



# **Orchard Partnership Academies**

## **Staff discipline, conduct and grievance procedures**



Reviewed: Autumn 2022

**Mr Alex Davies**

## **Contents:**

### Statement of intent

1. [Legal framework](#)
2. [Roles and responsibilities](#)
3. [Powers](#)
4. [The right to be accompanied](#)
5. [Trade union representatives](#)
6. [Suspension](#)
7. [Investigations](#)
8. [Criminal charges](#)
9. [Procedure at disciplinary hearings](#)
10. [Levels of disciplinary action](#)
11. [Alternatives to dismissal](#)
12. [The decision letter](#)
13. [Time limit for warnings](#)
14. [Right of appeal](#)
15. [Referrals to the Teaching Regulation Agency and DBS](#)
16. [Monitoring and review](#)

## **Statement of intent**

The main purpose of the disciplinary procedure is to encourage an employee, whose standard of work or conduct is unsatisfactory, to improve. The procedure serves to ensure that this is done in a fair and consistent manner.

The disciplinary procedure is not contractual and may be varied by the school. Orchard Partnership Academies expressly reserves the right to depart from the terms of the disciplinary procedure in circumstances where the employee does not have two years' qualifying service.

The disciplinary procedure is strictly confidential and all aspects, including all documentation and records, shall be treated as such. In line with this policy, the following will be adhered to:

- In minor cases of alleged misconduct, the manager should initially seek to resolve the matter informally by discussion with the employee.
- The disciplinary procedure is to be used where an employee's work or conduct is alleged to be unsatisfactory.
- Each step and action under the procedure must be taken without unreasonable delay, by either the school or the employee.
- The timing and location of meetings must be reasonable.

Please note: Disciplinary actions that relate to allegations of abuse about a member of staff will also be managed in line with the Allegations of Abuse Against Staff Policy.

## **Legal framework**

This policy has due regard to all relevant legislation and statutory guidance including, but not limited to, the following:

- The Education Act 2011
- The Teachers' Disciplinary (England) Regulations 2012
- DfE (2018) 'Teacher misconduct: the prohibition of teachers'
- DfE (2021) 'Keeping children safe in education 2021'
- DfE (2021) 'Teachers' Standards'
- DfE (2020) 'Teacher misconduct: disciplinary procedures for the teaching profession'

This policy operates in conjunction with the following school policies:

- Staff Code of Conduct
- Child Protection and Safeguarding Policy
- Grievance Policy
- Allegations of Abuse Against Staff Policy

## **Roles and responsibilities**

The governing board is responsible for:

- Monitoring and reviewing this policy on an annual basis to ensure its effectiveness.
- Ensuring that all members of staff have read and understand the provisions outlined in this policy.
- Initiating disciplinary action and deciding the appropriate level of action where an allegation is made against the executive headteacher.
- Ensuring a culture is established where employees are supported and assisted in achieving and maintaining the required standards of conduct.
- The dismissal of staff and for delegating the hearing of appeals to a sub-committee, if necessary.

The executive headteacher is responsible for:

- The day-to-day implementation of this policy and maintaining discipline among all staff.
- Ensuring this policy and associated procedure are readily available to all employees and can be accessed in an appropriate format.
- Initiating disciplinary action and deciding the appropriate level of action.
- Ensuring records are kept of all disciplinary meetings and communications with employees.
- Ensuring that all documentation relating to disciplinary issues is retained in accordance with the schools Records Management Policy.
- If a matter progresses to a disciplinary hearing, presenting details of the employee's failure to meet and maintain the required standards of conduct.
- Communicating the outcomes of disciplinary procedures to employees.
- If a matter concerns a safeguarding issue, ensuring the DSL has been notified.

Employees are responsible for:

- Familiarising themselves with the standards outlined in the Staff Code of Conduct.

- Adhering to the provisions outlined in this policy and cooperating with the disciplinary procedure.
- Attending all meetings, interviews and hearings that take place in accordance with this policy and its associated procedure.
- Logging appeals to the head of school within five working days of receiving a decision.
- If choosing to be accompanied to a disciplinary or appeal hearing, notifying the disciplinary officer who their chosen companion is, in good time before the hearing.

