



The Elliot Foundation Academies Trust
Academies' Staff
Disciplinary Procedure
November 2014

Approved September 2014



The purpose of the disciplinary procedure is to provide consistent, fair and effective arrangements for maintaining standards of conduct and behaviour required by the academy for all staff. The procedure should not be seen just as a means of imposing sanctions but also as a way of encouraging improvement amongst employees whose conduct or behaviour is unsatisfactory. However employees need to understand that persistent acts of misconduct or a single act of gross misconduct puts their employment at risk and could ultimately lead to dismissal.

The Elliot Foundation Academies Trust (TEFAT) is required to set disciplinary procedures for the staff they employ and to make them known to these staff. This procedure includes legislative requirements and guidance contained in the ACAS code of practice. This procedure has undergone consultation with the TEFAT National Joint Committee (NJC).

The code of conduct for academy employees provides guidance to all employees on what behaviour is and is not acceptable at work. When a manager does have a concern regarding the behaviour or conduct of an employee they should first consider if any concerns can be resolved informally.

Where informal action does not resolve concerns or where the issue/s are more serious, the formal disciplinary procedure may need to be used. Issues must be dealt with fairly and consistently, including the following elements:

- Concerns should be raised with the employee and dealt with promptly
- Employers should act consistently
- Employers should carry out an investigation to establish the facts of the case
 - Employers must inform employees of the basis of any concerns and give them an opportunity to put their case in response before any decisions are made
 - Employers must allow employees to be accompanied at any formal disciplinary or grievance meeting by a recognised trade union representative or workplace colleague.
 - Employers must allow an employee to appeal against any formal decision made.

DISCIPLINARY PROCEDURE

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DISCIPLINARY PROCEDURE

1. AIM

- i. The aim of this procedure is to provide fair and effective arrangements for maintaining the standards of staff conduct and behaviour required by the Academy.
- ii. To support this aim the procedure takes account of best practice, legislative requirements and guidance contained in the ACAS Code of Practice on Discipline and Grievance Procedures.

2. SCOPE AND PRINCIPLES

- i. TEFAT is required to set disciplinary procedures for the staff that they employ and to make them known to these staff. TEFAT has delegated to Principals the power to suspend and dismiss staff, and to the Chair of the Local Governing Body (LGB) the power to suspend the Principal. These procedures have been agreed with the teaching and support staff Trade Unions and have been adopted by TEFAT for use across all its academies.
- ii. These procedures apply to all staff (including Principals) employed by TEFAT to work in the Academy (for any staff who are not employees of the Academy, the Academy HR provider should be contacted for advice). They do not apply to staff, working in the academy under contract arrangements with external providers.
- iii. Disciplinary procedures should be seen primarily as a consistent and fair means of addressing concerns about the behaviour and conduct of employees, encouraging improvement whilst providing a range of sanctions if required.

- iv. The procedure will apply to all matters relating to:
 - a. Conduct and behaviour in the workplace
 - b. Breaches of Academy Policy such as the Code of Conduct, and the Equality & Diversity Policy, rules and standards
 - c. Activities and behaviour outside the workplace which may bring the reputation of the Academy into disrepute
 - d. Allegations of misconduct arising from action under other Academy Policies and Procedures such as Bullying and Harassment
 - e. Inappropriate conduct towards children
 - f. Fraud & corruption

- v. Separate procedures and guidance exist for the management of unsatisfactory performance, sickness absence and medical capability. Where, in the course of investigating an incident of alleged misconduct, it transpires that, it is an issue of medical capability or unsatisfactory performance rather than misconduct, the matter should be referred for action under the relevant procedure. The same manager dealing with the misconduct under the Disciplinary Procedure will normally deal with the relevant capability or Medical Capability Review procedures.

- vi. The procedure is designed to help establish the facts of a case quickly and to deal consistently with disciplinary issues. Disciplinary action should not be taken until the matter has been investigated and employees will be given the opportunity to state their case before decisions are reached.

- vii. This procedure allows members of the Academy leadership team to initiate the procedure depending on the specific circumstances of the case, and the application of their judgement (when considering whether informal or formal action is appropriate). However, an investigation (no matter how brief) should take place prior to a formal disciplinary hearing.

- viii. The employee will have access to any evidence that the presenting manager wishes to rely on at the formal hearing, whether through witnesses or documentary evidence.
- ix. Minor instances of misconduct and poor practice should initially be dealt with in an informal way e.g. confidential discussion, counselling, training and setting clear standards for improvement. This could be in the form of an informal verbal warning (which can be confirmed in writing); this should include confirmation of appropriate and expected standards. It should be stressed that such action does not form part of the formal disciplinary procedure, although it should be made clear to the employee that formal action would be taken on recurrence of the conduct in question.
- x. Principals are expected to take all disciplinary decisions including dismissal (with the exception of decisions involving the Principal). Appeals against any formal disciplinary sanction imposed by the Principal, including dismissal, should be heard by the LGB appeal panel. TEFAT has delegated to Principals the power to suspend and dismiss staff. The Principal cannot delegate this responsibility to other members of staff in the academy. However where a Principal is on long term sick leave, secondment or some other long term absence, TEFAT may pass full (or partial) delegated responsibility to the person acting in the Principal's absence.
- xi. The Academy is strongly advised to take advice from its HR professional who can attend as adviser at the hearing. At hearings where dismissal is a possibility TEFAT may attend and the academy must make provision for this and ensure that the TEFAT Director of HR is informed in advance.
- xii. An employee should not be summarily dismissed (that is without notice) except in cases of a finding of gross misconduct. If an employee is dismissed for some other misconduct, such a dismissal will be with notice.



- xiii. Employees have the right to appeal against any formal disciplinary sanction imposed. There is, however, no right of appeal against any informal action taken.

3. TIMESCALES

- i. All parties to the proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this procedure are followed. Where the handling of the case would be compromised by the need to comply with the timescales and/or in the event more time is needed, the timescales may be extended. In this case the employee should be informed in writing and given the reasons for the timescale extension.
- ii. Where a trade union representative or work colleague chosen by the employee (who is the subject of disciplinary action or an investigation) to accompany them at any stage of the formal procedure cannot attend on the date proposed they should confirm this to the person conducting the hearing and an alternative date should be arranged. This should normally be within five working days, beginning with the first working day after the original date proposed by the employer.
- iii. The meeting would not normally be postponed a second time and this should be made clear in the communication which is sent agreeing the first postponement. However, in exceptional circumstances, a further postponement may be agreed.

4. RIGHT TO REPRESENTATION

- i. Employees, who are the subject of disciplinary action /investigation, have the right to be accompanied/ represented by a recognised trade union representative or work colleague at any formal stage of the procedure including at investigative interviews. Managers should consider whether it might be helpful in achieving a resolution to invite the employee's representative to informal stages.
- ii. In exceptional circumstances, a representative who is neither a work colleague nor a trade union representative may be

permitted, for example, if there are medical reasons. This will be at the sole discretion of the officer conducting the meeting (i.e. the Investigation Officer for Investigation Meetings, and the Hearing Officer for Disciplinary Hearings). Legal representation, specialist employment law advisers and similar, should not be allowed other than where they are trade union representatives.

- iii. Employees and their representatives should be consulted on the timing of meetings/hearings under this procedure but the final decision on timing will be made by the presiding manager.

5. ROLE OF HUMAN RESOURCES (HR) REPRESENTATIVES

- i. At all stages in the Disciplinary Procedure, in addition to those stages where there is a specific recommendation, the Academy's HR provider should be consulted for advice.
- ii. HR's role includes the following:
 - a. Providing advice to the Principal and academy managers on informal action;
 - b. Providing advice to the Principal or Chairs of LGB on taking a decision to suspend an employee;
 - c. Providing advice to the Principal or Chairs of LGB on taking formal disciplinary action, including advice on child protection or other complex cases, framing allegations, disciplinary hearing case documentations
 - d. Ensuring that the investigating / hearing officers / appeal hearing governors are aware of the legal aspects and any other sensitive / complex aspects of a case;
 - e. Advising at disciplinary hearings and/or disciplinary appeals hearings;
 - f. Advising on letters which confirm the outcome of the hearing;
 - g. Advising on interpretation of academy policy;
 - h. Monitoring suspensions and progress on disciplinary investigations / hearings to ensure that the process is completed as quickly as possible;

- i. By agreement and exception, to act as investigating officer for the Academy.
- iii. The role of HR at disciplinary / appeals hearings is to provide advice and support to the Hearing Officer or panel (e.g. on procedural matters). The HR representative may also ask all parties questions at disciplinary / appeal hearings.

