Exceed Learning Partnership

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'Innovative Education - Transforming Lives'

Disciplinary Policy

Status	Statutory
Responsible Body	Directors Board
LGB	Full Local Governing Body
Responsible Persons	Mrs. B Nixon
Date Policy Agreed	September 2018
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Version Control

Version	***Revision Date***	***Revised by***	***Section Revised***
V2	July 2018	B Nixon	Section 17, Page 18 replaced Data Protection Act 1998 with GDPR 2018
V2	September 2019	B Nixon	None
V3	August 20	D Ashmore	Changed Executive Principal to CEO

1. Introduction

Principles and Objectives

1.1 Exceed Learning Partnership Trust recognises it has a statutory obligation to adopt formal policies and establish workplace procedures for dealing with staff conduct and discipline. A high standard of discipline is essential for the effective and efficient management of academies and the safety and wellbeing of all staff in the Trust. Exceed Learning Partnership Trust recognises that disciplinary rules and procedures promote good employment relations and is committed to dealing with matters in a fair and consistent way.

1.2 This procedure is designed to help and encourage all employees to achieve and maintain appropriate standards of behaviour and conduct. This procedure provides a method of dealing with apparent shortcomings in conduct and the main purpose of the procedure is to encourage an employee whose conduct is unsatisfactory, to improve. However, disciplinary action may, at its extreme, lead to dismissal.

1.3 The day to day supervision of employees is part of the normal management process and is outside the formal procedure for dealing with breaches of discipline. There is likely to be less recourse to the formal procedure if deficiencies in an employee's conduct are brought to his/her attention at the earliest possible stage by his/her immediate supervisor in the course of that person's normal duties.

1.4 This policy and procedure will be applied consistently and fairly to all employees, based on the circumstances of their case. No-one will be treated less favourably on the grounds of their gender, disability, age, race, creed, colour, religion, nationality, ethnic or national origin, trade union membership or activity, sexual orientation, gender reassignment, medical condition or marital status. Furthermore, Exceed Learning Partnership recognises its responsibility to ensure the implementation of the rules of natural justice as part of this policy and procedure; i.e.

- The employee should know the nature of the accusation against them;
- The employee should have an opportunity to state their case;
- Management should act in good faith.

1.5 The procedure is written in line with the ACAS Code of Practice.

1.6 The procedure sets out both general principles, which will apply to the way in which the individual academy disciplinary procedures will operate and in some instances, the detailed steps that will have to be followed.

1.7 The Principal, LGB and Trust Board have overall responsibility for promoting and maintaining standards of work conduct. Informal guidance does not form part of the formal disciplinary procedure.

1.8 All proceedings under this procedure shall be held in private and shall be confidential.

1.9 The procedure is not intended primarily as a means of imposing disciplinary sanctions or as necessarily setting out procedures leading to dismissal. Its primary aim is to ensure that employees of Exceed Learning Partnership are treated fairly and consistently and that particularly where an employee's job is at risk, that proper and adequate procedures are observed before any decision is taken.

2. Scope of the Procedure

2.1 This procedure does not apply where there are matters of grievance which is dealt with under the Exceed Learning Partnership Grievance Procedure.

Competence or capability which is dealt with under the Exceed Learning Partnership Capability Policy, unless it is clear that the employee is capable of reaching the required standard and has actively not done so.

Ill health which is dealt with under Sickness Absence procedures unless there is good reason to believe that the absence or ill health are not genuine.

Bullying, harassment, discrimination and/or victimisation which are dealt with in the first instance under Dignity at Work Policy.

2.2 This policy and procedure apply to all academy-based employees of Exceed Learning Partnership. Advice on this procedure should be sought from the Trust's HR Providers. Central Exceed Learning Partnership Staff are subject to the Central Exceed Learning Partnership Staff Disciplinary Policy.

3. Responsibilities

3.1 The Principal/CEO will have the delegated responsibility to take disciplinary action up to initial dismissal decisions. Following this, the employee will have a right of appeal to a committee of the LGB/MAT Board.

3.2 Dismissal and notice periods are effective from the initial dismissal decision. Should the appeal be successful, reinstatement will also be from the original date with no break in employment continuity.

3.3 There may be certain circumstances where the delegation of responsibility outlined in 3.1 will not apply. For example, the Principal has been directly involved in disciplinary procedures leading to dismissal, has instigated a proposal to dismiss or is a witness of particular conduct giving grounds for the dismissal in question.

3.4 Where it is not appropriate for the Principal to perform this function, a staff discipline committee of the LGB will be convened. The Trust reserves the right to utilise governors from other academies within the Trust to convene these and appeal panels where necessary. Members of the MAT Board may also participate in staff discipline and appeal hearing panels where necessary. Exceed Learning Partnership recommends wherever possible that the staff discipline/dismissal committee deals with cases of gross misconduct and Principals are delegated the responsibility to deal with all other cases.

3.5 Where a staff discipline/dismissal committee is required, the LGB should nominate 3 of its members who are not staff members to form the committee and another 3 members will be required to form an appeals committee. Please note 3.4 above regarding the use of governors from other LGBs and the MAT Board to facilitate in setting up panels.

