The Formal Disciplinary Hearing

Notification of a Disciplinary Hearing

The Principal/Headteacher and/or Executive Principal is normally responsible for the arrangements for a disciplinary hearing conducted by the Principal/Headteacher and/or Executive Principal. Subject to their availability and agreement, the Clerk to the LGB is normally responsible for the arrangements for formal hearings before the staff discipline/dismissal committee and/or the MAT Board. This includes notifying employees in writing of such hearings, giving at least 10 working days' notice.

The chair of the hearing will write to the employee his notification should specify:

- The allegation(s) to be considered at the hearing
- The time, date and venue of the hearing
- The possible consequences should the case be upheld and, if appropriate that dismissal may be an outcome
- The procedure to be followed
- That the Employee may be accompanied by their workplace colleague or trade union representative.

The school will make provision for any reasonable adjustments to accommodate the needs of a person with disabilities at the meeting. The school needs to be informed of requirements at least 48 hours before the hearing.

If their chosen companion cannot attend, an employee may offer a reasonable alternative time within five working days of the original date, unless mutually agreed otherwise.

The Disciplinary Hearing

The purpose of the disciplinary hearing is for the Academy to present the case against the Employee and for the Employee to be given the opportunity to respond.

The role of the manager hearing the case / panel is to consider the evidence presented and decide whether, on the balance of probabilities:

- The case against the Employee has been established, and
- Whether it is appropriate and reasonable to issue a formal sanction against the Employee.

The manager hearing the case / panel should also consider whether an appropriate and sufficient investigation has been undertaken and a fair and reasonable procedure followed.

The case for the Academy will usually be presented by the manager who commissioned the investigation, or their nominee. The Employee will have an opportunity to present their case. Witnesses may be presented by either party.

A workplace colleague or trade union representative may accompany an Employee to the hearing.

The arrangements for hearings are set out in Appendix B

Witnesses

Witnesses are called to give evidence their identity will be disclosed to the other party in advance, unless exceptional circumstances prevent this e.g. where anonymity is to be preserved.

The other party will receive advance copies of written witness statements to which reference will be made at the hearing.

Failure by the Employee to Attend

An employee who cannot attend a meeting should inform the Principal/Headteacher and/or Executive Principal in advance whenever possible.

A postponement may be granted if the employee or their representative is unable to attend on the proposed date. A postponement should not be for more than 5 working days after the original date proposed, however, an extension to this time limit can be made by mutual agreement.

If the employee fails to attend through circumstances beyond their control e.g. illness, the Principal/Headteacher and/or Executive Principal should rearrange the meeting to another date taking into account the reason. Sickness absence must be supported by a medical certificate.

Where a hearing is rearranged and the employee is unable to attend a second time, the hearing will normally convene, as arranged, and a decision taken in the employee's absence. A decision to proceed may be taken in the employee's absence if they fail to attend the rearranged meeting without good reason. The employee should be notified of this possibility in advance in writing.

Procedure to be followed at the hearing

The Manager investigating the allegation will set out their case after they have finished the employee or their representative can question the Manager. Once the employee or their representative has finished questioning the Manager the Hearing Panel will have an opportunity to question the Manager.

The employee or their representative will then set out their case after they have finished the Manager can question the employee, their representative cannot answer questions on the employees behalf. Once the Manager have finished questioning the employee the Hearing Panel will have an opportunity to question the employee.

Both parties will then have an opportunity to sum up their case before and decision making takes place.

Notes of the hearing should be taken by a Clerk to the LGB or another suitable person as arranged by the school and copies of the notes circulated to all parties as soon after the meeting as practicable. The Clerk does not take any other part in the formal process.

Making the Decision

The Principal/Headteacher and/or Executive Principal or the disciplinary/dismissal committee will deliberate in private, with the MAT HR provider, 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 Principal/Headteacher and/or Executive Principal or chair of the disciplinary committee will confirm the decision in writing within 5 working days of the hearing.

12. Possible Outcomes

Case not Substantiated

If the hearing manager/panel or disciplinary/dismissal committee considers that the case against the employee is unfounded, the employee wherever possible will be informed of this at the close of the meeting and the decision will be confirmed in writing within 5 working days of the hearing.