6. ROLE OF INVESTIGATING OFFICERS

- i. Investigating Officers will normally be drawn from the academy leadership group. There will, however, be exceptional circumstances where it will be necessary to appoint an independent Investigating Officer. This could be, where all members of the academy leadership group have had prior involvement with the case, which compromises their impartiality or if the disciplinary was against the Principal. Further advice on this can be obtained from your HR provider. Investigating Officers should be required to arrange for the following:
 - a. Undertake investigations, prepare reports and draft allegations;
 - b. Ensure that all relevant paperwork and full details of the allegations and witnesses are supplied to the employee;
 - c. Make arrangements for administering the process including arranging for notes to be taken and written up, including clerk support if required;
- ii. The Principal should generally hear Disciplinary Hearings. The exception would be, where their own involvement in a case could be seen as compromising their impartiality. In such cases the TEFAT director of HR should be consulted with regard to delegating powers to the Hearing Officer.
- iii. Investigating Officers should consult with HR before conducting a disciplinary investigation and at all stages of the process.

7. DISCIPLINARY RULES

- i. This section and further details in Appendix 1 outline situations that could result in disciplinary action being taken. This list is not exhaustive and there may be actions that are not listed, but may nevertheless be the subject of disciplinary action.

Gross Misconduct

- ii. Gross misconduct is an act/s of misconduct serious enough to justify dismissal. Where an allegation is considered to potentially be gross misconduct, then this may result in the employee's immediate suspension from work. If the allegations are proven, then this could result, after due process, in summary dismissal without notice. Examples of gross misconduct are detailed in Appendix 1 although this is not an exhaustive list. Further information on suspension is provided in paragraphs 9.12 to 9.20 below.

Other Misconduct

- iii. There is also other misconduct, which might be serious enough to merit dismissal where the Hearing Officer decides that no lesser sanction would be sufficient. In this event justification for the decision to dismiss should be provided misconduct of a serious or repeated minor nature may result in the issuing of a written or final warning. Examples include, inappropriate behaviour e.g. hostility or rudeness, failure to comply with attendance or timekeeping requirements. Examples of misconduct are contained in Appendix 1.
- iv. Cumulative or repeated acts of misconduct may lead to dismissal with notice in situations where an act of misconduct is committed while an earlier warning is still in force.

8. ABOUT THE PROCEDURE

Confidentiality

- i. At all stages of the procedure confidentiality must be observed. Circulation of information will be to those necessary to ensure a fair investigation and hearing. Unnecessary disclosure of confidential information by any party at any stage could itself be a justification for disciplinary action.

Records

- ii. Where a sanction is imposed records of proceedings must be kept on the employees file at the academy and managed appropriately. Tape or audio recordings of meetings is not normally permitted. Principals should ensure that the Academy keeps a record of the hearing and any sanction, with the outcome retained on the employee's personal file at the Academy. Retention periods are dealt with later in this procedure. The Academy should provide someone to take notes of the disciplinary hearing. In exceptional circumstances this may be an external person e.g. a clerk to governors from another academy.

Trade Union Representative

- iii. Where an employee under investigation is a representative of a recognised trade union, there should be discussion with the local senior representative or full-time official of that union before proceedings commence, except where immediate action may be required e.g. suspension. In any event, the HR provider should be consulted about cases involving trade union representatives before any action is taken under this procedure.

Discipline and Grievance

- iv. Employees cannot raise a grievance about the fact that the Academy may take disciplinary action against them, including

the fact that the Academy is commencing or contemplating commencing the investigation stage of the procedure.

- v. The only exceptions would be a grievance that claims the disciplinary action amounts to or would amount to unlawful discrimination, or that the true reason for the disciplinary action is not the reason given.
- vi. In such cases, consideration should be given to suspending the disciplinary procedure for a short period whilst the grievance is looked into. The decision about whether or not suspend the disciplinary action, and for how long, is at sole discretion of the academy.
- vii. In any cases where a grievance is raised by an employee who has been subjected to the disciplinary procedure, advice should be sought from HR before proceeding.

Criminal Offences

- viii. Sometimes an allegation about conduct at work or related to work, leads to criminal action against an employee, and / or an investigation by the police, or an external agency, and / or an investigation by TEFAT auditors. In these circumstances (and subject to the exceptions in paragraph 9.9), the Academy is not always obliged to await the final outcome of the criminal proceedings or of the external investigation, but must consult with the police if the police are investigating a criminal matter, and should consult with any other agencies, before beginning disciplinary action. The Academy may then be able to conduct its own investigation and take its own disciplinary action. The Academy may however choose to await the final outcome of the criminal proceedings or of the external investigation before commencing its own disciplinary action. In such cases, the delay between the date of the alleged misconduct and the date of the commencement of disciplinary action will not be a reason for the Academy to forgo disciplinary action.

Allegations of Child Abuse

- ix. Notwithstanding paragraph 9.8, and the general obligation on the Academy to act promptly, there will sometimes be overriding reasons to delay the commencement of disciplinary action. For example, where there are allegations of abuse against children (whether or not in the course of employment), this may lead to a multi-agency meeting which will take precedence over any Academy disciplinary action. Procedures for dealing with allegations of child abuse by Academy based staff are available separately. In every case advice must be sought from the Local Authority Designated Officer for Child Protection (LADO) to assess whether the allegation meets the threshold of significant harm. If so, a child protection strategy meeting will normally be convened. HR and the Principal or Chair of LGB should be involved and invited to attend strategy meetings where appropriate.

Other Sensitive Allegations

- x. There may also be specific legislation (for example regarding money laundering or terrorism), which prevents the Academy notifying the employee of the alleged misconduct. In such cases, the delay between the date of the alleged misconduct and the date of the eventual commencement of disciplinary action, will not be a reason for the Academy to forego disciplinary action.
- xi. Criminal acts committed or alleged to have been committed, other than in the course of employment, may warrant disciplinary action where the offence affects the interest and / or reputation of the Academy and / or the performance of the employee's contract of employment or where the existence of the charge would seriously undermine the trust and confidence the employer has in the employee.
- xii. Where disciplinary issues arise involving potential or actual criminal offences, advice should be sought from the Academy's HR provider prior to making decision.

Suspension

- xiii. Suspensions must be authorised and carried out by Principals (or their designated deputy when the Principal is not on site) or the chair of LGB (in case of Principals). The employee should be told of the reason for the suspension. Where this is not possible, for example, where it may prejudice an external investigation, then s/he should be given general or broad reasons. The employee should be told that suspension is a neutral act.
- xiv. The circumstances and nature of the allegations may require an employee to be suspended from duty during formal disciplinary proceedings. This would be where there is a possibility of a criminal charge or dismissal for gross misconduct or where there has been a serious breakdown in relationships, or where it may not be suitable for the employee to remain at work e.g. if their presence could hinder or interfere with the investigation, or their presence at work potentially puts others at risk, then suspension would be appropriate. Decisions on suspension should be made by the Principal or Chair of LGB (in the case of the Principal), taking advice from HR as necessary.
- xv. Alternatives to suspension must be considered where feasible, for example, transferring to other duties, transferring the employee to another workplace, working from home or special leave. Consideration should also be given to the potential detrimental effect of suspension on both the employee and the service. The reason as to why suspension is considered appropriate should be provided to the employee.
- xvi. The suspension should be confirmed in writing to the employee within two working days of the act of suspension, with the reasons for the suspension.
- xvii. Consideration should be given (by the respective managers) to suspending an employee from any other positions a person may hold with other TEFAT Academies, although alternatives suspension must be considered as detailed above. HR will be



able to check whether an employee holds more than one contract of employment with TEFAT.

