



**Endeavour**  
Multi-Academy Trust



## Disciplinary Policy

**Endeavour Multi Academy Trust**

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## **Purpose**

Endeavour Multi Academy Trust will support and encourage all employees to achieve and maintain the Trust's expected standards of conduct. This policy provides a framework within which your manager can work with you to achieve and maintain the expected standards of conduct and to manage any concerns in a fair and timely way

This policy outlines the procedure for when an employee's conduct falls below these standards to ensure that all disciplinary matters are dealt with fairly and consistently. It is essential that we treat people with dignity and kindness in line with our Values, regardless of the circumstances.

The Trust supports a culture of fairness, openness and learning and wants employees to feel confident to speak up when things go wrong, rather than fearing blame. If actions and/or behaviours don't meet the expected standards and/or go against the organisational Values or standards to which we work, an objective and prompt examination of the circumstances will be carried out. This will establish if training, support, guidance or informal management can be put in place to encourage improvement. In cases where formal disciplinary action is felt to be necessary, this policy and procedure is designed to ensure a fair, systematic and consistent approach is taken.

## **Definitions**

A disciplinary issue will arise when an employee is alleged to have behaved or acted inappropriately and/or contrary to the Trust's code of conduct. Examples are outlined at the end of this policy document.

Any reference to "the Trust" refers to The Endeavour Multi Academy.

The 'appropriate level of authority' should be determined according to The Endeavour Multi Academy Trust's governance structure/scheme of delegation.

This policy applies to employees of The Endeavour Multi Academy Trust, referred to in this policy as employees.

## **Scope**

This policy applies to all employees, regardless of length of service, but does not form part of the contract of employment and can be varied from time to time and in consultation with the recognised trade unions.

This policy does not deal with performance or sickness absence issues; these are dealt with in our Capability and Managing Attendance at Work policies.

The procedure does not apply once you have left Endeavour Multi Academy Trust.

## **General Principles**

We are committed to equality and diversity and will make reasonable adjustments to the application of this policy and procedure in line with our equal opportunities commitment.

Although the stages of the disciplinary process will normally be followed sequentially the school/Trust may enter the process at any stage depending on the seriousness of the matter.

No formal disciplinary action will be taken until the allegations have been fully investigated.

### **Responsibilities**

All managers should:

- ensure that they and all the employees they are responsible for are aware of, and comply with, the Trust's policies and procedures.
- ensure that employees know when they are not achieving or maintaining the expected standards of conduct or behaviour.
- comply with the requirements set out in this policy and procedure and observe the time requirements.
- ensure that at all times they treat the process as confidential.
- personally support all parties affected by a conduct issue.
- ensure that notes are kept and shared with the parties as appropriate.

All employees should:

- be aware of and conduct themselves in line with the Trust's policies, the law and maintain acceptable standards of conduct and behaviour.
- where relevant, adhere to codes of practice or standards associated with their profession or trade.
- cooperate with disciplinary procedures as required.

### **Acceptable Behaviour and Conduct**

The Trust expects all employees to meet high standards of behaviour and conduct and the Trust's code of conduct policy provides you with an effective ethical framework within which to work. It also provides the public with confidence that you are working on their behalf in an appropriate manner.

Examples of the types of expected standards of behaviour are detailed at the end of this policy.

### **Minor Conduct Issues and an Informal Approach**

For minor conduct issues, your manager will adopt an informal approach to help, guide or advise you in improving your conduct. Your manager will only consider dealing with minor disciplinary breaches through the formal stages of the procedure if your misconduct continues or the misconduct is too serious to be dealt with informally.

Cases of minor misconduct are usually best dealt with informally and confidentially. A conversation about the concerns and resolutions is often all that is required to improve your conduct. In some cases, your manager may decide that additional training, coaching and advice may be what is needed.

