

Disciplinary Procedure



BATH & WELLS
Multi Academy Trust

'That they may have life, life in all its fullness' John 10:10

Bath & Wells Multi Academy Trust Disciplinary Procedure

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Disciplinary Procedure

1. Purpose

- 1.1. This procedure is designed to help and encourage all employees to achieve and maintain high standards of conduct and to ensure fairness, equity and consistency in the management of employee conduct.
- 1.2. This procedure is effective from 1 April 2013 as approved by The Bath & Wells Multi Academy Trust (hereafter referred to as the MAT).

2. Applicability

- 2.1. This procedure applies to all employees within the MAT with the exception of support staff within their probationary period for whom conduct issues should be dealt with under the Probation Procedure. All employees are included, whether permanent or on a fixed term contract. It does not apply to agency workers, contractors or volunteers.
- 2.2. Separate procedures exist for dealing with underperformance due to ill health or to lack of capability which is not caused by wilful misconduct.

3. Roles and responsibilities

- 3.1. Line managers are responsible for;
 - 3.1.1. Managing the conduct of employees in accordance with this procedure.
 - 3.1.2. Ensuring that employees are aware of the expected standards of conduct as set out in the Code of Conduct, the Disciplinary Rules and of any local rules or regulations specific to their job or area.
- 3.2. Employees are responsible for adhering to the set standards of conduct, the Disciplinary Rules and any local rules or regulations, including any reasonable management instructions.
- 3.3. Human Resources are responsible for advising on the implementation of this policy.
- 3.4. Where concerns arise, line managers should seek advice from HR at an early stage.

4. Principles

- 4.1. Misconduct is conduct that falls below the expected standards; which may involve an employee breaking specific rules about behaviour or conduct. There may be occasions when negligence or failure to act amounts to misconduct or gross misconduct. Gross misconduct is very serious misconduct that will normally lead to dismissal without notice or pay in lieu of notice (summary dismissal).

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- 4.2. The Disciplinary Rules lists examples of both misconduct and gross misconduct and can be found at appendix one.
- 4.3. All employees are expected to observe the standards of conduct, behaviour, attendance and other rules that have been established for the well-being and safety of all and the efficient running of the school.
- 4.4. It is expected that minor misconduct will be resolved informally through effective management practice by way of advice, discussion and management instruction. However, where this approach has been tried and has not worked, or where the misconduct is more serious, formal disciplinary action will be considered.
- 4.5. Allegations of misconduct will normally be investigated before any disciplinary action is taken. Exceptionally, the circumstances may be such that an investigation is not required, for example where the employee admits to the misconduct.
- 4.6. The employee will be advised of the allegations of misconduct and will be given the opportunity to state their case and present relevant evidence at a disciplinary hearing before any decision is made.
- 4.6. All employees will have the right of appeal against any formal disciplinary sanction.
- 4.7. At all stages of the formal process the employee will have the right to be accompanied by a trade union representative or work colleague.
- 4.8. Employees will not generally be dismissed for a first incident of misconduct, except in the case of gross misconduct.
- 4.9. If there are any disability or language issues affecting the employee or their representative these will be reasonably addressed so that any formal proceedings can take place fairly.
- 4.10. Information relating to formal proceedings will be kept confidential where appropriate. Confidentiality should be maintained during all stages and throughout the Disciplinary Procedure.
- 4.11. The MAT will comply with regulations that require it to refer relevant formal disciplinary action taken under this procedure, for example if an allegation is connected to the risk of harm, or actual harm to a child then to the Disclosure & Barring Service (DBS) and to the Teaching Agency if the allegation involves a teacher.
- 4.12. The timescales within this procedure may be amended by mutual consent.
- 4.13. If an employee resigns where an investigation or formal proceedings are being considered or have commenced, the proceedings may continue to an appropriate conclusion at the discretion of management.
- 4.14. In the event that an employee raises a grievance in connection with the conduct or handling of action under the Disciplinary Procedure, the grievance should be resolved using the separate Grievance Procedure. However, the Grievance Procedure will not apply if the employee wishes to complain about actions short of dismissal to which

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the Disciplinary Procedure will apply unless the grievance is that these actions involve unlawful discrimination or are not genuinely on the grounds of conduct.

