



## Trinity Multi Academy Trust

<b>Policy:</b>	Disciplinary Policy
<b>Date or review:</b>	April 2017
<b>Date of next review:</b>	April 2020
<b>Lead professional:</b>	HR Manager
<b>Status:</b>	Statutory

## **1. Purpose of policy and guiding principles**

- 1.1. The purpose of the disciplinary procedure is to maintain appropriate standards of staff conduct in employment through the application of fair and effective management of disciplinary matters.
- 1.2. This policy applies to all employees of the trust. Where 'Principal' has been used, for employees in trust roles this would be the CEO, and the role of Governors would be fulfilled by Directors.
- 1.3. This procedure aims to:
  - support and encourage acceptable standards of conduct at work;
  - be a corrective rather than a punitive process, aimed at improving conduct by advice, counselling and direction rather than by disciplinary measures;
  - provide a fair and consistent method of dealing with alleged breaches in standards of conduct;
  - provide appropriate disciplinary sanction where the alleged breach of discipline has been proven.
- 1.4. The Principal is responsible for controlling the internal organisation, management and discipline of an academy in full consultation at all times with the Chair of Governors.
- 1.5. The Principal is also responsible for maintaining acceptable standards of conduct in their academy and is authorised to take disciplinary action in accordance with this Disciplinary Procedure up to, and including a dismissal decision. For non academy based staff the CEO has this authority.
- 1.6. The disciplinary procedure is not intended to replace or restrict the normal interchanges between the Principal or any other manager and employee about the employee's performance or conduct.
- 1.7. This policy applies to all employees of the trust, including Principal's and trust leaders. Where the Principal is the subject of any procedure, then the procedures will be modified so that the chair of the Governing Body, or another designated Governor, replaces the Principal in initiating any action which has to be taken. References in this document to the chair of the Governing Body could in this context include another designated Governor in place of the chair, if for any reason the chair were unavailable.
- 1.8. Where the term 'Principal' is used in these procedures, the Principal has the right to delegate these responsibilities to a member of the Senior Leadership Group. This is with the exception of dismissal decisions. The Principal may agree other delegations, with the agreement of their Governing Body.
- 1.9. All employees have a right to be accompanied at pre-disciplinary meetings and represented at formal hearings by an appropriate trade union representative or work colleague.
- 1.10. Employees have a right to be accompanied during the investigation stages of a disciplinary case, when it is still possible for further disciplinary charges to be brought against other individuals, including the witnesses. Once it has been decided not to make any such disciplinary allegations against an individual they will not need to be represented while acting merely as a witness, although they will still be entitled to be accompanied by a trade union representative or work colleague.
- 1.11. The disciplinary policy applies to certain criminal offences and events outside the workplace, where the offence/event has a bearing on the employee's employment or the organisation's reputation in the community.

## **2. Links with other policies and legislation**

- 2.1. This disciplinary policy and procedures are for use where there are allegations of a breach of discipline. There are other procedures, which deal with sickness, capability and grievances.
- 2.2. The disciplinary procedure does not apply to termination of employment in the following circumstances:
  - conclusion of temporary employment for which the employee was specifically engaged;
  - in the case of probationary employment, unsuitability for confirmation of appointment within the probationary period (refer to Probation policy);
  - dismissal on the grounds of redundancy (refer to Managing Staff Reductions procedures);
  - dismissal for reason of incapability arising from permanent ill-health (refer to the Absence Management procedures);

- lack of capability; defined for the purposes of this procedure as performance considered to be less than satisfactory for reasons connected with skills, knowledge, aptitudes and mental and physical qualities (refer to the Capability processes) ;
- 2.3. This policy is underpinned by ACAS guidance, Employment Act 2002 and other relevant employment legislation.

### **3. Consultation**

- 3.1. This policy has been developed in consultation with recognised Trade Unions.
- 3.2. The policy was approved by the Board of Directors after consultation and agreement with the recognised Trade Unions.