Where your manager has a concern about your conduct, they will organise an informal meeting in a timely manner to discuss their concern with you. The purpose of any informal meeting is to improve your conduct by identifying and examining any areas of concern and to provide a reasonable

opportunity for you to respond, and if misconduct is established, explore ways to address this. You and your manager must ensure that you understand any future expectations of your conduct and, where appropriate, develop an action plan to support you in improving. Although this may result in a note of the discussion and any follow-up correspondence being kept by your manager on your personnel file, there will be no note made on your disciplinary record. You will be asked to confirm your agreement that any action plan implemented is achievable and realistic. You should raise any concerns that you have about an action plan with your manager prior to its implementation.

Where the behaviour causing concern may be related to an underlying work- relationship issue, it may be appropriate to consider an independent third party, such as a mediator, to help resolve the situation rather than disciplinary action.

Minor disciplinary issues will be escalated to the formal disciplinary process when:

- the matter cannot be resolved informally,
- the matter is too serious for the informal approach to be applied or
- there are repeated or multiple instances of misconduct

### **Factfinding**

Prior to any formal disciplinary investigation or decision being made, an initial fact-finding meeting will take place with an appropriate manager to establish the facts of the case and to determine if a formal investigation is required.

### **Suspension**

Depending on the circumstances, you may be suspended from work on full pay following an allegation. Suspensions will be carried out in accordance with the Suspension Guidance (**Appendix 1**). Alternatives to suspension will also be considered such as working in a different area of the school/Trust.

The decision to suspend you from duty or place restrictions on your duty will not be taken lightly or without careful consideration of all the circumstances and the nature of the complaint/allegation made. Suspension is a neutral act; it is not a disciplinary penalty and does not imply that any decision has already been made.

If deemed appropriate, your access to your Trust/school email address may be removed during any period of suspension and your emails directed towards another manager/executive team member to ensure that any outstanding work is covered.

Your suspension period will be for no longer than is necessary to investigate any allegations of misconduct against you, or for so long as is reasonable while any disciplinary procedure against you is outstanding. It will be reviewed by an appropriate Manager on a regular basis to assess if there are any circumstances, not previously known, that affect the decision to suspend. You can expect to be updated following regular suspension reviews and on the status of the investigation by a mutually agreed person who will act as your key contact point. Whilst suspended you should not visit Trust premises or contact anyone connected with the Trust/school unless you have been authorised to do so by your manager. An exception to this is to contact an employee who is acting as a companion and supporting you as part of this process.

## Disciplinary Investigation

If formal investigation is required, an independent investigating manager will be assigned to fully investigate the allegation/s. The investigation will be carried out in accordance with the Investigation Guidance at Appendix 2 and submitted to the Deciding Manager.

A wellbeing contact will be appointed for the duration of the disciplinary process to support the employee with any wellbeing concerns. They will not be entitled to know any of the investigation details but will be able to pass on wellbeing concerns to the investigating manager or deciding manager. In some instances, it may be appropriate for a personal email address to be provided to the wellbeing contact to ensure contact can be maintained throughout the process.

The Deciding Manager will review the investigation report and decide whether to progress to a disciplinary hearing or to resolve informally. They will also take note of any recommendations and lessons learned outlined by the investigating manager and ensure these are actioned.

## The Disciplinary Hearing

If, following investigation, it is reasonably believed that there are grounds for disciplinary action, you will be required to attend a formal disciplinary hearing.

You will be provided with written notice of the hearing along with details/evidence of the allegations against you at least **10 working days** before the meeting/hearing, along with any names of witnesses the school wishes to call. The school/ Trust will aim to send documentation via email, but where this is not practical, documentation will be sent via recorded delivery

You must make all reasonable efforts to attend a disciplinary hearing but if you or your companion is unable to attend a formal meeting, you have a right to suggest an alternative time and date so long as it is reasonable, and it is not more than 5 working days after the original date.

The manager will respond sensitively when a delay is required, for example, it may arise for a reason related to a disability or emergency involving dependants. We may arrange another hearing date if you fail to attend through circumstances outside of your control.

If you do not attend the hearing without good reason, it should be re-arranged but if you do not attend the rearranged meeting/hearing, a decision may be made in your absence. You may submit a written statement to be taken into consideration.

Where you are persistently unable or unwilling to attend the hearing without good cause the manager should decide on the evidence available and proceed with the hearing in your absence.