- 4.15 The formal procedure set out in this policy follows the disciplinary procedure as set out in the ACAS code of practice

5. Dealing with misconduct informally

- 5.1 Managers should monitor and evaluate conduct, behaviour and attendance of all their employees through normal day to day management. Where minor concerns occur these should be raised with the employee on an individual basis to try to restore and maintain a satisfactory standard, addressing the following points:

5.1.1 Set the standard – the manager should bring to the attention of the employee how they are failing to meet the required standard and of the concerns that exist;

5.1.2 Seek an explanation - to provide the employee with an opportunity to explain why they are not meeting the standard and to discuss the acceptability of the explanation(s).

5.1.3 Require improvement - to tell the employee what they are expected to do to bring about improvements in conduct or behaviour. Outline any management action and support and give a time limit within which the employee can reasonably be expected to modify or change their behaviour.

5.1.4 Warn of the consequences - of failure to improve, to meet and sustain the standard of behaviour, attendance or conduct required, such as formal action under the disciplinary procedure.

- 5.2 The main points discussed should be recorded and a copy provided to the employee.

6. Informing the employee of the allegations

- 6.1. In cases of alleged misconduct the employee will be notified in writing of the allegations and that an investigation under the disciplinary procedure will occur.

- 6.2 The notification will inform the employee of who has been appointed as investigating officer.

- 6.3 Human Resources and relevant trade union regional officer must be notified before any formal disciplinary action is taken in respect of a Trade Union Representative. Human Resources should be informed when any formal disciplinary action is being considered.

7. Investigation

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- 7.1. Generally no disciplinary action will be taken against an employee until a reasonable investigation to establish the facts of the case has taken place. The purpose of the investigation is to:
- Establish the facts whilst they are still clear in the minds of those involved
 - Decide what further action to take
- 7.2 The investigation should be carried out promptly and without unnecessary delay.
- 7.3 If at the end of the investigation, it is found that there is no case to answer, the employee will be informed of this in writing.

8. Suspension

- 8.1. Suspension is a response available to remove an employee from the workplace in order to investigate the circumstances relating to any alleged misconduct, this decision should not be made until advice has been taken from Human Resources. Section 12 sets out with whom the authority to suspend rests with depending on who is involved. The decision to suspend should be confirmed in writing.
- 8.2. An employee may be suspended where one or more of the following apply:
- 8.2.1 An allegation of potential gross misconduct is being investigated.
- 8.2.2 An allegation of misconduct is being investigated where there is a danger that the alleged misconduct may be committed again; or
- 8.2.3 The investigation into an allegation of misconduct could be compromised by the continuing presence of the employee at work. (For example because they may destroy evidence or attempt to influence witnesses);
- 8.2.4 There is a potential threat to the business or other employees
- 8.3 Before a suspension is made it needs to be ensured that the following has taken place/been considered:
- 8.3.1 Where an allegation of gross misconduct has been made suspension may not be automatic; a preliminary investigation (no longer than two working days) should be carried out to determine whether there is enough evidence that the allegation is potentially gross misconduct. During this time the employee may be asked not to work or be temporarily redeployed.
- 8.3.2 The possibility of placing the employee in another area of the business whilst the investigation is carried out.
- 8.4 Suspension is on full contractual pay and should be for as short a period as possible.
- 8.5 Suspension does not imply wrongdoing and does not prejudice the outcome of the disciplinary investigation or hearing, suspension does not constitute a disciplinary sanction.
- 8.6 Suspended employees must make themselves available for interviews under the procedure and must not take alternative employment while the contract of employment still applies. If appropriate, employees may be asked to return property

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belonging to the school and to refrain from contacting other employees without first speaking to the investigating officer whilst the investigation is undertaken.

- 8.7 If, on completion of the investigation, the investigating officer believes it to be appropriate, having regard to the above provisions, the period of suspension on contractual pay may continue until a disciplinary hearing has been held and a decision communicated to the employee.

