



**Astrea Academy Trust**  
INSPIRING BEYOND MEASURE

## **Disciplinary Policy and Procedure**

Date	August 2024
Written by	Head of People
Internal Review	Chief Operating Officer
Consulted with NJCC	April 2024
Consultation Review	June 2024
Agreed Date	July 2024
Issued Date	August 2024
Review Date	August 2027
Policy Reference #	POL010

## Contents

<b>1</b>	<b>Introduction and Scope of the Policy and Procedure .....</b>	<b>4</b>
<b>2</b>	<b>Confidentiality and Data Protection .....</b>	<b>4</b>
<b>3</b>	<b>Disciplinary Policy and Procedure.....</b>	<b>5</b>
3.1	Core Principles .....	5
3.2	Safeguarding and Child Protection Issues .....	6
3.3	Referrals to External Bodies .....	7
3.3.1	Disclosure and Barring Service .....	7
3.3.2	Teaching Regulation Agency (TRA).....	7
3.4	Alleged Criminal Offences and Convictions.....	8
3.5	Precautionary Action (Including suspension).....	8
3.6	Investigations .....	11
3.6.1	Fact Finding .....	11
3.6.2	Formal Investigation .....	12
3.6.3	The Role of the Investigating Officer .....	13
3.6.4	Investigating Officer.....	13
3.6.5	Investigation Meeting.....	14
3.7	Potential Investigation Outcomes .....	15
3.7.1	No case to answer .....	15
3.7.2	A management advice letter.....	15
3.7.3	Convene a Disciplinary Hearing .....	15
3.8	Support and Assistance .....	16
3.9	Unavailability and Sickness Absence .....	16
3.10	Raising a Grievance During a Disciplinary Investigation.....	16
3.11	Notification of a Disciplinary Hearing .....	17
3.12	Representation .....	17
3.13	Disciplinary Hearing Procedure.....	18
3.14	Disciplinary Hearing Panels .....	19
3.15	Disciplinary Panel Housekeeping.....	19
3.16	Disciplinary Sanctions and Record of Hearings .....	19
3.16.1	No further action .....	19
3.16.2	Management advice .....	20

3.16.3	First warning .....	20
3.16.4	Written warning .....	20
3.16.5	Final written warning .....	20
3.16.6	Dismissal.....	20
3.17	Disciplinary sanctions for employment references .....	21
<b>4</b>	<b>Right of Appeal .....</b>	<b>21</b>
4.1	Appeal Process .....	22
4.2	Action available to the Appeal Panel.....	22
4.3	Notification of decisions made by the Appeal Panel .....	22
<b>5</b>	<b>Appendices .....</b>	<b>23</b>
5.1	Appendix 1 Suspension Risk Assessment.....	Error! Bookmark not defined.

## **1 Introduction and Scope of the Policy and Procedure**

- This Disciplinary Policy and Procedure applies to all academy based and central employees of Astrea Academy Trust ('the Trust').
- This purpose of this Policy and Procedure is to help and encourage all employees of the Trust to achieve and maintain the required standards of conduct, to promote best practice in employment and to ensure consistency and equity in the approach towards the management of cases where breaches of this policy are alleged to have taken place.
- At any stage within this Policy and Procedure, and in accordance with the Equality Act 2010 and the Acas Code of Practice on Disciplinary and Grievance Procedures, provision will be made for any reasonable adjustments to accommodate the needs of individuals attending meetings and hearings.
- This Policy and Procedure will be applied consistently and fairly to all employees. Furthermore, the Trust recognises its responsibility to ensure the implementation of the rules of natural justice as part of this Policy and Procedure, i.e.:
  - The employee should know the nature of the allegation(s) against them.
  - The employee will have an opportunity to state their case.
  - Management should act in good faith.
  - All decision makers must give the employee a fair hearing in advance of the decision being made.
  - A decision maker must not be biased or prejudiced.
- In applying this policy, the Trust will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good employee relations between people of diverse groups. In particular, on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, trade union membership or non-membership, or any other personal characteristic.
- For the purposes of clarity, when this Policy and Procedure refers to the Principal/Senior Leader these covers both academy and central staff.
- Preservation of Terms and Conditions under the Transfer of Undertakings (Protection of Employment) Regulations 2006 applies.
- This policy is non-contractual.

## **2 Confidentiality and Data Protection**

- It is the aim of the Trust to deal with all disciplinary and matters sensitively and with due respect for the privacy and dignity of any individuals involved.
- All investigations of a disciplinary nature, and any subsequent disciplinary/appeal hearings will be dealt with in the strictest of confidence and

in accordance with this policy. All parties involved in these investigations and proceedings must ensure they maintain, as appropriate, the confidentiality of the process within and outside of the Trust.

- All information gathered throughout the procedure will be retained on a confidential and secure basis. Information will be stored confidentially, with access only to individuals as deemed appropriate in line with the investigation process, to ensure a fair and thorough investigation.
- The issues raised under this procedure are often particularly sensitive, it is therefore essential that any record or information relating to, is held and destroyed in accordance with the provisions of the Data Protection Act 1998 and the Trust's Data Protection Policy.
- Information will be retained by the Human Resources Department in accordance with the above legislation and Trust policies. All of the documentation is subject to the above legislation.
- Any breach of confidentiality may be dealt with under this Disciplinary Policy and Procedure.