Where it is not possible to hold a face-to-face meeting under this policy, we may conduct the process remotely, for example using Microsoft Teams by mutual agreement. We will ensure that you and your companion have access to the necessary technology for participating. Your rights will not be affected, and we will ensure that the procedure remains fair and reasonable.

. You must provide copies of any relevant evidence you intend to refer to, at least **5 working days** before the hearing, along with any names of witnesses you propose to call to the hearing.

The disciplinary hearing will be conducted by the Deciding Manager who will be an appropriate level of management or authority and who has remained independent from the process and impartial. Where dismissal may be an outcome, the hearing should be conducted by a panel of Governors or Trustees. A representative from HR may also be present and will always be present at hearings that may result in dismissal or an alternative to dismissal.

The Hearing Chair will explain the allegations against you and the evidence in support of those allegations. The Chair may ask the Investigating Officer to attend the hearing as a witness to present their report and answer questions on it. You will have the opportunity to respond to the allegation/s, which will include the presentation of your own evidence if you wish.

You may request that a witness(s) attend the hearing except where you rely on character witnesses. Witnesses whose evidence is not challenged will not be called. Where a witness is required to attend the Deciding Manager will invite them in writing.

The hearing may be adjourned if further investigation needs to be carried out, such as re-interviewing witnesses in light of any new points raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Minutes of formal meetings will be provided to you for your information and copies of minutes, letters and action plans should be retained on your personnel file. The Trust reserves the right to use AI transcript technology to note conversations within the meeting for the purposes of minute taking. Any transcriptions will be securely deleted once the minutes have been approved by all parties.

## **Disciplinary Penalties**

### **Stage 1 – First written warning**

A first written warning may be issued and will usually be appropriate for a first act of misconduct where there are no previous warnings and where any agreed adjustments and other support have been made or provided. The warning will remain active for 6 months and it should be disregarded for disciplinary purposes after this period.

### **Stage 2 – Final written warning**

A final written warning may be issued in the following circumstances:

- where there has been a further act of misconduct while an existing first written warning is in effect, or
- the seriousness of the misconduct is sufficient to warrant such a warning, even though no previous warning may have been issued

The warning will remain active for 12 months and it should be disregarded for disciplinary purposes after this period.

### **Stage 3 – Dismissal**

Only an appropriate level of authority in line with the Trust's scheme of delegation can take a decision to dismiss and where any agreed adjustments and other support has been made or provided. A panel

of governors or trustees who have not had any involvement in the case so far will be convened to hear the disciplinary case. You may be dismissed in the following circumstances:

- where, within the duration of the final written warning, the necessary improvement in behaviour has not been achieved and any agreed adjustment and other support has been made or provided. This would be with notice or payment in lieu of notice, or
- where there has been a further act of misconduct while an existing warning is in effect.
- where it is reasonably believed that you have committed an act of gross misconduct. Gross misconduct will usually result in summary dismissal without notice and without pay in lieu of notice. Examples of gross misconduct are detailed at the end of this policy.

The panel or deciding manager may at their discretion consider alternatives to dismissal. Examples of such alternatives include demotion, loss of seniority, reduction in pay, compulsory training. If such an alternative is applied, it may also be accompanied by a final written warning.

If you decide to resign from your role during the ongoing investigation and before the panel has issued an outcome, the disciplinary process will cease. However, if the allegations are linked to safeguarding, the Trust is required, under Keeping Children Safe in Education (KCSIE) regulations, to continue with the disciplinary process and issue an outcome in writing. In this case, the relevant external bodies will be informed and referrals to DBS/TRA made as appropriate. Any employment reference provided by the Trust to a new employer will state if resignation occurred during a disciplinary process.

## **Warnings**

Where a warning is issued, this will be confirmed to you in writing within **10 working days** of the hearing. The warning will state the misconduct that led to the warning, the action or improvement required by you, the duration of the warning and the likely consequences of the action of improvement not being taken and/or any further misconduct. You will also be advised of the right of appeal and the person to whom an appeal should be made.