- a. If it is known that the employee is a trade union member, reasonable steps should be taken to notify the employee's trade union representative prior to the suspension.
 - b. Reasonable efforts must be made to enable a trade union representative / work colleague to accompany the individual, although this will not always be possible.
- xviii. A suspension is a neutral act and should not be used as a sanction. An employee who is suspended pending a disciplinary investigation will be suspended on full contractual pay. NB: "full contractual pay" means basic salary, contractual overtime and any contractual allowances but does not include voluntary overtime. This may also include any authorised deductions (e.g. for payment of rent etc.) and / or be at half or nil pay in accordance with the Academy's sick pay scheme and / or be at a rate of pay appropriate to any contractual variation in effect at the time.
- xix. All suspensions must be reviewed by the Principal or Chair of LGB (in the case of Principals) after 20 working days. Thereafter, suspension must be reviewed every 20 working days and a written explanation provided for the continuation of the suspension, if the employee (or their representative) requests it. The chair of LGB or Principal with the chair of LGB authorisation must act promptly to lift the suspension if it becomes clear that there is no longer a justification for suspension (whether or not the disciplinary action is to continue).
- xx. Employees who are suspended will not be permitted to enter the academy site except by prior agreement with the Principal or Chair of LGB (in the case of Principal). They must also not contact work colleagues during working hours for any reason connected to the suspension or their work at the Academy, unless they have permission from the Academy to do so. This permission may be required if the employee who is suspended

wishes to contact colleagues at the Academy, in support of their own defence. Employees must make themselves available as required during normal working hours and comply with the academy's policies and procedures e.g. sickness and leave arrangements.

9. INFORMAL ACTION

- i. The following section deals with minor disciplinary issues and should not be used for cases involving serious or gross misconduct, where formal action should be instigated immediately. Performance issues should be dealt with under the Academy's Capability Procedure.
- ii. Cases of minor infringement of rules and standards should be dealt with through confidential discussion, counselling, management guidance, informal verbal warnings, instructions and training; rather than the formal Disciplinary Procedure. The Academy manager should confirm informal discussions and action to the employee in writing.
- iii. An informal verbal warning can be defined as a manager informing an employee during a confidential discussion that the employee has fallen below the standards of conduct / behaviour expected by the Academy and recurrence/s may lead to more formal action under the disciplinary procedure. Managers are encouraged to discuss such issues with the trade union representative to assist dispute resolution.
- iv. Before taking any formal disciplinary action, if appropriate, line managers should initially try and resolve the matter informally through discussions with the employee as part of their day –to-day management responsibilities. For example, this may involve counselling, training, setting clear standards for attendance and conduct and so on.
- v. Where improvement in attendance or conduct is required, the employee should be told what standards are expected, how this will be reviewed and over what time period. Any informal disciplinary discussions should be noted, with a copy given to

the employee concerned. Employees should also be made aware of what action could be taken if they fail to improve.

- vi. If the employee subsequently achieves the required improvements, then they should be informed about this and advised of the need to maintain that improvement. A file note should be taken by the Principal / Manager confirming the outcome. A copy should be given to the employee.
- vii. Where the required improvement is not reached or maintained, then the informal action may be referred to in any formal action subsequently taken under either the Academy's disciplinary or capability procedures.
- viii. If during an informal meeting it becomes clear that the matter is more serious than first thought, the meeting should be adjourned and a decision made as to whether formal action should be initiated. Managers should speak to their Principal who should contact HR for further advice at this stage. The employee should be kept informed of any decisions and advised of any timescales.

10. START OF FORMAL ACTION – FORMAL REPRIMAND

- i. The formal procedure is designed to be used only if attempts to resolve potential problems through normal supervision and discussion or informal action has been unsuccessful, or in cases of more serious misconduct. The object is to provide a framework for dealing with employees in a fair, equitable and expeditious manner. Prior to any disciplinary action commencing, allegations will be carefully and promptly investigated.

Misconduct

- ii. Disciplinary action may be taken for misconduct and gross misconduct, examples of which are included at Appendix 1. The lists are not exhaustive.

Minor misconduct – Formal Reprimand Procedure

- iii. If, despite informal discussions, conduct does not meet acceptable standards, employees may be given a formal reprimand. A formal reprimand may also be given if appropriate, as a sanction for minor forms of misconduct without prior warning.
- iv. The employee's line manager should arrange to interview the employee concerned on a one-to-one basis. An employee has the right to be accompanied by a trade union representative or work colleague. The employee should be invited in writing giving at least 5 days' notice giving the date, time and purpose of the meeting.
- v. If the outcome of the meeting is that a formal reprimand should be given, then the manager will advise the employee of the reason for the warning, that the warning is the first stage of the disciplinary process, the improvements required and any time periods.
- vi. Employees should also be advised of their right to appeal against the decision to the Principal, or if the Principal made the decision, to the LGB appeal panel, within 5 working days of the formal reprimand being given.
- vii. A copy of the reprimand will be kept on the employee's personal file and a copy given to the employee. However, the reprimand will lapse after six months, subject to satisfactory conduct.
- viii. If the misconduct persists managers should consult the Principal and HR with a view to proceeding with formal action, as excessive use of formal reprimands must be avoided.
- ix. Where a manager becomes aware of alleged or suspected serious misconduct by an employee, it should be reported to the Principal and advice should be sought from Academy's HR provider. In all cases an investigation should be carried out. Suspension should also be considered where appropriate (see paragraphs 9.13 to 9.20 above).

11. DISCIPLINARY INVESTIGATION

If an investigation is required this should be carried out in accordance with section 6 and appendix 10

12. DISCIPLINARY HEARING

- i. If an investigation confirms that, there is a case to answer and / or the allegation/s is considered too serious, to consider under an earlier stage of this procedure, and the Principal / Governor receiving the report agrees, then a Disciplinary Hearing will be arranged. The Principal will decide whether it is the Principal or member/s of the governing body who will conduct the hearing (the Principal may not be able to hear the matter because of one of the aspects of appendix 4 applies). The exception to this would be if the person under investigation was the Principal in which case the Chair of LGB would arrange a panel of Governors to conduct the hearing. The hearing will normally be arranged within **10** working days of the investigation being completed. LGB disciplinary panel hearings may however take longer to arrange. The Principal will hear the case (except in cases involving the Principal) and will make the arrangements to hold the hearing with advice from HR. It is important that the Hearing Officer is impartial and has not had previous involvement in the case which would compromise their ability to hear the matter impartially. Where the allegations may lead to dismissal then a HR representative should attend (and a representative of TEFAT may attend).
- ii. Arrangements to hold a Disciplinary Hearing will then be made in accordance with the following paragraphs.
- iii. The Principal should make arrangements for a clerk to attend and to take notes of the hearing, a copy of which will be made available to the employee.

- iv. A HR representative may attend to provide advice to the decision-making person or panel, and may ask questions during the proceedings.
- v. The Investigating Officer will normally present management's case at the disciplinary hearing.
- vi. The Principal must inform the employee by letter, at least **5** working days before the Hearing of the following:
 - a. The date, time and place of the hearing
 - b. The details of the alleged misconduct including whether it is deemed minor, serious or gross as the possible consequences including where relevant dismissal
 - c. The identity of the manager who will be presenting the case
 - d. The right for the employee to be accompanied by a trade union representative or work colleague
 - e. The right for the employee to call witnesses and to produce relevant information
 - f. Enclose a copy of the disciplinary procedure, together with any supporting evidence (including the report of the Investigating Officer), if the case is particularly lengthy or complex then longer notice should be given
 - g. Confirmation of any witnesses that will be called by the Academy
- vii. An employee may choose to submit written evidence prior to the disciplinary hearing. This must be provided to the Principal or LGB disciplinary panel chair and officer presenting the case at least **2** working days before the date of the disciplinary hearing, and include the names of any witnesses the employee proposes to call. It is for the employee or their representative to organise for their witnesses to attend the hearing. Where the witnesses are academy employees, the Principal will arrange for them to be released from duties.
- viii. Evidence produced later than the timescales mentioned above will not necessarily be considered. The Principal or LGB disciplinary panel chair has discretion to allow evidence that

has been submitted late in exceptional circumstances, having heard representations from both parties, and having taken into account the reasons for the delay, the importance of the evidence and whether or not a short postponement would be a fair and practical alternative to exclusion of the evidence.

