

DISCIPLINARY PROCEDURE FOR ALL ACADEMY BASED STAFF

Committee/Person(s) Responsibility: **COO**

Distribution: **HR**

Review Date: **September 2016**

Policy written by Senior HR Manager and approved at the Trustees Board meeting September 2016. This policy is reviewed when there has been a change in statutory requirements or every 3 years.

Document Reviews

Version	Committee	Approved/ Reviewed	Comments	Initial
1.0	TEFT Board	28/09/16		RM



**DISCIPLINARY PROCEDURE FOR ALL ACADEMY BASED STAFF WITHIN
THE EDUCATION FELLOWSHIP ACADEMIES
EFFECTIVE FROM 1 MARCH 2016**

1. AIMS

This procedure is designed to help and encourage all employees to achieve and maintain satisfactory standards of behaviour and to comply with the rules of The Education Fellowship.

It is based on the Northamptonshire County Council Disciplinary Procedure, dated the 1 June 2013. The procedure transferred under TUPE to the employment of The Education Fellowship in 2012 and 2013. It has been adopted by The Education Fellowship and it applies to all of The Education Fellowship Academies. The original NCC Procedure was drawn up by Northamptonshire County Council following consultation with the recognised Trade Unions.

2. SCOPE

This procedure applies to all employees, irrespective of their length of service, status or number of hours worked.

This procedure does not apply where there are matters of:

- **grievance** which is dealt with under a separate procedure;
- **capability** for which there is a separate procedure, unless it is clear that the employee is capable of reaching the required standard and has not done so;
- **ill health** for which there is a separate procedure, unless there is good reason to believe that the absence or ill health is not genuine or
- **bullying, harassment, discrimination and/or victimisation** for which there is a separate procedure.

CONTENTS

Section	Title	Page
1	Aims	1
2	Scope	1
3	Principles	3
	Mediation	4
	Timescales	4
4	Responsibility	4
5	The Right to be Accompanied	4
6	Special Circumstances	5
	Trade Union Officials	5
	Child Protection Issues	5
	Criminal Offences	5
	Grievance during the Disciplinary process	6
7	Resolving Issues Informally	6
8	Suspension	6
9	Formal Procedures	8
	Investigation	8
	Examples of Misconduct	9
	Examples of Gross Misconduct	10
	Disciplinary Hearing	11
	Failure by the Employee to attend	13
	Witnesses	13
	Minutes	13
	Making the Decision/Outcomes	14
	Case not Substantiated	14
	Case Substantiated	14
	Disciplinary Action – Written Warning	14
	Disciplinary Action – Final Written Warning	14
	Dismissal	15
10	Appeals	15
	Appeal Hearing	16
	Failure by the Employee to attend	17
	Outcomes	18
	Minutes	18
	The Hearing	18
	Making the Decision	18
Appendix 1	Disciplinary Investigation Guidance	19
Appendix 2	Disciplinary Investigation Template Report	24
Appendix 3	Model for Conducting Disciplinary Hearings	28
Appendix 4	Model for Conducting Appeal Hearings	29

3. PRINCIPLES

The primary purpose of this Procedure is focused with improving discipline, not applying disciplinary penalties. It aims for an outcome which is fair and constructive. It is not intended that the procedure should replace normal interchange between the Principal and a member of staff in the day to day running of the academy, where discussions may take place informally. It is important that employees are made fully aware of the school's standards and expectations, The Education Fellowship Code of Conduct and behaviour and the possible consequences of falling below these standards.

Employees are encouraged to seek the advice of a trade union and they have the right to be accompanied by a work colleague or trade union representative at all **formal** stages.

Disciplinary action will not be taken without a prompt and thorough investigation into the circumstances. The employee will be informed in writing of the complaints against them will be given the chance to have their say before a decision is reached.

This procedure outlines what disciplinary action may be taken against an employee.

Formal disciplinary action can be taken at any level depending on the nature of the misconduct.

An employee will not normally be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice (summary dismissal).

The employee will have the right of appeal against any formal disciplinary action under this procedure.

This procedure ensures that the employee is given an explanation for any sanction. It also ensures that the employee will be heard in good faith and that there is no pre-judgement of the issues. Where the facts are in dispute, it ensures that no disciplinary penalties will be imposed until the case has been carefully investigated.

An individual who faces possible disciplinary action may be anxious about the situation, therefore the Principal should make the employee aware of any confidential counselling services available to them via The Education Fellowship or the Academy.

All proceedings, witness statements and records will be kept confidential by all parties.

Mediation

In certain circumstances it may be appropriate to consider mediation to resolve disciplinary matters. The HR team at The Education Fellowship can be contacted for further advice.

Timescales

The timescales within this policy are **recommended** timescales only. If it is not possible to respond within these timescales, the parties involved must be told why and when a resolution or outcome can be expected.

4. RESPONSIBILITY

The Chief Executive of The Education Fellowship via delegated powers to his Executive Team has overall responsibility for discipline and dismissing staff.

The Academy Principal will oversee the Disciplinary Investigation process, unless he/she has been directly involved in the disciplinary procedures; has instigated a proposal to dismiss; or is a witness of particular conduct giving grounds for the dismissal in question.

The Academy Principal will form part of the Disciplinary Panel, together with a member or members of The Education Fellowship Executive and one non staff Governor from any of the Fellowship's Academy Advisory body(ies).

In situations where it is not appropriate for the Principal to perform these functions a member of the Executive Team of the Fellowship can be called up or a non-staff Governor from any of the Fellowship's Academy Advisory body(ies)

Where ever possible each panel will consist of 3 members, neither panel member will have previous knowledge of the case.