### **3 Disciplinary Policy and Procedure**

#### **3.1 Core Principles**

- It is a fundamental principle that disciplinary matters are dealt with at the lowest level possible, appropriate to the allegation under investigation.
- The procedure should be used primarily to help and encourage employees to improve their conduct rather than as a way of imposing a sanction. It should provide a method of dealing with any apparent shortcomings in conduct of performance to support the employee become effective again.
- Issues should be raised and dealt with promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions. This should not be at the expense of fair and thorough process.
- The employee should be informed of any complaint/allegation against them and be provided with as much information as deemed appropriate without compromising the investigation i.e., safeguarding
- The employee should be provided with an opportunity to state their case before decisions are reached.
- Any action taken and sanctions issued should be reasonable in the circumstances of the case.
- Dismissal should not be considered as an applicable sanction for a first disciplinary offence unless it is a case of Gross Misconduct. In cases of gross misconduct, the full range of available sanctions will be considered.

- An employee should be informed of the required standards of behaviour and conduct expected of them whilst employed to undertake their role via induction procedures and annual declarations, . Policies and communications should cover such matters as;
  - timekeeping
  - absence
  - health and safety
  - use of organisation facilities
  - discrimination, bullying and harassment
  - personal appearance
  - the types of conduct that might be considered as 'gross misconduct'.
- Where an employee has received previous warnings or informal intervention regarding their conduct or behaviour, they should be aware that if there are further instances of potential misconduct, formal disciplinary action could be taken.
- An employee will be given the right to appeal against any formal disciplinary sanction issued under this policy.
- An employee has the right to be accompanied by a Trade Union Representative or a work colleague only at any formal stage during the procedure. This includes the formal investigation stage. It is the employee's responsibility to organise their own representation.
- The Panel Chair and other panel members should not have had any prior involvement with the investigation. Those conducting an appeal should not have had any prior involvement with the investigation or the disciplinary hearing.
- If the employee is unable or unwilling to attend a disciplinary hearing that has been organised on two separate occasions, the matter may be heard in their absence and a decision made based on all the evidence available.

### **3.2 Safeguarding and Child Protection Issues**

- If the allegation against an employee relates to a child protection issue, advice should be sought from the academy's DSL and/or the Trust Safeguarding Lead. Where deemed necessary and appropriate, an academy or trust representative must contact the Local Authority's Designated Officer (LADO) at the outset, to discuss how to proceed. The outcome may be that an allegations strategy meeting is required and the LADO will convene this meeting if this is the case.
- If the allegation is substantiated and the employee is dismissed or the Trust ceases to use the person's services, or the person resigns or otherwise ceases to provide their services, the LADO should discuss with the Trust whether a referral should be made for consideration as to the individual being barred from, or have conditions imposed in respect of, working with children. Legal advice may be sought.

- No disciplinary records relating to the safety and welfare of children and young people will be withdrawn from an employee's personal file for holders of posts covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Whilst the warning will remain on file, it is not 'live' and would only be taken into account if relevant and reasonable to do so in the context of the responsibility for the protection of children.
- The Trust will refer to the relevant external agency those serious misconduct cases relating to registered teachers, which do not raise issues relating to the safety and welfare of children and young people, who are dismissed through this procedure or where the proceedings would have led to dismissal had the employee not resigned. Legal advice may be sought.

### **3.3 Referrals to External Bodies**

- Where grounds for dismissal relate to issues relating to the safety and welfare of children and young people these will be referred by the academy to the Disclosure and Barring Service (DBS) and the Teaching Regulation Agency (TRA) where applicable for teaching staff.

#### **3.3.1 Disclosure and Barring Service**

The legal duty to refer to DBS is triggered when the following two conditions have both been met;

##### ***Condition One***

- When you withdraw permission for a person to work in regulated activity with children and / or vulnerable adults, either through dismissal or by moving the person to another area of work that is not regulated activity.

and

##### ***Condition Two***

- When you think the person has carried out one of the following:
- Been cautioned or convicted of a relevant (automatic barring) offence; or,
- Engaged in relevant conduct in relation to children and / or vulnerable adults [i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk or harm]; or,
- Satisfied the Harm Test in relation to children and / or vulnerable adults. [i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable still exists]

#### **3.3.2 Teaching Regulation Agency (TRA)**

- In cases of serious teacher misconduct and breaches of professional standards, The Trust may make a referral to the Teaching Regulation Agency (TRA).

### **3.4 Alleged Criminal Offences and Convictions**

- If an employee is charged with or convicted of a criminal offence, this should not normally in itself be reason for disciplinary action. Consideration must be given to what effect the charge or conviction has on the employee's suitability to carry out their role and the impact on their relationship with the Trust. In instances of alleged criminal offences and convictions, the Trust reserves the right to request a new and current enhanced Disclosure and Barring Service check.
- The disciplinary procedure will only be instigated where there are reasonable grounds for believing that the nature of the activities is sufficiently serious to have an adverse effect on the ability of, or confidence in, the employee to carry out their duties properly, bringing the Trust into disrepute, the breaking down of the employment contract due to a lack of trust and confidence, or for any other substantial reason.
- Where a criminal investigation relates to allegations of abuse of children or young people, the Trust will co-operate and share information about the employee with other relevant agencies as appropriate.
- HR advice should be sought in all cases of alleged criminal offences.