Non-attendance by employee

- ix. If the employee does not attend the disciplinary hearing, the hearing may either proceed in their absence or be adjourned, taking into account the reasons for the non-attendance. If the reason for not attending is non-availability of an employee's representative refer to paragraphs 3.2 and 3.3 of this procedure (Appendix 3).
- x. If non-attendance is due to a medical reason, the employee must inform Hearing Officer as soon as possible. Written confirmation together with a medical certificate can be required. The employee may also be referred to occupational Health to ascertain whether they are fit to attend the hearing.
- xi. If it is decided to adjourn the disciplinary hearing, then a new date and time will need to be arranged. If the employee again fails to attend, the hearing will normally go ahead in their absence after considering all the circumstances of the case. This should be confirmed in the letter to the employee setting out details of the new date and time for the hearing. Where an employee is unable to attend, they may arrange for representation (in accordance with section 4) at the hearing in their absence, or make written submissions.

Disciplinary Hearing Procedure

- xii. The disciplinary hearing will be conducted in accordance with the arrangements set out in Appendix 2. The Principal or LGB Disciplinary Panel Chair should ensure that all the relevant facts have been presented by both parties prior to summing up and may decide that further information / witnesses are required. The Principal or LGB Disciplinary Panel Chair may



adjourn the hearing where appropriate for any reason. The parties will be given reasonable notice of the hearing being reconvened, and at least **3** working days' notice of this. The Principal or Panel Chair will make the final decision on any matters raised at the hearing.

Decision

- xiii. A decision will be taken following careful consideration of the evidence provided by all parties. Following completion of the disciplinary hearing, all parties other than the Principal or LGB Panel, the HR representative and the note taker will withdraw.
- xiv. If a decision is reached quickly, the Principal or Panel Chair may recall the parties to give this decision orally, and confirm in writing, within **5** working days of the conclusion of the disciplinary hearing.
- xv. If it appears unlikely that a decision will be made while the parties are still present, then arrangements will need to be confirmed for how the decision will be communicated.

Disciplinary Measures / Outcomes

- xvi. Disciplinary measures / outcomes that may be reached are as follows:
 - a. No Disciplinary Action to be taken**

In which case all correspondence relating to the hearing should be removed from the individual's personal file. The employee concerned and manager presenting the case should still receive confirmation of the outcome in writing, but should be advised, where appropriate, that no record (other than the outcome letter) has been kept on the personal file.
 - b. A Formal Warning**

This will be recorded and the employee should be advised that any further disciplinary lapse could result in further disciplinary action including dismissal. In reaching

a decision about which sanction to apply, the Principal or Disciplinary Panel should take into account all of the circumstances of the case.

c. A Final Written Warning

The employee should be advised that this is a final written warning and that any further disciplinary lapse could result in further disciplinary action, including dismissal.

d. Demotion and / or transfer (as an alternative to dismissal) to a similar or lower graded post

A transfer may be considered appropriate in circumstances where it would not be appropriate to allow the employee to return to their former work area. In cases of gross misconduct this would only be appropriate if there is substantial mitigation. A transfer would normally be accompanied by a written warning. Before reaching such a decision, the Principal or Disciplinary Panel must be content that there is a suitable vacancy into which the employee can transfer. Payment would be made at the grade or pay rate applicable to the new job and not the rate applicable to the employee's previous job. If the employee refuses to accept the new employment then the original dismissal will stand. Where demotion or transfer of a member of support staff is proposed as an alternative to dismissal, payment will also be made at the rate applicable to the new job. An employee's refusal to accept such an offer will result in dismissal. If gross misconduct, then dismissal will be without notice and in all other cases dismissal with notice.

e. Dismissal with or without notice

Dismissal is an appropriate sanction for very serious misconduct or further misconduct after previous warnings. Other than for gross misconduct, dismissal is with notice. In cases of gross misconduct, the Academy has the right to dismiss summarily (e.g. without notice)

Live Warnings

- xvii. Warnings will cease to be 'live' following the specified period of satisfactory conduct and the warning removed from the personal file once it is spent. The following time periods shall apply to formal warnings and in the event that an employee leaves the Academy, it will expire after the same time period:
 - a. Formal Reprimands will be disregarded after 6 months of satisfactory conduct.
 - b. Formal Written Warnings will be disregarded after 12 months of satisfactory conduct.
 - c. Formal Final Written Warnings will be disregarded after 18 months of satisfactory conduct.
 - d. Where a Child Protection Allegation has been proven, this will remain on file for 10 years from the date of the offence or until the employee reaches 65 years of age, whichever is the latter. This requirement applies to all staff proven guilty of Child Protection offences, regardless of the level of sanction imposed.
 - e. Where the allegation has been proved to be malicious, no reference should be made to it on the employee's file.
 - f. Where the allegation is 'unsubstantiated' or 'unfounded' it should not be referred to in any future employment references.

- xviii. In all cases, where a written warning is given to an employee, the employee will be notified in writing of the period over which the warning will be regarded as 'live'. Once it is spent it will be removed from the personal file.

Written Notification

- xix. The letter to the employee should normally be sent within 5 days of the disciplinary hearing, together with a copy of the notes of the hearing. The outcome letter must set out the following if relevant:
 - a. The reason for the decision and the disciplinary sanction, covering details of the allegations, including which were

upheld and why, the factual issues covered, how the decision was reached, which version of events was preferred and why this was

- b. The implications and consequences of future misconduct
- c. Recording arrangements for disciplinary warnings
- d. The date (if any) from which any written warning or final written warning will be disregarded for the purpose of this procedure (in exceptional circumstances such warnings may be effective indefinitely)
- e. The effective date of dismissal
- f. The right of appeal
- g. Any further action required, including the lifting of suspension (where appropriate) and date of return to work, relegation, training, standard setting etc.

13. APPEALS

The appeal stage forms part of the statutory procedure and, whilst there is no compulsion on an employee to appeal, an employee has the right of appeal against disciplinary action taken under this procedure. An employee may appeal for a number of reasons, including:

- a. The process followed was flawed
- b. The disciplinary sanction was not appropriate and / or reasonable in all the circumstances and / or new evidence has come to light

The intention to appeal must be registered within **5** working days of the date of the letter informing the employee of the outcome of the disciplinary hearing, and should be sent to the Principal (or Chair of LGB in case of the Principal). The grounds for the appeal, specifying the reasons should follow within a further **5** days (e.g. within **10** days of the date of the outcome letter). If not received within this timescale then the employee will be deemed to have failed to appeal and no further action will be taken in relation to the notice of appeal. If the employee wants a short extension of time for lodging the full grounds of appeal, then the employee must make a written request with reasons within the time limit. The request will normally be granted where there is good reason. The duration of the extension will be at the discretion of the



Chair of the Panel, but will not normally be longer than **10** working days.

Appeals against disciplinary action will be heard by the LGB appeal panel. This should be a panel of three governors who should not previously have been involved in the case. The Panel may be supported by HR (see procedure at Appendix 4).

If an employee lodges an appeal against dismissal, then the employee will not be reinstated, nor be entitled to have the termination date delayed, pending the outcome of the appeal hearing.

Timing of Appeal Hearing

The Appeal Hearing will be normally held within **10** working days of receipt of the full grounds of appeal. The employee and (if appropriate) their representative, will be given at least **5** working days written notice of the hearing. Where possible the employee and their representative should be consulted over the date and time of the appeal hearing:

- a. The date, time and place of the hearing
- b. Details of the person or panel hearing the appeal
- c. The employee's right to attend and be represented at the appeal by a trade union representative or work colleague

Provided the employee has been given the appropriate notice of the date of the hearing, the appeal may be considered on the basis of the available evidence in the absence of the individual where no reasonable excuse has been provided.

Appeal Hearing Procedure and Process

Appeal Hearings will be conducted in accordance with the arrangements set out in Appendix 3. The appeal hearing should address the arguments set out in the grounds of appeal (rather than a full rehearing of the issues) and determine whether the decision made at the original hearing was reasonable in all the circumstances.



The Principal or Chair of the original disciplinary hearing can decide to prepare a statement in response to the employee's submission. If this course of action is decided, the statement should be provided to the employee within **5** working days of receipt of the notice of the appeal or of the full grounds of the appeal, if sent later. If further clarification or elaboration is considered necessary, either or both parties will be asked to provide this information, at least **3** working days before the appeal hearing.

Outcomes

Possible outcomes of Appeal Hearing considering appeals against a warning:

- a. A decision to uphold the employees appeal and either revoke the decision completely or impose a lesser sanction
- b. Deny appeal and confirm decision to issue reprimand, warning, or withhold annual increment

The decision of the governing body appeal panel will be final.