### **4. Appointing an Investigating Officer**

- 4.1. In the event of a complaint or report of a cause for concern about the conduct of an employee they will arrange for the matter to be investigated. The Investigating Officer (IO) will usually be a Senior Leader (enabling the Principal to make a later decision, without prior involvement).
- 4.2. Please refer to **Appendix 1** for the procedures to be followed if child protection concerns or criminal offences are alleged.
- 4.3. Consideration for suspension from duty  
In the event of serious allegations the Principal or the Investigating Officer will meet with the employee for their initial response to the allegation. The employee has the right to be accompanied to this meeting. Depending on the nature of the allegation the Principal reserves the decision to suspend an employee. Advice should be sought from the trust's HR Director. Please refer to **Appendix 2** for further information on consideration of suspension from duty.
- 4.4. The employee should be invited to attend an investigatory meeting. Sufficient notice should be given and the employee has the right to be accompanied. (See 1.8)
- 4.5. The IO must use the investigation to fully ascertain the facts of the case in order to recommend the next steps in the procedure.
- 4.6. The investigating officer is responsible for undertaking their investigation in a fair and reasonable manner.

### **5. The disciplinary procedure – investigation stage**

- 5.1. It is important that both investigation of a potential disciplinary matter and subsequent record keeping are thorough, timely and accurate. The IO must ensure that all the relevant information is recorded as soon as possible, whilst memories are clear.
- 5.2. Where there is alleged misconduct, the employee will be informed of the allegations made against him/her unless there is exceptional reason to do otherwise, e.g. where a financial irregularity is suspected. Where it is proposed to pursue the matter under the disciplinary procedure, he/she will be informed that the allegation will be investigated under the disciplinary procedure and that they can be accompanied at any investigatory interview by a trade union representative or work colleague.
- 5.3. The investigation interview will be arranged as soon as possible in order to establish the facts and give the employee the opportunity to state their case in response to the allegation(s). The IO should be accompanied by an HR colleague in the case of more serious allegations.
- 5.4. In investigation meetings, the IO should be clear about the reasons for seeing individuals, but use their judgement as to how much detail they go into and how much documentary evidence is provided at this stage.
- 5.5. If an employee cannot attend a disciplinary interview for medical reasons then he/she may be required to produce a doctor's statement to that effect. The sickness absence of the individual is not in itself sufficient reason for a serious matter not to be investigated, or brought to a conclusion through a formal process. The employer is entitled to request staff who are on sickness leave to a meeting, however consideration should be given to take practical steps that might progress such a case e.g. meeting at other premises than their usual place of work.
- 5.6. Should the employee not be able to meet the IO for reasons due to their sickness absence, the IO should consider seeking Occupational Health advice on the likelihood of the employee being able to attend a meeting within a reasonable timeframe. Should the employee be unable to meet

with the IO then consideration should be given to submitting written questions for the employee to answer.

- 5.7. The IO, having given reasonable opportunities to meet the individual, or receive a response to a written request, may decide to proceed with the investigation without information from the individual.
- 5.8. Notes or written and dated statements should be taken and any relevant documentation collated. It may be that during the investigation information comes to light that means the IO establishes a case that is potentially more than first alleged. For example, evidence to suggest gross misconduct, or some cases of serious misconduct. The IO should then consider if suspension is appropriate (4.3).
- 5.9. It may be necessary, on occasions, for the investigating officer to meet with other employees in order to clarify/seek explanations relating to potential disciplinary situations before considering whether or not a disciplinary hearing is necessary. Any employee has the right to representation at these meetings.
- 5.10. There are essentially four outcomes to a disciplinary investigation:
  - no case to answer, or no substance to the matter (no further action);
  - a finding that there are no grounds to proceed (insufficient evidence);
  - a recommendation for advice, counselling, training or a management instruction that can be dealt with by the Principal (unless the Principal is the subject of the action) or Investigating Officer rather than proceed to a formal disciplinary action;
  - initiation of formal disciplinary action, to be dealt with by the Principal (or where appropriate, the disciplinary committee).
- 5.11. The outcome of the investigation must then be conveyed to the employee, by the IO, and confirmed in writing.
- 5.12. If, following a full and proper investigation of the facts and circumstances, no substance to the complaint or allegation is found, or there are no grounds to proceed, a letter stating this should be sent to all parties concerned.
- 5.13. Alternatively, following the investigation it may be appropriate for the Principal or IO to advise the employee how their conduct is failing to meet the required standard and what action is required by the employee. See section 6. The informal stages of the procedure should be used before moving to the formal stages, unless the seriousness of the complaint or incident warrants suspension or more rarely an immediate formal investigation prior to a disciplinary hearing.
- 5.14. The IO should be clear about the nature of the reason for initiating disciplinary procedures and whether further action is needed. Information on formal action and management instructions are set out below.