3.6 Exceed Learning Partnership HR will offer advice at all stages of the procedure, and it is strongly recommended that Principals seek advice from HR. Please see the contacts section at the end of the policy

3.7 Where a matter of discipline relates to a Principal's conduct the matter will be undertaken by the Executive Team, with an Investigating Officer appointed by the CEO and any panel convened of members of the MAT Board.

4. Representation

4.1 At all stages of the formal procedure, employees have a statutory right to be represented by a recognised trade union representative or by a work colleague. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany the employee.

4.2 The employee is responsible for arranging his/her representation including notifying the representative of the hearing date in good time and sending copies of all relevant documentation.

Where the employee's trade union representative or work colleague is not available at the time proposed for the meeting/hearing, the employee may propose an alternative date and time that falls within 5 working days after the original date proposed.

4.3 It is good practice for management to try to agree a mutually convenient date for the meeting with the employee and their representative or work colleague in order to ensure that meetings do not have to be delayed or rescheduled.

4.4 The trade union representative or work colleague may address a hearing /meeting to put the case for the employee and/or sum up the case, respond on behalf of the employee to any views expressed at the meeting/hearing and may confer with the employee. They may not, however, answer questions on their behalf.

4.5 The academy will need to consider whether any additional support for the employee is required, for example to make reasonable adjustments where there is a physical disability or other special need identified.

5. Discipline of an employee representative

5.1 In the case where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary procedure will be followed. In accordance with the ACAS Code of Conduct, the Principal will discuss the case with the regional trade union official of the relevant union of any potential proceedings against a trade union representative before any action is taken.

6. Definitions of misconduct and gross misconduct

6.1 Misconduct

Misconduct is where an employee breaks specific rules about behaviour or conduct. It is where conduct falls below expected standards and is usually wilful. There may be occasions when negligent conduct amounts to misconduct. Breaches of reasonable conduct at work can take many forms. A list of behaviours which may be considered as forms of misconduct can be found at Appendix 5. The list is not exhaustive and there may be other examples relating to particular jobs where disciplinary action may be warranted following a thorough examination of the circumstances involved. Consideration will always be **given to the particular circumstances.**

6.2 Gross Misconduct

Gross misconduct is a term used to describe misconduct which is so serious it may destroy the employment contract between the employer and the employee and make further working relationships and trust impossible. Examples of the sorts of conduct that could be regarded as gross misconduct, rendering the employee liable to summary dismissal, can be found at Appendix 6.

7. Informal Stage

7.1 Many potential disciplinary issues can be resolved informally and the academy and Trust employees' should always seek to resolve disciplinary issues in the workplace. In many cases, the right word at the right time and in the right way may be all that is needed.

7.2 Informal action may often be a more satisfactory way of dealing with a breach of rules than a disciplinary meeting if it takes the form of a discussion with the objective of encouraging and helping the employee. It must not turn into a disciplinary meeting.

In addition:

- Written guidance can be given about acceptable conduct and standards and how these have not been met
- Any note of any informal action will be provided to the employee and kept for reference for no longer than 3 months.

Any written Guidance given about expectations of acceptable conduct and standards as above, cannot be used in any subsequent disciplinary action or sanction.

7.3 In certain instances, mediation may assist in relation to disciplinary issues. In such cases, subject to the agreement of both parties, mediation can be arranged to try to settle the matter.

8. Formal Procedure

8.1 Raising a Grievance during a disciplinary

Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

A discussion will therefore take place between the academy management, HR and the employee (normally through their trade union representative or directly if they are not represented) about whether or not the disciplinary procedure should be suspended so that the grievance issues can be dealt with separately under the Exceed Learning Partnership Grievance Procedure or whether the grievance should be raised by the employee at relevant disciplinary interviews, hearing or appeal.

Suspension of the disciplinary procedure would normally take place when:

- The grievance relates to a conflict of interest that the investigator is alleged to have
- Bias is alleged in the conduct of the disciplinary meeting
- There is an allegation that management have been selective in the evidence they have supplied to the investigator
- There is possible discrimination

8.2 Investigation

No formal disciplinary action will be taken without a prompt and appropriate investigation into the circumstances. Advice should be sought from Exceed Learning Partnership HR at an early stage when considering formal procedures. When a disciplinary matter arises the following procedure will apply.

8.2.1 The Principal will nominate an investigating officer. This will normally be a senior member of staff. Where the allegations are against the Principal, the Chair of the Governing Body will discuss the case with the Trust and an independent investigating officer will be nominated.

8.2.2 The investigating officer will write to the employee at the earliest opportunity and give the following information:-

- Details of the allegation/s
- Copies of appropriate and available information
- A copy of this disciplinary procedure
- Time and date of an investigation meeting
- No fewer than 5 working days' notice must be given in for any formal meeting (please see section 4)
- Confirmation of their right to representation by a trade union representative or work colleague, at all meetings

8.2.3 The investigating officer will investigate the matter. The investigating officer will be given guidance around the role of investigating officer and will be appropriately supported by the Trust.

