

STAFF DISCIPLINARY PROCEDURES

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1.0 Introduction

- 1.1 This Disciplinary Procedure applies to staff (Headteachers, teachers and support staff) of The Learning Trust (the 'Trust') and responsibility for implementation has been delegated by the Trustees to the Local Governing Bodies of the schools within the Trust.
- 1.2 Disciplinary hearings where the range of possible outcomes does **not** include dismissal will normally be chaired, at the relevant school, by a Designated Officer who will be a member of the Leadership Team (including the Business Manager) or the Headteacher. Additionally, where the Governing Body has delegated the initial disciplinary decision (IDD) to the Headteacher, the Headteacher may Chair a Disciplinary Hearing where dismissal is a possible outcome.
- 1.3 A Designated Officer cannot hear the case in the following circumstances:
- Where he/she has been directly involved in an investigation leading to a recommendation of disciplinary action. (This does not include a decision to suspend, commission a disciplinary investigation or accept a recommendation from a disciplinary investigation.)
 - Where he/she is a witness to particular conduct giving grounds for a disciplinary investigation
 - Where the Local Authority has made representations to the Chair of the Governing Body on grounds of serious concerns about the performance of the Headteacher
 - The Headteacher is the subject of the disciplinary action, or
 - The Governing Body has not delegated the initial disciplinary decision (IDD) to the Headteacher

In these circumstances the case will be heard by a Hearing Panel of the Governing Body.

- 1.4 The "Hearing Panel" will normally include at least 3 members of the Governing Body who have had no detailed involvement in the investigation or case generally. In relation to the Chair of Governors, this does not include a decision to suspend, commission a disciplinary investigation or accept a recommendation from a disciplinary investigation. Where there are insufficient governors who have had no detailed involvement in the case the decision will be delegated to two governors. The existing Business Resources Committee may be re-constituted to perform this function.
- 1.5 The Headteacher (except where s/he is the person concerned) may also be present at all hearings when dismissal is a possible outcome.

2. Action short of discipline

- 2.1 Cases of minor misconduct will be dealt with informally wherever possible. There will, however, be situations where matters are more serious or where an informal approach has been unsuccessful.
- 2.2 Management support and guidance will be given which is designed to improve an employee's conduct and are a normal feature of the manager's function.
- 2.3 A Headteacher or line manager may issue an instruction, confirmed in writing to the employee, setting the standards of expected behaviour and advising the employee that failure to adhere to the instruction may result in formal disciplinary procedures being instigated, is the most appropriate tool to deal with minor misconduct.
- 2.4 Where there is an allegation that an employee's conduct continually, repeatedly, substantially or grossly falls short of required standards the formal disciplinary procedure will be applied.

3. Initial Enquiries

- 3.1 Where a concern is raised which may potentially be dealt with under the Disciplinary Procedure, there needs to be some preliminary fact finding to establish the basic details to assess whether the Disciplinary Procedure is the most appropriate mechanism to use. This preliminary assessment will also include consideration of whether the individual has a protected characteristic (e.g. a disability) that needs to be taken into account. If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with your line manager as soon as possible.
- 3.2 Assuming the initial enquiries establish that the Disciplinary Procedure is the most appropriate mechanism to use, the Headteacher or Chair of Governors will then appoint an Investigating Officer, commission an investigation and set its terms of reference. At the earliest possible opportunity the employee will be informed of the allegation made against them and that an investigation will take place.
- 3.3 Consideration may be given to suspending an employee, depending on the nature of the allegation and the seriousness of it. A decision to suspend will be taken by either the Headteacher or Chair of Governors.

4. Investigation

- 4.1 The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents. The Investigating Officer will gather all the relevant information promptly. If there are witnesses, they will be interviewed at the earliest opportunity and notes of the interview will be produced. These will be signed and dated and the witnesses will be made aware that they may be asked to attend at a disciplinary hearing. Investigative interviews are solely for the purpose of fact-finding and no

decision on disciplinary action will be taken until after a disciplinary hearing has been held.

4.2 Information gathered during an investigation will be put together as a written report and sent to the commissioning officer for consideration.

4.3 At the end of the investigation the Headteacher or Chair of Governors will decide to either:

- Take the case forward to a disciplinary hearing or,
- Take no further action where there is insufficient evidence to warrant consideration at a disciplinary hearing or the employee provides a satisfactory explanation or,
- where there are some concerns about the employees conduct but these are not deemed sufficiently serious to be dealt with under formal proceedings, instruct the employee in accordance with paragraph 2.3.