Case Substantiated – Formal action

If the hearing manager/panel believes on the balance of probabilities that the alleged misconduct is substantiated, the appropriate disciplinary action will be determined, having regard to all the circumstances. Wherever possible, the employee will be informed of this at the hearing and the decision will be confirmed in writing within 5 working days of the hearing.

13. Disciplinary Sanctions

Based on the evidence presented, the panel may determine the following outcomes:

- There is insufficient evidence against the Employee and the matter should be concluded with no further action
- The case against the Employee is proven on the balance of probabilities and a decision made to give the Employee a formal warning
- The case against the Employee is proven on the balance of probabilities and a decision made to dismiss the Employee with or without notice
- The case is proven on the balance of probabilities and some other formal action is appropriate

If proven and depending on the circumstances of the case, the panel may impose a range of sanctions, including dismissal as follows:

Level of Sanction	Normal Expiry Period
First Level Written Warning	After 6 months
Second Level Written Warning	After 12 months
Final Written Warning	After 18 months
Dismissal with contractual notice	See terms and conditions of employment
Summary Dismissal without notice	n/a

An Employee will not usually be dismissed for the first incident of misconduct other than in the case of gross misconduct. Where an Employee’s first incident of misconduct is sufficiently serious – it may be appropriate to issue a final written warning. The duration of other sanctions will be determined by the circumstances of the case.

Should gross misconduct be found, and dismissal is determined, this is usually without notice (Summary Dismissal). In cases of dismissal arising from misconduct notice would normally be given. Where notice is given this is the greater of the Employee’s statutory or contractual notice entitlement.

A list of actions which may constitute Gross Misconduct and Misconduct is at Appendix A.

In determining the nature of the sanction consideration will be given to:

- Whether the proposed penalty is reasonable in view of all the circumstances – with reference to the examples of behaviours which constitute gross misconduct and misconduct within this procedure
- The nature, severity and impact of the misconduct
- The circumstances in which the misconduct occurred and any mitigating factors or the explanations given by the Employee
- The Employee's previous conduct, position, seniority, and length of service and their attitude towards the misconduct
- Any relevant Employer rules and procedures and whether the Employee was aware that their conduct contravened these
- The penalty imposed for similar offences in the past
- Whether any other action could be taken to encourage the Employee to improve their conduct such as training or additional support.

In certain instances, and where appropriate to the concerns, the panel may recommend to the Headteacher that other action be considered such as:

- Downgrading
- Transferring the Employee to another role
- Withholding Pay Progression
- Requiring the Employee to undertake certain specified training
- Refer the matter for consideration under another procedure, if appropriate

Alternative action such as this would only be taken where it is judged reasonable and viable for the Academy to implement.

14. Communicating the Decision

Where possible the Employee will be advised verbally of the outcome following the conclusion of the process and the Panel's deliberations. In all circumstances the Employee will be advised in writing of the outcome of the hearing usually within 5 working days of the decision being made.

The notification should specify:

- The outcome
- The reasons for the outcome and, the nature of any misconduct that has been found
- The nature of any sanction and how long it will last
- If dismissed – the reason for the dismissal, whether notice will be given and the termination date
- Any period of time given for improvement, a review date if appropriate, and the required improvement expected
- Any support that the Employer will provide to assist the Employee, if relevant;
- The likely consequences of any further misconduct

Should a sanction be imposed Employees should be advised of the timescales and procedure for making an appeal.

It will be deemed sufficient for the Academy to issue the written confirmation of the decision to the Employee's last known address.

15. The Appeal Process

An employee may lodge an appeal in writing against any formal disciplinary action taken against them under this procedure to the Clerk to the LGB within 5 working days of the date on which they receive the confirmation of the disciplinary action.

The letter of appeal from the employee should state the reasons for appealing from one of the following:

- Unfairness of decision
- That the sanction imposed was unreasonable
- That new evidence has come to light
- Significant procedural irregularities

The letter of appeal should include full details of the reasons for the appeal. The Employee should ideally also include any supporting information they wish to rely on at the appeal hearing with their letter of appeal.

In instances where the grounds for appeal are not stated the Academy will ask the Employee to confirm these to enable all parties to give due consideration to the issues prior to the appeal meeting.