### **3.5 Precautionary Action (Including suspension)**

- In some cases, where it is believed that an investigation may be adversely impacted if the employee who is the subject of the investigation remains at work, or where risk may present by the employee remaining in work, the decision may be made to take precautionary action whilst an investigation takes place.
- Precautionary action includes suspension from work or other alternatives including restricted/amended duties. Precautionary action is not an assumption of guilt, is not considered a disciplinary sanction and does not indicate any pre-judgment of the allegation/s.
- Any suspension should be for no longer than necessary to investigate to allegations and conclude the disciplinary process.
- Examples in which suspension may be considered include, but are not limited to:
  - Potential Gross Misconduct cases
  - Where there are sound reasons to believe pupils / employees / property are at risk
  - Where it is believed that the continued presence of the employee might prejudice enquiries, the carrying out of the investigation or influence witnesses



- Where there are reasonable grounds for concern that evidence has been tampered with, destroyed or witnesses pressurised during the investigation and/or before the hearing; or
- Where the allegations are so serious that dismissal for Gross Misconduct is possible in accordance with the statutory guidance 'Keeping Children Safe in Education', there will be careful consideration of whether the circumstances of the case warrant the employee being suspended from contact with children or whether suitable arrangements can be put in place as an alternative to suspension whilst the investigation is taking place and/or prior to a disciplinary hearing being held.
- The decision to suspend will not be taken lightly and will only be made after a risk assessment has been undertaken by a line manager and Principal/ senior leader who is able to undertake such an assessment objectively. Any such decision will be made on clear, justifiable grounds, taking into account all the facts available at the time and that all alternative options have been fully considered.
- The employee will remain on full pay for the duration of their suspension.
- The following considerations should be made when making the decision to suspend an individual:
  - The wellbeing and mental health of the employee and how this may be supported.
  - Plan the support provided to any suspended employee including access to the Trust's Employee Assistance Programme and an assigned wellbeing contact.
  - Only suspend where there is no other available or suitable alternative.

The HR department must be consulted in all cases before a decision to suspend is taken.

- Examples in which suspension may be considered include:
  - Where there are sound reasons to believe pupils / employees / property are at risk.
  - Where it is believed that the continued presence of the employee might prejudice enquiries or influence witnesses.
  - There are reasonable grounds for concern that evidence has been tampered with, destroyed or witnesses pressurised before the hearing.
- A suspension risk assessment (appendix 1) will be completed and approved by the Principal or senior leader.
- Any allegation relating to child protection issues (see clause 3.2), must be discussed with the Local Authority Designation Officer (LADO) and their advice must be considered. The LADO will then determine whether a formal LADO referral needs to take place and will advise on the appropriate course of action in line with the statutory guidance on handling allegations against members of

staff who work with children. If criminal activity has been alleged to have taken place, then the Police will also be contacted.

- Where suspension is being considered a meeting with the employee should take place as soon as possible, without unreasonable delay.
- The process of suspension should be conducted promptly but with an allowance for the employee to contact their trade union representative. If there is a short reasonable delay in arranging representation, this will generally be accommodated, provided it does not significantly delay the suspension process. For serious allegations, including those with third party agency involvement, the Trust reserves the right to suspend an employee without representation.
- All steps will be taken to suspend in person, however in exceptional circumstances an employee may be contacted via video call or telephone where this is appropriate. The employee will be advised to contact their trade union representative.
- The employee will receive written confirmation of the suspension, within two working days. This confirmation will include the reasons for the suspension, the date from which the suspension will operate and details of any restrictions relating to their suspension.
- The employee will be provided with an information contact during the period of their suspension. The role of the contact is to provide information regarding the progress of the investigation. The contact has no information regarding the investigation but can provide anticipated timescales alongside welfare support.
- Whilst suspended the employee is to make no contact with any other employee regarding matters of the workplace; where this is not possible (family member / partner of other employees), there will be a separate discussion.
- The Trust reserves the right to temporarily suspend IT software, email and phone account access. An alternative means of communication will be agreed to ensure important Trust updates (such as general updates on workplace development and news) are issued and corresponding via email does not require a Trust authorised email address. If the employee needs access to systems to support the investigation, access can be granted under supervision.
- The Trust will review the necessity for the suspension throughout the investigation and the employee will be notified of either, the continuing need for the suspension or the lifting of the suspension after each review.
- If a decision is made to lift the suspension prior to the conclusion of the investigation and/or before a disciplinary hearing is held, the employee will be invited to attend a meeting to discuss the arrangements for returning to work and any restrictions/support which may be necessary. This will be confirmed in writing to the employee following this meeting.

## **3.6 Investigations**

- Where any allegation of misconduct arises, the Principal / senior leader will take reasonable action via a preliminary investigation to establish the facts and having done so, will ascertain whether a formal disciplinary investigation is required.
- At all stages, the employee will be made aware of the support available to them through the Trust and Employee Assistance Programme.

