

Providing a Clear Framework to Help Promote Good Employment Relations

Disciplinary rules and procedures provide guidance to employees on the standards and conduct expected of them and a mechanism to deal with the consequences of failing to meet such standards

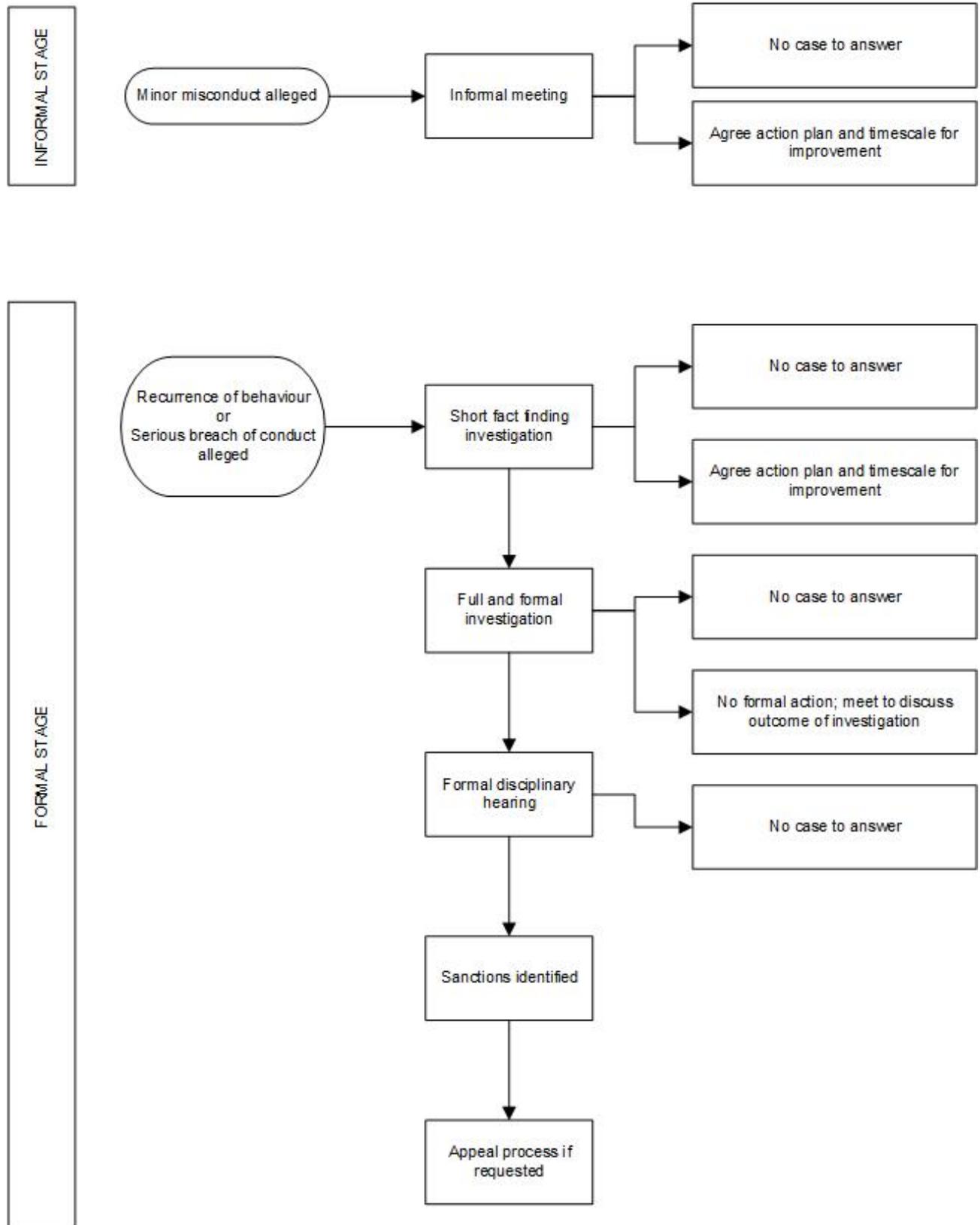
Key points

- The principle features of this disciplinary procedure have been defined in accordance with the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice on Disciplinary Practice and Procedures at Work which incorporate the Employment Act 2002 and the powers created under it.
- Its purpose is to assist the trust in meeting its obligations, under the Education Reform Act 1988, to establish disciplinary and dismissal procedures and to make them known to their staff. The School Staffing Regulations (2003) have also been incorporated into this document.
- Each employee has a responsibility to be familiar with the rules and standards of conduct which relate to his/her area of work and with the trust's standards of business conduct

1. Aims

- 1.1. The aim of this document is to formulate arrangements which will ensure a fair, effective and consistent method of dealing with disciplinary matters in the University of Brighton Academies Trust.
- 1.2. The purpose of the disciplinary procedure is to clarify the basic rules and requirements of the trust; to specify a procedure for maintaining uniform standards of discipline; and identify a process for dealing with any allegations of poor conduct which may arise against employees, whether this be formal or informal.
- 1.3. The provisions set out in this procedure are admissible in evidence at employment tribunals. No material changes should be made to this procedure without the permission of the Trust in order to ensure compliance with the relevant legislation and with the ACAS code of practice.