8.2.4 The investigating officer will promptly carry out a full and thorough investigation into the allegations in as timely a manner as the circumstances will allow. Normally investigations will be completed within 20 working days, other than for a particularly complex case and in exceptional circumstances. Care will be taken to ensure that where appropriate evidence is also sought from employees who may be supportive of the employee's case. This will involve the gathering of all relevant evidence from the relevant parties and an investigation meeting with the employee. The investigation should be thorough, comprehensive and unbiased. The investigation may require employees and witnesses to be interviewed to establish the facts.

Employees should be given sufficient notice of any investigation meetings/interviews; this must be no less than 5 working days in advance. Witnesses would not normally be entitled to representation by a Trade union representative or workplace colleague, but should be advised to seek advice as appropriate.

Minutes of these meetings will be taken and agreed with the employee as a true record. Copies of the minutes will be provided to the employee.

The role of the investigating officer is to gather evidence and recommend whether:

- There is no further action required
- Management guidance is appropriate
- Training is required
- The case should be referred to a hearing

Where it is recommended that formal disciplinary action should be taken, the investigating officer should recommend whether the matter is potentially one of gross misconduct.

If other areas of concern arise during the process that require further investigation, the investigating officer will adjourn the meeting/investigation in order to undertake this.

At the conclusion of the investigation, the Investigating Officer will produce a report and decide whether there is a case to answer. If on completion of the investigation, the investigating officer conducting it considers that a complaint of misconduct may require formal action, a disciplinary hearing before the Principal/ Hearing panel will be arranged.

If the investigating officer does not consider that the complaint requires formal action, the Principal may arrange informal guidance or counselling. If there is no case to answer the matter will be closed and all documentation removed from the employee's file. The employee will be informed in writing of the appropriate conclusion. In the case of the Principal, the investigating officer will submit the report to the CEO of the Trust with a copy to the Chair of Governors.

The CEO and the Chair of Governors will decide if any further action is required and whether there needs to be a formal hearing convened with the Governing Body. The MAT Board/Trust will be represented on the panel. Where the decision is made to convene a disciplinary hearing, then the investigating officer will inform the employee in writing. Persons directly involved in the investigative process may present a case or appear as a witness, but may not give advice to nor sit on the subsequent Disciplinary Hearing Panel.

8.3 Suspension

The Principal or Chair of Governors (CEO in the case of a Principal) has the authority to suspend a member of staff from duty on full pay. Where the employee holds more than one post in the academy/trust, the suspension will apply to all posts. The employee will refrain from entering into the academy or usual place of work until the investigation is complete and a disciplinary hearing arranged if appropriate, or if the suspension is lifted.

Suspension during the course of an investigation is not in itself a disciplinary sanction and does not imply guilt. It is a neutral act. Suspension from work is on full pay.

Suspension should be considered when the employee's continued presence:

- Constitutes a potential risk to other staff or pupils or to themselves
- Would potentially impede or prevent a full and proper investigation
- Seriously undermines the reputation of the academy or the Trust
- Constitutes a risk of a repetition of any serious alleged misconduct or
- When the allegation is potentially gross misconduct that may lead to dismissal

8.3.1 Managers should always consider alternatives to suspension such as a temporary change to duties, working arrangements or a transfer of workplace.

In the case of a teacher losing accreditation, the academy will make every effort to place the individual in another post in the first instance.

When considering the suspension of an employee, the Principal should inform the Chair of Governors, the CEO and the Chair of Directors. They should also immediately arrange a meeting with the employee, unless this is totally impractical. In the case of the Principal being suspended, this can only be actioned by the Chair of the Governing Body or nominated Trust representative. At all times, the Trust must be kept fully informed.

The employee must be informed that they may bring a certified trade union representative or work colleague to this meeting. The employee will be informed of the nature of the allegations. The employee may make representation in respect of the proposed suspension.

The Principal or Chair of Governing Body will then verbally confirm the decision at the meeting and in writing within five working days. If the decision is to suspend the employee, then the letter will outline the reasons for the suspension and the nature of the allegations.

On occasion more urgent action is necessary where it will not be possible to allow time for trade union representation. If this is the case the employee should be asked to leave the premises and escorted off the site. The employee should be allowed to make representations at a later stage. Written confirmation of the suspension should be sent as soon as possible afterwards.

A suspended employee should be assigned a contact officer who should be a senior member of staff not involved with the case. The contact officer will review the suspension at regular intervals (every 2 weeks where appropriate) and ensure that they advise the employee of progress with the case. Only the Principal or a Governor nominated by the Chair can end the suspension.

The letter should state that the investigation and disciplinary process should be completed as soon as possible.