An HR Representative from The Education Fellowship will be in attendance to advice the Panel.

5. THE RIGHT TO BE ACCOMPANIED

An employee has a statutory right to be accompanied where a disciplinary meeting could result in a formal warning, some other disciplinary action or confirmation of disciplinary action (at appeal).

The employee can be accompanied by a work colleague or a trade union representative or an official employed by a trade union, if they are a trade union member. A trade union representative who is not an employed official must ensure that they have been certified by their union as being competent to accompany a worker.

To exercise their statutory right, an employee must make a reasonable request to be accompanied. It would not be reasonable, for example, to insist on a companion whose presence may prejudice the hearing.

The companion may address the meeting to put and sum up the employee's case, respond on behalf of the employee to views expressed at the meeting and confer with the employee during the meeting.

The companion does not have the right to answer questions on behalf of the employee, address the meeting if the employee does not wish it or to prevent the employer from explaining its case.

6. SPECIAL CIRCUMSTANCES

Trade Union Officials

If the subject of a disciplinary matter is an official representative of a trade union, no action will be taken beyond the informal stage, until the Regional Office has been informed (the details of the case will not be discussed, only that the member is subject to a Disciplinary investigation).

Child Protection Issues

If a complaint against an employee relates to a child protection issue then it is essential that the Designated Lead for Child Protection or a Senior Member of staff at the Academy contacts the Local Authority Designated Lead Officer (LADO) at the outset to discuss how to proceed.

The outcome may be that an investigation should be carried out by the Police and/or Child Protection Team in which case any investigation by The Fellowship/Academy will not proceed until discussion has taken place with the relevant agencies.

If an employee who works with children is dismissed or is moved away from work on the grounds of misconduct which harmed a child or placed a child at risk of harm, then the employee's name and details will be referred to The Disclosure and Barring Service. In such cases, details relating to teaching staff are automatically referred to The National College for Teaching and Leadership.

Criminal Offences

Criminal offences outside employment will not be treated as automatic reasons for disciplinary action. The main consideration will be whether the employee's conduct warrants action because of its employment implications.

Generally, disciplinary action will not be postponed because other proceedings are contemplated or pending. The school will investigate the facts as far as possible and take action appropriate to the findings.

There may be circumstances which may require the Academy Principal or The Education Fellowship to liaise with the Police or other statutory bodies. The Education Fellowship will take other proceedings into account when managing its process.

Where criminal charges result in an employee being unable to fulfil their contractual obligations this may result in dismissal.

In all cases advice and guidance should be sought and provided by the HR Team at The Education Fellowship.

Grievance during the disciplinary process

Where an employee raises a grievance during a disciplinary process the disciplinary process **may** be temporarily suspended in order to deal with the grievance, this will depend on the circumstances. Where the discipline and grievance cases are related it will usually be more appropriate to deal with both issues concurrently.

In all cases advice and guidance should be sought and provided by the HR Team at The Education Fellowship.

7. RESOLVING ISSUES INFORMALLY

Where possible, matters relating to conduct and discipline should be resolved informally. This is an important management role for the Principal and senior members of staff. This may be achieved by giving informal advice, coaching and counselling. For the purposes of this section 'Principal' means a senior member of staff with management responsibility for the employee concerned.

The Principal will talk to the employee in private and listen to what the employee has to say about the issues. This will be a two-way discussion aimed at pointing out the shortcomings in conduct and encouraging improvement.

Where improvement is required the Principal will ensure that the employee understands what needs to be done, how their conduct will be reviewed and over what period. The employee will be told that if there is no improvement, the next stage will be under the formal disciplinary procedure.

The agreed action will be confirmed in writing. Written notes should be kept of the meeting which are shared with both parties. Notes should record any agreed support, training, etc.

If during discussions it becomes obvious that the matter may warrant formal investigation the meeting should be stopped and the employee will be told that the matter will be continued under the formal procedure.

8. SUSPENSION

In some circumstances it may be appropriate to suspend an employee, with pay whilst investigations are carried out. For example, where there is an allegation of gross misconduct or where the employee's presence at the workplace may interfere with the impartiality of the investigation.

Only the Chief Executive of The Education Fellowship via delegated powers to his Executive Team can suspend an employee. Only the Chief Executive of The Education Fellowship via delegated powers to his Executive Team can lift the suspension of the employee.

If suspension is being considered please contact the HR Team at the Fellowship for advice and for them to sanction this in consultation with the Chief Executive.

Both actions will be communicated to the employee formally, in writing.

Suspension should not be regarded in any sense as a disciplinary measure or implying guilt, but as an exceptional measure to enable a proper investigation to take place. Therefore consideration should be given to alternatives to suspension (e.g. moving the employee to other work or another location) in the first instance.

Suspension should only be applied where the circumstances of the case make it unacceptable for the employee to remain in school while an investigation is carried out. Suspension will always be on full pay.

If the employee is signed off sick whilst on suspension, then the period of absence will be treated as sickness absence and sick pay will apply.

If the suspension has not been lifted when the sickness absence ends, the member of staff will continue to be suspended, sick pay will end and normal suspension pay will resume.

Some examples where suspension may be appropriate are as follows (this is not an exhaustive list):

- where children are at risk;
- where staff are at risk;
- where the employee needs protection;
- where the allegation if proved is likely to amount to gross misconduct;
- where the school's reputation may otherwise suffer unduly;
- where the presence of the employee may impede the investigation.

Where suspension is under consideration, whenever practicable, the employee should be called to a 1:1 meeting with the Principal. This may be at very short notice; they do not have a right to be accompanied at this meeting, a note taker may be present. If this is the case, the notes of the meeting will be shared with the employee in due course.