4.4 You must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.

4.5 The decision will be notified to the employee in writing.

5. Suspension

5.1 Suspension is a neutral act and will not be an automatic response. It will be considered where there are concerns about the safety of children, risks to people, risks to property, that the allegation is so serious that it might be grounds for dismissal or there are other concerns that might compromise an investigation. The Headteacher or Chair of Governors will consider whether there are alternatives to suspension. The power to suspend rests with the Headteacher / Chair of Governors. Where suspension is unavoidable it will be with full pay whilst an investigation is conducted. Suspension is not a disciplinary penalty and does not imply that a decision has already been made about the allegations.

5.2 The employee will be informed in writing why they are being suspended and will be provided with a copy of the Disciplinary Policy and Procedure. The provision for suspension is not, in itself, to be regarded as a disciplinary action and does not involve prejudgment of any eventual outcome.

5.3 During a period of suspension the employee will continue to receive their normal wage/salary (which may for example be sick pay if they are off sick) ie the pay that they would have received if not suspended.

5.4 During the period of suspension the employee must adhere to any conditions set out in the letter of suspension. Any breach of those conditions may result in pay being stopped immediately, and may of itself be a ground for disciplinary action. The conditions of suspension are as follows:

- The employee must be contactable by school during working hours.

- They must not attend school unless it is agreed by the Headteacher. They must not discuss the allegations with any other employees without permission. They may of course contact their accredited trade union representative and their support officer if one has been allocated. They must not contact any other employee or person specified in writing by the Headteacher without permission.
 - If appropriate, they must return keys and other school property, and collect any personal belongings, under supervision. Access to ICT will be disabled.
 - The employee will be allowed access to information and other employees in order to respond to the allegations. This should be requested through the Investigating Officer in the first instance.
- 5.5 Suspension will be as brief as possible and necessary in the circumstances. The school's HR advisers will liaise on a regular basis with the employee or their appointed Trade Union representative or work colleague as to the progress of the investigation and the employee informed accordingly. Suspension will normally be reviewed weekly, and the outcome will be notified to the employee.
- 5.6 If the employee is not in a Trade Union, they will be allocated a contact officer, who is not involved with the investigation. The contact officer is there to facilitate two way contact during the suspension. If the employee is a member of a Trade Union, this role would normally be undertaken by their Trade Union Representative.
- 5.7 If an employee is sick during a period of suspension, they will be managed in accordance with the school's Absence Management Procedure.
- 5.8 An employee who is suspended may still take annual leave that has already been approved, and may make further requests to take leave which will be considered by their manager in the usual way.
- 5.9 No action under this procedure, including suspension will take place in respect of an officer who is an accredited representative of a trade union, and whose status has been notified to the authority in writing, until the circumstances of the case have been discussed with a full-time official of the trade union concerned.
- 5.10 Only the Governing Body has the power to lift a suspension.

6. Arrangements for a Disciplinary Hearing

- 6.1 If the outcome of the investigation is that a disciplinary hearing is necessary, the employee will be provided with a copy of the Disciplinary Policy and Procedure (unless previously provided at the time of suspension) and be advised of:
- place, date and time of the hearing.
 - full details of the alleged offence(s) and the basis for those allegations.
 - all the supporting documentation (with copies).
 - the likely range of consequences at the disciplinary hearing.
 - the right to be represented by an accredited trade union representative or work colleague.
 - the right to submit documentation.
 - the right to call witnesses.
- 6.2 The letter will be handed to the employee, sent by first class and recorded delivery and/or by electronic means. Reasonable time will be allowed between receipt of the

letter and all supporting documents and the hearing so as to allow the employee time to prepare their case.

- 6.3 Where possible, the employee's accredited trade union representative or workplace colleague will be consulted about the date and time of any hearing to ensure that this is convenient for them. If the representative cannot attend on the proposed date, the employee can suggest an alternative time and date so long as it is reasonable and is not more than 5 days later than the original date, or both sides may agree an alternative date beyond this period.
- 6.4 Where the employee intends to rely on a written Statements of Case or other written evidence, these must be submitted at least 5 working days prior to the hearing. Management and employee written papers will be sent to the Designated Officer / Panel 4 working days prior to the Hearing.