## **Appeals**

Where disciplinary action has been taken, if you are dissatisfied with that decision, you can appeal. Your appeal must be in writing and set out the grounds of your appeal in line with the list below and include all the information you wish to rely on at the appeal hearing. Please note this will not be a full re-hearing and will only be based on the grounds of your appeal as stated in your appeal letter. You must send your appeal to the Clerk to Governors within **5 working days** of the date you received the letter notifying you of the disciplinary decision. The action taken at the disciplinary hearing will remain in force pending the outcome of the appeal. You must be appealing against either:

- the finding that you were guilty of committing the alleged act (or acts) of misconduct where the evidence did not support this finding.
- the severity of the disciplinary sanction imposed, taking into account the nature of the misconduct and the mitigating circumstances.
- the fact that you don't feel the correct procedure was followed and why.
- the fact new evidence was not considered, was not available in the disciplinary hearing or has come to light since the hearing that would change the outcome.
- the sanction is inconsistent with how others have been treated.

- there was unlawful discrimination in the handling of the disciplinary.

You will be invited to the appeal hearing in writing and be given at least **10 working days' notice**. You have the right to be accompanied at the appeal hearing by your companion or Trade Union Representative. An appeal panel will be convened of CEO and governors or trustees who have not had any involvement with the case.

You must provide copies of any relevant evidence you intend to refer to, at least **5 working days** before the hearing.

The outcome of the appeal may be to overturn or confirm the original decision or apply a different, but not more serious sanction. You will be advised of the appeal outcome, which will be confirmed in writing within **10 working days** of the appeal hearing. The decision of the appeal panel will be final and there is no further right of appeal.

You are not entitled to raise a further complaint under the Trust's Disciplinary Policy (or any of the Trust's complaints procedures) in relation to the same grounds of appeal.

### **Records**

At the end of each formal stage of the disciplinary procedure, the manager hearing the case will send you written confirmation of the decision, within **10 working days** following the meeting. The letter will record the outcome and any sanctions resulting from the disciplinary, along with an explanation of who you can appeal to.

In cases where there is deemed no case to answer, documents will be held for a period of 6 months following the conclusion of the investigation and then securely destroyed. A summary record of the case will be held securely in line with the Trust's data protection policies.

In cases where a disciplinary sanction is given, a copy of documents used during the informal and formal processes, including but not limited to meeting notes, outcome letters, and evidence, will be held securely on the personnel file in line with the Trust's retention policies. This is usually no less than 7 years after the end of employment.

### **Right to be Accompanied**

You have the right to be accompanied by a companion at any formal meeting as part of the investigatory or formal disciplinary procedure. The companion may be a fellow colleague, a trade union representative or an official employed by a trade union.

The companion is allowed to address the hearing, to put and sum up your case, respond on your behalf to any views expressed at the meeting and confer with you during the hearing. They may also request an adjournment and ask questions of anyone present. The companion does not, however, have the right to answer questions on your behalf, address the hearing if you do not wish it or prevent the employer from explaining their case. Other than confirming that all parties have the same documentation it would not normally be necessary to read out the content of the documentation.

Under this procedure, you do not have the right to be accompanied by anyone else (such as a spouse, partner, other family member or legal representative).

Where appropriate, eligible employees, for example those with disabilities or language difficulties, may have the attendance of a supporter or interpreter.

### **Action against Trade Union Representatives**

Disciplinary action against a trade union representative can lead to a serious dispute if it is seen as an attack on their functions. Whilst normal disciplinary standards apply to a trade union representative's conduct as a colleague, the relevant full-time official should be notified of any action (including suspension) that the Trust proposes to take. All reasonable efforts must be taken to ensure that disciplinary action is not taken against a trade union representative until the relevant full-time official has had an opportunity to be present at any stage of the formal procedure.