2. Summary of process



3. Role of principals¹ and senior trust staff

- 3.1. The principal is responsible for the management and discipline of their academy and for ensuring that all employees are aware of the standards expected of them and any rules applying to them. For employees engaged directly with the trust, the relevant member of senior trust staff² assumes this responsibility.
- 3.2. The responsibility for initiating the procedure rests with the principal or relevant member of senior trust staff. It is expected that they will take the lead in making disciplinary decisions for staff, this includes:
 - (i) Carrying out a short investigation or appointing an Investigating Officer
 - (ii) Receiving the investigation report and deciding if there is a case to answer
 - (iii) Leading the Disciplinary panel.
- 3.3. In the event that a principal or a member of senior trust staff is implicated in a disciplinary, or needs to be available to act as a witness, then the role of Disciplinary Lead will pass to an alternative person determined by the trust. Further details of this are set out in the responsibility matrix in annex 1.
- 3.4. If a principal or member of senior trust staff has been part of the disciplinary panel or acted as a witness it will not be appropriate for them to be part of any appeal panel.
- 3.5. In some circumstances, the trust may choose not to delegate the authority to dismiss to the principal or member of senior trust staff.
- 3.6. For ease of reference throughout this document, the term 'line manager' is used to describe any member of staff responsible for the management and discipline of employees in the trust (eg Principal, Chief Executive, Management Director or Service Director), and the term 'Academy' is used to describe any employment setting in the trust (ie Academy or central trust team): the same principles will apply to each situation.

4. Representatives from the trust

- 4.1. The HR Department can provide advice to line managers on any disciplinary matter. HR may be invited to attend meetings at any point in the procedure.

5. Safeguarding matters and external processes

- 5.1. Where at any stage in the procedure, a safeguarding matter is suspected, the Allegations Management Team (part of the Children Safeguarding Unit) at West Sussex County Council must be referred to for advice. They can be contacted on 01243 642962.
- 5.2. If an allegation of abuse is made against any employee, the line manager must refer to the statutory guidance from the Department for Education entitled "Dealing with Allegations of abuse against teachers and other staff" and the trust's Safeguarding in Education and Child Protection Policy.
- 5.3. Where it becomes necessary to refer any disciplinary matter to external parties (e.g. the Police), further proceedings at academy level may continue where the academy has completed sufficient investigation. This will also depend on advice from the LADO (Local Authority Designated Officer) or the Police if relevant. Proceedings may be held in abeyance until the conclusion of these processes including any court/criminal proceedings should the circumstances require.

6. Guiding principles

- 6.1. The trust is committed to a consistent approach to disciplinary matters.

¹ For the purposes of this document, 'Principal' means Principal, Associate Principal, Executive Principal, Acting Principal, Head of School/Academy or, in the Principal's absence, the most senior teacher who is acting in the role of Principal.

² Chief Executive, Management Director or Service Director

- 6.2. The trust is committed to a fair and transparent process.
- 6.3. All disciplinary matters will be dealt with as promptly as possible to achieve a balance between timeliness and the need to ensure fair processes.
- 6.4. In all but the more complex of cases, the Informal Stage will be completed before proceeding to the Formal stage.
- 6.5. Except in cases of gross misconduct, employees will usually have been given at least one warning before they are dismissed.
- 6.6. **For Teachers:** The Teachers' Standards, which come into force on 1 September 2012, define the behaviour and attitudes which set the required standard for personal and professional conduct throughout a teacher's career. The Teachers' Standards will, therefore, be a reference point when considering whether a teacher's conduct has fallen significantly short of the standard of behaviour expected of a teacher.

7. Right to be accompanied

- 7.1. Employees have the right to be accompanied at all formal stages of the procedure, including to Investigation meetings. This does not include a right to be accompanied to meetings in the Informal stage.
- 7.2. A Trade Union Representative can accompany employees to Suspension meetings, providing this can be arranged quickly.
- 7.3. The employee's companion can be:
 - (i) a work colleague,
 - (ii) a full time Trade Union Official or
 - (iii) an accredited Trade Union Representative.
- 7.4. In order to exercise their right to be accompanied, the employee must provide the person holding the meeting with the name of their companion before the meeting.