## **6. Using the recorded management instruction**

- 6.1. Where an investigation of the facts has revealed a minor breach of discipline, it is possible for the Principal (or Investigating Officer) to issue a management instruction without recourse to a formal disciplinary hearing. This should be recorded for reference purposes. Such management instructions may result from persistent or frequent small breaches of discipline (e.g. lateness) and their purpose is to encourage the employee to improve their conduct. The warnings escalate if the misconduct or incapacity persists, providing every reasonable opportunity has been afforded for the employee to improve.
- 6.2. When issuing a management instruction the investigating officer will confirm the reasons for misconduct or unacceptable work performance and advise the employee of the standards expected and where appropriate what assistance will be provided, e.g. additional training or supervision, and the employee will be informed that if there are further acts of misconduct or if unacceptable work performance continues then further formal disciplinary action will be taken.
- 6.3. A dated, written record of this management instruction will be kept on the personal file of the employee and a copy of this record should be sent to the employee. The letter should confirm the findings of the investigation including any advice and guidance given to enable the required standards to be achieved.
- 6.4. When determining if a management instruction is appropriate consideration should be given to the number of management instructions that are already held on an individual's personal file.
- 6.5. Management Instructions should be reviewed, ideally every 12 months, to decide if they are still relevant. Where there is no reoccurrence these should be removed and where they are still

relevant and remain on file this should be advised to the employee. The employee has the right to refuse to accept a management instruction on the understanding that this could result in the matter being referred to a full disciplinary hearing.

## **7. The disciplinary procedure – formal action**

- 7.1. Following their investigation, the IO must advise the employee of the outcome of their investigation. Where the IO recommends a formal disciplinary hearing, as a general rule all stages of the formal procedure should be carried out as speedily as possible. This is in the interests of all parties.
- 7.2. If the decision is taken to implement formal disciplinary procedures, the employee must be made aware in writing of the allegations and be given 10 working days notice of the time and venue of the formal disciplinary hearing. The letter must also advise the employee of their right to representation and who will chair the hearing (the Principal, or Governing Body panel). Where allegation(s) may be considered gross misconduct, the letter must also advise the employee of this. Where appropriate, consideration should be given to holding the disciplinary hearing off-site.
- 7.3. Copies of all statements, written evidence or details of witnesses that were obtained during the investigation should be presented at the hearing. These should accompany the notification, or if that is not possible, should be sent to the employee 10 working days in advance of the disciplinary hearing. The employee should also be advised that they are able to submit written documentation or names of witnesses. This information needs to be received at least 3 days before the hearing is scheduled, in order to be forwarded to the chair/panel committee for their consideration.
- 7.4. In dealing with a breach of discipline, the arrangements should be such that the same person does not conduct both the detailed investigation and the hearing. A person who takes part in the investigation or disciplinary hearing must not sit as a member of any appeal body.
- 7.5. If the employee advises that their union representative is not available, the hearing can be deferred, but only for up to 5 working days.
- 7.6. The employee should also be warned that should they fail to attend the hearing without giving good cause or reason then the chair of the disciplinary hearing may proceed with the hearing in their absence and seek to award the level of penalty considered appropriate in the circumstances.
- 7.7. Where the intention is to implement formal disciplinary procedures, the Principal/CEO should take advice from the HR Director. The Principal and Governors will need to be clear about procedures and Governors may need more advice on the penalties to be applied to ensure consistency of approach. For these reasons it is advised to have an HR adviser present at the disciplinary hearing, to advise on matters of process and procedure. Consideration needs to be given to the clerking and minute taking of these meetings.

## **8. Conducting a formal disciplinary hearing**

- 8.1. In all instances of alleged misconduct, however serious, the employee must be given the opportunity to attend a disciplinary hearing to explain his/her actions or omissions.
- 8.2. If the employee says that they cannot attend the disciplinary hearing for medical reasons then he/she may be required to produce a doctor's statement to that effect. The sickness absence of the individual is not in itself sufficient reason for a formal process not to be brought to a conclusion.
- 8.3. Should the employee indicate that they are too ill to attend, or does not attend due to illness, usually advice should be sought from Occupational Health on the likelihood of the employee being able to attend a meeting within a reasonable timeframe. If the member of staff considers themselves to be too ill to attend in person, they are advised that they may send a representative of their choice instead. The hearing should be re-arranged within a reasonable timeframe and the member of staff should be written to, with another date advising that the disciplinary hearing will go ahead on the revised date.
- 8.4. If the employee simply does not attend the hearing, the member of staff should be written to, with another date advising that the disciplinary hearing will definitely go ahead on the revised date. The employee should also be afforded the opportunity of submitting a written statement on their behalf. The hearing should go ahead on the second date.