Any supporting information must be submitted by the Employee no later than the deadline for receipt of an appeal.

If a late submission is received the panel has discretion as to whether to accept this and make provision for an adjournment during the hearing to consider this. However the panel reserves the right to disregard this information.

The Academy will provide the Employee with copies of any documents which will be referred to during the appeal, including the notes of the disciplinary hearing and witness statements, in advance and usually no later than 5 working days before the appeal meeting.

A workplace colleague or trade union representative may accompany an Employee to an appeal.

The Appeal panel has discretion to consider allowing new evidence and witnesses but only if this is strictly relevant to the grounds of appeal.

The panel will identify a chair who will have responsibility for facilitating the hearing.

The arrangements for hearings are set out in further detail in Appendix B

The letter of appeal should include full details of the reasons for the appeal. The Employee should ideally also include any supporting information they wish to rely on at the appeal hearing with their letter of appeal.

In instances where the grounds for appeal are not stated the Academy will ask the Employee to confirm these to enable all parties to give due consideration to the issues prior to the appeal meeting.

Any supporting information must be submitted by the Employee no later than the deadline for receipt of an appeal.

If a late submission is received the panel has discretion as to whether to accept this and make provision for an adjournment during the hearing to consider this. However the panel reserves the right to disregard this information.

The Academy will provide the Employee with copies of any documents which will be referred to during the appeal, including the notes of the disciplinary hearing and witness statements, in advance and usually no later than 5 working days before the appeal meeting.

A workplace colleague or trade union representative may accompany an Employee to an appeal.

The Appeal panel has discretion to consider allowing new evidence and witnesses but only if this is strictly relevant to the grounds of appeal.

The panel will identify a chair who will have responsibility for facilitating the hearing.

The arrangements for hearings are set out in further detail in Appendix B

16. The Outcome of the Appeal

In the case of appeals the role of the panel is to review the original on the basis of the grounds presented for appeal by the Employee. The outcome may be to:

- To uphold the previous decision in full
- To uphold the previous decision in part – but to reduce the level of the sanction or amend other elements of the decision
- To uphold the Employee's appeal in full and withdraw the sanction in its entirety.

The panel may not impose a higher level of sanction than reached previously.

The appeal panel decision is final, even in instances of a full re hearing.

17. Communicating the Appeal Decision

The Employee will be advised in writing of the outcome of the appeal hearing usually within 5 working days of the decision being made.

The notification should specify:

- The outcome
- The reasons for the outcome reached
- Where the level or nature of the sanction is reduced – the nature of any revised sanction and how long it will last
- That the panel's decision is final and there is no further right of appeal.

It will be deemed sufficient for the Employer to issue the written confirmation of the decision to the Employee's last known address.

18. Further misconduct

Where a sanction short of dismissal is imposed and there is further proven misconduct within the period that the sanction is 'live', a further panel may extend the warning or issue a higher sanction, including dismissal.

The period of extension will be determined by the circumstances of the case. As a guide warnings may be extended by up to 6 months from the original expiry date.

19. Absence during the duration of the sanction

In cases where an Employee has been absent for a significant part of the period for which the sanction was imposed – the lifespan of the warning may be extended by the amount of time the Employee has been absent. Any decision to extend the lifespan of a warning should be made with reference to the panel / individual who determined the original sanction.

20. Non Attendance at Hearing or Appeal Meetings

Where an Employee or their representative is unavailable to attend, they should inform the Headteacher / Panel at the earliest opportunity.

If an Employee's representative is unavailable the hearing / appeal may be deferred by up to 5 working days from the date of the original hearing.

The Headteacher / Panel will give due consideration to any request for postponement taking into account the individual circumstances, reason for non-attendance and the seriousness of the allegations.

Other than in exceptional circumstances only one postponement will be granted.

The Headteacher / Panel reserves the right to hold a hearing in the Employee's absence where all reasonable efforts to secure attendance have been unsuccessful. In this event the Employee will be given the opportunity to make written representations to the hearing or for their representative or workplace colleague to make representations either to the meeting or in writing on their behalf.

If no submissions are received the panel may make a decision based on the available information.