9. The Disciplinary Hearing

- 9.1. Following the investigation if it is considered that there is a case to answer then a disciplinary hearing will be convened. The hearing will decide what, if any, action should be taken in respect of the alleged misconduct.
- 9.2. The employee will normally be given 10 working days notice in writing of a disciplinary hearing. The chair of the hearing will write to the employee to confirm:
- The allegations against him/her
 - The date, time and location of the hearing
 - The name of the person (or panel) chairing the hearing
 - The right to be accompanied and/or represented by a trade union representative or work colleague
 - The requirement to provide the chair hearing the case with a copy of the documents that he/she will be relying upon and the names of any witnesses that he/she will be calling at the hearing at least 5 working days before the hearing
- 9.2. Copies of documents that management will refer to at the hearing, and names of any witness that they will call will be included with the notification.
- 9.3 The employee will be informed if the outcome of the hearing could be dismissal (normally where the employee has been suspended for alleged gross misconduct or is subject to a final written warning that had not expired at the time of the alleged misconduct).
- 9.4. At the hearing both the management side and the employee will be given the opportunity to state their case, call witnesses and ask questions. HR will attend the hearing to provide procedural advice.
- 9.5 The hearing will normally be adjourned whilst the chair/panel hearing the case reaches a decision. The basis of the decision should be whether on the balance of probabilities the employee committed the alleged misconduct based on the evidence presented from both sides, and if so what if any disciplinary sanction should be given. The disciplinary sanction will depend on the seriousness of the misconduct, any current warnings and/or relevant mitigating circumstances.
- 9.6 The employee will be notified in writing of the outcome normally within 5 working days and of their right of appeal. Where an employee is dismissed he/she should be dismissed with appropriate notice, unless the allegations amount to gross misconduct.

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- 9.7 A postponement may be granted if the employee or their representative is unable to attend on the proposed date. A postponement should not be for more than 5 working days after the original date proposed, however, an extension to this time limit can be made by mutual agreement. Where a hearing is rearranged and the employee is unable to attend a second time, the hearing will normally convene, as arranged, and a decision taken in the employee's absence.

10. Disciplinary Sanctions

- 10.1 It may be that the outcome is that there is no case to answer. Where an employee is found to have committed misconduct a disciplinary hearing may decide on one of the following sanctions:
- 10.1.1 Issuing of management advice – whilst this would normally occur during the informal stage, it is still possible that a panel may determine that the misconduct is not sufficiently serious to warrant a higher level of disciplinary sanction or the circumstances of the case may be such that the panel accepts the mitigation provided and considers a lower level of disciplinary sanction is justified.
 - 10.1.2 First written warning – where misconduct has occurred
 - 10.1.3 Final written warning – where sufficiently serious misconduct has occurred or where there is continued repetition of an offence despite a previous warning.
 - 10.1.4 Dismissal – where an employee has still not reached the standard required or where there are continued breaches of conduct despite previous warnings or when gross misconduct has occurred.
- 10.2 A first or final written warning should set out the nature of the misconduct and the improvement that is required. The employee should be told how long the warning will remain current. The employee should be informed that failure to improve, or further misconduct within the specified timescale could lead to more serious formal action being taken, including dismissal.
- 10.3 Warnings will normally be disregarded after 12 months in the case of a first written warning, and two years in the case of a final written warning unless otherwise stated. If during this period similar offences or further misconduct occurs, then any 'live' warnings will be taken into account. Once spent, the disciplinary warning will remain on the file as part of the employee's overall record of employment but would not be taken into account.
- 10.4 A decision to dismiss should only be taken by a manager who has the authority to do so (see section 12). The employee should be informed of the reasons for the dismissal, the date on which the employment contract will end, and the appropriate period of notice.