7. The Right to be Accompanied

- 7.1 You may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. You must tell Designated Officer who your chosen companion is, in good time before the hearing.
- 7.2 A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.
- 7.3 If your companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards (see 6.3 above), we may ask you to choose someone else.
- 7.4 We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) if this will help overcome a disability, or if you have difficulty understanding English.
- 7.5 To exercise the right to be accompanied, you must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for you to ask to be accompanied by someone whose presence would prejudice the hearing. Nor would it be reasonable for you to ask to be accompanied by a companion who is based at a remote geographical location in circumstances where there is someone suitable and willing to undertake the role who is on site.
- 7.6 You are not entitled to be accompanied at an investigatory meeting; however the Trust may allow you to bring a companion to an investigatory meeting, for example, if it would help you to overcome any disability or any difficulty in understanding English.

8. Disciplinary Hearing

- 8.1 The conduct of the hearing will be as set out in **Appendix 1** to this procedure.
- 8.2 The Designated Officer / Hearing Panel will be empowered to determine disciplinary action. They will consider whether the employee's conduct justifies formal disciplinary

action having regard to all the circumstances of the case including the gravity of any misconduct, any mitigating circumstances and the employee's previous record.

- 8.3 At the disciplinary hearing we will go through the allegations against you and the evidence that has been gathered. You will be able to respond and present any evidence of your own. Your companion may make representations to us and ask questions, but should not answer questions on your behalf. You may confer privately with your companion at any time during the hearing.
- 8.4 You may ask relevant witnesses to appear at the hearing, provided you give us sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness. However, you will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise.
- 8.5 We may adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 8.6 The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. We aim to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.
- 8.7 You will not normally be dismissed for a first act of misconduct, unless we decide it amounts to gross misconduct or you have not yet completed your probationary period. This will be considered on a case-by-case basis and is at the discretion of the Trust.
- 8.8 If you fail to attend any meetings without good reason, this may be treated as misconduct itself. If you fail to attend without good reason, or are persistently unable to do so (e.g. health reasons) the Trust may reach a decision in your absence based on the available evidence.

Disciplinary sanctions

- 8.8 **Stage 1 – Verbal warning (confirmed in writing).** It will usually be appropriate for a first act of misconduct where there are no other active written warnings on your disciplinary record depending on the seriousness of the misconduct.
- 8.9 **Stage 2 – First written warning.** It will usually be appropriate for an act of misconduct where there is a verbal warning on your disciplinary record depending on the seriousness of the misconduct.
- 8.10 **Stage 3 - Final written warning** It will usually be appropriate for:
- misconduct where there is already an active written warning on your record; or
 - misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.

8.11 **Stage 4 - Dismissal.** It will usually only be appropriate for:

- any misconduct during your probationary period;
- further misconduct where there is an active final written warning on your record; or
- any gross misconduct regardless of whether there are active warnings on your record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are set out in our Disciplinary Policy.

8.12 **Alternatives to dismissal.** In some cases we may at our discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

- Demotion.
- Transfer to another department or job.
- A period of suspension without pay.
- Loss of seniority.
- Reduction in pay.
- Loss of future pay increment or bonus.
- Loss of overtime.

8.13 The decision of the hearing will be confirmed by letter, signed by the Designated Officer / Chair of the Hearing Panel , and will either be handed to the employee, sent first class and recorded delivery or sent by electronic means.

8.14 The letter will state:

- the decision of the hearing and the disciplinary sanction being applied
- the reason for this
- the right of appeal
- in the case of warnings, the ways in which the employee's work or conduct must improve detailing, if appropriate, any assistance to be given and/or timescales in which the improvement is to be achieved. It will also state the period during which the warning is effective and that any further misconduct of any kind may result in a final warning.
- in the case of a final written warning, the letter will clearly indicate the possibility of dismissal in the event of any further misconduct of any kind.
- In the case of a dismissal, the date from which the dismissal will take effect. The dismissal letter will be written on behalf of the Governing Body and The Learning Trust.

8.15 The duration of warnings is as follows:

- Six months from the date of the disciplinary hearing for a verbal warning
- Twelve months from the date of the disciplinary hearing for a first written warning
- Twenty four months from the date of the disciplinary hearing for a final warning.

