

# DISCIPLINARY POLICY AND PROCEDURE

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## **CONTENTS**

1. Introduction
2. Scope of the Procedure
3. Core Principles
4. Management of Employees
5. Allegations of a Serious Nature
6. Misconduct and Gross Misconduct
7. Suspension
8. Stages of the Disciplinary Procedure
9. Disciplinary Hearing
10. Appeals against Disciplinary Action
11. Record of Warnings
12. Confidentiality
13. Review

### **Appendix**

App 1 Disciplinary meeting/hearing structure

## **1. INTRODUCTION**

This disciplinary policy and procedure applies to all employees of School Partnership Trust Academies (SPTA).

Throughout this document, the term 'Principal' refers to the Principal or Head of Academy and 'Senior Leader' refers to the Department Head within the Core Team. Reference to 'SPTA' includes all Academies as well as the Core Team.

At all stages within this policy and procedure, and in accordance with the Equality Act 2010, provision will be made for any reasonable adjustments to accommodate the needs of individuals attending meetings/hearing.

## **2. SCOPE OF THE PROCEDURE**

This procedure has been drawn up to comply with the ACAS Code of Practice on Disciplinary Procedures. It is intended to provide a system which can deal speedily with disciplinary matters whilst ensuring that the principles of natural justice are preserved.

The principles of natural justice ensure that:

- A decision maker must give the employee a fair hearing in advance of the decision being made
- A decision maker may not be biased or prejudiced

Where it is proposed to take disciplinary action against a Trade Union officer, SPTA HR will consult with and notify in writing the Regional Officer immediately.

## **3. CORE PRINCIPLES**

- It is a fundamental principle that disciplinary matters are dealt with at the lowest level possible, appropriate to the disciplinary matter under investigation
- The procedure should be used primarily to help and encourage employees to improve rather than as a way of imposing a punishment
- Issues should be raised and dealt with promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions
- The employee should be informed of any complaint/allegation against them and be provided with as much information as deemed appropriate without compromising the investigation
- The employee should be provided with an opportunity to state their case before decisions are reached
- Any action taken should be reasonable in the circumstances of the case
- An employee should not be dismissed for a first disciplinary offence, unless it is a case of Gross Misconduct
- An employee should be informed of the required standards of behaviour and conduct expected of them
- Where an employee has been warned before about their conduct or behaviour, it should be made clear at that time that if there is a further instance of misconduct, formal disciplinary action could be taken

- All meetings held within this procedure will be arranged at a mutually agreed date, time and venue
- The employee will be given the right to appeal against any formal disciplinary sanction
- The employee has the right to be accompanied by a trade union representative or a work colleague at any stage during the procedure
- Where possible, the Hearing Officer (Principal / Senior Leader) should not have had any prior involvement with the investigation. Those conducting an appeal should not have had any prior involvement with the investigation or the disciplinary hearing
- If, without good cause, the employee is persistently unable or unwilling to attend a disciplinary hearing, the matter will be heard in their absence and a decision made based on all the evidence available

#### **4. MANAGEMENT OF EMPLOYEES**

The day to day supervision of employees is part of the normal managerial process. In most cases, the line manager is the Principal / Senior Leader. It is important therefore that the immediate line manager clarifies with employees the duties to be performed and the standards expected.

The Principal / Senior Leader should first assess if the possible disciplinary matter can be dealt with informally. Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. This approach can lead to resolving problems quickly and confidentially and emphasis should be placed to do this. If this is done, there is likely to be less recourse to the formal procedures.

If an immediate line manager has a concern about an employee's conduct, it should be brought to the attention of the employee at the earliest possible opportunity. Where such a meeting takes place, the line manager / nominated person should explain at the meeting with the employee the area(s) of concern and give the employee the opportunity to respond.

It is important that the line manager / nominated person tries to establish if there are any mitigating circumstances that may have contributed to the employees conduct. The line manager / nominated person should deal with the employee in a fair and equitable manner but at the same time ensure that the employee is in no doubt as to the conduct required.

This informal approach is considered as being outside the formal disciplinary procedures but there will be situations where matters are more serious or where an informal approach has been tried but is not successful. In these cases, the matter will be progressed to the formal disciplinary procedure. No records will be retained of informal meetings.