9. Disciplinary Hearing (Please see Appendix 1 for the procedure of the hearing)

9.1 If the investigating officer is satisfied that the alleged misconduct warrants a hearing, s/he will inform the employee and a disciplinary hearing will be arranged. The employee will be notified in writing (by registered post and email) of the following:

- The date, time and venue of the hearing – with at least 10 working days' notice from receipt of the letter. If the employee is unable to attend this hearing for a valid reason, a new date will be set within 5 working days (please see section 4)
- The names of the panel members (but this may be subject to change)
- The specific nature of the allegation/s
- The right to produce written statements and to call witnesses
- The right to representation
- The names of any management witnesses
- That an independent note-taker will be present
- All supporting documents to be used as evidence by management
- The possible/likely outcome of the hearing if the allegations are considered proven i.e. warnings, dismissal etc.
- A copy of the disciplinary procedure

9.2 The employee should be notified that if they wish to call witnesses or to provide relevant paperwork, this should be provided to the Principal/Chair of the panel as appropriate, at least two working days prior to the hearing.

9.3 The academy will make provision for any reasonable adjustments to accommodate the needs of a person with disabilities at the meeting. The academy must be informed of requirements at least two working days before the hearing.

9.4 A representative from Exceed Learning Partnership HR will be available to attend a hearing if required. If dismissal is a likely outcome, a representative from Exceed Learning Partnership HR must be present to advise the panel.

9.5 If the employee's chosen representative is not able to attend, an employee may offer a reasonable alternative time within five working days of the original date, unless mutually agreed otherwise.

9.6 The Principal will hear the case. If they have been directly involved in procedures leading to the disciplinary action, have instigated a proposal to dismiss, or is a witness of particular conduct giving grounds for the disciplinary action in question (or where the Principal is being considered for disciplinary action), the initial decision is delegated to a panel of at least three governors. In the case of the Principal being considered for disciplinary action, a member of the MAT/Trust Board must be on the panel.

9.7 If the employee fails to attend the hearing, the case will be heard in their absence, unless acceptable reasons have been presented in advance and it is therefore agreed to postpone the hearing to a later date.

9.8 It is for the Principal/Chair of the panel to decide whether late evidence from either side is acceptable. The views of both parties should be sought when considering the late admission of evidence, and the Principal/Chair should consider the fairness and reasonableness when making their decision. If the late evidence accepted is in written form, then it would be usual to allow a brief adjournment for reading the document/s.

9.9 The Principal/Chair must ensure that the employee receives a fair and impartial hearing, is encouraged to be represented or accompanied, is allowed to present his/her case or have it presented, and is allowed to bring witnesses and to question the management case presenter and any management witnesses.

9.10 As mentioned previously, it is the practice of Exceed Learning Partnership Academy Trust, that where necessary, governors may be used from other Exceed Learning Partnership academies, or from the MAT Board for any hearing or appeal process.

The procedure to be followed at a hearing is at Appendix 1 Please note that all mobile phones and recording devices must be switched off at all times within the hearing. No recording will be allowed without the prior agreement of all parties.

9.11 Minutes should be taken by the Clerk to the governing body or another suitable person arranged by the academy. Copies of all minutes should be circulated to all parties as soon after the hearing as possible.

9.12 Once the Principal/panel have heard the case and are satisfied that all relevant evidence has been heard, they will consider all the facts of the case, whether these constitute unacceptable conduct and what the level of sanction should be, if any. When a decision is being made by the panel they must consider the principles of natural justice and objectivity in considering the evidence. All parties other than the note taker and the assigned officer advising (Exceed Learning Partnership) the Principal/ Panel, shall withdraw, taking all personal belongings, when the consideration of evidence is undertaken.

9.13 If the Panel decides that there has been no unacceptable conduct, they will call the employee back to inform them that there is no case to answer and that all record of the process will be removed from the file after 20 working days.

9.14 If, following 9.12 above, the panel considers that unacceptable conduct has taken place, they will call the employee and their representative back into the room to let them know and to ask if there is any mitigation.

9.15 Following the process at 9.14 and before deciding what disciplinary sanction to impose, if any, the Principal/panel should, in addition to considering any mitigation, consider whether the employee has been subject to any previous disciplinary action and whether any warnings are still current. The decision of the Panel will take into account reasonableness, natural justice and will be based on the advice of Exceed Learning Partnership HR Provider.

9.16 The decision of the hearing will be announced at the close of the hearing whenever possible. This may be varied by mutual agreement, especially if the decision-making process is likely to take some time. The Principal or Chair of the panel will confirm the decision in writing within two working days of the hearing.

10. Disciplinary Sanctions

10.1 The possible actions arising from a disciplinary hearing are:

No further action – All allegations and documentation will be removed from the employee's file and removed from the record.

Verbal warning – this can be used for more minor breaches of conduct and will remain on the employee's record for 3-6 months dependent on the nature and severity of the breach.

Written warning – This is used where an employee has been found guilty of a misconduct. This written warning will set out the nature of the misconduct/reasons for the warning and any improvements and the change in behavior required. The employee will be notified that the warning constitutes part of the formal disciplinary process and the consequences of any further misconduct of a similar nature, could be a further written warning and ultimately dismissal during the life of the warning. The employee should be notified that they have a right of appeal and that a record of the warning will be kept on file but disregarded for disciplinary purposes after 6-12 months subject to continuous satisfactory conduct during this period.

Final written warning – This warning will be given where misconduct is not sufficient to justify dismissal, but is sufficiently serious that it warrants only one warning, or where the misconduct is considered serious enough to justify dismissal, but where a lesser sanction is appropriate in the particular circumstances. A final written warning may also be issued where there is still a failure to improve following previous written warning/s.