- 8.5. An employee is always entitled to be accompanied by a trade union representative or work colleague at any disciplinary hearing.
- 8.6. The purpose of the formal hearing is to hear the manager's complaint and the employee's response and consider the evidence so that the Principal or Governors, as appropriate, can decide what formal action, if any, to take.
- 8.7. At the hearing the procedure will be that the case of the employer should be made first, by the Investigating Officer and cross-examined. Witnesses should then be called to present evidence and be cross-examined. The case of the employee is then made in the same way. Both parties should be asked to sum up and then retire whilst the case is considered. This may vary, with the consent of all parties.
- 8.8. The parties should be called back and the decision announced by the chair. It may be that at the end of the hearing, further investigation is deemed necessary. The hearing should be adjourned and reconvened after the investigation.
- 8.9. If the outcome of the hearing is a warning or dismissal, the action should be confirmed in writing along with advance notice of the date of the reconvened hearing.

## **9. Formal disciplinary hearing - outcomes**

- 9.1. The level of penalty awarded will depend on the seriousness of the offence, its consequences to the academy, and the previous recorded conduct of the employee, where it is appropriate to the circumstances of the case.
- 9.2. When deciding upon a penalty, the following circumstances should be considered:
  - how serious was the offence?
  - was it a repeated offence?
  - does the disciplinary procedure give guidance on this matter?
  - what penalties have been applied to similar cases in the past?
  - are there any mitigating circumstances?
  - has consideration been given to the member of staff's employment record and any disciplinary record?
  - is the penalty reasonable?
- 9.3. The outcome options available are:
  - take no further action;
  - first written warning – on personal file for up to 6 months;
  - intermediate written warning – on personal file for up to 9 months;
  - final written warning – on personal file for up to 15 months;
  - dismissal;

Further advice on applying these penalties is provided in the next sections. Examples of offences of misconduct which have previously led to disciplinary sanctions are attached in **Appendix 3**.
- 9.4. The chairperson should confirm to the employee the outcome of the hearing as soon as possible, in writing, informing them of their right of appeal, which must be made within 10 working days of receipt of the letter.
- 9.5. After receiving a warning, the employee where appropriate will be allowed sufficient reasonable time and opportunity to improve his/her conduct before any further disciplinary action is taken.

## **10. Guidance about the use of written warnings**

- 10.1. All written warnings will be the responsibility of the employer. All originals of written warnings should always be kept confidential and secure. If requested any 'live' written warning(s) should be declared in any reference provided for the individual.
- 10.2. The first or intermediate written warning will:
  - set out the nature of the unsatisfactory conduct;
  - state that any further act of misconduct may lead to further formal disciplinary action;
  - inform the employee of his/her right of appeal and the time limit;
  - be given personally to the employee where possible or be posted (preferably by recorded delivery) as soon as possible after the disciplinary hearing.

- 10.3. The employee should be requested to sign a copy of the letter, acknowledging its receipt. This copy should be kept on the employee's personal file.
- 10.4. Once a disciplinary penalty has been applied and recorded, the conduct and performance of the member of staff should be monitored regularly and discussed with them. The aim of such follow up is to encourage the member of staff to make the required change or improvement.
- 10.5. If an employee already has a live warning and the Chair/disciplinary committee considers a further warning is warranted, then that warning could be a final warning. The disciplinary committee may issue a final written warning even though no previous disciplinary action has been taken, where it is warranted by the circumstances and there is a degree of serious misconduct by the employee
- 10.6. The final written warning will:
  - clearly state that it is a final written warning and refer to any previous warning where appropriate;
  - set out the nature of the unsatisfactory conduct;
  - state that any further act of misconduct of similar gravity is proven it will lead to further disciplinary action which could result in dismissal;
  - inform the employee of his/her right of appeal and the time limits;
  - be given personally to the employee where possible or be posted, preferably by recorded delivery, as soon as possible after the disciplinary hearing.
- 10.7. Where an employee has a live final written warning and is considered by the disciplinary committee to have committed further misconduct of a similar gravity then the employee will normally be dismissed with notice in accordance with the terms of their contract of employment.
- 10.8. The decision to dismiss should normally be given orally at the end of the disciplinary hearing and will be confirmed in writing by the chair of the disciplinary committee. The written confirmation of the decision should be given personally to the employee wherever possible or be posted (by recorded delivery) as soon as possible after the disciplinary hearing. It must inform the employee of his/her right of appeal and the time limit.