The Principal / Senior Leader will initiate the disciplinary procedure in the following circumstances:

- i) Where the Principal / Senior Leader has assessed that the matter cannot be dealt with informally

- ii) Where the employee has been given a previous warning for behaviour of a similar nature
- iii) Where the allegation is of a 'child protection' nature; if deemed appropriate following consultation with the Local Authority Designated Officer (LADO)

The Principal / Senior Leader is advised to consult with the SPTA HR team before appointing an Investigating Officer to investigate the allegations using the formal disciplinary procedure.

Where there are **concerns about the conduct of the Principal / Senior Leader**, a SPTA Director must determine the most appropriate person (e.g. Chair of the Education Advisory Body, Regional Director) to be appointed as the nominated person / Investigating Officer to deal with the matter.

## **5. ALLEGATIONS OF A SERIOUS NATURE**

In all cases it will be appropriate to involve the Police, particularly in cases involving alleged child abuse. It will also be appropriate where an alleged criminal act has taken place. Advice on these matters should be sought from SPTA HR and reference should be made to the relevant local Safeguarding Policy.

**Where the allegations are of a child protection nature, these MUST be reported to a member of SPTA HR immediately.**

## **6. MISCONDUCT AND GROSS MISCONDUCT**

### **6.1 Misconduct**

This is a breach of discipline which on its own is not sufficiently serious to warrant dismissal, but will warrant action being taken under this procedure. In cases where misconduct takes place and live warnings for this or another type of misconduct are still in force, then unless mitigating circumstances are proven, the employee may be dismissed.

Examples of misconduct are outlined below. This list is not intended to be exhaustive or exclusive and there may be other incidents of misconduct of a similar gravity.

- Poor timekeeping, including unauthorised absence
- Failure to observe reasonable instructions
- Failure in Duty of Care towards pupils and employees
- Failure in protecting the Health, Safety and Wellbeing of pupils and employees
- Minor instances of neglect of duties and responsibilities
- Wilful failure to cooperate or follow reasonable instructions with SPTA employees
- Deliberate breaches of SPTA policies and procedures
- Misuse of SPTA facilities (e.g. telephone and internet, including social networking sites) (Further information can be found in the SPTA e-Safety Policy)

## 6.2 Gross Misconduct

This is a grave breach of disciplinary which may be serious enough to end the employment contract between SPTA and the employee making any further working relationship and trust impossible.

Gross Misconduct would normally lead to dismissal or a final written warning, even in cases of first incidents of Gross Misconduct.

Examples of Gross Misconduct are outlined below. The list is not intended to be exhaustive or exclusive and there may be other incidents of Gross Misconduct of a similar gravity which could result in dismissal.

- Theft or Fraud
- Falsification
- Serious breaches of relevant professional Codes of Conduct
- Refusal to register with mandatory professional bodies (including persistent failure)
- Failure in Duty of Care to protect pupils or young adults by placing them at significant risk
- Physical violence or bullying
- Unlawful discrimination or harassment
- Serious and deliberate damage to property
- Wilful refusal to follow reasonable instructions
- Serious incapability at work brought on by alcohol or illegal drugs
- Serious abuse of the SPTA e-Safety Policy (e.g. in relation to accessing pornographic internet sites or sending and receiving offensive or obscene material)
- Bringing SPTA into disrepute
- Serious misuse of SPTA facilities (e.g. telephone and the internet, including social networking sites)
- Causing loss, damage or injury through serious negligence

## 7. SUSPENSION

In certain cases, a period of suspension from work with full pay may be considered whilst the case is being investigated or before a disciplinary hearing is held. During any period of suspension, the employee remains in employment and will be on full pay, including associated contractual benefits, without prejudice to the outcome of the investigation.

**SPTA HR must be consulted in all cases before a decision to suspend is taken.**

Suspension with pay should only be imposed after careful consideration and should be reviewed to ensure it is not unnecessarily protracted. In all cases, the employee should be advised to seek assistance from their Trade Union.

Examples in which suspension may be considered include:

- Gross Misconduct cases
- Where there are sound reasons to believe pupils / employees / property are at risk

- Where it is believed that the continued presence of the employee might prejudice enquiries or influence witnesses
- There are reasonable grounds for concern that evidence has been tampered with, destroyed or witnesses pressurised before the hearing
- Where the allegations are so serious that dismissal for Gross Misconduct is possible

Where suspension is being considered, an interview with the employee should take place as soon as possible. In child protection cases, the LADO must be contacted in accordance with local child protection procedures.