8. The informal stage of the procedure

- 8.1. Cases of minor misconduct, for example, poor time keeping, are often best dealt with informally through supervision or through a "quiet word". This approach can be effective in dealing with problems quickly and confidentially.
- 8.2. Where a line manager has minor conduct concerns, they should speak to the employee informally about the issue. This is normally carried out as a meeting between the employee and line manager (although it is possible to delegate this to another member of senior staff).
- 8.3. The line manager should advise the employee of the following:
 - (i) Where the employee is falling short of expectations,
 - (ii) How the employee's conduct is expected to improve, and
 - (iii) Timescale for improvement.
 - (iv) Additionally, the employee can be advised that they are being issued with a verbal or informal warning.
- 8.4. A written record of the meeting should be made and kept on the employee's personnel file. A copy must also be given to the employee. This should include the areas of discussion, the agreed action plan, and a timescale for improvement. The employee should be offered the opportunity to add their comments which should also be recorded.
- 8.5. There is no specific procedure for the employee to appeal or dispute the informal stage, although the employee does have recourse to the Grievance Procedure.

9. The formal stage of the procedure

9.1. Moving to a formal procedure

9.1.1. The formal discipline procedure should be invoked if there is:

- (i) a recurrence of the behaviour
- (ii) an escalation to a more serious breach of conduct
- (iii) a suspected serious breach of conduct.

9.2. Investigation

9.2.1. Before carrying out any disciplinary action, it is necessary to undertake an investigation in order to understand the facts.

9.2.2. There are two types of investigation:

- (i) A short, fact-finding investigation, which is carried out by the line manager or another senior manager. This is a useful means of checking the facts for a matter of minor misconduct. Alternatively, it can be used as a preliminary to a full investigation.
- (ii) A full and formal Investigation, which is carried out by an Investigating Officer, appointed according to Annex 1. Their findings will be presented in a written report and given to the line manager, who will decide if there is a disciplinary case to answer.

9.3. Outcome of the investigation

9.3.1. The investigation report is given to the potential disciplinary chair who decides if the employee is to be called to a formal disciplinary hearing, and what the potential sanctions are.

9.3.2. Before writing to the employee, the chair will also need to identify from the investigation report which witnesses (if any) they wish to call to the disciplinary hearing. The HR department team can assist with this.

9.4. Preparing for a disciplinary meeting

9.4.1. If the employee is to be asked to attend a disciplinary hearing, they must be sent a letter and given at least 5 working days' notice. The letter will set out:

- (i) The allegations
- (ii) The right to be accompanied by a companion.
- (iii) The time, date and venue for the meeting, including the process to request a change if the time is significantly impractical for the employee or their companion to attend.
- (iv) The names of the people who will be present at the disciplinary meeting, including those who have been called as a witness, and
- (v) The potential sanctions.

9.4.2. In addition, copies of the investigation report, a copy of the disciplinary policy and guidance, and any statements or documents to be used at the disciplinary meeting must be sent to the employee.

9.4.3. The employee will be asked to provide:

- (i) The name of their companion; and
- (ii) The names of any witnesses they are calling; and
- (iii) Any additional documentation that they wish to be considered no later than 3 days before the meeting.

9.4.4. The employee is expected to attend the disciplinary hearing. However, if there are exceptional circumstances which mean that the employee is unable to attend at the date or time invited, or if their companion is unable to attend, the employee may request a change to the meeting time / date. The employee must provide reasons for submitting this request. However, it should be noted that such a meeting will only be rescheduled on one occasion, within 5 working days of the first date. Should the employee be unable to attend the rescheduled investigation meeting, they will be asked

to put forward written representation. The chair will then take a decision in the employee's absence based on the evidence available.

9.5. No formal action

9.5.1. If the hearing chair decides not to proceed to a formal disciplinary hearing, they should notify the employee in writing, and arrange to meet with them to discuss the outcomes of the investigation and the reasons why the matter is not being pursued formally. The employee may bring a companion with them to this meeting. The chair may also like to consider if there is a need for any further, informal action, – for example, a 'lessons learned' meeting.

9.6. Suspension

9.6.1. During a disciplinary investigation, an individual should only be suspended if there is no reasonable alternative. Only in exceptional cases, where a serious breach of conduct is suspected, may suspension be appropriate.

9.6.2. Suspension will always be on full pay and is a "neutral act" – i.e. an employee being suspended does not imply guilt.

9.6.3. The length of time that an employee may be suspended will vary depending on the complexity of the allegations. Periods of suspension will be kept to a minimum and will be reviewed to ensure that no employee is suspended for longer than is necessary.

9.6.4. Suspension may be considered before an investigation begins, or at any time throughout the investigation process if information comes to light which makes suspension appropriate

9.6.5. Approvals:

- (i) Suspension from work can only be authorised by the Principal who must inform the Academies Director of Operational Services. The HR department must be consulted before a suspension decision is made.
- (ii) In cases where a Principal or member of senior trust staff is to be suspended, the Chief Executive Officer will authorise the decision.

9.6.6. Procedure:

- (i) The relevant senior manager should arrange to meet with the employee before the suspension decision is made. In exceptional circumstances, such as the employee being in hospital or in custody, an employee can be suspended without a meeting.
- (ii) The employee must be given a letter confirming the details of their suspension within 4 working days.