### **Criminal Offences**

Some criminal offences may affect your suitability to continue in your role with the Trust or damage our reputation. If you are charged with a criminal offence, you must inform your manager as soon as possible. Failure to inform your manager may be considered a conduct matter. We will not treat notification about criminal proceedings, or a conviction (including bind-overs and cautions), as an automatic reason for dismissal or for any other form of disciplinary action being taken. We will decide what action to take, if any, after we have reviewed the matter. The main consideration should be whether the conviction is one that makes you unsuitable for your job or affects the Trust's reputation.

If you are subject to a criminal investigation, the Trust will determine to what extent it needs to conduct its own investigation before deciding whether to proceed to formal disciplinary action. The Trust will not usually wait for the outcome of any prosecution before deciding what action to take (unless specifically advised otherwise by the police). No decision to impose a disciplinary sanction or dismiss will be taken prior to giving you the opportunity to make representations.

If we have reasonable grounds to suspect that the potential misconduct involves fraud, systems abuse, theft, or any financial irregularity, we will notify the internal auditors and/or the police as soon as possible.

### **Statutory Duty to Refer Conduct Matters**

There is a legal requirement for the Trust to make a referral to the Disclosure and Barring Service if it is felt that you pose a risk to a child or a vulnerable person or have engaged in conduct that has harmed (or is likely to harm) a child or vulnerable person.

In addition, a referral will be made to a relevant professional body (i.e., the Teaching Regulation Agency) if there are concerns about any serious misconduct and fitness to carry out your duties and responsibilities or fitness to practice.

### **Examples of Standards of Behaviour**

The following are examples of the behaviour expected by the Trust of all its employees, although the list is not exhaustive:

- you should attend work punctually and regularly, in line with operational requirements.
- you should carry out reasonable requests/instructions from your managers promptly and efficiently, and to the required standard.

- time off must be approved in advance by the appropriate level of authority, usually your manager and be in line with your contract of employment.
- you must follow the procedures outlined in the Managing Attendance at Work Policy when notifying the Trust of your sickness absence.
- you must comply with all the Trust's policies and procedures, including but not limited to the Bullying and Harassment Policy, Code of Conduct policy, the ICT Acceptable Use Policy or the Health and Safety Policy.
- you must adhere to professional body and statutory guidelines, as appropriate, and act professionally at all times.

In your own interests, and in the interests of the Trust as a whole, you should bring serious breaches of Trust's policies or procedures to the attention of management.

### **Examples of Gross Misconduct**

The following are examples of gross misconduct, but this list is not exhaustive:

- Action that has caused or is likely to cause a child to suffer significant harm.
- Failure to take action to protect a child whom you believe is suffering, or is likely to suffer, significant harm.
- Theft or unauthorised removal of property, fraud, falsification of the Trust's records or any other dishonesty.
- Actual or threatened violence or bullying behaviour.
- Deliberate or serious damage to the Trust's property or that of a colleague, or other stakeholder.
- Serious or gross negligence which does or could result in loss, damage or injury.
- Deliberately accessing, copying or distributing pornographic, offensive, obscene or inappropriate material on the internet or paper media.
- Being under the influence of alcohol, drugs or other similar substances at work which may give reasonable grounds to suspect your ability to undertake your duties or being in possession of illegal or intoxicating drugs on site.
- Refusal to obey reasonable instructions or any other act of serious insubordination.
- Any action or behaviour which brings the Trust into serious disrepute.
- Serious breach of health and safety rules.
- A breach of data protection legislation including unauthorised disclosure of confidential information which causes significant detriment to an individual and/or to the organisation.
- Acceptance of bribes or other secret payments.
- Harassment or any act of discrimination towards anyone you come into contact with because of your work.
- Convictions relating to activities outside work, but which have a significant and direct bearing on your employment and duties with the Trust and its reputation.
- Misrepresenting at any time, including at your appointment with the Trust, any previous positions you have held, your qualifications, date of birth, declaration of health, or a failure to disclose a criminal offence or pending criminal action subject to the provisions of the Rehabilitation of Offenders Act 1974.

## **Links with Other Policies and Procedures**

Grievance Policy – Where you submit a complaint during disciplinary proceedings, this will not normally stop the proceedings from progressing. Where you raise a grievance during disciplinary proceedings:

- The disciplinary proceedings may be temporarily suspended in order to deal with the grievance or,
- The grievance and disciplinary may be run concurrently where they are related.
- Where you assert that disciplinary proceedings being undertaken are unlawfully discriminatory or are motivated by reasons other than misconduct, you can raise a grievance.