A final written warning will give the reason for the warning and advise that dismissal may result if there is no satisfactory improvement. It must state the right of appeal. A copy of the warning will be kept, but will be disregarded for disciplinary purposes after 12-18 months subject to continuous satisfactory conduct during this period.

A final written warning may, in the most serious of circumstances, be the first and last warning, even if there is no previous record of disciplinary action against the employee.

10.2 In addition and where appropriate, there are a number of supplementary sanctions that a Principal/panel may consider to accompany a written warning, a final written warning or dismissal. Such sanctions may include, for example the necessity to attend specified training.

10.3 The written notification will include the following information:

- The exact nature of the misconduct proven
- The basis of their decision

- The period of time given for improvement, if appropriate and the standard of improvement expected
- The disciplinary sanction being applied and, where appropriate, how long this will last
- Notification of the likely consequences of further proven misconduct
- Information about the employee's right of appeal, including how they should make it and to whom.

Dismissal

10.4 Following the issuing of a final written warning, if there is a management view that there has been potential subsequent misconduct, or there is a management view that the employee has potentially committed gross misconduct, then a further investigation and Hearing Panel will be convened. The further Hearing will decide if there are grounds for dismissal. The employee will be informed of the reasons for the dismissal, the date on which the employment contract will terminate, the appropriate period of notice and their right of appeal.

11. Gross Misconduct

Gross misconduct is regarded as misconduct of such a nature that it fundamentally breaches the contractual relationship between the employee and the Trust/academy and it justifies management in no longer accepting the continued presence of the employee in their employment.

Some gross misconduct breaches of discipline (please see list at Appendix 5 which is not exhaustive) may be regarded as serious enough to warrant summary dismissal without reference to any prior warnings.

12. Duration of warnings

- Verbal warning – 3-6 months
- Written warning - 6-12 months
- Final written warning - 12-18 months

After the expiry of any warning period where an employee's conduct has remained satisfactory, the warnings will be removed for the purpose of the employment relationship, e.g. For promotion, etc. however, a valid record of employment history will be retained separately.

13. Appeals

13.1 An employee can appeal against any formal disciplinary action. The appeal must be made in writing to the Chair of governors, using the proforma at Appendix 2, within 5 working days of receipt of the decision letter. This time limit will be strictly observed.

13.2 The letter of appeal from the employee should state the reason/s for appealing from one of the four below:

- The action taken was unfair
- The disciplinary procedure was applied defectively or unfairly
- New evidence has come to light which was not available at the hearing and which may make a difference to the original decision.
- The sanction was overly harsh

13.3 Evidence presented at the appeal hearing must relate to any of the reasons above and must enable the assessment of whether or not the allegations against the employee were accurate, justified and substantiated and whether the disciplinary action was appropriate in all the circumstances. The appeal may either be a review of the disciplinary sanction or a re-hearing depending on the grounds of appeal.

13.4 Arrangements for the appeal hearing will be made by its Chair on receipt of the appeal letter. Wherever possible the appeal should be heard within 20 working days of the lodging of the appeal and the employees should have at least 5 working days' notice of the appeal hearing.

13.5 The appeals panel should be formed from the governing body to include no fewer members than that of the disciplinary hearing panel whose decision is subject to appeal. A representative of Exceed Learning Partnership HR should assist the appeals panel.

13.6 No member of the Disciplinary hearing panel shall be a member of the Appeal panel.

13.7 All documentation presented to the hearing, together with the decision of the Principal/Chair of the panel, as well as any subsequent correspondence, must be made available to the Appeal Hearing panel. Any new evidence should be copied to all parties at least 2 working days before the Appeal hearing.

14. Appeal Hearing (Please see Appendix 3 for the procedure of an Appeal Hearing)

14.1 The Appeal panel will deliberate in private, paying particular attention to any new evidence that has been introduced by the employee, as well as hear representations from both management and the employee or representative in order to determine whether the decision of the hearing was fair and reasonable in view of the evidence available. The Appeal panel cannot increase the disciplinary sanction.

14.2 The decision of the Appeal hearing panel is final and binding on all parties.

14.3 Minutes of the Appeal hearing will be taken by the Clerk to governors or another suitable person as arranged by the academy. Copies of the notes will be circulated to all parties as soon as practicable after the hearing.

15. Child Protection Issues

15.1 If a complaint against an employee relates to a child protection issue then the Investigating officer must contact the Local Authority's Designated Officer (LADO) at the outset, to discuss how to proceed. The outcome may be that an allegations strategy meeting is required and the LADO will convene this meeting if this is the case.

15.2 If the allegation is substantiated and the employee is dismissed or the Academy / Trust ceases to use the person's services, or the person resigns or otherwise ceases to provide his/her services, the LADO should discuss with the academy whether a referral should be made for consideration as to the individual being barred from, or have conditions imposed in respect of, working with children.