## **11. Gross misconduct**

- 11.1. The employer may dismiss a member of staff on the grounds of gross misconduct after following the recognised procedure. Gross misconduct is conduct of such a nature that the employer cannot reasonably continue to allow the staff member's presence at the place of work.
- 11.2. Dismissal for gross misconduct does not have to be preceded by any previous formal warning. Examples of offences of gross misconduct which have previously led to the dismissal of members of staff are attached at **Appendix 4**.

## **12. Barring**

- 12.1. The trust itself has no powers to bar anyone from working with children, or in the teaching profession.
- 12.2. The Principal, upon advice from an HR adviser, has a legal duty to consider whether to refer a case to the National College for Teaching and Leadership when they have dismissed a teacher for misconduct, or would have dismissed them had they not resigned first.
- 12.3. The Principal, upon advice from an HR adviser, also has a legal duty to refer any cases to the Disclosure and Barring Service (DBS) where the misconduct relates to Child Protection or Safeguarding concerns.
- 12.4. For further information on when a case needs to be referred to a national agency refer to the current guidance from the Department of Education.
- 12.5. Referrals to the NCTL or DBS can also be made when the employee resigns during any stage of the formal disciplinary process.

## **13. Appeals against disciplinary action**

- 13.1. Any appeal should be lodged in writing by the appellant with the Appeals Committee within 10 working days of receiving written notification of the outcome of a disciplinary hearing. The written appeal should explain the basis of the appellant's appeal. The employer and the appellant (or representative) may each prepare a statement explaining the basis of their case.

- 13.2. Any appeal against disciplinary action can only be heard by an appeals committee. The committee must be made up of three representatives of the trust who have had no prior involvement in the case. The trust may use Governors or Directors from across the trust to form an appeal panel. This is in the interests of impartiality.
- 13.3. Sufficient notice should be given of the date and time of the appeal hearing (10 working days). Should the appellant and their representative fail to attend, the hearing may proceed in their absence at the discretion of the committee.
- 13.4. The case of the employer should be made first and cross-examined. Witnesses should then be called to present evidence and be cross-examined. The case of the appellant is then made in the same way. Both parties should be asked to sum up and then retire whilst the case is considered.
- 13.5. The parties should be called back and the decision announced by the chair and confirmed in writing.
- 13.6. When an appeal against a decision is received, this should be referred to the HR team to make them aware of the situation and take any necessary advice. The Principal and Governors will need to be clear about procedures and Governors may need more advice on appeal hearing decisions, to ensure consistency of approach. For these reasons, the academy is advised to have an HR adviser present at appeal hearings, to advise on matters of policy and procedure.

## **14. Roles and responsibilities**

### **14.1. The role of the CEO/Principal;**

- The role of CEO is to ensure that this policy is applied fairly and consistently across the trust.
- The CEO will ensure that this policy is available to Governing Bodies to review and adopt.
- The role of Principal is to ensure that this policy is applied fairly and consistently across their academy.
- The Principal will delegate roles appropriately to senior leaders, ensuring that training is provided for all those who have responsibility for handling disciplinary matters.
- The Principal will chair disciplinary hearings, as required.

### **14.2. The role of the Governing Body**

- The Governing Body will ensure that employees are aware of the disciplinary procedure and standards, and should make them readily available;
- Familiarise themselves with the procedures, so that employees are confident that disciplinary matters will be investigated and managed in a fair and orderly manner;
- Apply the relevant stages of the disciplinary procedure and comply with the statutory requirements;
- Ensure that full and accurate records are kept of all investigations and formal hearings and they can be made available, when necessary;
- Convene a disciplinary committee in cases where the Principal is excluded from making the disciplinary decision or is the subject of disciplinary action him/herself, and an appeals committee, to hear appeals against formal warnings or dismissal. No Governor who has had prior involvement in a particular case should sit on either committee when that case is being considered;
- The Governing Body is responsible for investigating as well as hearing formal disciplinary cases where the Principal is the subject of disciplinary proceedings.