The period of suspension should be kept as brief as possible and kept under regular review by the Principal in consultation with the HR Team at The Education Fellowship. Investigations should be started immediately. The suspension will usually last until the investigation has been concluded or any

resulting disciplinary hearing has been held.

The employee should not contact other members of staff or come onto school premises during the suspension without the written permission of the Principal.

Where practicable, the following support should be offered to the employee during the period of suspension:

- The name of a responsible person to act as a point of contact, to provide information on the progress of the investigation;
- If counselling is available via the Academy and
- Reasonable access to information which will help the employee to prepare their case.

Written confirmation of the suspension wherever possible will be sent to the employee within one working.

9. FORMAL PROCEDURES

Investigation

Where a complaint of misconduct warrants formal investigation, the Principal should nominate a senior member of staff to conduct a full investigation as soon as possible after the allegations has been made. The senior member of staff needs to remain impartial, so they should not have any prior knowledge or have been involved in this or any previous incidents with the employee.

In some cases, it may be appropriate to appointment an Independent Investigating Officer, an employee of The Education Fellowship, an Academy Advisory Board member, a senior colleague from another Fellowship Academy or a person external to the organisation.

The Principal will not normally carry out the investigation themselves as they may be required to deal with the matter formally at any stage up to and including being part of a panel at any potential Disciplinary Hearing. However, where the Principal already has considerable knowledge of the complaint, it may be appropriate for them to undertake the investigation.

Any subsequent disciplinary decision would then be taken by The Chief Executive of The Education Fellowship or his Executive Team under delegated authority.

If the complaint is against the Principal or if the Principal is involved in the complaint, then The Chief Executive of The Education Fellowship or a member of his Executive Team, under delegated authority should either undertake the investigation or appoint an Independent Investigating Officer. This can be an employee of The Education Fellowship, a Academy Advisory Board member, a Senior Colleague from another Fellowship Academy or a person external to the organisation.

The aim of the investigation is to establish the facts of the case as promptly and thoroughly as practicable.

The employee must be informed in writing:

- That an investigation is taking place and that they will be given the opportunity to respond to the allegation;
- Of the details of the complaint/allegation and
- that they may be accompanied by a work colleague or trade union official to any formal meetings if they are a member of a trade union.

A Guide to Investigation can be found at Appendix 1

Once the investigation is complete the Investigating Officer will produce a report and submit this to the Commissioning Officer. It is for the Commissioning Officer to decide whether or not there is a case to answer.

A Template Disciplinary report can be found at Appendix 2

The outcome of the investigation will be notified to the employee. If there is no case to answer, the matter will be closed and the employee informed in writing. The Commissioning Officer may decide resolve the matter informally.

If there is a case of misconduct to answer, the matter will be referred to a formal disciplinary hearing. The employee will be notified in writing.

Examples of Misconduct

The following are examples of misconduct and in severe cases some examples could be considered as gross misconduct. This is not an exhaustive list.

- leaving the place of work during the employee's normal working hours without permission;
- frequent failure to attend work punctually;
- failure to comply with the school's agreed procedures e.g. failure to notify absence;
- making unauthorised private telephone calls or sending personal mail at the school's expense or unauthorised use of the Internet;
- failure to comply with a reasonable instruction;
- failure to exercise proper control or supervision over pupils;
- failure to discharge without sufficient notice the obligations placed on the employee by their contract and terms and conditions of employment;
- abusive behaviour or language that is directed to staff, parents, pupils and members of the public;
- a wilful attempt to mislead.

Examples of Gross misconduct

This constitutes serious misconduct which may destroy the employment contract between the employer and the employee; it has the potential to make any further working relationships and trust impossible.

The following are examples of the sort of conduct that could be regarded as gross misconduct, rendering the employee liable to dismissal without notice.

This list is not exhaustive:

- Victimisation or intimidation of other employees; (Where referred as a disciplinary matter as an outcome of an investigation carried out under the 'anti-harassment, discrimination and bullying at work policy and procedure)
- Serious bullying including cyber bullying, unlawful discrimination or harassment against other employees, pupils or members of the public;
- Dishonesty, including theft, fraud or deliberate falsification of records;
- Acceptance of bribes;
- Physical violence;
- Serious negligence which causes or might cause unacceptable loss, damage or injury;
- Deliberate damage to Academy/The Education Fellowship property;
- Serious act(s) or persistent repetition of a failure to comply with a reasonable instruction;
- Misuse of the Academy/The Education Fellowship property or name, or bringing the organisation into disrepute;
- Serious infringement of health and safety rules;
- Sexual offences or sexual misconduct;
- Breach of any professional code of conduct applicable to the job, which could bring the profession or the school or the Organisation into serious disrepute;
- Serious abuse of the Academy/The Education Fellowship computer equipment/software; including deliberately accessing internet sites containing pornographic, offensive or obscene material;
- Misuse of official position for personal gain;
- Serious breach of confidence;

- Act(s) relating to issues of child protection;
- Mistreatment of Children/Pupils in the care of the School either through intent or neglect;
- Verbal, physical, emotional and/or sexual abuse of pupils;
- Serious incapability at work brought on by alcohol or illegal drugs;
- Alleged Criminal Conduct (see Section 6, page 5 Criminal Offences);
- Committing an act outside working hours which is incompatible or inconsistent with the employee's job or which is likely to bring discredit to or lead to lack of confidence in the School;
- Sleeping on duty;
- Fraudulently obtaining public funds from a Local Authority or other Government Agency;
- Entitlement to Work in the UK – failure to provide satisfactory evidence required by the School of an employee's entitlement to enter or remain in the UK;
- Breach of the Leave of Absence Policy – e.g. if leave is requested and declined, but taken anyway.