15.3 No disciplinary records relating to the safety and welfare of children and young people will be withdrawn from an employee's personal file for holders of posts covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Whilst the warning will remain on file, it is not 'live' and would only be taken into account if relevant and reasonable to do so in the context of the responsibility for the protection of children.

15.4 The academy will refer on to the Teaching Agency (TA) those serious misconduct cases relating to registered teachers, which do not raise issues relating to the safety and welfare of children and young people, who are dismissed through this procedure or where the proceedings would have led to dismissal had the employee not resigned.

15.5 Where grounds for dismissal relate to issues relating to the safety and welfare of children and young people these will be referred by the academy to the Disclosure and Barring Agency (DBS).

16. Alleged Criminal Offences

16.1 If an employee is charged with, or convicted of a criminal offence, this should not normally in itself be reason for disciplinary action. Consideration must be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with the Academy and work colleagues. The disciplinary procedure will only be instigated where there are reasonable grounds for believing that the nature of the activities is sufficiently serious to have an adverse effect on the ability of, or confidence in, the employee to carry out his/her duties properly.

16.2 Where an employee is alleged to have committed a criminal offence and Police investigations are underway, disciplinary proceedings can be taken and a decision implemented in accordance with this procedure before Police investigations are completed. This must however, be handled carefully and in accordance with Police instructions so as not to interfere in the police investigation.

16.3 The Academy will normally wish the Police to independently prosecute offenders where financial impropriety at work is discovered, in addition to whatever disciplinary action is felt appropriate.

17. Record-Keeping

17.1 Keeping accurate and contemporaneous records is essential, particularly in the event of referral to an Employment Tribunal. This should include details of all investigations, correspondences, statements and meeting notes. The notes need not be verbatim, and there is no requirement for agreed minutes, however, it is good practice to attempt to agree minutes, particularly in the case of interview records. It should be kept in mind that an Employment Tribunal could be an extended time after the matter was considered internally.

17.2 Records are confidential and must be held in a confidential and secure manner. The issues raised under this procedure are often particularly sensitive, and it is essential that information is kept in accordance with the General Data Protection Regulation 2018.

17.3 If in exceptional circumstances the operational decision is published or made public in any way, advice must be sought in these circumstances from both Exceed Learning Partnership HR and our legal partners.

17.4 Documentation that should be retained includes:

- All papers presented at the disciplinary and appeal hearing
- Notes of meetings (contemporaneous or otherwise)
- Information collated by the panel or used to assist in making a decision
- Confirmation of the decision, or other supplementary correspondence
- Clarity on how decisions were reached and disciplinary action determined

17.6 Monitoring and Evaluation

17.6 The LGB/Principal/ CEO and Exceed Learning Partnership Trust Board will monitor the operation and effectiveness of the disciplinary process arrangements. The Principal will provide the LGB/Board of Directors and Exceed Learning Partnership HR with a written report on the operation of the Academy's Disciplinary Policy annually. This information will be shared and discussed with the trades unions at the academy. The report will not identify any individual by name. It will include an assessment of the impact of the policy on:

- Race
- Sex
- Sexual Orientation
- Disability
- Religion and Belief
- Age
- Part-time Status
- Maternity and Pregnancy
- Caring Responsibilities

The policy will be reviewed and amended (where necessary) annually by Exceed Learning Partnership, in consultation with the trade unions at a national level, based on the information received, and on any trust or legislative changes.

Policy Agreed: 19th September 2018 (reviewed Sept 2020)

Signed CEO: B.A. Nixon

Signed: Chair of Directors:

Policy to be reviewed in autumn 2021

Appendix 1 Procedure for a Disciplinary Hearing

NB: This Procedure can be varied by agreement by both parties, for example where mitigation is the body of the main case.

1 Preliminaries

- Introductions, identification of panel members, employee, representative, HR support, Note taker.
- Where witnesses are called, they are only present for the period of questioning.
- Notification to all present to switch off mobile phones and other electronic devices for the duration of the hearing including any adjournments. Where participants leave the room for adjournments/deliberations, they must take all personal belongings with them.

2. Management case

- The management representative presents management case and calls witnesses for the management case
- Employee/representative have the opportunity to question the management representative and witnesses
- Principal/panel have the opportunity to question the management representative and witnesses
- Further questions if necessary from the Employee/representative
- Further questions if necessary from Principal/panel

3. Employee's case

- Employee/representative presents his/her case and calls witnesses for the employee's case
- The management representative /HR Support has the opportunity to ask questions of the employee/representative and witnesses
- Principal/panel have the opportunity to ask questions of the employee/representative and witnesses
- Further questions if necessary from management representative/HR Support
- Further questions if necessary from Principal/panel

4. Summing up

- The management representative has the opportunity to sum up his/her case (no new evidence to be submitted at this point)
- The employee/representative has the opportunity to sum up his/her case (no new evidence to be submitted at this point)

5. Adjournment and deliberation of whether misconduct has taken place

- The management representative / HR support to withdraw
- The employee/representative to withdraw
- Principal/panel to consider the facts presented to them and to determine whether misconduct has taken place
- Management representative / HR support and Employee/representative to be recalled and the determination of the Principal/panel on whether misconduct has occurred to be conveyed verbally. The panel will then ask the employee for any mitigation they would like to present where necessary.
- The hearing will then be adjourned again for the Principal/panel to consider any mitigation provided and to determine what (if any) disciplinary sanction to apply
- The management representative, the employee and their representative to be recalled and wherever possible, for the determination of the Principal/panel to be conveyed verbally. This will be confirmed in writing within 5 working days of the date of the hearing.
- The hearing may also be adjourned at the deliberation stage in order to allow for further investigation if the Principal/panel feels that there are points that require clarification. An opportunity may be given to re-examine the evidence/witnesses.