### **14.3. The role of the employee/other staff**

- The HR Director is responsible for providing advice and guidance within this policy and employment (or other) case law. The HR Director will also ensure that full and accurate records are kept of all investigations and formal hearings and they can be made available, when necessary;
- All staff have a responsibility to meet the requirements of this policy.



## **Appendix 1**

### **Cases where there are child protection concerns**

In cases of alleged child abuse, advice must be sought from the HR Director and the appropriate Designated Officer (DO, previously known as LADO) before beginning an investigation, as Social Services or the Police may wish to interview the student/s. In these cases the academy's and the Local Authority's Child Protection Procedures must be followed.

Any suspected child abuse including physical assaults on children or inappropriate handling of children must be reported immediately to the Principal or the Designated Child Protection Officer and the DO. Procedures may include reporting the concern/incident to local authority Children's Services. The interviewing of children who may have been abused requires considerable skill and experience and may be carried out by suitable social services or police child protection officer. If in any doubt the academy's DCPO should seek advice from the social services child protection team. If the Principal is suspected it is the responsibility of a Vice Principal or the Designated Child Protection Person to contact the relevant DO.

The application of applicable multi-agency child protection procedures is separate from any disciplinary action, which may be taken in the event of a member of staff being suspected of child abuse. Disciplinary procedures should be followed alongside any investigation by the police or Children's Services, except when specifically requested not to do so.

### **Cases where criminal offences are alleged**

In criminal cases an employee cannot be dismissed without a disciplinary procedure merely because he or she has been charged with, or convicted of a, criminal offence. Any disciplinary action taken by the employer would normally not be initiated until after the conclusion of any Police investigations. The Principal does need to investigate the available facts, however, and decide whether the employee's conduct affects the suitability for, or possibility of, continued employment. If so, the normal disciplinary processes should be applied.

In cases where an employee is in custody or otherwise unable to return to work (e.g. on account of bail conditions) the Principal needs to decide whether, in the light of the needs of the organisation, the employee's job can be kept open during the likely period of absence. Where a criminal charge has been made, it may not be appropriate to defer taking fair and reasonable disciplinary action merely because the outcome of the prosecution is not known. If an employee is sentenced or remanded in custody, this may constitute frustration of contract.

An employee will not necessarily be subject to formal disciplinary action because of his/her arrest, charge or conviction for a criminal offence outside his/her employment. In such circumstances, the criterion for determining whether the disciplinary procedure should be invoked will be the extent to which the alleged offence is one which potentially makes the employee unsuitable for his/her type of work, or which, if it became widely known, would be detrimental to the academy or would in any way weaken public confidence in the conduct of an academy or trust's business. Where the alleged criminal offence falls into such a category, disciplinary action should be taken immediately where this is deemed to be appropriate, having regard both to the consequences to the academy of not taking such action and the need to ensure that internal investigations do not prejudice Police enquiries or legal proceedings.

Where it is suspected or alleged that an employee may have committed a criminal offence connected with his/her employment then action must be taken. An investigation of the facts must be carried out, where possible separately from any investigation undertaken by the Police or from any criminal proceedings. In these circumstances it will usually be appropriate for the employee to be suspended to enable the investigation to take place. A formal disciplinary hearing should be convened as soon as possible and imposition of the appropriate disciplinary penalty should not normally be delayed pending the outcome of any criminal investigations or criminal proceedings.

## Appendix 2

### Considering suspension from duty

Upon receipt of a complaint that may constitute gross misconduct, the Principal (or person nominated by him/her) will meet with the employee for their initial response to the allegation, informing them beforehand of their right to have a representative in attendance. If, after considering the advice of the HR adviser, the Principal (or his/her representative), does not accept the explanation, he/she will immediately suspend the employee pending an investigation. The Principal and Governing Body must be informed immediately when a suspension is imposed.

The DfE recommends suspension in the following circumstances:

- where the allegations amount to gross misconduct;
- where children may be at risk;
- where employees need protection themselves;
- where the academy or the trusts reputation might suffer unduly;
- where the presence of the member of staff may impede an investigation.

An employee may be suspended from duty either to enable investigations to be made or where it is considered unsuitable for the employee to remain in the place of work. Suspension is based on the principle that the employee's presence would put either the employee, or others, or the organisation at risk, or would undermine the investigation. In most cases of alleged gross misconduct it may therefore be prudent to suspend.