Where gross misconduct is determined at a disciplinary hearing the employee may be summarily dismissed – that is dismissed immediately without notice or pay in lieu of notice. However, pay would be reinstated in full back to the date of dismissal if an appeal against dismissal was subsequently successful.

Disciplinary Hearing

The Commissioning Officer is responsible for organising the Disciplinary Hearing.

The Chief Executive of The Education Fellowship via delegated powers to his Executive Team has overall responsibility for discipline and dismissing staff.

The Academy Principal will oversee the Disciplinary Investigation process, unless he/she has been directly involved in the disciplinary procedures; has instigated a proposal to dismiss; or is a witness of particular conduct giving grounds for the dismissal in question.

The Academy Principal will form part of the Disciplinary Panel, together with a member or members of The Education Fellowship Executive and one non staff Governor from any of the Fellowship's Academy Advisory body(ies).

In situations where it is not appropriate for the Principal to perform these functions a member of the Executive Team of the Fellowship can be called up or a non-staff AAB member from any of the Fellowship's Academy Advisory body(ies)

Where ever possible each panel will consist of 3 members, neither panel member will have previous knowledge of the case.

An HR Representative from The Education Fellowship will be in attendance to advice the Panel.

The Commissioning Officer will write to the employee, giving them at least 5 working days' notice and informing them of:

- The date and time of the hearing;
- The venue (wherever possible this should be held on neutral territory);
- The name of the Chair of the Panel and other panel members including the name of HR Advisor and the note taker;
- The name of the person presenting the management case (this is normally the Independent Investigating Officer);
- The full details of the complaint/allegation and advise if it Misconduct or Gross Misconduct and what the likely outcomes could be;
- Inform them of their right to be accompanied by a work colleague or a trade union representative if they are a member of a trade union.

The employee should be given a copy of the Disciplinary Investigation Report together with all supporting information, including signed witness statements together with a copy of this Disciplinary Procedure.

The employee has the right to submit a written response. This exchange of documents should 5 working days before the hearing although this may be reduced by mutual agreement.

The Disciplinary Investigation Report, Disciplinary Procedure, all supporting papers and copies of correspondence that are being sent to the employee should be provided to all members of the Disciplinary Hearing Panel at the same time that it is sent to the employee. If the employee submits evidence in their defence, this should also be shared with the panel in advance of the hearing.

A copy of the letter and Disciplinary Investigation pack should be provided to the HR Team at The Education Fellowship and each member of the Hearing Panel.

A template letter is available from the HR Team at The Education Fellowship

The Agenda for the Disciplinary Hearing appears in Appendix 3.

Failure by the Employee to Attend

An employee who cannot attend the hearing should inform the Commissioning Officer in advance whenever possible. If the employee fails to attend through circumstances beyond their control e.g. illness, the Principal/Commissioning Officer should rearrange the meeting taking into account the reason. Sickness absence must be supported by a medical certificate.

If the employee's representative or colleague cannot attend on the proposed date, the employee can suggest another date that is reasonable and is not more than 5 working days after the original date proposed, unless mutually agreed otherwise.

Where the employee has failed to attend two scheduled hearings, the hearing will proceed in the employee's absence.

Witnesses

If witnesses are called to give evidence their identity will be disclosed to the other party in advance, unless exceptional circumstances prevent this e.g. where anonymity is to be preserved. Caution will be exercised where children or juveniles could be called as witnesses. However, where there is a requirement to call children/juveniles, parents or guardians will be informed and given the opportunity to accompany the child/ juvenile at the hearing.

The other party will receive advance copies of written witness statements to which reference will be made at the hearing. It is preferable that the authors of statements attend the hearings as witnesses, although in certain circumstances e.g. in the case of children/juveniles, those in the care of The Local Authority or where anonymity is to be preserved, it is acknowledged that this may not be appropriate.

Minutes

Notes of the hearing will be taken and copies of the notes circulated to all parties as soon after the meeting as practicable. The Academy, wherever possible will provide the note taker.

If amendments to the notes are requested by any individual who was present at the hearing, these changes will appear in a separate document, signed, dated and appended to the original notes so that the original document remains unaltered.

Making the Decision/Outcomes

The Panel members will deliberate in private, with the HR Advisor, only recalling the parties to clear points of uncertainty on evidence already given. If a recall is necessary both parties are to return even if only one is concerned with the point giving rise to doubt.

The possible outcomes can be as follows:

Case not Substantiated

If the Panel consider that the case against the employee is unfounded. The Chair of the will give the employee their decision at the close of the hearing whenever possible. The decision will be confirmed in writing within 5 working days of the hearing.

All reference to the case and all information relating to it will be removed from the employee's personal file.

Case Substantiated Formal action

If the Panel consider that the alleged misconduct is substantiated, an appropriate disciplinary action will be taken, having regard to all the circumstances. The Chair of the will give the employee their decision at the close of the hearing whenever possible. The decision will be confirmed in writing within 5 working days of the hearing.

The HR Advisor to the Panel will produce the outcome letter

Written warning

In cases of misconduct, a written warning will be given detailing the reasons for the warning and any improvements required.

It will also advise that further action under the procedure will be considered if the improvements required are not met and inform the employee of the right of appeal. A copy of the warning will be kept but will normally be disregarded for disciplinary purposes after 12 months, subject to continuous satisfactory conduct during this period.