### **3.6.1 Fact Finding**

- Upon receipt of any allegations against employees, it is likely that further information will be required to establish the next course of action. The Principal, or senior leader should seek to establish the basic facts of the situation; this may involve looking at records/documents, speaking to witnesses, reviewing CCTV and other available sources of information.
- The Astrea Child Protection and Safeguarding Policy sets out the procedure for allegations of abuse, in association with this policy (clause 3.2).
- Where witnesses are spoken to as part of a fact find, the employee should be made aware of the allegation. However, if witnesses are not spoken to, the Trust reserves the right to not notify the employee, with their welfare being a key consideration.
- A fact find meeting may be held with the employee to establish the basic facts of the circumstance and to enable the Principal or senior leader to determine whether further investigation is required. Such a meeting can sometimes produce a reasonable explanation in relation to the allegation that then enables the matter to be concluded and it is important to establish any mitigating circumstances that may have contributed to the employee's conduct.
- A fact find meeting will not be required in all cases, and it is for the Principal / senior leader to decide whether this is appropriate. Minutes may be taken and circulated, but they will not be used in a formal hearing.
- HR must be notified of all fact finding for the purpose of record keeping.
- Where a matter can be dealt with informally, if the level of misconduct is of a low-level nature, the approach to resolving quickly and confidently should be taken.
- Where this is deemed appropriate, Principal / senior leader may request that the line manager addresses with the employee, making a note of the discussion for agreement to this being an accurate record of any discussion. The line manager may issue the employee with a management advice instruction, advising that further acts of misconduct may result in formal disciplinary action.

- The informal approach is considered as being outside of formal disciplinary procedures, but where matters are more serious or where an informal approach has not been implemented but is not successful (i.e a further transgression within the three-month period) the matter will be progressed to the formal disciplinary procedure.
- Any matters of misconduct will proceed to formal investigation in the following circumstances;
  - Where that matter cannot be resolved informally
  - Where the employee has been given a previous warning for behaviour of a similar conduct
  - Where the allegation leads to concerns about the safety and welfare of children, if deemed appropriate following consultation with the Local Authority Designation Officer (LADO)

HR advice should be sought before instigating any formal investigation.

### **3.6.2 Formal Investigation**

- After fact find if it is determined that there is a need for investigation, or if the concerns are serious enough to warrant a full investigation immediately, the Principal or senior leader will take the role of Commissioning Manager and appoint an Investigating Officer to carry out the investigation.
- That Investigating Officer will be provided with a term of reference by the Commissioning Manager, will gather the facts, identify and hold investigation and fact-finding meetings, which may include witnesses, and obtain documentary evidence as required.
- The Terms of Reference (TOR) should include, but is not exhaustive of;
  - Purpose of the investigation
  - Scope of the allegation(s)
  - Roles and responsibilities
  - Timeline
  - Reporting
  - Communication
  - Review and approval
- The purpose of the investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations made against an employee before deciding 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 witnesses and / or reviewing relevant documents and other information.
- The Investigating Officer should verbally advise the employee of the allegation(s) made against them and advise them that they have been appointed to investigate the allegation(s).

- The Investigating Officer shall then set out clearly the allegations being investigated against the employee in writing, inviting them to an investigation meeting as soon as is practicable. Employees will not be expected to attend a meeting that is outside of their working hours. The meeting may be held at a different location if deemed appropriate for the employee's wellbeing.
- Where a formal investigation is required, the appropriate member of senior staff/leadership will investigate. That person will gather the facts, identify and hold investigation and fact-finding meetings, which may include witnesses, and obtain documentary evidence as required. The employee will be informed that an investigation is to be undertaken.

### **3.6.3 The Role of the Investigating Officer**

- The Investigating Officer should be a person with no involvement in the allegation under investigation. This person should be a senior employee to the employee who is being investigated. Where this is not possible. The Trust may appoint an external investigating officer.
- The Investigating Officer's brief is to establish the facts of the case by gathering information. This can be in the form of witness statements, interviews, CCTV footage, and through obtaining other relevant information. All information gathered will be handled in line with the requirements of the Trust's Data Protection Policy and relevant legislation.
- All investigations will be undertaken in the strictest of confidence. The employee and any other individuals interviewed as part of this process will be advised to treat the investigation as such.
- Where the Trust would always support the notion that the HR function supports the Investigating Officer in some cases the Investigating Officer may carry out the investigation with varying degrees of HR support, dependent on the case circumstances, and the Investigating Officer's experience.

### **3.6.4 Investigating Officer**

- The appointed Investigating Officer should be a person with no involvement in the allegation under investigation. This person should, wherever possible, be a senior employee to the employee who is being investigated. Investigating Officers appointed must have completed the National College training, Internal School Investigations: Establishing a Fair and Robust Process.
- The Investigating Officer's brief is to establish the facts of the case by gathering information. This can be in the form of witness statements, interviews, CCTV footage, and through obtaining other relevant information. All information gathered will be handled in line with the requirements of the Trust's Data Protection Policy and relevant legislation.