9.6.7. Contact Officer:

- (i) A contact officer should be appointed when an employee is suspended. In cases where an employee is given alternative duties, it may be helpful to appoint a Contact Officer as well.

9.7. Roles and responsibilities

9.7.1. At all stages in the policy and as far as possible given the size of the establishment, different people will:

- (i) Lead the investigation;
- (ii) Chair the disciplinary meeting, and
- (iii) Chair the appeal meeting.

9.7.2. If there are serious impracticalities with this approach, for example, due to someone being absent for a prolonged time, or because they are already involved in the case in some way, then practical alternatives should be agreed with the employee.

9.8. *The Disciplinary Hearing*

- 9.8.1. The employee will be called to attend a disciplinary meeting in order to have their opportunity to respond to the allegations set out in the letter and the investigation. The process for this is set out in annex 2.
- 9.8.2. For cases of minor misconduct (a first written or level one warning) and more serious misconduct (a final written or level two warning), the following will be present at the Disciplinary Hearing:
- (i) The employee and their companion
 - (ii) The hearing chair, appointed according to the responsibility matrix in Annex 1.
 - (iii) A note taker may be present, if required.
 - (iv) An advisor from the HR Department may be present.
- 9.8.3. For more serious cases of misconduct where dismissal is a potential sanction, the following will be present at the Disciplinary Hearing:
- (i) The employee and their companion
 - (ii) A panel consisting of the hearing chair (appointed according to the responsibility matrix in Annex 1), plus one or two representatives from the trust³
 - (iii) A note taker
 - (iv) An advisor from the HR Department
- 9.8.4. In addition, witnesses may be present at any formal meeting to answer questions. They will leave the room when they have finished.
- 9.8.5. The chair may appoint a representative if it is not appropriate for them to be involved in the Disciplinary – for example – if they have been previously involved – OR if the employee's management structure makes that appropriate.

9.9. *Potential Sanctions*

- 9.9.1. Before an employee is invited to a disciplinary meeting, the chair will have identified the range of potential sanctions, and these will be explained to the employee in the letter.
- 9.9.2. The sanctions available are:
- (i) First written warning: this is a level one warning, current for 6 months
 - (ii) Final written warning or level two warning, current for 1 year
 - (iii) Dismissal with notice, and
 - (iv) Dismissal without notice – this is applied in cases where “Gross misconduct” is found.
- 9.9.3. In cases where minor misconduct is found, a level one warning will be issued. If that misconduct is repeated, the sanction would usually escalate to a level two warning (following a further hearing), and potentially a dismissal (following a third hearing).
- 9.9.4. However, where an employee is accused of a more serious allegation, the chair will outline a range of sanctions in the letter. On hearing the case, the panel will decide which sanction to apply. It is not necessary for the employee to have had prior warnings on file if the misconduct is sufficiently serious.
- 9.9.5. Additionally, at all stages:
- (i) The allegations may be rejected if it is considered that there is no case to answer.
 - (ii) The matter may be referred to another procedure, if appropriate.
 - (iii) **For non-teaching staff only:** If an employee is given a formal warning, and if they are not at the top of their salary scale, then the chair may authorise for the employee's increment to be withheld until the warning has lapsed. If this is to be actioned, the employee will be told in writing and be given the right of Appeal.

³ This could include, for example, Local Governors, members of the Board of Directors, or senior members of staff from the trust or from another academy in the trust

9.9.6. The HR department will be able to provide advice on the appropriate potential sanctions.

9.10. Notification of the outcome

9.10.1. If at all possible, the Disciplinary Chair will inform the employee of the outcome in person, and this will be followed by a letter within 5 working days of the decision being taken.

9.10.2. The letter will include:

- (i) The nature of the allegations
- (ii) The findings of the Chair/Panel
- (iii) The decision of the Chair/Panel including the nature of any sanction (and the length of time it will be kept on their personal file in the cases of warnings).
- (iv) The likely outcome if there is no improvement by the employee.
- (v) The date of any review of the warning (if appropriate).
- (vi) The right to appeal against the decision.

9.11. Follow up – reviewing conduct to ensure improvements are met

9.11.1. The line manager will review the employee's conduct at the end of the review period. If there has been limited or no improvement, the line manager may decide to proceed to another disciplinary hearing.

9.11.2. If there has been sufficient improvement, a letter should be sent to the employee confirming this fact at the end of the review period.

10. The Appeal Process

10.1. An employee who wishes to appeal against a warning or a dismissal must do so in writing within 5 working days of receiving written notification.

10.2. In their letter, the employee must set out the grounds for their appeal, and this must be sent to the HR department who will arrange for an appeal to be heard within a reasonable timeframe.

10.3. The appeal will be heard by the relevant persons identified within the responsibility matrix (annex 1), one of which will act as Chair. An advisor from the HR department will be present (if it is a dismissal appeal) and a note taker.

10.4. At the appeal meeting, the employee will be asked to give their reasons for appeal.

- (i) For appeals against a warning, the appeal will focus on these “grounds” for appeal and will not be a re-hearing of the disciplinary.
- (ii) For appeals against dismissal, the meeting will be a re-hearing of the case.