21. Minuting Hearing and Appeal Meetings

Minutes should be taken of all submissions to the hearing – including Employer, Employee and witness statements, any questioning of the parties and the panel's decision statement. The panel's deliberations should not be minuted.

Minutes should be shared with the Employee as soon as practicable. The Employee will have the opportunity to check the minutes and comment on the accuracy of the minutes. Where there are discrepancies between the Employer and Employee that cannot be resolved both versions of the minutes will be held on record.

An audio record may also be made with the prior consent of the Employee. Where this is the case, the prior agreement of the Employee will be sought. In these instances an audio copy or summary transcript will be shared with the Employee.

Covert recordings of meetings or hearings are expressly prohibited. Any recording of a meeting or hearing must be with the prior consent of all parties.

22. Disclosure of formal sanctions in employment references

Should an Employee have an unexpired formal disciplinary sanction on file – this will be disclosed, upon request, in any reference provided by the Employer to a prospective Employer.

Expired sanctions will not be disclosed – unless these relate to matters which the Employer is required to share in accordance with Child Protection / Safeguarding Procedures.

23. Malicious and Vexatious Allegations

Where an allegation of misconduct against an Employee is found to be vexatious or of malicious intent, this may be examined in accordance with the Academy's disciplinary procedures.

24. Advice and support to Employees during the process

Employees are advised to seek support from their Trade Union or Professional Association in the first instance. Employees may address questions about the procedure to the Headteacher or other delegated staff member.

In instances where the investigation is prolonged or the Employee is suspended, the Academy will, as far as is practicable, make arrangements to keep the Employee informed with the progress of the investigation and timescales for conclusion.

25. Ill health and sickness absence during the process

The ill health of an Employee will not usually be grounds for ceasing any ongoing investigation or disciplinary process.

Where the absence is likely to be short, the Academy may pause the process until the Employee recovers. Where the absence is ongoing, the Academy may seek guidance from an occupational health advisor to determine whether or not the Employee is sufficiently fit to take part in the process. It is expected that Employees will consent to a referral being made to an occupational health advisor in such circumstances.

Upon receipt of occupational health advice consideration may be given to any measures that can be put in place to enable the process to proceed. This may include giving the Employee the opportunity to make written representations to an investigation or hearing or for their trade union representative or workplace colleague to make representations on their behalf.

26. Concurrent investigations by other agencies

Certain allegations of misconduct may initially be investigated under a different procedure or as a part of criminal investigation.

In these circumstances an investigation under the Employer's Disciplinary Procedure may take place concurrently, unless the Employer is otherwise instructed by other agencies.

Any disciplinary hearing held in relation to acts of misconduct will be independent of the timing or outcome of other procedures.

27. Allegations relating to financial irregularities

In instances where an allegation of theft, fraud or other financial irregularity is made – the issue may be referred to the Academy's auditors. Advice can also be sought from the Education Funding Agency.

28. Allegations against Trade Union Representatives

No formal disciplinary action or formal disciplinary investigation will be taken against a trade union representative until the circumstances of the case have been discussed with a full time official of their union.

29. Criminal Proceedings

A criminal charge or conviction for actions outside of the workplace may result in disciplinary proceedings being taken where it is judged that the Employee's action:

- Affects or is likely to affect the suitability of the Employee for the post for which s/he is employed;
- Impacts on the operation or reputation of the Academy;
- Seriously undermines the trust and confidence that the Academy has in the Employee.

Each case will be considered on its own merits with regards to the circumstances of the case and following such investigation as is appropriate.

30. Other concurrent processes

In the event that an Employee raises a grievance or a complaint of harassment or bullying in the course of a disciplinary process, both processes may continue concurrently.

However each case will be considered on its own merits to ensure that the Academy is acting reasonably.

31. Referral to other agencies

Where a teacher is dismissed for serious misconduct (or may have been dismissed for serious misconduct had they not resigned) the Academy will consider whether to make a referral to the National College for Teaching and Leadership (formerly the Teaching Agency) in accordance with Education Act 2011 and The Teachers' Disciplinary (England) Regulations 2012.

Under the Safeguarding Vulnerable Groups Act (2007) a referral may also be made to the Disclosure and Barring Service where an Employee is dismissed (or would have been dismissed had they not resigned) because they have been cautioned or convicted of a relevant offence or behaved in a manner that has put at risk of harm / harmed a child.