- All investigations will be undertaken in the strictest of confidence. The employee and any other individuals interviewed as part of this process will be advised to treat the investigation as such.
- The Trust central HR team will provide support and procedural guidance, as required to Investigating Officers.
- Where the Trust would always support the notion that the HR function supports the Investigating Officer in some cases the Investigating Officer may carry out the investigation with varying degrees of HR support, dependent on the case circumstances, and the Investigating Officer's experience.
- In all cases, if a member of staff has any concerns regarding the appropriateness of the chosen Investigating Officer, they should raise these at the commencement of the investigation and, if required, throughout the process.

### **3.6.5 Investigation Meeting**

- During the meeting, the Investigating Officer should present the allegation(s) to the employee and ask any questions that are relevant to the investigation. The employee will be invited to respond in full and to any other information submitted by the Investigating Officer. A record of the meeting will be circulated to the employee to allow them to check for accuracy and note any points of disagreement.
- An employee has the right to be accompanied by a Trade Union Representative or a work colleague at a formal investigation meeting. It is the employee's responsibility to organise their own representation.
- At any point during the meeting the employee or the Investigating Officer may request a short adjournment.
- If new allegations emerge during the course of the investigation, it may be necessary to re-interview the employee or witness in seeking to establish the facts.
- The investigation should be conducted as soon as possible. Every attempt should be made to complete the investigation in a timely manner and to expedite the process. The employee subject to the allegation(s) will be given regular information as to how the investigation is progressing.
- Following the investigation, the Investigating Officer will determine whether there is a case to answer, and a written report should be prepared of the facts of the case which will include a list of every individual who has been interviewed, together with records of interviews, and any other evidence, and an indication of the proposed next steps and recommendations.
- The Investigative Officer may determine that allegations are not substantiated.

- These documents will be made available to all parties should a disciplinary hearing ensue.

### **3.7 Potential Investigation Outcomes**

- After the investigative process has been completed and the Investigating Officer has consulted with the Commissioning Manager and appropriate HR Representative, the employee must be informed as soon as possible in writing of the decision taken by the Investigating Officer.
- This will take the form of one of the following by the appropriate party
  - An invitation to a disciplinary hearing should it be deemed that there is a case to answer
  - A management advice letter
  - Other training and advice as necessary.
  - A letter to confirm that the investigation has concluded, and no further action will be taken.

#### **3.7.1 No case to answer**

- Where the outcome is no case to answer, there should be a meeting with the employee to advise them of this decision either in person or remotely. The employee may exercise their right to accompaniment during this meeting. The employee will also receive written confirmation of this decision within 2 working days.
- If the employee has been suspended and it is not intended to proceed with any form of disciplinary action, the suspension should be lifted immediately, and placed in writing to the employee by the Principal / Senior Leader within 2 working days. The Principal / Senior Leader should meet the employee to discuss their return to work and any appropriate arrangements.

#### **3.7.2 A management advice letter**

- A management advice letter may be issued where an allegation is found to have some foundation, though does not merit a formal hearing and may be resolved through advice and training where appropriate. The letter should detail the mitigation that led to the decision and will remain on file for a period of 3 months from the date of issue.
- If the employee has been suspended and it is not intended to proceed with any form of disciplinary action, the suspension should be lifted immediately, and placed in writing to the employee by the Principal / Senior Leader. The Principal / Senior Leader should meet the employee to discuss their return to work and any appropriate arrangements.

#### **3.7.3 Convene a Disciplinary Hearing**

- If the Investigation Officer has grounds for disciplinary action, the employee will be required to attend a disciplinary hearing. The

Investigation Officer will notify the employee in person, or by video call / telephone where this is not possible followed with written confirmation of their recommendation to convene to a disciplinary hearing, within 2 working days.

### **3.8 Support and Assistance**

- The Investigating Officer should ensure that there is the opportunity for support throughout the investigation and disciplinary process. This could be used to give appropriate guidance, support and reassurance and to help rebuild, where necessary, an employee's confidence. Any support of this nature will be provided by an appropriate person who is not involved in the process. This may include an employee from another academy, or from central services.

### **3.9 Unavailability and Sickness Absence**

- If an employee is absent due to sickness during the disciplinary process, the Investigating Officer should be informed of this. Advice may be sought from the Trust's Occupational Health service or the employee's GP regarding the employee's fitness to participate in the process.
- If an employee is suspended from duty and subsequently becomes unwell, they must follow normal absence notification procedures. Such absence will be recorded in accordance with the Trust absence management policy.
- Reasonable time should be allowed for the employee to recover. However, if it is likely that the absence will be prolonged, with the employee continuing to be unfit to take part in an investigation, the investigatory process may proceed in their absence. The employee's representative may give evidence and state the case for the employee. The employee may provide a written statement in these circumstances.

### **3.10 Raising a Grievance During a Disciplinary Investigation**

- A grievance raised during the course of the disciplinary procedure will be referred to a member of staff senior to the Investigating Officer who will decide whether the grievance should be considered separately, or as part of the disciplinary process.
- Grievances will not ordinarily suspend the disciplinary proceedings and can run in parallel, however it is recognised that there may be circumstances in which disciplinary proceedings should be suspended to allow for the investigation of the grievance raised.
- Decisions regarding ongoing proceedings will be made on an impartial, case by case basis.