10.5. Witnesses may be called to appeal hearings, but are not automatically required to do so.

10.6. Following a short adjournment to consider the employee's arguments, the panel will invite the employee back into the meeting to confirm the outcome. This will be confirmed in writing to the employee within 5 working days.

10.7. The outcome of the appeal meeting can be one of the following:

- (i) **To uphold the employee's appeal in full.** This will mean that the employee's warning is revoked in full, or their dismissal is overturned.
- (ii) **To reject the Appeal.** This means that the warning will remain on file or the dismissal will remain in place.
- (iii) **A partial uphold.** This is where the Appeal panel uphold some points of the appeal, but rejects others. This category is not to be used when the appeal panel cannot reach a decision. Where there is a “Partial uphold” outcome, the Appeal Chair will need to record in the outcome letter if each point has been “upheld” or “rejected”.

- 10.8. The panel will need to decide, in cases of a partial uphold, if the sanction is to be modified, reduced (e.g. to a lesser sanction or shorter time frame) or if it will remain in place.
- 10.9. The Appeal Panel cannot increase the sanction awarded by the disciplinary. The panel may not make any award of compensation to the employee or vary unilaterally the employee's contract of employment.
- 10.10. If it is not possible to reach a decision immediately following the appeal meeting, the employee will be notified in writing within 5 days of the decision being taken.

11. General points

11.1. Failure to attend

- 11.1.1. All parties should make every effort to attend the disciplinary meeting.
- 11.1.2. If the employee is unable to attend the meeting for legitimate reasons outside of their control, the meeting may be postponed and re-arranged. The employee should make every effort to contact the discipline panel before the time of the meeting. Usually only one postponement and re-arrangement will be agreed.
- 11.1.3. If the employee refuses to attend, the meeting can be held without the employee present. The employee should be allowed to submit documents for consideration at the meeting.
- 11.1.4. If the employee insists on a companion being present who continues to be unavailable, and a suitable alternative companion is available, then the Chair of the meeting may decide to proceed with the meeting.

11.2. Timescales

- 11.2.1. As a general rule, it is in all parties' interest for disciplinary matters to be dealt with promptly, and all those involved with a disciplinary matter have a responsibility in this regard.

11.3. Record keeping

- 11.3.1. Records of disciplinary matters should be treated as confidential and kept securely.
- 11.3.2. Notes will be made of all formal investigation, disciplinary and appeal meetings and copies will be given to the employee for information. It is the responsibility of the chair to arrange for a note taker.
- 11.3.3. In some limited circumstances, information may be withheld to protect the identity of a witness, for example, whistle blowing, severe harassment, safeguarding or criminal matters.
- 11.3.4. If any safeguarding issues have arisen during the disciplinary, the documentation will need to be kept securely in accordance with Safeguarding Procedures.

11.4. Amendments to the disciplinary procedure

- 11.4.1. In exceptional circumstances there may be a need to amend the procedure as set out in this policy e.g. it may be necessary for someone other than the Principal to chair the disciplinary meeting. Any such amendment(s) will be to ensure that the employee has a fair hearing and will need to be subject to the agreement of all parties.

11.5. Overlapping procedures

- 11.5.1. Where an employee raises a Grievance during the disciplinary process (which is unconnected with the disciplinary) then the disciplinary process may be temporarily held in abeyance until the outcome of the grievance is known.

11.5.2. However, where the two procedures are about related issues, it may be possible to deal with the two concurrently.

11.5.3. Where another procedural policy applies, such as the Attendance Management or Capability procedure, it may be possible to cover the essential elements of the procedures at a single meeting, with a view to minimising the number of letters and meetings required.

11.5.4. Where overlapping procedures may apply, please contact the HR department for advice.

11.6. Trade Union Officials

11.6.1. In keeping with ACAS requirements, no action will be taken against an accredited Trade Union representative without prior discussion with a full time official of the Trade Union concerned, except in cases of Gross Misconduct where immediate action is required. In these cases, discussion with a full time Trade Union Representative will be undertaken as soon as possible afterwards.

11.7. Employees with disabilities

11.7.1. If an employee requires any reasonable adjustments to be made to enable them to fully participate in the process, they should notify the chair as soon as possible (and providing a minimum 4 working days notice).

11.8. Referral to the National College of Teaching and Learning (Teachers Only)

11.8.1. If a teacher has been dismissed for serious misconduct, or would have been dismissed for that reason if they had not resigned, the case may be referred to the National College of Teaching and Learning (NCTL) by the HR department. The NCTL considers, investigates and hears cases of alleged serious misconduct. This process could lead to the issue of a prohibition order against the teacher concerned.