The HR Advisor to the Panel will produce the outcome letter

Final written warning

For very serious misconduct which would be insufficient to justify dismissal but would warrant only one written warning;

- For very serious misconduct which would justify summary dismissal for gross misconduct but a lesser penalty is appropriate in the circumstances; or
- Where there is still a failure to improve conduct following previous written warning(s).
- A final written warning will give the reason for the warning, advise

that dismissal will result if there is no satisfactory improvement and state the right of appeal.

The HR Advisor to the Panel will produce the outcome letter

A copy of the warning will be kept on the employee's personal file, but will normally be disregarded for disciplinary purposes after 18 months, subject to continuous satisfactory conduct during this period.

Dismissal

The sanction of dismissal is likely to be used where:

- There is a failure to improve or further acts of misconduct have occurred after a final written warning has been given and remains live. Dismissal will be with notice or pay in lieu of notice.
- There is an act of gross misconduct. Dismissal will be without notice (summary dismissal). In such cases pay will cease when the decision to dismiss is made and reinstated in full if an appeal is subsequently successful.

In both cases, the written notice of dismissal will be sent by the Chair of the Panel, it will state the date on which the contract is to end, the reason for dismissal and the right of appeal.

The HR Advisor to the Panel will produce the outcome letter

10. APPEALS

An employee may lodge an appeal in writing against formal disciplinary action by writing to The Chief Executive at The Education Fellowship c/o the HR Team, The Old Dairy, Grange Road, Islip, Northants NN14 4JB. Or via email to hr@educationfellowship.net.

This should within 10 working days of receipt of confirmation of the disciplinary action.

The letter of appeal should state the reasons for appealing:

- it is against the findings of the previous panel;
- it is against the form of disciplinary action taken;
- it is alleged that the disciplinary procedure has been applied defectively or unfairly;
- new evidence has come to light which was not reasonably available at the disciplinary hearing and which may make a difference to the original decision.

The HR Team at The Education Fellowship will acknowledge the Appeal and inform the Academy Principal that an appeal has been received.

Appeal Hearing

The appeal will be heard by an Appeals Panel. This will consist of a member or members of The Education Fellowship Executive and one non staff AAB member from any of the Fellowship's Academy Advisory body(ies).

These members will not have any prior knowledge of the case.

Where ever possible each panel will consist of 3 members, neither panel member will have previous knowledge of the case.

An HR Representative from The Education Fellowship will be in attendance to advice the Panel.

The Appeal hearing will take place at the earliest opportunity, but at least within 20 working days (not including School closure periods) of receipt of the request. This may be changed by mutual agreement or where it is not practical to arrange within this time frame.

The Principal will write to the employee, giving them at least 5 working days' notice and informing them of:

- The date and time of the hearing;
- The venue (wherever possible this should be held on neutral territory);
- The name of the Chair of the Panel and other panel members including the name of the HR Advisor and the note taker;
- The name of the person presenting the management case (this is normally the Chair of the Disciplinary Panel);
- The full details of the Appeal and what the likely outcomes could be;
- Inform them of their right to be accompanied by a work colleague or a trade union representative if they are a member of a trade union.

The Disciplinary Investigation Report, Disciplinary Procedure, the Minutes of the Disciplinary Hearing, all supporting papers and copies of correspondence that were originally sent to the employee at the Disciplinary Hearing should be provided to all members of the Appeals Panel. If the employee has sent a statement for the Appeal hearing, this should also be provided to the appeals panel together with a copy of the outcome of Disciplinary Hearing letter and the employees Appeal letter and invite to Appeal letter.

These documents should also be provided to the HR Advisor at The Education Fellowship.

Failure by the Employee to Attend

If the employee cannot attend the hearing they should inform the HR Team at The Education Fellowship in advance whenever possible. If the employee fails to attend through circumstances beyond their control e.g. illness, the Principal/Chair of the Appeals Panel should rearrange the meeting taking into account the reason. Sickness absence must be supported by a medical certificate.

If the employee's representative or colleague cannot attend on the proposed date, the employee can suggest another date that is reasonable and is not more than 5 working days after the original date proposed, unless mutually agreed otherwise.

Where the employee has failed to attend two scheduled hearings, the hearing will proceed in the employee's absence.

A template letter is available from the HR Team at The Education Fellowship

Evidence presented to the Appeals Panel must relate to one or more of these four reasons:

- it is against the findings of the previous panel;
- it is against the form of disciplinary action taken;
- it is alleged that the disciplinary procedure has been applied defectively or unfairly;
- new evidence has come to light which was not reasonably available at the disciplinary hearing and which may make a difference to the original decision.

It must enable the Appeals panel to assess whether or not the allegations against the employee were accurate, justified and substantiated and whether the disciplinary action was appropriate in all the circumstances. There will **not be a re-hearing** by the Appeals panel, they will examine the facts as stated above.

In **exceptional** circumstances, additional new evidence is permissible at the appeal. If either party wishes to introduce new evidence, they should give details of the new evidence and provide copies of any supporting documents, names of any witnesses, written statements to be presented.

New evidence should be provided 5 days prior to the hearing.

If, at the appeal hearing, the new evidence is of such significance that further investigation, information, clarification is required, it may be appropriate for an adjournment and to reconvene when this has been completed.

Outcomes

These could be

- Confirm or overturn the original decision or
- Apply a greater, lesser or alternative penalty.

Minutes

Notes of the hearing will be taken and copies of the notes circulated to all parties as soon after the meeting as practicable. Wherever possible, the Note taker will be provided by the Academy.

If amendments to the notes are requested by any individual who was present at the hearing, these changes will appear in a separate document, signed and appended to the original notes so that the original document remains unaltered.

The Hearing

The Employee/The Appellant will present their case first.