Appendix 2 Disciplinary Procedure Appeal Proforma

Name: …….. Post title:…….

Trade Union:……

Union Representative Name and Contact details:

……

……

Date of Hearing:……

Decision

Date letter issued:…… Date letter received:……

The grounds for my appeal are:

Continue on a separate sheet if necessary.

Please ensure that additional sheets are signed, numbered and dated.
Signed:……

Date:……

Please return this pro-forma within 5 working days of receipt of the decision letter to:

Chair of Governors (insert name of Academy, address and email contact)

Time limits for the appeal with be strictly observed

Appendix 3 Procedure for a Disciplinary Appeal Hearing

1 Preliminaries

- Introductions, identification of panel members, employee, representative, HR support, Note taker.
- Explanation by Chair of the Appeal hearing process.
- Where witnesses are called, they are only present for the period of questioning.
- Notification to all present to switch off mobile phones and other electronic devices for the duration of the hearing including any adjournments. Where participants leave the room for adjournments/deliberations, they must take all personal belongings with them.

2. Running order

Employee/representative to put his/her case and call witnesses where required

Employer representative/HR support to have the opportunity to ask questions of the employee/representative/witnesses

Panel members to have the opportunity to ask questions of the employee/representative/ witnesses

Employer representative to have the opportunity to put their case and answer questions on their decision, and to call any witnesses as required.

Employee / representative to have the opportunity to ask questions of the employer

Representative Panel to have the opportunity to ask questions of the employer representative

Employer representative to sum up their case if required (no new evidence should be submitted at this point)

Employee/representative to sum up their case for appeal (no new evidence should be submitted at this point)

Employee/representative and employer representative/HR support to withdraw, taking all personal belongings with them.

Appeal panel to consider the facts presented to them and reach a determination which they will relay to all parties verbally (wherever possible) this will be confirmed in writing within 5 working days of the appeal hearing.

The appeal hearing may also be adjourned at the deliberation stage in order to allow for further investigation if the panel feels that there are points that need clarification. An opportunity may be given to re-examine the evidence/witnesses.

The decision of the appeal panel is final.

Appendix 4 Model letters

Model suspension letter

Insert Date

Dear (insert employee's name)

Disciplinary Procedures – Notification of Suspension from Duty

Further to our meeting on (insert date of meeting) I am writing to confirm that you have been suspended from your duties as (insert job title) with effect from that date. The suspension is a precautionary measure and without prejudice. It does not indicate any pre-judgement on the matter and is not a disciplinary penalty. It is in place pending the investigation of the following allegation(s) made against you:

Enter allegation(s) here ……

The reason for the suspension is that the actions are potentially gross misconduct/or your presence on site will impede the investigation. (*Delete as appropriate).* A thorough investigation will be undertaken, during which you will be given a full opportunity to offer any explanation or comments regarding the above allegations. You should remain available during normal working hours over the period of suspension. Any information that is gained during the process of the investigation may be presented at any subsequent disciplinary hearing.

I will undertake the disciplinary investigation or I have nominated (*name and post title*) to carry out the investigation (*delete as appropriate*) and will be supported by (*HR representative, Exceed Learning Partnership Academy Trust)*. You will receive a separate letter inviting you to a meeting as soon as possible.

The suspension will be kept under review and could be lifted at any time if deemed appropriate to do so. You will continue to receive your normal pay during the period of suspension which will be for as short a period as possible but will be sufficient to allow a thorough investigation.

As discussed you should not attempt to come onto the Academy during the suspension and you must not have any discussion with staff about the suspension and associated allegation. You should let me have any property belonging to the Academy that may be needed during the period of suspension if you still have any, likewise you should arrange with me to collect any of your personal belongs if you have not already done so.

During your suspension (*insert name and post title*) will be your contact officer who you will be able to contact to enquire about the process, discuss any concerns or to contact colleagues in the Academy who you may wish to ask to be witnesses on your behalf. Your health and well-being throughout this investigation is important, therefore if you require any support, such as confidential counselling or Occupational Health support, please contact (insert name and post title).

I have enclosed for your information the disciplinary procedure as adopted by the Governing Body that will be followed. I would also encourage and advise you to contact your trade union representative if you have not already done so.

Yours sincerely ……

Principal
CC: …….. (Trade union rep) if known and applicable

Model letter Invite to investigatory meeting Date:

Strictly Private and Confidential

Insert date

Dear……..

Re: Disciplinary Procedures – Invite to Investigation Meeting

I am writing to advise you that as Investigation Officer I will be undertaking a full investigation into the following allegation(s) that have been made against you:

Enter allegation(s) here…….