The employee will be notified in person of the decision to suspend and have the right to be accompanied by a Trade Union representative or work colleague.

The employee will receive written confirmation of the suspension. This confirmation will include the reasons for the suspension, the date from which the suspension will operate and details of any restrictions relating to their suspension. The employee will be provided with an information contact during the period of their suspension. The role of the contact is to provide information regarding the progress of the investigation.

Suspension is a neutral act and not an assumption of guilt and is not considered a disciplinary sanction. Principal / Senior Leader's may consider a temporary redeployment as an alternative to suspension.

## **8. STAGES OF THE DISCIPLINARY PROCEDURE**

### **8.1 Appointing the Investigating Officer**

The Principal / Senior Leader should verbally advise the employee of the allegation(s) made against them and advise them that an investigating officer has been appointed to investigate the allegation(s). This should be confirmed to the employee in writing.

Where the matter of concern involves the Principal / Senior Leader, it is for a SPTA Director to determine who would be the most appropriate person to be appointed as the investigating officer to deal with the matter.

The investigating officer should be a person with no involvement whatsoever in the matter under investigation. This person should, wherever possible, be a senior employee. The Principal / Senior Leader should not be the investigating officer, unless there are exceptional circumstances (e.g. a senior employee is the subject of the investigation, the senior employee may be required as a witness).

The investigating officer's brief is to establish the facts of the case by gathering information. This can be in the form of witness statements, interviews and through obtaining other relevant documents.

Where the matter under investigation involves an allegation(s) of physical/sexual abuse and the Police or child protection agencies are involved, SPTA's investigation

may have to be held in abeyance until the external investigation has been completed. Advice should be sought from SPTA HR.

All investigations will be undertaken in the strictest of confidence. The employee and any other individuals interviewed as part of this process will be advised to treat the investigation as such.

## 8.2 The Investigation

As part of the investigation, a meeting should be arranged with the employee as soon as possible, giving a minimum of five working days' notice in writing to the employee, who will also be advised that they may be accompanied by a trade union representative or a colleague of their choice.

At the meeting, the Investigating Officer should present the allegation(s) to the employee who should be invited to respond in full and to any other information submitted by the Investigating Officer.

At any point during the meeting the employee may request a short adjournment to consult their representative.

If new allegations emerge during the course of the investigation, it will be necessary to re-interview the employee or witness in seeking to establish the facts.

The investigation should be conducted as soon as possible. Every attempt should be made to complete the investigation in a timely manner and to expedite the process. The employee will be given regular information as to how the investigation is progressing.

As part of the investigation, the Investigating Officer will determine the appropriate action and a written report should be prepared of the facts of the case which will include a list of every individual who has been interviewed, together with records of interviews, and any other evidence. These will be made available to all parties should a disciplinary hearing ensue.

After the investigative process has been completed and the Investigating Officer has consulted with the appropriate SPTA HR Advisor, the employee must be informed as soon as possible in writing of the decision taken by the Investigating Officer.

### a) Take no further action under the disciplinary procedure

In this instance, where the outcome is not to refer the matter to a disciplinary hearing, there should be a meeting with the employee to advise them of this decision in person. The employee will also receive written confirmation of this decision.

If the employee has been suspended and it is not intended to proceed with any form of disciplinary action, the suspension should be lifted immediately by the Principal / Senior Leader. The Principal / Senior Leader should meet the employee to discuss their return to work. The employee will also receive written confirmation of this decision.



- b) Convene a disciplinary hearing before the Principal / Senior Leader
- c) Convene a disciplinary hearing before a SPTA Director, in the following cases:
  - Where the Principal / Senior Leader cannot hear the case because they have prior knowledge of the case, or has acted as Investigating Officer or is required as a witness
  - Where the subject of the investigation is the Principal / Senior Leader

If disciplinary action is to be taken, the Investigating Officer's report will be made available to all parties in the bundle of papers, prior to the disciplinary hearing. This will be sent out with the disciplinary hearing invite letter.

### 8.3 Support and assistance

Other than in the event of dismissal, the Principal / Senior Leader should ensure the opportunity for informal counselling. This could be used to give appropriate guidance, support and reassurance and to help rebuild, where necessary, an employee's confidence. There may also be a need for specific guidance and consideration may need to be given to other employment options, in consultation with SPTA HR.