32. Confidentiality

All parties are required to respect the confidentiality of all information relating to the disciplinary process.

All records and information, including those relating to any sanction imposed, are a matter of confidence between the Academy and the Employee. In certain limited circumstances this information may be shared by the Academy - for example in accordance with Child Protection / Safeguarding Procedures.

33. Retention of Written Records

In the event that the matter under consideration is dropped due to insufficient or inconclusive evidence, all documentation should be destroyed immediately. It may be appropriate to keep a basic confidential record of the concern raised, date and the fact the matter was dropped due to insufficient or inconclusive evidence.

If formal disciplinary action is taken, the details of the complaint, investigation findings, hearing and appeal minutes plus a copy of the outcome letter and the details of any sanction, should be retained confidentially on the Employee's personnel file.

At the expiry of any sanction, all documentation should be removed from the Employee's personnel file. A minimal confidential record may be retained. This will only be referred to in future cases of a similar nature for the purpose of evidencing a pattern of misconduct or countering an Employee's subsequent assertion that there have been no previous misconduct issues.

When the matter relates to a child protection issue a factual written record of the details of the allegations and outcome will be retained in all instances.

In certain limited instances it may be appropriate to retain records for longer than the retention period for example in cases related to child protection concerns or where the case is awaiting decision from an employment tribunal.

All records will be treated as confidential and processed in accordance with the Data Protection Act 1998, which provides individuals with the right to request and have access to certain data.

A record of the documentation relating to the case will be retained and will include:

1. the complaint / problem against the employee
2. the employee's views / defence
3. any grievances raised during the disciplinary process
4. findings made and actions taken
5. whether an appeal was lodged
6. the outcome of the appeal
7. subsequent relevant developments
8. notes of any formal meetings

Records will be treated as confidential and be kept in accordance with the Data Protection Act 1998 so that an employee has the right to request and have access to relevant information but, in certain circumstances (for example to protect a witness) the School may consider it appropriate to withhold some information.

A warning will be disregarded for disciplinary purposes after the following periods from the date of the hearing when the warning was issued, providing there has been satisfactory conduct and unless a Head Teacher / Manager / Governor(s) decide(s) to increase these time limits (see paragraph below):

- a. Written warning – 12 months

b. Final written warning – 24 months

There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long any warning should last.

No disciplinary records relating to the safety and welfare of children and young people will be withdrawn from an employee's personal file for holders of posts covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Whilst the warning will remain on file, it is not 'live' and will only be taken into account if it is relevant and reasonable to do so in the context of the responsibility for the protection of children.

An employee who works in the provision of services to children and is dismissed, or who resigns in circumstances relating to the safety and welfare of children and young people which may have led to dismissal, will be referred to the Vetting and Barring Scheme (VBS) of the Independent Safeguarding Authority (ISA) by the MAT HR provider.

On behalf of the School, the MAT HR provider will also refer on to the General Teaching Council (GTC) those misconduct cases relating to registered teachers, which do not raise issues relating to the safety and welfare of children and young people.

Appendix A: Disciplinary Rules

The following examples give an indication of the Academy's position as to the types of behaviour which constitute misconduct. It is not possible to specify all forms of behaviour that will result in disciplinary action.

Each case will be judged in the light of the circumstances and context surrounding it. Varying circumstances may well allow different disciplinary actions or no disciplinary action at all to be taken for what are similar offences.

The examples are not exhaustive and omissions from the list are not in themselves grounds for appeal.

In addition, Employees should, so far as is reasonably practicable, be familiar with the Academy rules, working practices and conditions of service procedures relating to their own Academy and their particular area of work. Teachers should be familiar with Part Two of the Teachers' Standards which set out the expectations with regards to personal and professional conduct. Employees should be familiar with any 'Code of Conduct' in place for whole Academy staff.

Gross Misconduct

Gross misconduct is an act which may render it inappropriate for the Employee to be allowed to remain in their job. If on the balance of probabilities, this is decided gross misconduct may lead to a summary dismissal without notice for a first offence.