## Powers

The school has delegated powers to the following levels (or above) of staff:

Sanction	Disciplinary officer	Appeal officer
<b>Level 1: First warning/ Verbal warning</b>	Head of school/line manager	Executive Headteacher
<b>Level 2: Written warning</b>	Head of school/line manager	Executive Headteacher
<b>Level 3: Final warning</b>	Head of school	Executive Headteacher
<b>Level 4: Dismissal.</b>	Head of School/Executive Headteacher	Governor Appeal Panel

Where the employee is employed by the school at the level of the appointed disciplinary officer, then the next level of management up will ordinarily deal with the matter.

For allegations regarding the head of school, the executive head shall have the authority to be the disciplinary officer and a governor appeal panel will hear the appeal. For allegations regarding the executive head, the chair of governors will have the authority to be the disciplinary officer and any appeal will be to the governor appeal panel.

In a case where the person who would normally be the disciplinary officer is compromised through existing circumstances, is significantly involved in the investigation, or does not have the resource to deal with the matter at that time, the case will normally be dealt with by an alternative at the same level or the next level of management.

Before any disciplinary decision is made, the employee will be advised of the allegations against them and will be given the opportunity to state their case. The employee will be notified in writing of the allegations to be answered, plus any documentary evidence, before the disciplinary hearing.

The employee must make every effort to attend an investigative interview or disciplinary hearing and failure to attend, without good reason, may be treated as misconduct in itself. If the employee fails to attend without good reason, or if they are persistently unable to do so (for example, for health reasons), the school may have to take a decision based on the available evidence.

Investigatory meetings will not, by themselves, result in any disciplinary action.

At any disciplinary hearing or appeal hearing, the employee will have the right to put forward their case. The school will only consider evidence presented by the employee which is relevant to the allegations.

The school shall be entitled to manage the time and resources allocated to a disciplinary matter, including managing the time of a disciplinary hearing and allocating time within a disciplinary hearing. This may result in limiting the amount of time allocated to an employee to present their case.

The decision and the reasons shall be communicated in writing to the employee. An employee will be advised of their right of appeal and how to exercise that right.

### **The right to be accompanied**

The employee may bring a companion to any disciplinary or appeal hearing under this procedure. The companion may be either a trade union official, a trade union representative or a work colleague not involved in the matter. The employee must tell the disciplinary officer who their chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from duties, without loss of pay, but no one is obliged to act as a companion if they do not wish to do so.

If the choice of companion is unreasonable, the school may ask for the employee to choose someone else. For example:

- If in the school's opinion the employee's companion may have a conflict of interest or may prejudice the hearing.
- If the companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days afterwards.

The school may, at its absolute discretion, allow the employee to bring a companion who is not a work colleague or union representative (for example, a member of family) if this will help the employee overcome barriers to effective participation caused by a disability.

At a hearing, the companion may make representations to the school and ask questions, but should not answer questions on the employee's behalf. The employee may confer privately with their companion at any time during a hearing.

### **Trade union representatives**

Although normal disciplinary standards will apply to the conduct and performance of trade union representatives as employees, no disciplinary action or suspension will be taken until the circumstances of the case have been discussed with an appropriate trade union official. In the case of suspension, this may not be practical and should not prevent leaders taking action.

### **Suspension**

In certain circumstances, consideration may be given to suspending the member of staff from their place of work at the outset of the investigation or at any stage during the course of the investigation. The school will consider and document why suspension is necessary before making this decision, and will consider alternatives to suspension, where possible.

The suspension will be for no longer than is necessary and the school will confirm the arrangements to the employee in writing.

The decision to suspend may only be taken by a head of school or executive headteacher. If the head of school or executive headteacher, the decision may be delegated to a nominated line manager, who must make every effort to contact the head of school or executive headteacher, to discuss the case and be authorised to make the decision.

Where the executive headteacher is suspended, the chair of governors only has the power to do so and must notify the full governing board.