### **3.11 Notification of a Disciplinary Hearing**

- If a decision is reached as per clause 3.6 that the matter should be addressed through a disciplinary hearing, the employee will be informed of this decision and will receive confirmation in writing. The letter inviting the employee to a hearing will include:
  - The date, time and venue of the hearing – with at least 10 working days' notice.
  - The names of the panel members.
  - The specific nature of the allegation/s.
  - What the allegation may constitute
  - The employee's statutory right to be accompanied by either a work colleague or Trade Union Representative.
  - The requirement for all parties to provide names and status of any witnesses to be called at the same time as any documentary evidence, provided at least 2 working days before the hearing.
  - A copy of the Disciplinary Policy and Procedure.
  - The possible outcomes to the hearing.
  - All supporting documents to be used as evidence, including a copy of the investigation report at the time of being invited to the hearing. This will include as appropriate, detailed within the investigation report;
    - A summary of all relevant information gathered during the investigation
    - A copy of any relevant documents that will be used at the disciplinary hearing
    - A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case as much information as possible will be provided whilst maintain confidentiality
- The employee will be given 10 working days' notice of the meeting to provide the employee with a reasonable amount of time to prepare their case based on the information provided.
- Where the hearing date is postponed at the request of the employee or their representative, only one further hearing date will be arranged. The alternative date should be within 5 working days of the original hearing date. In the event of the employee being unable to attend the second date arranged, the Principal / Senior Leader may go ahead with the hearing in the employee's absence based on the evidence available.

### **3.12 Representation**

- The employee has the right to be represented and will be advised that they may be accompanied by a Trade Union Representative or a work colleague of their choice, excluding family members and solicitors. Family members as companions for employees under the age of 18 will be considered by the Trust.

- The employee will be responsible for making these arrangements and for providing any paperwork for the disciplinary hearing.
- The Trade Union Representative [or companion where applicable] may ask questions and sum up the employees' position but will not be allowed to answer questions on the employee's behalf. The employee may confer privately with their companion at any time during a meeting.
- If the employee chooses not to attend the hearing, they may choose to send a written statement for consideration at the hearing or a trade union representative may attend on the employee's behalf.

### **3.13 Disciplinary Hearing Procedure**

- The hearing will be chaired by the Principal or senior leader. The Investigating Officer will also normally attend to present the investigation.
- At the disciplinary hearing, the Investigating Officer will go through the allegations made against the employee and the evidence that has been gathered. The employee will be able to respond and present any evidence of their own, or their trade union representative should the employee have consented.
- The format for a disciplinary hearing is;
  1. Welcome by the Chair of the Panel:
  2. Ask all parties to introduce themselves and state their role in the hearing.
  3. Explain the purpose of the hearing.
  4. Enquire whether any reasonable adjustments are required for the hearing that have not already been established beforehand.
  5. Presentation of the investigation report by the Investigating Officer.
  6. Questions from the employee / representative to the Investigating Officer.
  7. Questions from the Hearing Chair / panel to the Investigating Officer.
  8. Presentation of the employee's case by the employee / representative, including evidence from employee's witnesses where applicable.
  9. Questions to the employee / witnesses from the Investigating Officer.
  10. Questions to the employee / witnesses from the Chair / panel.
  11. Summing up of the investigation report by the Investigating Officer.
  12. Summing up by the employee / representative of final comments
  13. Hearing adjourned and all parties asked to leave whilst the Chair / panel consider the evidence and make a decision on the level of sanction (if appropriate).
  14. All the parties return, and the employee is advised of the Chair / panel's decision (sanction and right of appeal to be communicated).
- In some cases where an additional period of consideration is required, the Chair will inform all parties of this and provide a written outcome within 5 working days.

- Minutes from the meeting and outcome letter confirming the outcome of the hearing and sanction (where awarded) to be circulated to the employee and their representative within 5 working days.

### **3.14 Disciplinary Hearing Panels**

- Disciplinary hearing panels will comprise of 3 persons of suitable position or seniority in the Trust. This may include members of local governing boards and where deemed appropriate, Trustees. The panel must not comprise of any persons who have had any involvement in the investigation. A member of the department will attend to advise and guide the panel is required.
- The attending HR representative will not be the same HR representative who has provided advice and guidance to the Investigating Officer. A note taker will be appointed for the disciplinary hearing panel. Notes will be issued for comment and return by all parties.
- The chair of the hearing will be: The Principal and one other panel member, more senior to the employee.
- The panel will be advised by a member of the HR department.

### **3.15 Disciplinary Panel Housekeeping**

- All mobile phones and recording devices must be switched off at all times within the disciplinary hearing. No recording will be allowed unless agreed by all parties before the hearing begins. Recording will be considered as a reasonable adjustment, where applicable, at the discretion and agreement of all parties.
- Minutes will be taken by a suitable person arranged by the Trust. Copies of all minutes should be circulated to all parties as soon after the hearing as possible and agreement sought as to the content.

### **3.16 Disciplinary Sanctions and Record of Hearings**

- Upon conclusion of the disciplinary panel hearing the determined sanction will be advised of. The usual penalties are set out below and can only be imposed once a disciplinary panel hearing has been concluded.
- The Trust aims to treat all employees fairly and consistently, and a sanction imposed on another employee for similar misconduct will usually be considered but should not be treated as a precedent. Each case will be assessed on its own merits.