The Principal or Chair of Governors is responsible for advising the employee of the reasons for suspension, any conditions relating to it, the action proposed and, where known, the likely duration of the suspension. This should be confirmed in writing. Suspension will be with full contractual pay in all instances. The suspended employee is to remain available to assist with or participate in the disciplinary process. Conditions relating to a suspension will generally include a requirement not to return to the workplace or to discuss the details of the matter with colleagues. There may be other terms of the suspension which will be discussed with the individual. If in any doubt of these terms the employee should seek the advice of the Principal, or an HR colleague. An employee who is suspended is entitled to contact their professional association or trade union representative.

An employee may be suspended from work as above at any time before or during the course of management investigations into the employee's conduct where there is potentially evidence of gross misconduct. Suspension is not a disciplinary penalty. It is a power which may be exercised in particular cases where the Principal or Governors consider that the employee should not remain on the premises while investigations are proceeding.

The suspension will normally only be for a very limited period, and will be reviewed when a decision has been reached as to what disciplinary action, if any, is to be taken. If the suspension is to be continued beyond a few days/weeks, the Principal will decide (normally in consultation with the Chair of Governors and the HR Director) on what basis the suspension should continue. Suspension will normally continue to be on full pay unless there are exceptional circumstances to warrant otherwise e.g. the employee deliberately obstructs the disciplinary investigation or Police proceedings, where a criminal offence may have been committed, have led to custody or bail orders which prevent the employee attending work.

Where an employee is suspended from work, this action must be confirmed by letter to the employee. The suspension letter should give the reasons for the suspension and set out any special terms and conditions relating to the suspension. If the employee is found not to have been at fault, the suspension will be lifted by the Governing Body and the Principal. This decision will be confirmed in writing to the employee.

When suspending an employee, it is strongly recommended that in the suspension letter, a person in the same academy unconnected to the investigation or any potential decision is nominated, with whom the individual can discuss issues and from whom they can seek advice. This should be someone other

than an academy based trade union representative. This is part of the employer's duty of care towards the member of staff, who may well need to be reintegrated into the academy at the end of the suspension period.

In cases where the employee is at risk of dismissal, it is possible that they will offer to resign. In this situation the Principal should not enter into discussions or negotiations with suspended employees or their representatives without first seeking advice from the HR Director. Any such contact from or agreement with the suspended employee should be fully documented.

## Appendix 3

### Examples of misconduct

The following list gives examples of behaviour that may be regarded as disciplinary breaches or unacceptable misconduct. The specific circumstances of each case should be carefully considered. These **examples** are neither exhaustive nor exclusive and should be used as a guide, not as a definitive list of misconduct issues. They are given as examples of misconduct, but in severe cases, some examples could be considered gross misconduct.

- Failure to discharge, without sufficient cause, the obligations which statute, the terms and conditions of employment and the contract of employment place on the employee.
- Refusal or failure to undertake any duty, task or other reasonable instruction.
- Wilful or negligent failure to comply with policies and practices. Examples of this are:
  - Leaving the workplace, during your normal working hours, without permission or unauthorised absence of any duration without sufficient cause. This may also be considered gross misconduct.
  - Persistently poor time-keeping and/or failure to attend work punctually.
  - Failure to follow the absence notification procedure, including not following leave request processes or sickness absence procedures.
  - Failure to observe any provision of the Staff Code of Conduct, including social media use and behaviour outside of working hours.
  - Treatment of students that is inconsistent with policies and procedures.
  - Breach of health and safety policies, rules and practices
  - Deliberate or wilful delivery of unsatisfactory standards of performance.
  - Negligence causing injury and/or damage to property or persons. Examples of this are:
    - Failure to exercise proper control or supervision over students, amounting to negligence. Where this failure leads to child or young people being at risk of harm, or harmed, this could be considered gross misconduct.
    - Failure to report a matter, where there is a responsibility to report.
- Aggressive, unnecessarily negative, disruptive or abusive behaviour whilst at work; this includes abusive behaviour or language that is directed to staff, parents, students or members of the public.
- Unlawful discrimination, victimisation, bullying or harassment against other employees, students or members of the public. Examples of this would include the use of racist, sexist, disablist language or behaviour.
- Dishonesty, wilful deception or a wilful attempt to mislead. This could also be considered gross misconduct. Examples could include:
  - Suspected abuse of the sickness absence or other leave of absence schemes.
  - Falsifying or improperly destroying official documents or records.
  - Improper disclosure of information known to be confidential.
  - Undertaking personal activities during a timetabled session.
- Engaging in paid or secondary employment which is outside academy hours but is considered detrimental to the employers' interests.
- Use of trust buildings, facilities, equipment or other property for personal use, without prior agreement.
- Abuse of the trust's communications systems; examples of this would include making unauthorised personal calls, excessive personal calls or texts, unreasonable use of mobile data, sending inappropriate emails, unauthorised franking of personal mail.
- Being inappropriately involved in decisions relating to discipline, promotion or pay decisions for an employee who is also a relative, partner or close friend.
- Failing to declare any financial or non-financial interests that could present a conflict of interests. (Inaccurate declaration of interest submitted).
- Presenting for work under the influence of intoxicating substances, this could also be considered gross misconduct.