Managing Attendance at Work Policy - Where you are absent due to sickness whilst a disciplinary matter is pending, the managing attendance at work procedure will apply as normal. However, those responsible for keeping in touch would not normally be the same people involved in the handling of your disciplinary case. We will arrange for you to see Occupational Health as soon as possible for them to assess your health generally and whether or not you are fit to participate in the disciplinary process. Being absent from work due to sickness will not automatically stop the disciplinary procedure progressing. Under these arrangements due regard will be given for what is said by Occupational Health and any information you may wish to provide from your GP.



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## Suspension Guidance

### Reasons for suspension

When an employee does something which may potentially be misconduct, the appropriate manager, according to the Trust Scheme of Delegation, may suspend an employee from work on full pay. Suspension on full pay is not a disciplinary penalty or a presumption of guilt.

Any suspensions would be carried out in accordance with this guidance.

The appropriate manager should arrange a meeting with the employee to establish some preliminary facts. The employee should be given brief details of the serious complaint and be given chance to respond. Once the employee has given a response, the interview should be adjourned for the response to be considered. If a satisfactory explanation is not given at the meeting and the complaint / incident could potentially lead to an allegation of gross misconduct, suspension or an alternative to suspension should be considered, pending full investigation.

Reasons to suspend an employee could include:

- To enable the school to conduct a full investigation for potential allegations of gross misconduct.
- Where it may not be possible to carry out a thorough or impartial investigation with the colleague still at work.
- Where it is possible further misconduct could occur.
- If the employee is a risk to the investigation process, themselves or other people i.e. to protect evidence/witnesses from tampering.
- There are no viable alternatives.

Wherever possible, the appropriate manager should meet with the employee to confirm the suspension or alternatives to suspension. When suspending an employee, they should be given the opportunity to be accompanied by a trade union representative or work colleague at all meetings although this cannot unnecessarily delay the suspension meeting.

If the concerns relate to a Headteacher, it is the responsibility of the Chair of the Trust or CEO to consider suspension.

### Alternates to suspension (Inc Sickness absence)

Before making the decision to suspend you should consider what alternatives there may be to suspension. Below are some alternatives to consider:

- Temporary redeployment within the Trust if appropriate.
- Providing another member of staff to work with the employee or a temporary move to a different area of the school/Trust (e.g., move to a different year group, school, class or to work with a different child).
- Providing alternative work or stop doing part of their job (e.g., Stop using a specific system or removing access temporarily).
- Work from home.

If you do not feel any of these are viable alternatives, you should ensure that you fully document your objective reasons in order to justify your decision.

An employee who is signed off as sick during a period of suspension will have their suspension rescinded until such time as they become fit for work, this is considered an alternative to suspension, this will be confirmed to the employee in writing. When the employee's period of sickness ends the appropriate manager will have to consider suspension or other alternatives to this. The manager must continue to manage the employee's absence concurrently with the investigation process.

Any alternative to suspension implemented is not in itself a disciplinary measure; it is to enable a full investigation to be conducted into very serious allegation(s).

In cases concerned with allegations around safeguarding children, any decisions not to suspend an employee following an allegation of abuse must be fully documented and done in consultation with the relevant Safeguarding Manager. This information must then also be made available to the CEO, LADO and the police where relevant.

### **Following Suspension Meeting**

Once the suspension has been confirmed to the employee verbally, you will need to:

- Write to the employee and
  - Confirm the reasons why this process is taking place.
  - Confirm their suspension, or any alternative to suspension.
  - Confirm the terms of suspension which may include -
    - to contact their trade union representative if not already done.
    - that they remain on full pay during their suspension (unless on sick pay).
    - to remain contactable and available during normal working hours.
    - to not approach witnesses.
  - The employee should be provided with a copy of the Trust Disciplinary Policy.
- Appoint and confirm a named contact and support, who the employee can contact during their suspension with regards to work related issues. This would normally be someone separate to the Case Manager/Deciding Manager.
- Appoint an Investigation Officer (if appropriate) who will write to the employee to invite them to an Investigation Meeting.
- Confirm if access to their Trust/School email address will be removed during the period of suspension and who will be monitoring their emails to ensure work is covered

### **During Suspension**

Ensure the appointed named contact keeps in regular communication with the employee throughout their suspension, giving consideration to any additional support the school can offer or an occupational health referral.