Possible outcomes of Appeal Hearing considering appeals against demotion or dismissal are:

- a. An adjournment to allow for additional evidence and/or witnesses and/or information to be made available
- b. A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser sanction
- c. To make any other appropriate recommendation
- d. Any combination of the above or
- e. To submit the case back for a new hearing by a newly constituted LGB disciplinary panel (In the event that the panel believe that a disciplinary hearing was so faulty as to render the decision unsafe OR that important evidence was either not available or not appropriately considered at the original hearing AND feel unable to rehear the case and / or substitute a new decision for the original then the case be remitted for a new hearing subject to the agreement of all parties to cooperate)
- f. To deny the appeal and confirm the relegation/dismissal.



The appeal panel will not, however, be empowered to impose a more severe penalty than, that imposed at the original disciplinary hearing. The decision of the governing body appeal panel will be final.

Notification of Decision

The decision will be given orally on the day of the hearing, unless it is not practical to do so. In all cases, the decision of the appeal will be confirmed in writing within **5** working days of the conclusion of the hearing.

Where the disciplinary action is rescinded, all records will be removed from the employee's personal file and destroyed. A copy of the investigation will be retained in accordance with the Academy's HR record keeping practices.

14. MONITORING AND REVIEW

This procedure will be reviewed on a regular basis and changes and improvements made where necessary by TEFAT. Employees at the academy and recognised trade unions will be consulted on any proposed changes to this procedure.

Appendix 1

Types of Misconduct

Gross Misconduct

If an employee is found guilty of gross misconduct then the normal consequence will be dismissal without notice. Offences of the following nature are may amount to gross misconduct:

- Serious failure to comply with or operate the Academy's Equality and Diversity policies. Examples include; serious acts of discrimination, harassment, or verbal abuse against employees, clients, parents or members of the public on grounds of race, sex, disability, age, sexual orientation or religious beliefs; the display or circulation within the workplace or academy community of any literature or material (such as pornographic or racist materials) via any medium that could offend other persons
- Serious bullying or harassment
- Serious infringement of the academy's Health & Safety policy, procedures or guidance
- Serious failure to comply with or operate the academy's Code of Conduct e.g. holding unauthorised paid employment during paid academy time; conducting inappropriate relationships with vulnerable clients; not declaring a personal interest which may infringe the employee's impartiality
- Serious negligence that causes or might cause unacceptable loss, damage or injury
- Bringing the reputation of the academy or TEFAT into serious disrepute
- Incapability whilst on duty brought on by alcohol or illegal drugs
- Serious failure to comply with or operate the academy's information systems and security standards e.g. gaining unauthorised access to passwords and breaches of the use of the email and internet policy including emails with pornographic attachments
- Serious breach of financial regulations or procedures
- Unauthorised removal, possession, use or theft of property belonging to the academy, an employee, client, parent or member of the public
- Acts of violence including the assault of an employee, client, parent or member of the public during working hours or in connection with their employment of work

- Falsification of qualifications or information to obtain employment with the academy or which are a statutory or essential requirement of employment or which result in additional remuneration
- Deliberate falsification of records i.e. attendance sheets, timesheets, subsistence and expense claims etc.
- Serious breach of rules or standards relevant to employment (e.g Teacher Standards)
- Acceptance of bribes or other corrupt or fraudulent practices
- Defrauding the Academy, TEFAT, or Council e.g. in relation to housing or council tax benefit, grants and housing property
- Disclosure of highly confidential matters to public sources or the deliberate unauthorised use or disclosure of any information or computer generated information from which a living individual can be identified (Subject to the Public Interest Disclosure Act 1998)
- Committing a criminal or civil offence at or away from work that renders the employee unsuitable to remain in the academy's employment or which may seriously damage the academy's reputation. Or where there are reasonable grounds to believe that a serious criminal offence has been committed which may be connected or unconnected with their employment
- Allegation of child abuse or serious malpractice if proven

Other types of misconduct

Other types of misconduct are listed below (the list is not exhaustive). These will usually result in a sanction that is less than dismissal, but dismissal may sometimes be the result depending on the circumstances and/or in cases where the misconduct is repeated.

- **Attendance and Timekeeping** – failure to comply with attendance and timekeeping requirements, failure to follow procedures for booking and returning from leave, persistent absence and/or excessive absence without medical reason
- **Telecommunications related issues** – abuse of telephone, fax, e-mail or internet for personal reasons, inappropriate use of e-mail or internet (gross misconduct in serious cases), recording conversations or meetings without having been given permission by the employee/manager concerned



- **Behaviour** – failure to follow a legitimate management instruction, prolonged time-wasting, inappropriate behaviour towards a colleague, manager, pupil or a person in the care or charge of the Academy, parent or member of the public (gross misconduct in serious cases)
- **Poor working practices** – failure to maintain proper records, failure to follow academy procedures e.g. financial regulations, safety standards
- **Malicious complaints/grievances made against another employee or manager (gross misconduct in serious cases)**
- **Other breaches of the Academy’s Code of Conduct**



Appendix 2

Procedure to be followed at Disciplinary Hearings

2.1 The Principal or Chair of the LGB disciplinary panel will invite both parties into the room at the same time, introduce all parties present and explain the purpose and conduct of the hearing and how witnesses will be managed.

2.2 The employee will then be asked to state whether s/he admits or denies the allegations.

Where employee admits the allegations

2.3 If the employee admits the allegations, the employee will be invited to present any mitigating circumstances to the Principal / Disciplinary Panel. The presenting manager, the Principal or Panel members and the HR Advisor may then ask questions of the employee in turn.

2.4 In addition, the Principal/Disciplinary Panel may require that witnesses / evidence should be called / produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Principal / Disciplinary Panel may decide to adjourn the hearing to allow for this if necessary.

2.5 It is for the Principal / Disciplinary Panel to manage the process and intervene where appropriate.

Summing – up stage

2.6 Both parties will then have an opportunity to sum up, with management summing up first, followed by the employee/representative. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.

Deliberation

2.7 The Principal / Disciplinary Panel will then ask both parties to withdraw apart from the HR Advisor and note taker. The Principal / Disciplinary panel should indicate to the parties whether they should wait to be recalled for the



decision. The Principal / Disciplinary Panel should then reach a decision on the basis of the evidence presented in the course of the hearing with advice from the HR Advisor as necessary.

The Decision

2.8 The Principal / Disciplinary Panel Chair may give decision verbally at the end of the Hearing or in writing later. In any event the decision must be confirmed in writing, within **5** working days of the Hearing, to the employee and copied to their representative and to the manager presenting the case. The HR Advisor will provide advice on the content of the outcome letter.

Where employee denies allegations

Management presentation with witnesses

2.9 The management representative will present the case.

2.10 The other parties may ask questions on the presentation in the following order:

- Employee and / or trade union representative / work colleague
- Principal / Disciplinary Panel Members
- HR Advisor

2.11 The manager presenting the case will then call the witnesses.

2.12 The other parties may ask questions of the witnesses in the following order:

- Employee and / or trade union representative / work colleague
- Principal / Disciplinary Panel Members
- HR Advisor

Employee's presentation of the witnesses

2.13 Following completion of the management case, the presentation is then reversed, with the employee and/or trade union representative/work colleague having the chance to put their case. Questions may be asked on this presentation by the presenting manager, the Principal/Disciplinary Panel members and the HR Advisor in that order.

2.14 The employee / trade union representative / work colleague will then call witnesses. The Principal / Disciplinary Panel Chair will explain to the witness the procedure to be followed.

The employee/trade union representative/work colleague may then ask questions of the witness. The other parties may ask questions of the witnesses in the following order:

- Manager presenting the case
- Principal / Disciplinary Panel
- HR Advisor

2.15 Following the questioning by the other party, witnesses may be re-examined once more by the manager, employee (trade union representative/work colleague), Principal/Disciplinary Panel members or HR advisor, if necessary, to clarify any points raised during the cross-examination.

2.16 It is for the Principal / Disciplinary Panel Chair to manage the process and intervene where necessary.

2.17 Once each party has completed their questioning, witnesses should not normally, be recalled. However, the Principal/Disciplinary Panel has the right to recall witnesses or seek further information, if this is required. If this does happen, both sides should be recalled into the hearing. In addition, the Principal/Disciplinary Panel may require that other witnesses/evidence should be called/produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Principal/Disciplinary Panel may decide to adjourn the hearing to allow for this if necessary.