In other cases, the school board should be informed through the executive headteacher or chair of governors.

While the employee is suspended, they should not visit the school site or contact any of its pupils, parents, governors, chair of governors, members or colleagues, unless the employee has been authorised to do so by the head of school or executive headteacher.

While suspended, the school will provide the employee with a named contact with whom they can liaise to support them through the investigation.

Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. The employee will continue to receive their salary during the period of suspension. Every effort will be made to avoid lengthy periods of suspension. The decision to suspend, and the conditions of suspension, will be reviewed periodically and the employee will be updated as, and when, necessary.

## **Investigations**

The purpose of an investigation is for the school to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any relevant witnesses, and/or reviewing relevant documents.

Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. An employee does not have the right to bring a companion to an investigative interview; however, the school may, in its absolute discretion, allow an employee to bring a companion if it helps the employee to overcome barriers to effective participation caused by a disability or in exceptional circumstances.

The employee must cooperate fully and promptly in any investigation. This will include informing the school of the names of any relevant witnesses, disclosing any relevant documents to the school and attending investigative interviews if required. Any failure to comply may lead to disciplinary action. It is incumbent on the employee, during the investigation stage, to raise details of additional witnesses whom the school should interview during the investigation.

The school will make every effort to maintain confidentiality and guard against unwanted publicity whilst an allegation is being investigated. Where an employee has been accused of misconduct by a pupil, the school ensures that no material is published or made public that could identify the employee as the subject of the allegation.

Reporting restrictions will remain in place until the employee is charged with an offence or until the Secretary of State publishes information on the outcome of the investigation. Reporting restrictions will be dispensed with if the employee waives their right to anonymity by going public themselves or by giving their written consent for another to do so, or if the restrictions are lifted by a judge.

## **Criminal charges**

Where the employee's conduct is the subject of a criminal investigation, charge or conviction, the school will investigate the facts before deciding whether to take formal disciplinary action.

The school will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the school may have to take a decision based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the school considers that it is relevant to the employee's employment.

## **Procedure at disciplinary hearings**

At the beginning of the hearing, the disciplinary officer will introduce those present and the purpose of the meeting. The employee will be reminded of their right to be accompanied (if the employee has not chosen to be accompanied by a trade union representative or a work colleague). The disciplinary officer will go through the allegations against the employee and the evidence that has been gathered. The employee will be able to respond and present any relevant evidence.

Witness evidence (save for additional matters that the employee wishes to raise) is provided through witness statements. There is no right for either the school or the employee to call witnesses to the disciplinary hearing. As such, there is no power for the school or the employee to cross-examine witnesses (albeit that the disciplinary officer may ask questions of the employee). Should the employee wish to question the evidence provided by another witness in the investigation then this should be raised by the employee during the investigation or upon receipt of the investigation documents.

The employee will be given a full opportunity to ask questions and put forward any mitigating factors which they believe are relevant to the allegations. Once the employee has been afforded an opportunity to explain their position, the disciplinary officer will do either of the following:

- Give the decision and explain the reasons for the decision, and confirm as soon as possible in writing
- Inform the employee that the decision will be given in writing as soon as possible

The disciplinary officer may adjourn the disciplinary hearing if the school needs to carry out any further investigations in light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider and comment on any new information obtained before a decision is given.

## **Levels of disciplinary action**

There are four stages, each of which is designed to cover the varying seriousness of the cases. The stages give a proper sequence for persistent cases. Where the case is of sufficient importance or

seriousness to use the procedure, disciplinary action will be taken at whatever stage appears appropriate to the circumstances. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice and without pay in lieu of notice.

Please note: in instances of more than one minor cases of misconduct- it is down to the school to establish whether to treat them as separate incidents or group them together.