The Agenda for the Appeal Hearing appears in Appendix 4

Making the Decision

The Appeals Panel will deliberate in private, with the HR Advisor, only recalling the parties to clarify points of uncertainty on evidence already given. If a recall is necessary both parties will return.

The decision will be announced at the close of the hearing whenever possible. The Chair of the Appeals Panel will confirm the decision in writing within 5 working days of the hearing.

The decision of the Appeals Panel is final.

The HR Advisor to the Panel will produce the outcome letter

A Guide to the Appeal Hearing can be found at Appendix 3.

Disciplinary Investigation Guidance

1. Who should investigate?

- The person who investigates either a disciplinary or a grievance must be able to investigate all of the facts without any preconceived biases;
- Individuals who have had any prior involvement or were witness to any events should not investigate;
- The investigator will be required to write a formal report summing up the investigation/case;
- The investigator cannot hear any formal hearing which may be required following the investigation;
- If a formal hearing is required following the investigation, the investigator will be required to present the management case;
- Internal investigators will normally be someone senior at the school who can handle the matter sensitively and confidentially;
- In some cases it may be appropriate to appoint an external investigator to ensure that there is no prior knowledge of the matter and
- Investigations may make significant demands on your time but need to be completed as quickly as possible without compromising their thoroughness.

2. The Purpose of the investigation

The purpose of the investigation is to gather all the relevant facts by checking appropriate records, collecting documents and, if appropriate, taking statements from any witnesses or anyone else who may have a bearing on, or pertinent knowledge about, the matter.

During the investigation every effort must be made to ensure that the details are kept confidential and the investigator should ensure that all individuals interviewed are made aware of the need for confidentiality.

3. Before starting the Investigation

- The investigator must be familiar with the Disciplinary Procedure.
- Please contact The HR Team at The Education Fellowship for guidance and support, they can also provide the standard letter templates.

- Build in appropriate time scales to the investigation process. You will need to balance the need for the investigation to be carried out in as concentrated a time scale as possible (to ensure the best recollection of the facts and to minimise uncertainty for all involved) with the need to conduct a thorough and fair investigation. This may require other work to be rescheduled or reallocated.
- The interview may take place over more than a single meeting, but it must be carried out within a reasonable timescale
- Collect as many relevant facts as are available about:
 - the alleged offence(s);
 - who was involved (e.g., any witnesses)
 - the sequence of events before and after the alleged offence(s);
 - the current circumstances of the employee(s), for example, suspension, sick leave.
- Collate all the relevant documents to provide evidence for discussion during the investigatory meetings.
- Inform the employee in writing that an investigation interview is to take place and what the allegation(s) is/are at this stage. Agree a time and place. Advise the employee of their right to bring a union representative or work colleague to the meeting. Check whether the employee has any particular needs that need to be met to enable them to take part in the meeting e.g. translator, wheelchair access etc.
- Ensure the venue for the interview is a private room, free from interruptions.
- Where ever possible, arrange for a note taker to be present and brief them regarding their role.

4. Witnesses

- Witnesses may bring a trade union representative or work colleague to any meetings.
- Witnesses to the incident/misconduct should be interviewed including witnesses who are able to support the employee's version of events. Arrange a time and venue for the interview and confirm in writing. **N.B.** If children are being interviewed, ensure that the correct child protection regulations are followed – speak to the child protection team in the first instance.
- Also interview any person who has relevant 'background/contextual' information.

- Witnesses who are employees are obliged to attend witness interviews. Every effort should also be made to interview witnesses who are not employees.
- Explain the allegation(s) that is/are being made at this stage.
- Explain that no disciplinary action is taking place at this stage. You are investigating the matter to determine whether or not the allegations have any substance and that their information will be important in helping you to determine this.
- Gather as much relevant information as possible. If the witness saw an incident, find out what they saw, what they heard, what they did and who else was present.
- Take a hand written or electronic witness statement from the individual and gain a signature before the witness leaves.
- If, at a later stage, the witness wishes to make any changes to their statement this must be done in the form of a second statement, or a separate document which is noted as an amendment to their statement. Whichever format is used, the original statement must remain unchanged and the second document must be signed by the witness and dated.
- Explain that if disciplinary action is pursued, this statement will be submitted to the disciplinary hearing.
- Explain to the witness that if disciplinary action is pursued, they may be required to give evidence at a disciplinary hearing.

6. The Investigation Interview

- Explain the allegation(s) being made at this stage.
- Explain that the investigation process is taking place to clarify whether or not the allegations have any substance. It does not constitute disciplinary action.
- If the employee is represented, explain that the representative may:
 - confer with the employee requesting an adjournment if necessary
 - address the interviewer
 - ask any questions of clarification
 - not answer questions on the employee's behalf