Summing - up stage

2.18 Both parties will then have an opportunity to sum up, with management summing up first, followed by the employee/representative. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.

Deliberation

2.19 The Principal / Disciplinary Panel Chair will then ask both parties to withdraw apart from the HR Advisor and clerk. The Principal / Disciplinary



Panel Chair should indicate to the parties whether they should wait to be recalled for the decision. The Principal / Disciplinary Panel should then reach a decision on the basis of the evidence presented in the course of the hearing with advice from the HR Advisor as necessary.

The Decision

2.20 The Principal / Disciplinary Panel Chair may give the decision verbally at the end of the Hearing or in writing later. In any event the decision must be confirmed in writing, within **5** working days of the Hearing, to the employee and copied to their representative and to the manager presenting the case. The HR Advisor will provide advice on the content of the outcome letter.

Appendix 3

The Disciplinary Appeal Process

3.1 The intention to appeal must be notified to the Principal / Chair of Panel within 5 working days of the date of the written confirmation of disciplinary action. The Principal / Chair of Panel will arrange for a hearing of the governing body appeal panel to take place following receipt of the full grounds of appeal.

3.2 The appellant must then provide a written statement outlining in detail the grounds of the appeal against the decision together with any supporting documentation within 10 working days of receipt of the written confirmation of the disciplinary action. The appellant should clearly state with full reasoning, the basis on which s/he believes the decision to be at fault (e.g. why s/he believes that the procedure was incorrectly applied and / or that the evidence did not substantiate the allegations and / or that the sanction is too severe and / or that specific relevant evidence was not available or was not taken into account at the original hearing). No hearing shall be arranged until such a detailed statement has been received.

3.3 If further information, clarification or elaboration in support of the case is considered necessary, then the appellant will be asked to provide this information at least 3 clear working days before the date set for the appeal hearing if it is to be used. A hearing will be arranged and the employee notified of the date, time and place of the hearing.

3.4 The employee shall be given notice in writing at least 5 working days in advance of the time and place of the hearing that: s/he shall be allowed to be represented by his/her trade union representative, a work colleague or other representative of his/her choice and; may call witnesses and; refer to previously submitted documents relevant to his/her appeal; at the hearing. The employee will also be informed that the appeal hearing will not be a full rehearing of the case and that s/he should restrict his/her presentation to arguments about the reasonableness of the decision and/or procedural faults or failure.

3.5 The governing body appeal panel should ensure that there is a clerk to take notes. The appeal panel chair will invite the parties into the room,

introduce all parties present and explain the purpose of the hearing. The appeals process will not normally take the form of a rehearing and witnesses will only be allowed with the permission of the hearing officer and where it is relevant to the issue of the appeal. Both parties should therefore be asked if they intend to bring any witnesses. Failure to name witnesses at this stage does not mean that they cannot be called later within the hearing.

3.6 The management representative(s) will present his/her justification of the disciplinary decision, in the presence of the appellant and his/her representative. The management representative(s) may also call witnesses to the appeal hearing.

3.7 The appellant (or his / her representative) will then have the opportunity to ask questions of the management representative on the evidence given by him / her and any witnesses whom s/he may call.

3.8 The members of the panel may ask questions of management's representatives and witnesses.

3.9 The appellant (or his/her representative) will present his/her case against the reasonableness of the disciplinary decision in the presence of the academy's representative and to call such witnesses as s/he wishes.

3.10 The management representative will then have the opportunity to ask questions of the appellant and his/her witnesses.

3.11 The panel may ask questions of the appellant and his / her witnesses.

3.12 The management representative and the appellant (or his / her representative) will then have the opportunity to sum up their case if they so wish.

3.13 The panel supported by the HR Advisor will deliberate in private only recalling the management representative and the appellant to clear points of uncertainty on evidence already given. If recall is necessary both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.

3.14 Courses of action open to the appeals panel are:



- i. An adjournment to allow for additional evidence and / or witnesses and / or information to be made available;
- ii. A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser sanction;
- iii. To make any appropriate recommendation;
- iv. Any combination of the above;
- v. To submit the case back to the Principal / Chair of Panel for a new hearing (in the event that the panel believe that a disciplinary hearing was so faulty as to render the decision unsafe or that important evidence was either not available or not appropriately considered at the original hearing and feel unable to rehear the case and / or substitute a new decision for the original, then the case may be remitted for a new hearing subject to the agreement of all parties to cooperate);
- vi. To deny the appeal and confirm the disciplinary sanction.

3.15 The appeal panel will announce the decision to the management representative and appellant personally, if practical and this will in any case be confirmed in writing together with the reasoning behind the decision. The employee will also be reminded that there are no further rights of appeal.

Appendix 4

Alternative Arrangements

4.1 In certain circumstance TEFAT may feel that it is not appropriate for the Principal to exercise delegated responsibility for staff disciplinary matters and may consider applying alternative arrangements. This would involve a TEFAT Trust and / or local governing body disciplinary panel exercising responsibility. The circumstances, in which delegated responsibility for staff disciplinary matters may be exercised by the local governing body, are as follows:

4.2 Where the Principal has been directly involved in disciplinary procedures leading to dismissal (other than in initiating an investigation), has had some prior involvement in an issue of misconduct involving a member of staff which could be seen to prejudice a Principals impartiality, or is a witness of particular conduct giving grounds for the dismissal in question.

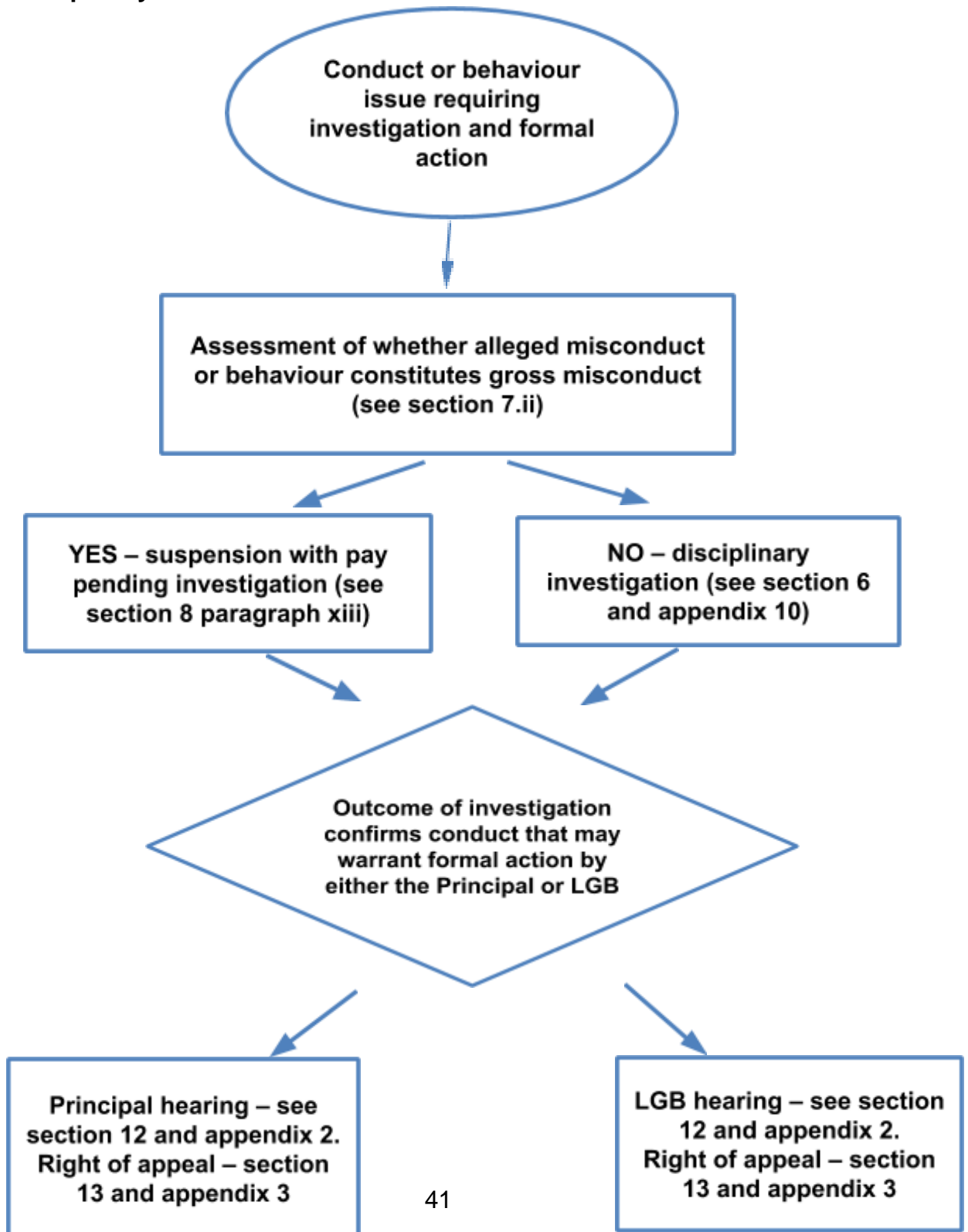
4.3 Where a Principal is subject to suspension, disciplinary or capability procedures or disciplinary sanction.