The following decisions will be confirmed in writing:

- **Level 1:** A first warning/verbal warning may be given where the case is of sufficient importance or seriousness to bring to the attention of the employee formally. The time limit shall be six months (excluding the Summer holiday) from the date of the decision.
- **Level 2:** A written warning may be given where the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient importance or seriousness. The time limit shall be nine months (excluding the Summer holiday) from the date of the decision.
- **Level 3:** A final warning may be given where the case has already involved a written warning and insufficient improvement has been made, where further misconduct has occurred or where the case is of sufficient importance or seriousness. Also where gross misconduct may not warrant dismissal, for example due to mitigating circumstances. The time limit shall be 12 months (excluding the Summer holiday) from the date of the decision; however, in exceptional circumstances, misconduct may be so serious that if repeated at any time in the future, the likely consequence is dismissal. The individual/s making the decision may impose a final written warning and specify that such a warning will remain in force for a longer period of time.
- **Level 4:** Dismissal. An employee is likely to be dismissed where the case has already involved the final warning and insufficient improvement has been made or where further misconduct has occurred or where the case is so serious as to constitute gross misconduct or where there is some other substantial reason.

Breaches of discipline will be disregarded after the specified period of satisfactory conduct, but will remain permanently on the employee's personnel file.

## **Alternatives to dismissal**

In some cases, the school may, at its discretion, consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include the following:

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

## **The decision letter**

A letter detailing the decision will be given to the employee and a copy placed on their personnel file, if a warning is issued. Following the outcome of the hearing, the decision letter will state:

- The reason for the decision.
- The course of action to be followed by the employee.
- The timescale in which improvement is required, if applicable.
- Where assistance is required, the assistance which will be made available to the employee (e.g. training and guidance).
- The date on which the warning will elapse.
- That further disciplinary action will be considered if there is further misconduct or insufficient improvement within the timescale of the warning.
- The right of appeal against the decision and how to exercise that right.

If the warning is a final, it will also state that if the employee's conduct continues to be unsatisfactory or if there is further misconduct, it may lead to dismissal.

## **Time limit for warnings**

The time limits for warnings are as follows:

- **First warning/Verbal Warning:** the time limit shall be 6 months (excluding the Summer break) from the date of the decision
- **Written warning:** the time limit shall be 9 months (excluding the Summer break) from the date of the decision
- **Final warning:** the time limit shall be 12 months (excluding the Summer break) from the date of the decision

In exceptional circumstances, misconduct may be so serious that if repeated at any time in the future the likely consequence is dismissal. The individual/s making the decision may impose a final written warning and specify that such a warning will remain in force for a longer period of time.

Breaches of discipline will be disregarded after the specified period of satisfactory conduct, but will remain permanently on the employee's personnel file.

## **Right of appeal**

All employees have the right of appeal. Appeals must be lodged in writing to the head of school or executive headteacher within five working days of the decision being communicated to the employee, i.e. usually within five days of the date of the outcome letter.

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal; however, if the appeal is successful, the employee will be reinstated with no loss of continuity of pay.

If the employee raises any new matters in their appeal, the appeal officer may need to carry out further investigations. If any new information comes to light, the appeal officer will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.

The school will give the employee written notice of the date, time and place of the appeal hearing. The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that

may have come to light. This will be at the school's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible. Where possible, the appeal hearing will be conducted impartially by a more senior manager who has not been previously involved in the case. The employee may bring a companion to the appeal hearing.

The appeal officer may adjourn the appeal hearing if the school needs to carry out any further investigations in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before a decision is given.

The appeal officer may do any of the following:

- Confirm the original decision
- Revoke the original decision
- Substitute a different penalty

The appeal officer will inform the employee in writing of the final decision as soon as possible. There will be no further right of appeal.

## **Referrals to the Teaching Regulation Agency and DBS**

Allegations of serious professional misconduct by a teacher may be referred to the Teaching Regulation Agency (TRA). A referral is appropriate if the alleged misconduct is so serious, it warrants a decision on whether a teacher should be prevented from teaching.

If an individual may have harmed a child or vulnerable adult, or put a child or vulnerable adult at risk of harm, a referral to the DBS must be made by the employer. In these cases, advice should be sought from the school's HR advisor.

## **Monitoring and review**

This policy is reviewed annually by the executive headteacher and governing board.