Examples of actions that are likely to be treated as gross misconduct include – but are not limited to:

Dishonesty

- Theft of academy / pupil / employee's property
- Falsification of documents, records, claims – whether for personal gain or not
- Fraud or Corrupt Practices
- Failure to disclose if asked criminal convictions not exempt under the terms of the Rehabilitation of Offenders Act 1975 and Amendment 2013
- Withholding significant and relevant information that the Academy could have reasonably required the employee to have disclosed
- Breaking statutory provisions that would render the Governing Body or Academy Trust liable to prosecution.

Conduct giving rise to a child protection issue

- Inappropriate or sexual relationship with a pupil
- Contact with a pupil via phone / text / online of an inappropriate nature and /or content
- Act of sexual misconduct by an employee where that misconduct could have a detrimental impact on students or on the employee's position within the Academy
- Misuse of the ICT to view or distribute obscene, pornographic, defamatory or otherwise unacceptable material
- Inappropriate physical contact or restraint of a pupil
- Persistent and significant failure to exercise proper control or supervision of pupils.

Conduct placing others at risk

- Acts of violence
- Malicious or wilful damage to property
- Wilfully or negligently ignoring responsibilities/instructions thus placing other members of staff/pupils at risk
- Serious breach of health and safety rules
- Attending work or undertaking duties whilst under the influence of alcohol, drugs or other substances which may inhibit the ability to keep self or others safe.

Conduct in the Workplace

- Deliberate and significant refusal to carry out a reasonable, lawful and safe instruction or the normal agreed defined duties of the post
- Significant gross negligence in failing to attend or carry out the agreed duties of the post
- Persistent and substantial failure to follow procedures, regulations and policies either by deliberate act or omission
- Serious and / or persistent acts of harassment, bullying or victimisation of other employees
- Acts which amount to wilful discrimination or incitement to discriminate
- Serious and unlawful breach of confidentiality or data protection obligations
- Serious breach of any relevant code of conduct or professional standards
- Making a false or vexatious allegation against another member(s) of the Academy community
- Abusive / offensive language or behaviour towards a member of the Academy community
- Acts which are incompatible with the ethos of the Academy, or in the case of a Church Academy, its religious character
- Serious insubordination – undermining the authority of senior staff.

Actions outside of the workplace

- Criminal offences which are relevant to the post occupied by the Employee, whether or not a criminal conviction occurs
- Actions outside of the workplace that could be so serious as to fundamentally breach the trust and confidence placed in the Employee.

Misconduct

Misconduct is an act of a degree less serious than that which would warrant immediate dismissal for a first offence but which could nevertheless lead to dismissal if persistent.

Acts listed under the heading of gross misconduct where the impact and implications are less serious may also be considered as misconduct.

Occasionally an act of misconduct might be so serious as to justify dismissal. Normally, however, only when it can be shown that the warnings have not been heeded or there is a pattern of misconduct for a variety of reasons will misconduct lead to dismissal.

Dismissal for misconduct will be with notice.

Examples of actions that are likely to be treated as misconduct include – but are not limited to:

- Unauthorised absence from work
- Failure to follow absence notification and / or certification requirements

- Poor time keeping
- Refusal / failure to follow reasonable management instruction
- Breach of one or more Academy policies or procedures either by deliberate act or omission
- Failure to adopt safe working practices either by a deliberate act, negligence or omission
- Serious neglect of duty
- Negligent use of Academy property
- Acts of dishonesty such as making unauthorised private phone calls / sending personal mail at the Academy's expense or unauthorised use of the internet
- Insubordination.

Appendix B: Guidance for Hearings and Appeals

General

- Hearings and Appeals should take place at a reasonable time and place usually during the Employee's normal working hours and, in the case of Employees who work term time only, during the Academy term. These arrangements may be varied by mutual agreement
- Consideration should be given to the venue for the hearing. There should be adequate rooms for the parties and arrangements to ensure that the hearing is conducted with discretion and confidentiality maintained. A venue away from the Academy site may be appropriate in certain circumstances.

The precise procedure to be followed will vary depending on the particular circumstances of each case, but in general the following will apply:

Role of the Panel / Manager Hearing the Case

It is the role of the panel / manager hearing a case to consider the evidence presented and decide whether on the balance of probabilities:

The case against the Employee has been established.