11. Appeals

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- 11.1. An employee is entitled to appeal against the formal decision taken by the disciplinary hearing.
- 11.2 The following grounds are examples of when an appeal may be successful:
- The procedure - a failure to follow procedure had a material effect on the decision
 - The decision - the evidence did not support the conclusion reached
 - The penalty - was too severe given the circumstances of the case
 - New evidence - which has genuinely come to light since the first hearing.
- 11.3 The appeal must be made in writing, addressed to the Clerk of Governors, stating the specific grounds for the appeal, within 5 working days of being advised in writing of the decision of the hearing.
- 11.4 The appeal will be heard as soon as possible and not normally later than 6 weeks after being received.
- 11.5 Appeal hearings will not normally be a re-run of the first hearing. Instead the Appeal Panel will consider the following as appropriate to the case:
- The properness of the procedure leading up to the original hearing
 - The composition of the original panel
 - The conduct of the original hearing
 - Any new evidence provided
 - Appropriateness of the initial disciplinary sanction
- 11.6 The employee will normally be given 10 working days notice, in writing, of the date of the appeal hearing. This notification will give the name of the person chairing the hearing, and the names of panel members. It will remind the employee of his/her right to be accompanied at the hearing by either a trade union representative or work colleague. HR will attend the hearing to provide procedural advice.
- 11.7 Both parties must indicate at least 5 working days in advance of the appeal hearing which, if any, witnesses they wish to call and provide copies of any documentation that will be relied upon at the hearing. In exceptional circumstances an alternative time-scale may be agreed.
- 11.8 The chair of the disciplinary hearing will attend the appeal.
- 11.9 The employee will be able to present evidence that is directly relevant to the grounds of the appeal. Management will have the opportunity to respond.
- 11.10 The appeal hearing may confirm or overturn the decision or may recommend some alternative action.
- 11.11 The employee will be informed of the appeal decision in writing, normally within 5 working days. The decision of the appeal hearing is final.
- 11.12 In cases where an appeal against a dismissal is upheld and a decision is made to reinstate/re-engage the employee shall suffer no loss under their previous contract of employment from the date of the dismissal up to the date of re-employment.

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12. Authority to act under the procedure

Disciplinary action concerning	Suspend an employee	Investigate the allegations	Chair the hearing (except in the case of gross misconduct or where the employee has a live final written warning)	Hear the Appeal (Except where the employee was dismissed)	Chair the Hearing in cases of gross misconduct, or where a live final written warning exists	Hear the Appeal where the employee has been dismissed
All employees, except those listed below	Headteacher	Either the Headteacher or an employee authorised by them of at least line management level	Headteacher if not previously involved or a Panel of three from the Local Governing Body	Panel of three from the Local Governing Body who have not previously been involved.	Panel of three, two from the Local Governing Body and one MAT Director	Panel of three, two from the Local Governing Body and one MAT Director who have not previously been involved
Headteacher	Chair of the MAT Directors	MAT Director or a Governor from the Local Governing Body	Panel of three, made up of either members of the Local Governing Body and/or MAT Directors. Must include at least one MAT Director	Panel of three MAT Directors who have not previously been involved	Panel of three, made up of either members of the Local Governing Body and/or MAT Directors. Must include at least one MAT Director	Panel of three MAT Directors who have not previously been involved

13. Records

13.1 Records of disciplinary hearings and disciplinary appeal hearings will be kept detailing:

- The nature of any allegations
- The employee's defence or mitigation
- The action taken and the reasons for it
- Whether an appeal was lodged and its outcome
- Any subsequent developments

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- 13.2 These records will be kept confidential and retained in accordance with the Data Protection act and Freedom of Information Act, which require the release of certain data to individuals on their request.

14. Criminal Conduct

- 14.1 Employees are required to inform the Headteacher/Principal in the event of being cautioned or arrested on suspicion of a criminal offence whether the offence is committed during the course of employment or outside employment. Failure to comply with this requirement may be regarded as gross misconduct and may lead to summary dismissal. Advice should be sought from Human Resources where an employee is remanded in custody.

15. Review

- 15.1. This procedure will be reviewed to respond to any changes in the employment legislation, and at least every three years.

See separate Disciplinary Procedure Appendices for supporting documentation

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The Bath and Wells Diocesan Academies Trust operating as Bath & Wells Multi Academy Trust

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