12. Policy status and review

Written by:	HR Manager
Owner:	HR Director
Status:	V1 = APPROVED
Approval date:	V1 = 9/9/16 (Policy Sub-Committee; Confirmed with unions 8/7/16)
Review Date:	2020/21

Annex 1 – Responsibility matrix

1. Responsibilities

POST	INVESTIGATION AND PRESENTATION	DISCIPLINARY HEARING	APPEAL
Executive Officers			
Chief Executive	University of Brighton procedures		
Executive Principal	Director of School Improvement	Chief Executive	Board Panel
Principal	Director of School Improvement	Chief Executive	Board Panel
Director of Development	University of Brighton procedures		
Director of Operational Services	University of Brighton procedures		
Director of Policy and Governance	University of Brighton procedures		
Director of School Improvement	University of Brighton procedures		
Teaching Staff			
Associate Principal	Principal of other Academy/Executive Principal	Director of School Improvement	Board Panel
Vice Principal	Principal of other Academy/Executive Principal	Director of School Improvement	Board Panel
All other teaching and classroom staff	Vice Principal	Principal	Board Panel
Support Staff			
Service Director	Director of Policy and Governance	Director of Operational Services	Board Panel
Academy-based Support Staff	Vice Principal	Principal	Board Panel
Trust-based Support Staff	Service Director	Director of Operational Services	Board Panel

Annex 2– Procedures for Disciplinary meetings and Appeals

1. This procedural guidance has been written in accordance with the Education (school staffing) Regulations 2009, which comply with S35 and S36 of the Education Act 2002. There is statutory guidance to accompany these regulations, available from the Department for Education.
2. Copies of this procedure will be held in every academy and be freely available to all employees.

3. Overview of a Hearing

- 3.1. The meeting will open with introductions, confirmation of the names of witnesses, and confirmation of the documents to be considered during the meeting. If there are additional documents to be added, or discrepancies, the meeting will be adjourned to enable the documents to be copied and read.
- 3.2. The chair of the meeting will explain the purpose of the meeting and state precisely the allegation against the employee and outline the process.
- 3.3. The chair will ask the employee if they want to respond to the allegations by providing an initial response, after which, the chair (and any other panel members) may ask questions of the employee.
- 3.4. There will then be an opportunity for witnesses to be called; first, any witnesses which the chair (or person chairing the Disciplinary) has identified, followed by any witnesses which the employee has called.
- 3.5. The Investigating Officer may be called as a witness by either party.
- 3.6. The employee and their companion, the chair and any members of the panel will all have the opportunity to ask questions of the witnesses, who will leave the room when they have finished responding.
- 3.7. Witnesses may be recalled if further questions subsequently arise.
- 3.8. When all the witnesses have been questioned, the employee will be invited to make any final comments. They may ask their companion to speak for them, if they choose. It is useful then for the chair to sum up all the information that they have heard in the meeting, to enable all parties to be reminded of the nature of the offence, the arguments and evidence put forward and to ensure nothing is missed.
- 3.9. The employee will then be asked to withdraw, while the chair and any panel members deliberate.

4. General Rules

- 4.1. Those involved in disciplinary proceedings need to be fair, impartial and reasonable throughout.
- 4.2. The following rules of conduct shall apply to all formal disciplinary meetings including appeal meetings under this Procedure.
 - (i) A person is ineligible to serve on a disciplinary committee where he/she is related to the employee in question, or has made allegations, or has been a witness to an alleged incident, which results in disciplinary proceedings.
 - (ii) Where a panel is required to determine an appeal against any disciplinary action, the panel will include no fewer than three persons and no person who has had prior involvement in the case shall consider an appeal against that decision. The membership of an appeal committee shall include no fewer members than the committee whose decision is the subject of appeal (where this is relevant).

- (iii) The line manager or panel of may be advised by a Legal representative or a representative from the HR department or some other representative of the Trust. These advisers may retire with the panel for the purpose of giving advice (they do not, however, have any role in making the decision).
- (iv) Hearings will be scheduled for a time and place, which, as far as possible, are acceptable to all parties. A meeting should be adjourned to another date after 5 hours or at 6 p.m.; whichever is the earlier, unless both parties agree otherwise.
- (v) Copies of all documentary evidence will be available to the employee and the panel as early as possible in advance of the meeting.
- (vi) Accommodation will be provided for the employee and his or her representative or friend/work colleague to meet in private before, during and after the meeting.
- (vii) With the exception of witnesses, all those involved in the hearing, including the employee are required to attend throughout. Witnesses will be present only while they are required to give evidence to the meeting.
- (viii) During the meeting, the Panel or the employee may request one or more short adjournments. Such requests will not be unreasonably refused.
- (ix) Witnesses will be instructed not to discuss their evidence with other witnesses during the hearing.

5. Notice

- 5.1. The employee should be given at least 5 clear working days' written notice of the date, time and place of the disciplinary or the appeal hearing. The employee should be advised of their right to be represented. The notice calling the employee to the disciplinary hearing will set out the allegations to be discussed at the meeting and the potential sanctions.