4.4 Where TEFAT has made representations to the Chair of the local governing body on grounds of serious concerns about the performance of the Principal.

4.5 Where the Principal has failed to abide by financial limits agreed by the TEFAT for any academy purpose.

Appendix 5

Disciplinary Procedure





Appendix 6

Disciplinary Hearing

Dear

You are instructed to attend a Disciplinary Hearing at (time) on (date) in (specify venue). The hearing will consider the following allegation(s):

List allegation(s)

These allegations if proven at the Disciplinary Hearing could be deemed to constitute gross misconduct and may result in the termination of your employment. **(Only insert if applicable)**

The Chair of the Disciplinary Hearing will be (name and title) and the panel will also include (names) / or specify the name of the Principal. The Management Case will be presented by (name). A representative from academy's HR provider will attend to advise.

You may be accompanied by a recognised trade union representative or a workplace colleague. I enclose the papers to which Management will refer at the hearing (specify). There will be no management witnesses (or show names). You must supply (name) with any papers to which you intend to refer not less than three working days prior to the hearing together with the names of any witnesses you intend to call to speak on your behalf.

You are instructed to attend this hearing and failure to attend without prior notification of a valid reason may itself constitute a separate disciplinary offence. Non-attendance due to sickness must be supported by a valid doctor's medical certificate, which relates specifically to your inability to attend the hearing. The academy, on production of a valid receipt, will pay for the cost of this. You may submit a written statement if you are unable to attend for any reason whatsoever and / or be represented in your absence by a trade union representative or a workplace colleague. The hearing may in any event be held in your absence.

I enclose a copy of the Disciplinary Procedure.

Yours sincerely



Principal/Chair of Disciplinary Panel



Appendix 7

Draft letter of suspension

Private and confidential

Suspension from duties

Dear

I am writing to confirm your suspension from your duties as
(designation and location)
.....on.....(date)..... *and that accordingly you
return the site keys in your possession to the Principal.

You were suspended from duty pending investigation into (detail the
allegations)

Suspension is a neutral act, carrying no implication of guilt.

Whilst you are suspended from duty, the following conditions will apply:

1. You should not enter the academy site for any reason.
2. You should not contact any member of staff during academy hours or their working hours.
3. During your working hours you should remain available to be contacted if required.
4. You will be kept informed of the progress of the disciplinary investigation (if this has not already taken place)
5. Confidentiality will be maintained
6. You will be kept informed of general school matters or any issues of importance by (insert name of staff member acting as liaison)

I confirm that you are suspended on full pay. I have advised the academy payroll provider accordingly.

Enclosed is a copy of the Academy's Disciplinary Procedure for your information.



If there is anything that you re unsure of or you wish to clarify please contact (academy contact)..... You are advised to contact your trade union / professional association.

Yours sincerely

*delete as appropriate



Appendix 8

Draft 1st Written Warning

Private and confidential

Written Warning

Dear

I am writing to confirm the decision of the Principal / Local Governing Body Disciplinary Panel (as appropriate) which met on(date) The hearing panel was convened (as appropriate) to consider (details of misconduct/unsatisfactory performance).

I gave/the panel gave (as appropriate) serious and careful consideration to all of the evidence presented to me/them and decided that you should be issued with a first written warning in accordance the academy's adopted disciplinary procedure. You are required to(details of any conduct/performance improvements required and timescale for improvement). You are hereby warned that should you fail to meet the improvements required further action will result.

You have a right of appeal against this decision. If you wish to exercise this right, you should confirm in writing the grounds or basis for the appeal to the Principal at the Academy within 5 working days of receipt of this letter. The appeal will be considered by the Local Governing Body Appeals Panel.

The Chair of the Local Governing Body has decided that your suspension will end onand you should report for duty on The Principal will be discussing with you the arrangements for your return in due course (as appropriate).

A copy of this warning will be placed on your personal file. The warning will remain on file for period of 12 months after which it will be disregarded.

Yours sincerely

Principal/Chair of Governing Body Disciplinary Panel (as appropriate)



Appendix 9

Draft Final Written Warning

Private and Confidential

Final Written Warning

Dear

I am writing to confirm the decision of the Principal/Local Governing Body Disciplinary Panel which met on(date). The Panel was convened to consider

.....
.....
(details of misconduct/unsatisfactory performance).

The Panel gave serious and careful consideration to all of the evidence presented to them and decided that you should be issued with a final written warning in accordance with the academy's disciplinary procedure. You are required to
(details of conduct/performance improvement required, timescale for improvement and any support/training to be provided where necessary). You are hereby warned that should you fail to meet the improvements required further action will follow which may lead to your dismissal.

You have a right of appeal against this decision. If you wish to exercise this right, you should confirm in writing the grounds or basis for the appeal to the Principal at the Academy within 5 working days of receipt of this letter. The appeal will be considered by the Local Governing Body Appeals Panel.

The Chair of the Local Governing Body has decided that your suspension should end on(date) and you should report for duty on (date). The Principal will be discussing with you the arrangements for your return in due course (as appropriate).

A copy of this warning will be placed on your personal file. it will remain on file for a period of 18 months after which time it will be disregarded.



Yours sincerely

Principal/Chair of Local Governing Body Disciplinary Panel

Appendix 10

Investigation Guidance

Purpose

The purpose of an investigation is to obtain and analyse information and to collect evidence to determine whether there is a prima facie case to answer. The Local Governing Body or Principal will normally appoint an Investigating Officer to collect evidence which will form the basis of the decision regarding whether there is a disciplinary case to answer. It is important to remember that it isn't just management representatives who present evidence. Both parties, together with witnesses, will do so. A good investigation should aim to establish all the relevant information, not just enough to support a management decision.

Cases involving potentially criminal acts

Local Governing Bodies or Principals will have considered possible police involvement before appointing an Investigating Officer to conduct a disciplinary investigation. In such cases an internal investigation must be delayed until police investigations are complete.

Process

The process is one of gathering and checking information from the following sources:

- The people involved. This may include staff, parents and, where unavoidable, children. Where it is necessary to speak to children in connection with a disciplinary investigation, the consent of the children's parents or guardian should be obtained.
- Documentation, letters, procedures, receipts etc.
- Physical evidence - damaged property, photographs, equipment etc. (subject to obtaining the owner's consent where necessary)
- Personal observation e.g. site/area inspection where appropriate.

The evidence gathered should enable the Investigating Officer to be clear about three main aspects of the case:

- What has happened? The sequence of events, who was involved, when and where this took place etc.
- What rules and standards apply? what is the established practice that should be followed? How are these rules and standards made known to staff
- Any background to the incident. What led up to the incident? Are there any issues regarding the management, communication and staff support in the work area concerned?

The information gathered may provide evidence for a management case for disciplinary action, so it is important that it is collected in a manner consistent with this disciplinary procedure and that all information is carefully recorded and securely stored.

Gathering evidence - good practice principles

Collect any evidence speedily. Ensuring that items or property that may be needed are kept securely.

Be aware of the need for confidentiality.

Where possible collect original items rather than copies.

Collect any documentation covering the three key aspects of the case, what has happened, established practice and the background.