- 8.16 In certain circumstances, the Trust has a statutory duty to refer the matter to the relevant professional or safeguarding bodies (e.g. the Teaching Agency and the Independent Safeguarding Authority). The employee may also have a duty to refer the matter.
- 8.17 Provided the employee's conduct is satisfactory throughout the period, the warning will thereafter be disregarded for the purposes of determining progressive disciplinary sanctions but a copy will remain on your personnel file. However there may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to lapse very soon thereafter. Where a pattern emerges and there is evidence of abuse, expired disciplinary sanctions will be borne in mind when considering any further offences.
- 8.18 Exceptionally, there may be circumstances where the misconduct is so serious that it cannot ever be completely disregarded for future disciplinary purposes. In such circumstances this will be made clear at the time the sanction is imposed and that any further misconduct may lead to dismissal.
- 8.19 In determining whether a warning is still 'live' and therefore to be taken into consideration should further misconduct occur, the relevant date is the date on which the later misconduct occurred, not the date of the hearing which may be some time later. In other words, if an employee is on a warning at the time of the allegation, but this warning has expired by the time of the hearing, it will still be taken into consideration as a live warning.

9. Attendance at Hearings

- 9.1 Decisions on postponement of a hearing at the employee's request will be made in accordance with the school's policy.
- 9.2 If the employee fails to attend, a decision may be taken in the employee's absence.

10. Appeal Rights

- 10.1 An employee has the right to appeal against any formal disciplinary action under this procedure. They must write to the Headteacher / Chair of the Hearing Panel (whoever led the original hearing) within 10 working days of receipt of the letter confirming the action. The letter must stipulate the grounds of the appeal, whether:
- The employee is appealing the finding or sanction or both;
 - New evidence has come to light; or
 - The employee considers that the disciplinary procedure was not correctly applied and set out the reasons and evidence to support their contention.
- 10.2 An Appeal against the findings, where new evidence has come to light or where the employee considers that the disciplinary procedure was not correctly applied will be conducted by way of a full re-hearing. The order of presentation will be in accordance with Appendix 1 to this Procedure, with additional provision for the trade union to present and management to respond to any grounds of appeal specific to the reasons for dismissal set out in the dismissal letter.

- 10.3 Appeals against the sanction only i.e. where the employee accepts that the allegation is upheld but believes the sanction is too harsh, will be conducted in accordance with Appendix 2.
- 10.4 Appeals will normally take place within 25 working days of the appeal being lodged.
- 10.5 Appeals will be heard by the Headteacher or an Appeal Panel of the Governing Body. An Appeal Panel will consist of at least three governors who have not previously been involved with the case (i.e. it must exclude members of the Hearing Panel). Where insufficient such governors are available, the appeal may be heard by two governors, but there will be no fewer than the number that made the initial decision.
- 10.6 The employee will be given a minimum of 10 working days notice of the time and place of the hearing, and will be allowed to be represented by either their accredited trade union representative or a work colleague.
- 10.7 Where the employee intends to rely on a written Statement of Case or other written evidence, these must be submitted at least 6 working days prior to the Appeal hearing. Management and employee written papers will be sent to the Headteacher / Appeal Panel 5 working days prior to the Hearing.
- 10.8 At the appeal the employee may be accompanied by an accredited trade union official or work colleague.
- 10.9 The Headteacher/Hearing Appeal Panel may, in the light of the appeal, vary the disciplinary action taken, decreasing the severity of the sanction or setting it aside. The employee will receive written confirmation of the outcome of the appeal as soon as possible.
- 10.10 If an appeal results in the reinstatement of an employee this will be backdated to the final date of employment, pay will be reinstated and continuity of service will be preserved.
- 10.11 The decision at the Appeal Hearing is final.