6. Opening the meeting

- 6.1. The chair of the disciplinary should start the proceedings by introducing himself/herself and others present to the employee, explaining the role of each of those present. The employee should introduce any person who is accompanying him/her. The chair should then confirm the names of any witnesses that are to be called to the meeting.
- 6.2. The chair will first present the allegation(s) against the employee as appropriate, providing such evidence, documentary or by oral statements from witnesses, as necessary.

7. Questioning the employee and witnesses

- 7.1. The employee or his/her representative will then be asked to give an explanation of the circumstances which led to the convening of the disciplinary hearing, providing such evidence, documentary or by oral statements from witnesses, as appropriate.
- 7.2. All witnesses may be questioned by the chair, the employee or his/her representative, any governor, and the representative of the Trust (if present) immediately following their submission to the meeting. The Investigating Officer and the employee may be similarly questioned. At the end of the questioning, witnesses may be recalled - but only to clarify evidence previously given, not to introduce any new material. If recall is necessary, both the employee and the panel must return even if only one is concerned with the point giving rise to doubt.
- 7.3. The chair and the employee or his or her representative may sum up following the conclusion of statements. The employee will be given the opportunity to speak last. Neither summary may introduce any new material.

- 7.4. The chair may adjourn the meeting for further investigations before a decision is made.
- 7.5. At the conclusion of the meeting, all those present except the panel and adviser should leave the room to allow them to deliberate in private.
- 7.6. In coming to a conclusion on the facts of the case, the panel will need to decide “on the balance of probabilities” whether the employee concerned carried out the alleged misconduct. Once a decision has been reached, the employee should be recalled to the meeting.
- 7.7. The chair should inform the employee of the decision and the right of appeal. In exceptional circumstances, it may not be possible to reach a decision on the day of the meeting. In this case, the employee should be recalled to the meeting and so advised. The chair should explain the reasons and inform the employee when the decision is likely to be reached. This must be no later than two working days after the meeting.

8. Deliberation

- 8.1. Witnesses will leave the room when they have finished giving evidence; they may not join the Panel for the deliberations. The panel may recall anyone to clarify evidence previously given, provided that the employee and their Companion are also in attendance when that evidence is given.

9. Outcomes

- 9.1. At the end of the hearing, if it is considered that dismissal should take effect, the employee will be informed orally if possible and in any event the decision will be confirmed in writing within 5 working days.
- 9.2. In the case of an appeal, the employee shall set out in writing the grounds for the appeal, to be lodged with the HR department, within 5 working days of receipt of written confirmation of the dismissal.

10. Procedures for appeals

10.1. Appeals against a warning

- 10.1.1. If an employee wishes to lodge an appeal following a disciplinary warning, they must write to the HR department within 5 working days of receiving written notification of the outcome.
- 10.1.2. In their letter requesting an appeal, the employee should set out their reasons for appeal.

10.2. Note taking

- 10.2.1. There is a need to keep notes at appeal hearings. The chair of the appeal panel must ensure that a note taker has been arranged.
- 10.2.2. The companion has a similar role to that in disciplinary hearings, and rules regarding breaks are the same as for disciplinary hearings.

10.3. The procedure: appeal against a warning

- 10.3.1. The chair will open the meeting, make introductions, share documentation and invite the employee to give their reasons for appeal.
- 10.3.2. The employee will then talk through their grounds for appeal, and may call on witness statements, or other documents used in the original disciplinary hearing.
- 10.3.3. The aim of the hearing is to understand the employee’s grounds for appeal and to consider their reasons and any evidence, which they bring to support this appeal.

10.3.4. The chair of the appeal will invite the chair of the disciplinary hearing to the meeting to respond to the employee's appeal reasons. They will be present as a witness, and will be asked questions by the appeal panel, employee, and their witness.

10.3.5. The appeal chair will sum up at the end of the meeting. The chair will then call for a brief adjournment to consider their decision.

10.4. Appeal against dismissal

10.4.1. If the employee wishes to lodge an appeal following Dismissal, they must write to the HR department within 5 working days of receiving written notification of the outcome.

10.4.2. In their letter requesting an appeal, the employee should give their grounds for appeal. The appeal will take the format of a re-hearing of the dismissal.

11. Procedure to be followed at the appeal against Dismissal

11.1. The chair of the appeal will:

- (i) Open the appeal meeting and ensure everyone is introduced.
- (ii) Briefly explain the purpose of the meeting, and ask any particular questions.
- (iii) Confirm the documentation to be used at this meeting, and where there are discrepancies, ensure that time is given to allow for papers to be copied and read. There should be no new information presented at an appeal meeting than at the original meeting, but, where new information has come to light, everyone should be given time to consider the information.

11.2. The chair of the appeal panel will decide on which order to invite the parties to present their arguments.

11.3. Both the employee and the dismissal chair will have the opportunity to state their arguments, and to bring forward witnesses, who will be questioned.

11.4. There will then be an opportunity for summing up, by both the dismissal chair and the employee (or their Companion).