## 9. DISCIPLINARY HEARING

### 9.1 Notification of a disciplinary hearing

Should the decision be taken to proceed to a disciplinary hearing, the employee will be informed in writing providing at least ten working days' notice of the hearing date.

The written notification will contain the following information:

- The mutually agreed date, time and venue of the disciplinary hearing
- An outline of the allegations
- The possible consequences
- Copies of any relevant documentation (including the investigating officer's report)
- The employee's statutory right to accompaniment by either a work colleague or trade union representative
- All parties' ability to produce any documents in evidence or references/testimonials to the investigating officer, at least five working days before the hearing takes place
- The requirement for all parties to provide names and status of any witnesses to be called at the same time as any documentary evidence

Where the hearing date is postponed at the request of the employee or their representative, only one further hearing date will be arranged. The alternative date should be within five working days of the original hearing date. In the event of the employee being unable to attend the second date arranged, the Principal / Senior Leader may go ahead with the hearing in the employee's absence based on the evidence available.

## 9.2 Disciplinary hearing before the Principal / Senior Leader

The disciplinary hearing will be carried out by the Principal / Senior Leader. In cases where the Principal / Senior Leader is the subject of the disciplinary action, the role of Principal / Senior Leader will be carried out by a SPTA Director alongside the Chair of the Education Advisory Body. In all cases, SPTA HR will also be present.

The Principal / Senior Leader is responsible for ensuring a note taker is present at the hearing to take formal notes.

Following a disciplinary hearing, the Principal / Senior Leader may:

- Take no action
- Issue a first warning
- Issue a written warning
- Issue a final written warning
- Dismiss the employee

In addition to these potential outcomes, the Principal / Senior Leader also has the discretion to consider redeployment and demotion where appropriate.

In exceptional circumstances, an employee may agree to accept a first warning without following the formal disciplinary procedure. This must be discussed with both SPTA HR and the employee's union representative prior to being issued.

## 9.3 Implementing the action

The Principal / Senior Leader, wherever possible, should advise the employee verbally and confirm their decision in writing not later than five working days after the hearing.

The written notification will contain the following information:

- The precise nature of the misconduct
- Specify the disciplinary action being taken
- State, if appropriate, the period of time given for improvement which is expected
- Indicate the likely consequences of further misconduct
- Inform the employee of their right to appeal within ten working days of receiving the written confirmation
- State to whom the appeal should be made (the relevant SPTA HR Advisor)

In the event of no further actions being taken, all records of the disciplinary hearing shall be removed from the employee's file.

In cases of dismissal, the employee shall be given such notice as required under their employment contract to terminate their employment, except in cases of Gross Misconduct where the employment contract will be terminated without notice (summary dismissal).

## 10. APPEALS AGAINST DISCIPLINARY ACTION

Every employee has the right to appeal against the outcome of a disciplinary hearing and they may choose to do so, on any number of grounds. The appeal hearing will focus only on the grounds of the appeal which the employee raises within their letter of appeal.

An appeal panel composed of two SPTA Directors will hear any appeal against disciplinary action. In cases where the Principal / Senior Leader is the subject of the appeal hearing, the appeal hearing will be heard by an appeal panel composed of two SPTA Directors alongside the Chair of the Education Advisory Body. If SPTA Directors were used at the original disciplinary hearing, it must be different SPTA Directors at the appeal hearing. In all cases, SPTA HR will also be present.

The appeal should be made in writing to the SPTA HR Advisor to the hearing within ten working days of the receipt of the written confirmation of the disciplinary hearing, clearly outlining the grounds of appeal.

The Principal / Senior Leader may be invited by either side to attend the appeal hearing as a witness.

The employee will be informed in writing, providing at least ten working days' notice of the date of the appeal hearing.

The written notification will include the following information:

- The mutually agreed date, time and venue of the appeal hearing
- A copy of the notes from the disciplinary hearing
- Any new evidence and/or new witnesses to be presented/in attendance at the appeal hearing
- The employee's right to accompaniment by either a work colleague or trade union representative
- All parties' ability to produce any documents in evidence or references/testimonials at least five working days before the hearing takes place

The appeal panel will also receive copies of the above.