11. Confidentiality

- 11.1 All parties have a responsibility to deal with disciplinary issues in a sensitive and confidential manner.
- 11.2 Information shared as part of the disciplinary process is confidential and must not be used or published for any other purpose, except as required by legislation, for example referrals to the Independent Safeguarding Authority. Failure by the employee or manager to observe this requirement could, of itself, lead to further disciplinary action.
- 11.3 You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.
- 11.4 You will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against you, unless we believe that a witness's identity should remain confidential

Approved by the Trustees on 17 July 2018

1 Conduct of Disciplinary and Appeal Hearings

Appeals will be heard by the Headteacher or an Appeal Panel of the Governing Body

The procedure to be followed at a disciplinary hearing or an Appeal by way of a full re-hearing will normally be:

1. The Hearing / Appeal will be conducted by either a Designated Officer (which includes the Headteacher) or a Panel of the Governing Body as appropriate.
2. The Designated Officer or Panel may be advised/supported by an HR Adviser.
3. The Designated Officer or Chair of the Panel will satisfy himself/herself/ that the employee understands the purpose of the Hearing / Appeal.
4. The management case will be presented normally by the Investigating Officer; Designated Officer or Chair of Governors (where the Headteacher is the subject of the Hearing / Appeal) supported by an HR Adviser. The presenting manager will describe the case and the presentation may include witnesses, written statements or other documents where these are necessary. If written statements or other documents are to be presented copies of these will normally be sent to the employee and/or their representative with the letter convening the hearing.
5. The employee and/or representative will be given the opportunity to question the presenting officer as well as any witnesses who may have given evidence.
6. The employee or his/her representative will then be invited to respond to the case as presented. The employee may also produce witnesses, written statements or other documents in support of his/her case. (Where the employee intends to rely on a written Statement of Case or other written evidence these must be provided six working days prior to the hearing.) Where witnesses are school or Council employees they should be given reasonable time off with pay to attend.
7. The presenting officer will be given the opportunity to question the employee, his/her representative and any witnesses called in his/her defence.
8. At any stage during the Hearing/Appeal the Designated Officer or Panel conducting the hearing and any adviser(s) may ask questions of the employee, the presenting officer or such other persons, as they may consider appropriate in order to ascertain the facts and arguments.
9. In the case of Appeals by way of a full re-hearing, the employee may present additional arguments relating specifically to the reasons for dismissal set out in the dismissal letter. In such cases, the management representative will be given an opportunity to respond prior to closing statements being invited.
10. The presenting officer will then be invited to make a closing statement not introducing any new material.
11. Finally the employee or his/her representative will be given the opportunity to make a closing statement also without introducing any new material.

12. Both parties will withdraw to allow the Designated Officer / Panel to review and consider the evidence in conjunction with any advisers.

13. The Designated Officer or Panel will then recall both parties to inform them of his/her/their decision. The decision will normally be announced personally to the parties as soon as it is possible on the day of the Hearing/Appeal. If it is not possible to make a decision immediately the parties will be informed of this. In any event a decision must be made and communicated to the employee within five working days of the hearing. The decision will be confirmed in writing and delivered to the employee either by hand or recorded delivery and first class post (even if also sent electronically) with a copy (sent electronically) to the trade union representative or work colleague and the presenting officer.

Schedule of Appeal against a Disciplinary Sanction only

The procedure at the hearing will normally be as follows:

1. The Appeal will be conducted by either the Headteacher or an Appeal Panel of the Governing Body as appropriate.
2. The Headteacher or Panel conducting the Appeal may be advised/supported by an HR Adviser.
3. The Headteacher or Panel conducting the Appeal will satisfy himself/herself/themselves that the all those present understand the purpose of the hearing which is to consider arguments as to the severity of the sanction imposed.
4. No witnesses will attend for either side, but written character references may be submitted by the employee in advance (six working days before the Appeal).
5. The employee or his/her representative will be invited to present their case.
6. The management representative will be given the opportunity to question the employee or his/her representative.
7. The management representative will be invited to respond to the employees case.
8. The employee and/or representative will be given the opportunity to question the management representative.
9. At any stage during the appeal any member of the Panel conducting the hearing and any adviser(s) may ask questions of the employee, their representative or the management representative, as they may consider appropriate in order to ascertain the facts and arguments.
10. The employee or their representative will then be invited to make a closing statement not introducing any new material.
11. Finally the management representative will be given the opportunity to make a closing statement also without introducing any new material.
12. Both parties will withdraw to allow the Headteacher or Panel to review and consider the arguments in conjunction with any advisers.

The Headteacher or Panel will then recall both parties to inform them of his/her/their decision. The decision will normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately the parties will be informed of this. In any event a decision must be made and communicated to the employee within five working days of the hearing. The decision will be confirmed in writing and delivered to the employee either by hand or recorded delivery and first class post (even if also sent electronically) with a copy to the trade union representative (sent electronically) or work colleague and the management representative