#### **3.16.1 No further action**

- All allegations and documentation will be removed from the employee's file and removed from the record. This will be confirmed in writing.

### **3.16.2 Management advice**

- This should state that, although the allegation has some foundation, the employee will receive advice and (if appropriate) training and that the matter does not merit a disciplinary sanction. The letter could list mitigation that led to the decision and warning that a repeat could result in further disciplinary action.
- This letter will remain on file for a period of 3 months from the date of issue. Any management advice that does not merit a disciplinary sanction is not disclosable under section 4, employment history and references in Keeping Children Safe in Education.

### **3.16.3 First warning**

- This will be issued for more minor breaches of conduct. The employee should be notified that they have a right of appeal and that a record of the warning will be kept on file but disregarded for disciplinary purposes after 6 months subject to continuous satisfactory conduct during this period.

### **3.16.4 Written warning**

- This will be issued where an employee has been found to have committed an act(s) of misconduct. This written warning will set out the nature of the misconduct/reasons for the warning. The employee will be notified that the warning constitutes part of the formal disciplinary process and the consequences of any further misconduct of a similar nature, could be a further disciplinary action, up to and including dismissal during the life of the warning.
- The employee should be notified that they have a right of appeal and that a record of the warning will be kept on file but disregarded for disciplinary purposes after 9 months subject to continuous satisfactory conduct during this period.

### **3.16.5 Final written warning**

- This warning will be given where misconduct is not sufficient to justify dismissal but is sufficiently serious that it warrants a warning for gross misconduct. A final written warning may also be issued where there is still a failure to improve following a previous written warning/s.
- The employee should be notified that they have a right of appeal and that a record of the warning will be kept on file but disregarded for disciplinary purposes after 12-months subject to continuous satisfactory conduct during this period.

### **3.16.6 Dismissal**

- In cases of dismissal, the employee shall be given such notice as required under their employment contract to terminate their employment, except in cases of Gross Misconduct where the employment contract may be terminated

without notice constituting summary dismissal. The employee will be notified that they have a right of appeal.

- In addition, and where appropriate, there are a number of supplementary measures or recommendations that the panel may consider accompanying a written warning or a final written warning. For example, the necessity to attend specified training, redeployment, and demotion where appropriate.
- Where demotion is considered, it must be handled sensitively and should only be considered if it is deemed the only available option to prevent dismissal. Specified training and redeployment options must be exhausted.
- In cases where a management advice or a formal warning (sanction) has been issued for safeguarding reasons, and is deemed to be of a serious nature, this warning may be taken into consideration where future allegations arise and the record period has lapsed.
- Where a formal sanction has been issued, a record should be kept on the employee's personal file until such time as the warning has expired. However, where disciplinary sanctions relate to the safety and wellbeing of children and young people, records will be retained on the employee's personnel file permanently.
- Nb. Only live formal warnings (first warning, written warning and final written warning) and cases of dismissal will be disclosable by the Trust on an employment reference.

### **3.17 Disciplinary sanctions for employment references**

- Only live formal warnings (first warning, written warning and final written warning) and cases of dismissal will be disclosable by the Trust on an employment reference.

## **4 Right of Appeal**

- The purpose of an appeal is not to re-hear the original hearing and therefore the remit and scope of the considerations of the Appeal Panel is limited to the specific areas which the employee is dissatisfied with in relation to the outcome of the original hearing. There are stipulated grounds for appeal, which must be clearly evidenced:
  - a) New evidence, relevant to the case which was not available at the original hearing.
  - b) The disciplinary sanction or penalty was not felt reasonable and appropriate in all the circumstances of the case.
  - c) A procedural error in the disciplinary process.
  - d) Dismissal for an unfair reason.

## **4.1 Appeal Process**

- An employee can appeal against any formal disciplinary action. The appeal pro forma must be completed and sent to the HR representative who was present at the disciplinary hearing, within 5 working days of receipt of the decision letter clearly outlining the grounds of appeal.
- An appeal hearing is not a re-hearing of the original disciplinary hearing. The appeal needs to be based on specific reasoning as to why the employee believes that the original hearing was unfair.
- The employee will be informed of the scheduled hearing date in writing, providing at least 10 working days' notice. Where possible, every effort will be made to arrange this hearing date with the employee's Trade Union Representative, where applicable, in advance.
- The written notification will include the following information:
  - The date, time and venue of the appeal hearing.
  - A copy of the notes from the disciplinary hearing. Any new evidence and/or new witnesses to be presented/in attendance at the appeal hearing.
  - The employee's right to accompaniment by either a work colleague or Trade Union Representative.
- All parties' ability to produce any documents in evidence or references/testimonials at least 2 working days before the hearing takes place.
- A copy of the completed appeal pro forma as lodged by the employee.
- The Appeal Panel will also receive copies of the above. The panel will comprise of 3 persons of suitable seniority.

## **4.2 Action available to the Appeal Panel**

- The Appeal Panel may decide to:
  - Confirm the original decision.
  - Overturn the original decision.
  - Substitute with a lesser penalty.
- The decision of the Appeal Panel is final and presents the end of the internal process. Copies of the notes will be circulated to all parties as soon as practicable after the hearing.