The manager should regularly review the employee suspension and ensure the investigation procedure continues to progress.

Consideration should be given to any information provided to colleagues/parents/service users to explain the absence of the individual. It is important that a need to know approach is adopted when carrying out this process in order to maintain confidentiality.

### **Lifting a Suspension**

The appropriate manager will review the continued need for the employee's suspension at appropriate intervals, dependent upon the circumstances of the case.

Cases involving suspension should always be expedited as quickly as possible.

The employee should be updated following regular suspension reviews and on the status of the investigation by a mutually agreed person who will act as your key contact point.

A decision may be made to lift a suspension if for example;

- The allegations are no longer considered as gross misconduct.
- There is no case to answer.
- The disciplinary process is complete.

If a decision is made to lift suspension, this will be confirmed in writing to the employee without delay. The manager should also consider reinstating all access and equipment.

***In circumstance when suspension is being considered the manager should seek appropriate HR advice and template letters for each stage of the suspension procedure.***



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# Investigation Guidance

## **Purpose**

The purpose of a disciplinary investigation is to establish the relevant facts where there is an allegation of misconduct. The investigation is not a hearing to make a decision about a disciplinary sanction

This note provides guidance for managers undertaking disciplinary investigations. Further advice and guidance is available from your Human Resources Provider.

## **Principles**

When undertaking a disciplinary investigation it is important that you keep an open mind regarding the outcome and ensure impartiality, fairness and confidentiality throughout the process.

It is also important to ensure that you stay focussed on investigating the specific allegation/s of misconduct.

## **Initial Factfinding**

An initial fact-finding meeting will take place with a manager to establish the facts of the case and to determine if a formal investigation is required. This is not a formal meeting so there is no statutory right to be accompanied however if the employee wanted this, it should be allowed provided it does not unnecessarily delay the meeting.

It should also be considered at this stage if suspension is required for any serious misconduct/gross misconduct allegations. Alternatives to suspension should be considered such as working in a different school within the Trust or carrying out alternative duties. For further details on suspension, please refer to Appendix 1 – Suspension Guidance.

Please contact your Human Resources Provider at this point in the process to gain any relevant advice and guidance.

If, following the initial fact-finding exercise, a deciding manager feels that a formal investigation is needed, they will need to write the allegations that will be investigated and outline the policies and guidelines which have potentially been breached. They will then appoint an independent investigating manager who will fully investigate the allegation/s. The individual undertaking the investigation should not have previously been involved in the case and care should be taken to avoid conflicts of interest.

Where possible, a timescale for completion of this investigation process should be given. Where significant delays in concluding the investigation are anticipated this should be notified to the affected employee.

### **Safeguarding Allegations**

If any of allegations are linked to Safeguarding, as per Keeping Children Safe in Education, you must contact the LADO before embarking on any formal investigation to gain their advice on whether an internal investigation can commence or whether it needs to be investigated by external agencies first e.g. police and/or social services. Once you have received the appropriate guidance from LADO, you can proceed with your investigation.

### **Planning an investigation**

As investigating manager, you should start by deciding what evidence you will require to establish the facts.

Think about who you need to interview, what questions you want to ask them and in what order you wish to see individuals. Also consider what other evidence or documentation you might require. Where evidence is likely to perish or be removed or destroyed this should be gathered as a priority. The role of the investigating manager is to gather the facts; your role is not to conclude whether the allegations are substantiated or not.