Whether it is appropriate and reasonable to issue a formal warning or dismiss the employee.

Should an Employee appeal the outcome of the hearing it is the role of the panel / manager considering the appeal to review the original decision on the basis of the grounds for appeal presented by the Employee and consider whether the original outcome was within a range of reasonable responses given the circumstances.

If the case is to be heard by a panel, a chair will be identified who will have responsibility for facilitating the hearing.

The Role of the Representative

The Employee has the right to be accompanied to a hearing or appeal meeting by either a workplace colleague or recognised trade union representative.

The representative may address the hearing to put and sum up the Employee's case, respond on behalf of the Employee at the hearing and confer with the Employee during the hearing. The representative does not have the right to answer questions on the Employee's behalf, address the hearing if the Employee does not wish it or prevent the Employer from explaining their case.

The Role of the HR Advisor

The Academy may request that a HR Advisor attends a hearing or appeal meeting whose role is to advise the panel on the procedure and any points of employment law.

A further HR Advisor may also be in attendance to support the Academy in the presentation of their case.

The HR Advisor may be allowed to ask questions and clarify issues on behalf of the party they are supporting.

Witnesses

Witnesses may be called by either party. Details of the proposed witnesses should be communicated in advance no later than 5 working days before the date of the hearing / appeal. The role of the witness is limited to giving evidence and responding to questions.

The Employee is responsible for ensuring that any witnesses they call can attend on the relevant date. In the event that a witness cannot attend they may make a written statement which should be provided to the Academy no later than 5 working days in advance of the hearing / appeal.

All witnesses should be aware of the confidential nature of hearings and should not discuss any aspect of the meeting or matters under consideration with anyone outside of the hearing.

Procedure for Hearings

- The manager hearing the case / chair of the panel will introduce those present and their roles, explain the case to be considered, the procedure to be followed and the format of the hearing
- The Academy's representative presents their case including calling any witnesses and referring to written submissions / evidence. The Employee and their representative and panel may ask questions of the Academy's representative or any witnesses
- The Employee or their representative presents their case including calling any witnesses, referring to written submissions and presenting any mitigating circumstances. The Academy's representative and panel may ask questions of the Employee and their representative or any witnesses
- Adjournments may be requested by both parties or by the manager / panel during the hearing
- Both parties have the opportunity to sum up their cases, with the Employee or their representative having the final word
- The hearing will then be adjourned whilst the manager / panel deliberates over the evidence. If further clarity is required both parties or witnesses may be recalled and the hearing reconvened so that all parties may hear any additional evidence
- The hearing is reconvened and the outcome is communicated verbally to the Employee. This should also be confirmed in writing. On occasion it may not be possible for the panel to reach a decision on the day of the hearing in which case the hearing may be reconvened or all parties may agree for the outcome to be communicated in writing within 5 working days of the decision being made.

Procedure for Appeals

- The manager hearing the case / chair of the panel will introduce those present and their roles, explain the case to be considered, the procedure to be followed and the format of the meeting
- The Employee or their representative shall put the case in support of the grounds for appeal, including any mitigating circumstances. This may include referring to written

submissions and evidence. Witnesses may be recalled only where this is strictly relevant to the grounds of the appeal. The Academy's representative and panel may ask questions of the Employee and their representative

- The Academy's representative presents the case for upholding the previous committee's decision and refers to written documentation. Witnesses may be called only where this is strictly relevant to the grounds of appeal. The Employee and their representative and panel may ask questions of the Academy's representative
- The panel will invite both parties to sum up their cases, with the Employee or his/her representative having the final word. The hearing will then be adjourned whilst the panel deliberates over the evidence
- Adjournments may be requested by both parties or by the panel during the appeal hearing. If new evidence is presented the appeal may need to be adjourned while this is investigated
- The appeal hearing will then be adjourned whilst the panel deliberates over the evidence. If further clarity is required both parties or witnesses may be recalled and the hearing reconvened so that all parties may hear any additional evidence
- The appeal hearing is reconvened and the outcome is communicated verbally to the Employee. This should also be confirmed in writing. On occasion it may not be possible for the panel to reach a decision on the day of the hearing in which case the appeal may be reconvened or all parties may agree for the outcome to be communicated in writing within 5 working days of the decision being made