The Principal / Senior Leader is responsible for ensuring a note taker is present at the hearing to take formal notes.

### 10.1 Action available to the appeal panel

The appeal panel may decide to:

- Confirm the original decision
- Uphold the grounds of appeal
- Substitute a lesser penalty

## 10.2 Notification of decisions made by the appeal panel

Wherever possible, the appeal panel will convey their decision verbally and this decision will be confirmed to the employee, in writing, not later than five working days after the hearing. This letter will also confirm that this decision is final and there is no further right of internal appeal.

## 11. RECORD OF WARNINGS

A copy of the warning will be held on the personal file of the employee concerned for:

- First Warning – 6 months
- Written Warning – 9 months
- Final Written Warning – 12 months

In cases of Gross Misconduct, where a final written warning has been issued, and in the opinion of the Principal / Senior Leader, the misconduct is so serious that it cannot be disregarded for future disciplinary or managerial purposes, then the final written warning shall remain live for a longer period and the employee shall be so advised. This facility shall only apply where the welfare, safety of a pupil, member of the public or fellow member of staff might be placed at risk. In such cases, the employee may appeal to the appeal panel against the warning and/or against the decision for the warning to remain live.

Where no action is to be taken against the employee, no record of the investigation will be kept on the employee's personal file. However it would be kept in a confidential file within the SPTA HR confidential files in accordance with the periods specified under the Data Protection Act.

Where a formal sanction has been issued, a record should be kept on the employee's personal file until such time as the warning has expired. However, where disciplinary sanctions relate to the safety and wellbeing of children and young people, records will be retained on the employee's personal file permanently.

In accordance with The Education (Teachers) Regulations 1993, where a person is dismissed from relevant employment on grounds of their misconduct (whether or not they are convicted of a criminal offence) or they would have been dismissed, or dismissal was being considered, but for their resignation, the employer shall report the facts of the case to the Secretary of State.

## 12. CONFIDENTIALITY

All investigations and any subsequent disciplinary/appeal hearings will be dealt with in the strictest of confidence.

The Principal / Senior Leader or SPTA Directors should not discuss a case with anyone other than a SPTA HR Advisor. Any issue of this kind should be referred to the investigating officer.

Where appropriate and following the conclusion of a case, the SPTA CEO, or their representative, will agree a statement which may be read out to relevant individuals to inform them briefly of the outcome of any hearing. There should not be a discussion of the details of the case.

### **13. REVIEW**

This policy will be reviewed every three years, or when there are changes to relevant legislation.

## **APPENDIX 1 – DISCIPLINARY MEETING/HEARING STRUCTURE**

### 1. Introduction

The person chairing the meeting/hearing should:

- Make reference to the disciplinary procedure under which the meeting/hearing has been arranged
- Provide an overview of the manner in which the meeting/hearing will be conducted (as outlined below)
- Explain the requirement for confidentiality throughout the process
- Introduce all persons present at the meeting/hearing
- Explain the purpose of the meeting/hearing
- Explain the nature of the allegation(s)

### 2. Investigating Officer to present the disciplinary case

The Investigating Officer will present the disciplinary case, including evidence from witnesses (where appropriate). Witnesses should submit their evidence and answer any questions put to them, before leaving the room.

### 3. Questions to the Investigating Officer from panel and Employee/Representative

### 4. Employee and/or their representative to present their case

The employee and/or their representative will present their case, including evidence from witnesses (where appropriate). Witnesses should submit their evidence and answer any questions put to them, before leaving the room.

### 5. Questions to the Employee and/or their representative from panel and Investigating Officer

### 6. Final statement from the Investigating Officer

### 7. Final statement from the Employee and/or their representative

### 8. Investigating Officer and Employee and their representative leave the room whilst the person chairing the meeting/hearing considers the matter.

### 9. The person chairing the meeting/hearing considers the matter in consultation with other members of the panel (where relevant) and SPTA HR.

### 10. All parties recalled to the room in order to hear the decision of the panel which will be delivered by the person chairing the meeting/hearing.

The employee will be informed of the decision, any sanction to be imposed and its duration, any improvement required and consequences of any failure to do so. The employee will also be informed of their right to appeal any disciplinary decision (with the exception of an appeal hearing which is the final stage of the process).

### 11. Decision confirmed in writing to the employee