You should try to see people as quickly as reasonably possible before their recollection of events fade. You should ensure that interviews take place in a venue that provides appropriate privacy and allows them to take place without interruptions. Arrange for a colleague to take notes of any meetings to allow you to focus on conducting the interview. If you need to interview any pupils, this should be done only when necessary and you may need parental consent. Any pupil names should be anonymised in notes e.g. Pupil A.

You should interview the employee accused of misconduct to understand their version of events. You should ensure that you give them advanced warning of the meeting and time to prepare. In line with the Trust's disciplinary policy, 10 working days' notice should be given in writing of the investigation meeting. The employee should be made aware of the allegations against them. An employee accused of misconduct may be accompanied at investigatory meetings by a work colleague or Trade Union representative.

If the employee under investigation reports they are sick and unable to attend an investigation interview, it is advised to gain consent from the employee to undertake an Occupational Health referral to establish if the investigation can continue or be put on hold until they are well enough to attend the interview. If Occupational Health determines they are fit to attend any procedural meeting, then you should proceed with the investigation. If they are deemed not fit to attend, then the investigation should be put on hold. Please speak to HR to gain advice on how to proceed.

### **Witnesses**

When questioning witnesses, care should be taken to maintain confidentiality. The full circumstances regarding the allegations should only be revealed if required.

Witnesses are not normally expected to be accompanied at investigatory interviews as they are not themselves under investigation.

You cannot insist that an employee participates in the investigation as a witness. If a potential witness raises concerns, you should seek to address these. In some circumstances witness statements may be anonymised to protect the witness however this should only be in exceptional circumstances. If a witness wishes to remain anonymous you should discuss this with HR before proceeding any further.

Witnesses should be made aware that any statements or minutes of witness interviews may be used as part of the evidence pack and included in the final investigation report which will be shared with the employee under investigation. Witnesses will be asked to check their statement for accuracy and then sign them.

### **Undertaking investigatory interviews**

The following list provides suggested areas to cover when undertaking interviews.

#### Opening

- Explain who you are and the other people in the room
- Outline the format of the meeting
- Explain the role of the representative
- Advise that adjournments may be requested if required
- Highlight an expectation of honesty and confidentiality
- Explain why you are carrying out the investigation (and read out the allegations to be investigated – this is just for the person under investigation)
- Clarify that your role is to establish what happened and not to make a judgement about what to do
- Advise that a note of the meeting will be provided and the interviewee will be asked to confirm that they are accurate
- For witnesses - advise that the notes of the meeting will normally be shared with the employee accused of misconduct

#### During the meeting

- Ask the interviewee to tell you what happened in their own words
- Let the individual speak even if they are not describing things in order
- Focus questioning on the allegations and the facts relating to these
- Only explore issues in more detail that are relevant to the case
- Do not make assumptions and interpret what they are saying, if required clarify any points you are unsure about
- Summarise back to the witness what you have understood / written
- Ask if there is anything else relevant that they wish to add or any additional witnesses that may be relevant
- Explain what will happen next

## **Records of meetings**

Notes of any interviews should be taken. These should capture the responses to questions. While it is important to capture key points reflecting the interviewee's words, the notes are not intended to be a verbatim record of the interview. You should ensure that notes are agreed as an accurate record of the meeting and that these are signed and dated.

Meetings will not normally be electronically recorded. Where an employee asks if a meeting can be recorded you should advise them that they or their companion may take written notes if they wish, however it cannot be recorded.

Any witness statements provided should also be signed as accurate and dated.

## **Investigation outcome**

After completing the investigation, the evidence should be collated together, to form the basis of a report. It is important to take into account all the evidence and to take care to view the matter objectively. The relevance and validity of information collected should also be considered.

The report would normally provide a summary of your investigation findings and a recommendation on whether the case should proceed to a disciplinary hearing. You should not recommend what level of penalty is warranted.

Decisions should be based on the evidence supporting the allegation/s vs. the evidence not supporting the allegation/s. Your recommendations can include:

1) no further action is appropriate 2) informal action e.g. coaching, or training or 3) that you consider appropriate evidence in support of the allegation/s to warrant the case proceeding to disciplinary hearing.

Advice on completing the investigatory report is available from HR.