## **4.3 Notification of decisions made by the Appeal Panel**

- Wherever possible, the Appeal Panel will convey their decision verbally and this decision will be confirmed to the employee, in writing, not later than 5 working days after the hearing.
- This letter will also confirm that this decision is final and there is no further right of internal appeal.

- Where a decision is made by the Appeal Panel to reinstate an employee following dismissal, continuity of service will be preserved.

## 5 Appendices

### 5.1 Appendix 1 Suspension Risk Assessment

Academy Site	Principal / Head of School
Employee	Role
<p>This form is to be used to assist the consideration of suspension and alternatives to suspension.</p> <p>In cases involving allegations of harm to a child made against staff, KCSiE Part 4 should be consulted, and the Harm Threshold considered. If harm threshold is met, the Principal must make a referral to the Local Authority's Designated Officer (LADO). The Principal can take the LADO view on suspension; however, the decision is ultimately with the Principal.</p> <p>Every effort will be made to inform the employee as soon as possible and suspend in person. If in person is not possible suspension notification may be via video call or telephone.</p>	
Details of allegation(s)	
<p>Where a sanction has previously been issued and the warning time has been served on the employees personnel file, this must be disregarded unless the sanction was of a safeguarding matter – then this can be referred to.</p>	
Considerations	
Does the nature of the allegation suggest the person has behaved in a way that has harmed a child, or may have harmed a child?	Yes / No
Does the nature of the allegation suggest the person has possibly committed a criminal offence against or related to a child?	Yes / No
Does the nature of the allegation suggest the person has behaved towards a child or children in a way that indicates he or she may pose risk of harm to children?	Yes / No
Are the police investigating the allegation?	Yes / No
Do the police have objection to the employee continuing to work during the investigation?	Yes / No/ NA

Does the LADO have objection to the employee continuing to work during the investigation?		Yes / No/NA
Has the Principal sought advice from the Head of Safeguarding?		Yes/No
Have HR been contacted for advice and guidance?		Yes/No
<b>Considerations</b>		
Can the member of staff be redeployed within the academy so that the individual does not have direct contact with the child(ren) concerned?		Yes / No
<b>How will this be achieved?</b>	<b>Who needs to know?</b>	<b>How will this be monitored?</b>
If no to the above can another adult be present when the member of staff has contact with children?		Yes / No / NA
<b>How will this be achieved?</b>	<b>Who needs to know?</b>	<b>How will this be monitored?</b>
<b>Considerations</b>		
Can the member of staff undertake alternative work within the academy, so the individual does not have unsupervised access to children?		Yes / No
If so, is this an option?		Yes / No / NA
<b>How will this be achieved?</b>	<b>Who needs to know?</b>	<b>How will this be monitored?</b>
<b>Considerations</b>		
Is moving the child(ren) to classes where they will not come into contact with the member of staff, making it clear that this is not a punishment (and parents have been consulted) an option?		Yes / No / NA
<b>How will this be achieved?</b>	<b>Who needs to know?</b>	<b>How will this be monitored?</b>



<b>Considerations</b>		
Can the member of staff be redeployed to an alternative location?		Yes / No
Is this an option?		Yes / No / NA
<b>How will this be achieved?</b>	<b>Who needs to know?</b>	<b>How will this be monitored?</b>
<b>Considerations (Note risk assessments may be required as part of considerations)</b>		
Is there a risk to the safety and welfare of others?		Yes /No
Detail:		
Is there a risk to the individual's safety and welfare?		Yes /No
Detail:		
Is there a risk to the individuals wellbeing and mental health if expected to attend work and deliver productive output whilst under investigation?		Yes /No
Detail:		
Is there a risk to the academy / Trust premises or property?		Yes / No
Detail:		
Is there a risk to the investigation (e.g potential for interference)?		Yes / No
Detail:		
Are there any other alternatives to the member of staff being suspended that have not already been considered?		Yes / No
Detail:		
If substantiated, is the allegation(s) of a nature, if proven, likely to constitute gross misconduct.  HRA to advise.		Yes / No
Is the member of staff a parent of a student at Astea?		Yes / No
If suspended from work, provisions must be made to accommodate parental rights / attendance at school etc.		
Is the member of staff a family member or partner of an employee of Trust?		Yes / No

If suspended from work, please detail that the employee cannot be prevented from having contact with such person(s) as per the terms of suspension.	
---	--

**Decision Summary (Will the member of staff be suspended? Why has this decision been made?)**

**Suspend**                       **Do not suspend**

Detail:

**Employee Assistance Programme (EAP) Support**

Have you provided the details of the EAP support plan to the employee.  
 Yes / No

Please ensure this is provided.

Please detail the welfare contact (this person will be nominated in the suspension letter).

**Communication Plan**

Who needs to know?	What do they need to know?	How will it be communicated?
Employee		Please insert details of meetings, calls, dates and times.
Examples - Social Care		
Examples - Police Authorities		
Examples - Head of Safeguarding		
Examples - LADO		
Welfare Contact		

<b>Principal / SLT</b>		<b>Signed</b>	
<b>Line Manager</b>		<b>Signed</b>	
<b>Date of Plan</b>		<b>Next Review</b>	
<b>HR Consulted</b>		<b>Yes / No</b>	

FORM	FOR084
Date	August 2024
Issue	V1