11.5. Deliberation process

11.5.1. The chair of the appeal will ask the employee and their companion to leave the room while the panel deliberates. The note taker will remain in the room to record the deliberations and the rationale for the outcome.

11.5.2. Ideally, the panel should reach a consensus. However, if no consensus is possible, the panel may apply a two-thirds majority decision, provided that the two-thirds majority includes the chair of the appeal.

11.6. Notification

11.6.1. Ideally, the employee will be invited back into the room and the decision of the panel will be shared with them. This will be confirmed in writing to them. Where it is not possible to inform the employee of the outcome in person, they must be informed in writing within 5 working days.

12. The decision making process

12.1. **The balance of probabilities** - In coming to a conclusion on the facts of the case, the panel will need to decide 'on the balance of probabilities' whether the employee concerned carried out the alleged misconduct. This is not as stringent a test as in a criminal court of law where the test of 'beyond reasonable doubt' applies, but it nevertheless requires the panel to come to a conclusion based on evidence rather than 'gut feeling'.

- 12.2. In most meetings, evidence is put forward that is in some ways contradictory and the panel will need to come to a conclusion as to where the truth lies. To do so, the panel will need to use their common sense and management experience to balance the evidence for and the evidence against. The panel should consider how likely it is that the act or omission happened, e.g. how unusual would it be for the alleged act to have occurred? Does any of the evidence sound more far-fetched than the rest? If two people are directly contradicting one another, who is more likely to be telling the truth and is there any corroborating evidence that adds weight to one or other of them?
- 12.3. Generally, the less likely the act or omission is to have occurred, the greater the burden of proof required. The panel will need to identify evidence the corroboration for one side or the other.
- 12.4. As part of their deliberations, the panel will need to consider each allegation in turn. These formal deliberations should be recorded by the note taker.
- 12.5. **The test of reasonableness** - Decision making panels should consider the following questions:
- (i) How thorough was the Investigation? Has there been as much investigation as is reasonable in the circumstances?
 - (ii) Have the requirements of the disciplinary procedure been properly complied with up to this point, including advance notice to the employee of the matter(s) to be considered at this meeting?
 - (iii) Has there been sufficient regard paid to any explanation put forward by or on behalf of the employee?
 - (iv) Is there a genuine belief that the employee committed the misconduct?
 - (v) Are there reasonable grounds for sustaining that belief on the balance of probabilities?
 - (vi) Is the misconduct sufficiently serious to justify the disciplinary decision being contemplated?
 - (vii) Has there been regard paid to any mitigating circumstances put forward by, or on behalf of, the employee?
 - (viii) Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?
 - (ix) What was the type, degree and frequency of the misconduct?
 - (x) What is the employee's previous record?
 - (xi) What were the consequences of the misconduct?
- 12.6. **Making findings of fact** - If the panel finds it cannot come to a judgement about where the truth lies because it does not have sufficient evidence to do so, it will be unable to make a finding that the act or omission did occur as alleged. In this case, the panel would not be able to take any disciplinary action, whatever panel members' private view about whether the employee was guilty or not.
- 12.7. If the panel concludes that the alleged misconduct did occur in full or in part, it should record its findings and then move on to considering the appropriate disciplinary penalty
- 12.8. **Imposing Disciplinary Penalties** - In many cases, the employee concerned will have offered an explanation about what happened and why. In some cases, the misconduct may be admitted and the only evidence put forward by the employee relates to mitigating circumstances. Based on the facts the panel has found, it will then need to consider any mitigation put forward by the employee to decide what penalty should apply. The panel will also need to take account of the employee's previous disciplinary record in deciding what level of action is appropriate.
- 12.9. The panel is not able to impose a penalty higher than the sanctions outlined to the employee as "potential sanctions" in their letter inviting them to the disciplinary meeting.
- 12.10. Having considered mitigation, the panel also needs to consider the seriousness of the misconduct in the context of the employee's previous record and the circumstances of the case. The HR Advisor should be able to advise on any precedents to ensure the decision is consistent with them.
- 12.11. The panel should work out with the advisor the exact wording of the findings and the penalty. The panel will also need to decide how long any disciplinary penalty should remain 'live' and any arrangements that may need to be put in place to assist the employee to improve and/or be monitored.

- 12.12. **Summary of Key Points** - At this stage, it may be useful to run through the following checklist to satisfy panel members that they have reached a fair decision:
- (i) Focus on the evidence and ensure findings can be substantiated by the evidence.
 - (ii) Approach decision-making as a two-stage process: decide whether the allegations are substantiated before deciding on the appropriate penalty.
 - (iii) The panel may only decide whether to take disciplinary action and, if so, the level of disciplinary action that is appropriate.
 - (iv) The panel may not impose any other penalties such as redeployment, stoppage of pay, demotion.
 - (v) The panel cannot impose a disciplinary penalty at a higher level than that set for the meeting.
 - (vi) In all cases, the chair of the panel, shall confirm the determination in writing within 5 working days of the meeting.