Collecting information - good practice

Collect information, including written witness statements, as quickly as possible while the events are still fresh in peoples' minds and before discussion starts to influence people. If possible, prevent witnesses from talking to each other before providing evidence. This is especially important where staff are suspended.

Ensure privacy when collecting evidence and treat people with sensitivity and courtesy.



Keep an open mind. Don't make assumptions. Try not to become personally involved and be as objective as possible. Even a sceptical approach can be appropriate.

Ascertain the facts and check them where possible. Dates especially can easily be mistaken or confused.

See the employee against whom the allegations have been made last in the investigation, once the evidence in support of the allegation/s has/have been collected.

Remember that complaints against those handling investigations are not uncommon!

Recording

Double check that everything has been covered and that any information gained is clear.

Summarise the main points and check that the interviewee has no further points to make.

Tell the person that a further meeting may be necessary. Explain what happens next.

Taking statements

Ideally people should write their own statement. If necessary it may be dictated. The statement should be consistent with what the person remembers of the incident.

Statements should be signed and dated. Ensure people know how their statements will be used. Inform interviewees that if the statement is used as part of a case they may be required to attend a hearing and answer questions about their statement.

Conducting an investigation interview

Prepare and arrange meetings in advance. Ensure that staff involved understands the purpose of the investigation, the procedure, and that they have been advised of their right to be represented if they are the subject of allegations which may lead to formal action.

If considered necessary have someone present when interviewing witnesses. A HR Representative can attend if requested.

Witnesses should be informed that they can be accompanied at an investigation interview by a trade union representative, or work colleague.

Be prepared for a range of feelings and behaviours from those being interviewed. These may range from anger and hostility to distress and great anxiety.

The interview

Ensure suitable conditions are in place for the interview. Make sure that the person concerned knows that this is a disciplinary investigation, that they will be asked to make a statement (if they have not already done so), that information they give may be used at a disciplinary hearing and that they may be asked to appear as witnesses in a hearing.

Explain to witnesses that their statement will need to be copied to the employee against whom the allegation/s are made to allow them the opportunity to respond. Different protocols may apply in the initial stages of an investigation into allegations brought under the whistleblowing procedure.

Ensure that staff against whom allegations have been made are aware of their right to be represented by a trade union representative, or work colleague.

Explain how the investigation will proceed in broad terms. Tell the person that the role of the investigating officer is to collect evidence, and to determine if there is a prima facie case to answer.

Explain that notes will be taken.



Assure those being interviewed that any findings will be treated as confidential. However, don't give assurances that their information will remain with the Investigating Officer. Confirm that it may be needed as evidence at a hearing.

Questioning

Remember that information is best gained from a conversation, rather than an interrogation. Do not dominate, allow the interviewee to feel that they can answer freely. It is not good practice to pressure somebody who could be a potential witness at a hearing. Such pressure can bring into question the role of the Investigating Officer and can cause problems in relation to the whole investigation process.

Plan questions in a logical and orderly sequence and be prepared to supplement your list. Use open questions, keeping them short and simple to encourage the person to talk. Closed questions should be used to check points of detail and where the interviewee is vague. Probing questions should be used to obtain detailed information and to clarify other answers.

Concentrate and listen to the answers (don't miss points thinking about the next question). Avoid leading questions.

Don't imply criticism. The interview is to obtain facts. Personal criticism or judgement will inhibit the interviewee and make your task harder. The rights and wrongs of a case are for a hearing to decide.

Recap throughout the interview to ensure that the facts are agreed and understood. As a principle, focus on facts, what the person saw or heard, who was there, where, when etc. Ensure you distinguish between facts the person is giving and their opinions/assumptions. Ask how they know things they state as fact. Ask how they know that the things they are stating as factual are true. Ask for specific examples or clarification where necessary.

Writing the investigation report

An Investigating Officer's report should include the following:

- The purpose of the investigation and by whom it was conducted.

- A summary of the investigation - brief description of the event and findings.
- Background information and how the issue was brought to light.
- Confirmation as to whether or not the subject of the investigation has, in the view of the Investigating Officer, a case to answer.
- Details of the investigation, including a list of those interviewed, records and details of interviews, statements, documents inspected and details of other actions taken e.g personal inspection of site or damage etc.

Care should be taken to include all information whether it supports the management case or weakens it. Otherwise this could be challenged by a member of staff under investigation and is not fair or reasonable to them. The report must contain all relevant information so that the case may be objectively assessed. It should include a recommendation as to whether or not they feel there is a case to answer.

Evidence

Any evidence included with the report should be:

- Authentic - it must be verifiable
- Relevant - to the issue in question
- Accurate - check that dates and figures tally
- Easy to use - list, number, index, label etc.

Assessing the case

The information from the investigation will be assessed by the disciplinary panel or Principal before a decision on how to proceed is taken. The evidence needs to show that the case has been thoroughly investigated before that decision can be reached.

The investigation should be completed as soon as possible, after the alleged misconduct depending on the complexity of the case, and the availability of witnesses and evidence. Except in exceptional circumstances, it should normally be completed within 20 working days, following appointment of the Investigating Officer.

The outcome of the management investigation should be discussed with the Principal/chair of disciplinary panel. Where it has not been possible to interview the employee during the investigation, then the Investigating Officer



should consider deferring production of the report for a short while until that has been done.

However, while the Investigating Officer will normally meet the employee that is not always essential. In particular, if there is evidence that the employee would be unable to attend a meeting in the immediate future, then it is permissible for the Investigating Officer to finalise their report in the absence of a meeting. In such cases, the employee should have the opportunity to make written representations if practical.

The Investigating Officer will draw up a report of the investigation and provide a recommendation as to whether or not they feel there is a case to answer. This should normally be completed within 10 working days. If as a result of the investigation it is found that formal disciplinary action is not appropriate, the Principal (or Chair of LGB in cases involving the Principal) should decide whether any other action is necessary in accordance with academy procedures or other guidelines (e.g. Medical Capability Review). The employee should be notified of any decision in writing, normally within 5 working days.

Allegations that are found to have been unfounded or malicious should be removed from personnel records and any that are not substantiated, are unfounded or malicious should not be referred to in employer references.



Appendix 11

Disciplinary Hearing Outcome - Dismissal

Private and Confidential

Dear

This letter is to confirm the outcome of the Disciplinary Hearing held on (*insert date*) at which allegations about your behaviour/standard(s) under the Academy's Disciplinary Procedures were considered.

The Disciplinary Hearing was attended by yourself, your representative (*insert name*), and (*insert names, titles of others in attendance*). A copy of the notes of the Disciplinary Hearing is enclosed.

The details of the allegations were (*insert details from hearing invitation*)

I have decided that **you be dismissed with effect from** (*insert date*) with (*insert contractual notice entitlement by referring to the contract of employment*) weeks' notice and you will continue to receive full pay during this period (*or without notice in cases of summary dismissal for gross misconduct*) and your last day of service with (*name of academy*) will be You will also be entitled to any outstanding holiday pay up to your last day of service and I will arrange for these payments to be made to you in your final salary payment.

Special note: where there are allegations involving vulnerable clients the paperwork will be retained at least until the person reaches normal retirement age or for a period of 10 years from the date of the allegation/s and in exceptional cases, warnings may be referred to in future disciplinary purposes if it relates to issues involving vulnerable clients or verges on gross misconduct. Amend wording to incorporate this if relevant.

Reason for decision/s



In coming to my decision, I took account of *(insert the factual issues covered e.g.*

- *Summary of investigation report*
- *Any evidence from management witnesses*
- *Account given by the employee/representative*
- *Any other information or other documents considered*

Further information

Insert any further action required (*e.g return of academy property etc.*)

Right of appeal

You have the right of appeal against this decision through the Academy's Disciplinary Procedure. If you wish to do so, you must put it in writing to (*insert name, title*) within 5 working days (*insert specific date*) of receiving this disciplinary decision. The appeal notification must incorporate a statement setting out clearly the grounds of appeal, or state that the full grounds will follow, which must be received within a further 10 working days (e.g. 15 working days of the date of receiving this disciplinary decision). Where no appeal is received within the above timescales, the matter will be regarded as closed.

Yours sincerely

(Name of Hearing Officer)

(Title)

Cc: *(Insert name, title)*, Investigation Officer *(Insert name)*, HR representative *(insert name of fellow employee or trade union representative, if known)*