- If the employee is not accompanied, check that this is his/her wish. If, at any stage during the investigation interview, the employee wishes to adjourn to seek representation, this should be granted.
- Give the employee the opportunity to answer the allegation and give an explanation as to why he/she acted in a particular way.
- Use open questions throughout and probe/follow up any responses.
- Gather facts, for example, time, place, who was present, what happened.
- Reflect back to the employee what he/she has said to you by way of your notes, in order to check understanding.
- At the end of the interview, ask the employee if he/she wishes to say anything more and whether there are any witnesses they wish to be interviewed by the investigator.
- Following the interview provide the employee with a copy of the notes and ask them sign and date as a true written record of the meeting. Any points of disagreement will be noted in writing and kept with the record of the investigation.
- While the purpose of the investigation is to establish whether there is evidence to support the allegation, it is equally important to ensure that evidence which refutes the allegation is not overlooked particularly in disciplinary cases. Where there is contradictory or insufficient evidence it may be reasonable, following an investigation, to conclude that it would be inappropriate to precede with formal disciplinary proceedings. In grievance cases the investigator is collecting evidence to be presented at a formal hearing to allow a decision to be taken with regard to the grievance raised.
- Consider all the information that you have collected and decide whether or not there is sufficient evidence for the matter to be referred to a disciplinary hearing. If the head teacher is to hear the case (e.g. for misconduct) then the investigator will decide if there is a case to be heard. For matters of gross misconduct the head will decide if there is a case to be heard before a panel of Governors. Remember that the standard of proof required to substantiate disciplinary allegations is 'on the balance of probabilities' not 'beyond all reasonable doubt'.
- Whatever your decision, you will need to write a formal investigation report. If you believe that there is insufficient evidence to progress the matter to a disciplinary hearing, you should clearly indicate this and you should indicate why you believe this. You may recommend that some other form of management action is appropriate. You should note that even if you feel there is a case to answer, the disciplinary hearing might not find the allegation(s) to be substantiated.

6. After completing the Investigation

An Investigation report should be prepared.

A Template Report can be found in Appendix xxx for a template report.

The report should include:-

- Details of the alleged offence(s);
- Circumstances of the alleged offence including a chronology of events;
- Factors in support of the allegations
- Factors against the allegations
- Any documents which will be relied upon in the course of the investigation, for example documents, interviews notes (signed or unsigned), signed witness statements, these should be referred to throughout the report and cross referenced;
- Aggravating factors relating to the employee, for example, previous spent or live warnings, extent to which employee should have known that the conduct was unacceptable;
- Mitigating factors relating to the employee, for example, previous unblemished record, length of service;
- Recommendations on whether there is a case to answer
- Investigator's notes - step by step account of how the investigation was conducted, with dates and times of interviews, what was said by way of explanation of process.

Keep the employee informed as to the progress, but not the details of the investigation. Confirm updates in writing where appropriate and make a note of all conversations and actions taken relating to the investigation process.

7. If there is a case to answer

A Disciplinary Hearing will take place.

The Investigators role is to:

- Present the management case, using the evidence contained within the report and evidence from relevant witnesses, in a fair and balanced manner applying the principles of natural justice. It is important to note, however that the IIO is no longer neutral at this point in proceedings. The IIO will have formed a view that on the balance of probabilities the allegations have substance and will present this view to the hearing.
- Call any witnesses. Go through their statements and ask them questions to amplify/clarify the information they have given.
- Answer questions put by the employee or their representative.
- Answer questions from the panel.

N.B. All parties will be asked to leave the meeting when the hearing adjourns for the panel to consider their decision.

DISCIPLINARY INVESTIGATION TEMPLATE REPORT



CONFIDENTIAL

REPORT

Detailing the investigation into allegations made against

[Name]

Job title at

[Xxxx] Academy

Report by[xx]

Independent Investigating Officer

Employed as xxxxxxxx by The Education Fellowship at [name of Academy]

[Date of Report]

1. Introduction:

This report was written following an investigation undertaken by [name], Independent Investigating Officer (IIO).

The subject of the investigation is [Name] employed at [xxx Academy].

- 1.1 [xxx is employed by xxxx Academy as a [job title] since [date] and employed for [number of hours per week], [term time only/or 52 weeks], and [his/her] usual working hours are [times from and to].
- 1.2 There is no live disciplinary warning's recorded on [name] employment record.xxxxxx asked me to undertake a disciplinary investigation into [list the allegations].
- 1.3 This report is based on the information available to the commissioner, those authorised by the commissioner and any documentation provided by them. In addition, evidence may be provided by the subject of the investigation, any other witnesses and any documentation submitted by them.
- 1.4 The conclusions reached in this report have been based on the material presented within the report. No additional material has been used. Additional material, of which the IIO was not aware, may have affected the conclusions reached. The IIO is not responsible for failing to take account of information or evidence that was not available to her at the time of writing the report.

2. Allegation

That [name] is alleged to:

- [list the allegations in accordance with the invite to investigation letter] .

3. Methodology

The following documents have been taken into Account:

[list for example The School's Leave of Absence Policy (See Appendix xxx) and The Disciplinary Policy and Procedure (See Appendix xxx)

4. Background Information

- 4.1 xxxxxxxx wrote to [name] on the [insert date] (See Appendix xxx) to inform [him/her] that I would be undertaking a disciplinary investigation.
- 4.2 I wrote to [name] on the [date] inviting [him/her] to a Disciplinary Investigation meeting on the [insert date] (See Appendix xxxx). I met with [name] and [his/her] Union Representative on the [date].
- 4.3 I received [add list of background information received]

4.4 On the [date] , I wrote to [name] providing [him/her] with a copy of the notes of the meeting giving [name] the opportunity to amend them. (See Appendix xxx. [name] [did not/or amended] the notes and returned them to me on the [date]. (See Appendix xx)

5. Investigation/Evidence

5.1 The Academy has a [copy of the Policy on xxxxx list all Policies appropriate to the case and cross reference to Appendixes]

5.2 [set out and explain procedures, etc that staff have to adhere to

5.3 On the [date] [set out exactly what the member of staff is deemed to have done, how, what, when].

5.4 [Set out the member of staffs version of events and what they informed you].

5.6 [list here is you are able to find any evidence to co-oberate their version of events or any evidence to contradict their version of events].

5.7 [also list what witnesses have told you i.e. whether they co-oberate or contradict their version of events]. [See Appendix xxx – cross reference all Appendixes with your evidence to that the panel can see before them all the evidence and so they are not just taking your word for it]

5.8 [state any facts that you are aware of i..e if they acknowledge they are aware of school policy and procedures, whether they have undertaken any training etc].