## Appendix 4

### Examples of gross misconduct

The following list gives examples of behaviour that may be regarded as extremely serious disciplinary breaches or completely unacceptable misconduct by the trust.

The specific circumstances of each case should be carefully considered.

- Serious or persistent failure to comply with the employers recognised policies, procedures and practices.
- Unauthorised removal, theft or attempted theft from the trust, its students, members of staff or the public and other offences of dishonesty.
- Fraud and corruption, deliberate falsification of records, including expenses claims.
- Leaving the workplace without permission or unauthorised absence of any duration without sufficient cause. This includes arranging or taking extended annual leave.
- Wilful, persistent or negligent failure to comply with policies and practices.
- Failure to observe any provision of the Staff Code of Conduct, including social media use and behaviour outside of working hours.
- Dishonesty, wilful deception or a wilful attempt to mislead.
- Criminal convictions which makes the employee unsuitable for their role and/or would weaken public confidence in the conduct of the trust's business. Any sexual offences against children or young people will result in dismissal.
- Actions constituting a criminal offence or behaviour which makes the employee unsuitable for their role and/or would weaken public confidence in the conduct of the trust's business.
- Physical assault, violent and/or intimidating conduct, including fighting.
- Falsification of qualifications which are a stated requirement of employment or which result in financial gain.
- Malicious or deliberate damage to trust property.
- Serious breach of health and safety or breaches of safety regulations endangering other people, including deliberate damage to, neglect or misappropriation of safety equipment.
- The persistent and wilful refusal to carry out a reasonable instruction despite warnings of the consequences of continued refusal.
- Any act that brings, or is likely to bring, the trust or the trust's business reputation into disrepute or damage the standing or position of the organisation.
- Serious or persistent acts of unlawful discrimination against other employees, students or members of the public.
- Serious or persistent abuse, victimisation, bullying or harassment on the grounds of a person's gender, race, age, nationality, ethnic origins, sexual orientation, sexuality, disability, religion or belief (or other protected characteristic defined by the Equalities Act).
- Abuse of the sickness absence scheme, including undertaking secondary or alternative paid work whilst reporting unfit for work.
- Serious misuse of trust communication systems and equipment. Examples would include contravention of the use of ICT policies, improper use of laptops, mobile telephones and unauthorised/unacceptable access to personal or sensitive data.
- A serious breach of the normal trust and confidence, which should exist between employee and employer.
- Serious or gross negligence that causes unacceptable loss, damage or injury.
- Wilful disregard of health and safety procedures and practices.
- Serious act of insubordination.
- Continued and repeated offences of misconduct.
- Incapability through alcohol or being under the influence of illegal substances.
- Failure to disclose or declare private interests that conflict, or potentially conflict or adversely, potentially adversely affect the trust's interests and/or that breach statutory requirements of an education organisation or weaken public confidence in the delivery of trust's business.

This list is neither exclusive nor exhaustive. There may be other offences of a similar gravity which could constitute gross misconduct.

Acts of gross misconduct normally lead to suspension while the alleged offence is investigated. The procedures to be followed in cases of gross misconduct are the same as those described for misconduct, but may proceed directly to a Hearing with consideration of a dismissal decision by the Principal/CEO or the Disciplinary Committee.

If, on completion of the investigation and Hearing, the Principal or the Chair of the Governors' Disciplinary Committee is satisfied that gross misconduct has occurred, the result may be summary dismissal without either notice or payment in lieu of notice. However, in such a case the employee has a right of appeal.

Appendix 1

Flowchart – Formal Disciplinary Hearing