6. Conclusion

Through the process of this investigation, I have reached the following facts:

6.1 Based on the evidence gathered during this investigation and referred to throughout this report, I find that overall and on the balance of probability that the allegations against [name] has [substance and/or do not have substance]. That [name] did [list the allegation and the date it took place].

6.2 I form the opinion that there [is/or is not] a case to answer and believe the allegation [constitutes/or does not] [misconduct/or Gross Misconduct] and [that the findings of my investigation should be properly considered by a panel of two Governors from Academy Advisory Board and one member from the Fellowship Executive or the member of staff should be informed that there is no case to answer].

7. Summary

Based on the evidence gathered during the investigation and referred to throughout this report, I find that overall that the allegations against [name] [has/has no substance].

I am of this opinion for the following reasons:

- 7.1 [name] [list all details of your findings i.e that they admitted it etc.....] ;
- 7.2 [list what witnesses say and any contradictory evidence]
- 7.3

MODEL FOR CONDUCTING DISCIPLINARY HEARINGS

Introduction
The Chair welcomes everyone and opens the meeting and invites all parties to introduce themselves. The Chair then then confirms the reason for the hearing i.e. Disciplinary or Ill Health absence case and states the name of the employee – the Chair then checks that everyone has the paperwork? and adds that if anyone wants to adjourn that they can say so during the course of the hearing. The Chair then invites:
Management Presentation
The person presenting the case (normally the person who investigated the matter)
Questions to the person presenting the management case
The employee's side has the opportunity to ask questions first Those hearing the case then have the opportunity to ask questions Please note that either party cannot go back and ask further questions once they have finished
Management Witnesses then invited into the hearing (If applicable)
The person presenting may call witnesses one at a time Then – Questions to the Management Witness The employee's side has the opportunity to ask questions first Those hearing the case then have the opportunity to ask questions Please note that either party cannot go back and ask further questions once they have finished
Employee's Presentation
The employee's side is then invited to present their case
Questions to the Employee
The person presenting the management case has the opportunity to ask questions first Those hearing the case then have the opportunity to ask questions Please note that either party cannot go back and ask further questions once they have finished
Employee Witnesses then invited into the hearing (if applicable)
The Employee may call witnesses one at a time Then – Questions to the Employee's Witness The person presenting the management case has the opportunity to ask questions first Those hearing the case then have the opportunity to ask questions Please note that either party cannot go back and ask further questions once they have finished
Summaries (after an adjournment (if needed))
The person presenting the management case, followed by the employee's side, take turns to summarise the case without introducing new evidence All parties including the note taker to leave the room
Considering the Evidence
The hearing is adjourned while those hearing the case consider the evidence and reach a conclusion. The HR Advisor will remain to provide advice and guidance, they are not part of the decision making
Decision
Once a decision is reached, the hearing is reconvened for the Chair to give the decision and notify the employee of the right of appeal (unless this is an Appeal Hearing, in which case they will state that there is not further right of Appeal the decision is final) and add that a formal detailed letter will follow

MODEL FOR CONDUCTING APPEAL HEARINGS

Introduction
<p>The Chair welcomes everyone and opens the meeting and invites all parties to introduce themselves.</p> <p>The Chair then then confirms the reason for the hearing i.e. Disciplinary or Appeal and states the name of the employee – the Chair then checks that everyone has the paperwork? and adds that if anyone wants to adjourn that they can say so during the course of the hearing. The Chair then invites:</p>
Employee's Presentation
The employee's side to present their case
Questions to the Employee
<p>The person presenting the management case has the opportunity to ask questions first</p> <p>Those hearing the case then have the opportunity to ask questions</p> <p>Please note that either party cannot go back and ask further questions once they have finished</p>
Employee Witnesses then invited into the hearing (if applicable)
The Employee may call witnesses one at a time
Then – Questions to the Employee's Witness
<p>The person presenting the management case has the opportunity to ask questions first</p> <p>Those hearing the case then have the opportunity to ask questions</p> <p>Please note that either party cannot go back and ask further questions once they have finished</p>
Management Presentation
The person presenting the case responds
Questions to the person presenting the management case
<p>The employee's side has the opportunity to ask questions first</p> <p>Those hearing the case then have the opportunity to ask questions</p> <p>Please note that either party cannot go back and ask further questions once they have finished</p>
Management Witnesses then invited into the hearing (If applicable)
The person presenting may call witnesses one at a time
Then – Questions to the Management Witness
<p>The employee's side has the opportunity to ask questions first</p> <p>Those hearing the case then have the opportunity to ask questions</p> <p>Please note that either party cannot go back and ask further questions once they have finished</p>
Summaries (after an adjournment (if needed))
<p>The person presenting the management case, followed by the employee's side, take turns to summarise the case without introducing new evidence</p> <p>All parties including the note taker to leave the room</p>
Considering the Evidence
<p>The hearing is adjourned while those hearing the case consider the evidence and reach a conclusion. The HR Advisor will remain to provide advice and guidance, they are not part of the decision making</p>
Decision
<p>Once a decision is reached, the hearing is reconvened for the Chair to give the decision and notify the employee of the right of appeal (unless this is an Appeal Hearing, in which case they will state that there is no further right of Appeal the decision is final) and add that a formal detailed letter will follow</p>

Person(s) Responsibility: **Senior HR Officer**

Distribution: **To All Academies**

Review Date: March 2017

Policy written by Julie Prescott and approved at the Trustees Board meeting on the 1st April 2016

Document Reviews

Version	Date	Approved/ Reviewed	Comments	Initial