You are therefore required to attend an investigation meeting on …….. (date) at …….. (time) at …….. (venue) in order to offer you the opportunity to explain or comment on the matter, and for me to question you. (insert name of HR representative, Exceed Learning Partnership Academy Trust) will accompany me.

Please report to reception and ask for me. A trade union representative or work colleague may accompany you at this meeting but it is your responsibility to arrange this. You are encouraged and advised to do this.

I must inform you that notes will be taken at this meeting by (insert name) and any information which is gained during the process of the investigation may be presented at any subsequent disciplinary hearing with the Governing Body.

Please confirm your attendance and whether you will be accompanied by (insert date to be notified by).

You will be informed in writing of the outcome of the investigation.

Yours sincerely ……

Investigating Officer/Job title

CC: …….. (Trade union rep) if known and applicable

Model letter

Outcome of Investigation

Insert Date:

Dear

Disciplinary Procedures – Outcome of Investigation

I am writing to advise you that the disciplinary investigation into the following allegation(s) is now complete:

Enter allegation(s) here …….

The outcome of the investigation is: (Please delete options below as appropriate:)

1. I can confirm that no disciplinary action will be taken and the matter is now concluded. I would like to thank you for your cooperation during the process.

2. Following careful consideration of the information gathered during the investigation it is felt that the nature of the issues warrant management guidance.

The purpose of this letter is to confirm the guidance that you received verbally at our meeting on (insert date) to ensure that you are aware of the implications of any further incidents in regard to the issues investigated.

(Enter here reasons for the decision and the specific management guidance; including any other further recommendations such as training/supervision etc.)

Finally, you should be aware that any further allegations of a similar nature will be dealt with under the same procedure where appropriate and this guidance may also be taken in to account and may result in a formal hearing of the Principal/Governing Body. Should you have any enquiries in regard to the contents of this letter please do not hesitate to contact me.

3. I am recommending that a disciplinary hearing should be convened with the Principal/Governing Body. The purpose of the hearing is to listen to the facts presented from both parties and for the Principal/panel to decide whether any disciplinary sanction is required.

I must inform you that the outcome of this hearing could be an improvement note/written warning/final written warning or dismissal.

If there are any of your own witness statements that you wish to present at the hearing please start collating these now as you will need to exchange these with me 2 working days before the hearing. Please remember to contact (insert name of contact officer) if you wish to discuss progress on the investigation or contact anyone from the academy to gain witness statements on your behalf.

I will write to you again very soon with the documentation that will be referred to at the hearing, details of the date and time of the hearing and your right to be represented.

Yours sincerely

Investigating Officer/Job title CC: (Trade union rep) if known and applicable

Model letter Invite to Hearing

Date

Dear……

RE: Disciplinary Procedures – Invite to Hearing

I am writing to inform you that the investigation is now complete. The outcome of the investigation is that you are required to attend a disciplinary hearing on ……. (date) at ……. (time) at …….. (venue). The specific allegation(s) that will be considered at the hearing are:

Enter allegation(s) here: …….

You have the right to be accompanied by a certified trade union representative or work colleague but it is your responsibility to arrange this. You are encouraged and advised to do this. I will be presenting the management case and will/will not be calling any witnesses. Insert names of witnesses if applicable.

Delete option below as appropriate:

1. …….. (Principal) will hear the case and will be supported by …….. (HR representative Exceed Learning Partnership). Copies of the written evidence and relevant documents that will be presented to the hearing are enclosed.

2. The case will be heard by a panel of Governors. The names of the Governors are ……., ……., ……. although this may be subject to change. …….. (name) will also be present at the hearing to take minutes.

The following information should be supplied to me as soon as possible and no later than (2 days before hearing)

- any written evidence or relevant documents you wish to be considered
- the names of any witnesses and copies of their written statements detailing their evidence
- confirmation of your attendance and who will accompany you

It will be the Chair of the Hearing Committee decision as to whether any late submitted evidence from either side is acceptable.

You should be aware, that under the disciplinary procedure the sanctions that could be agreed by the Panel are: Improvement note and/or training, written warnings (first written or final).

In extreme cases where there is already written warnings on file or in the case of gross misconduct, dismissal.

Yours sincerely

Investigating Officer/Job title
CC: …….. (Trade union rep) if known and applicable

Model letter

Outcome of Hearing

Date:

Dear

Following the formal disciplinary hearing held on …… (date) attended by ……(names), I write to confirm that having carefully taken in to account all the information provided

SELECT THE APPROPRIATE PARAGRAPH FROM THE FOLLOWING

1

no further action needs to be taken and the matter is now closed. Provide reasons for the decision. Any records must be removed from the personnel file.

1a. Though no action needs to be taken, training may be required.

2.

the allegations made against you were found to be substantiated and at the hearing you were provided with an improvement note and/or training – enter specific details here and the reason for the decision. Any further incidences of a similar nature or failure to improve conduct could result in further action being taken under the Disciplinary Procedure.

3.

written warning – The allegations made against you were found to be substantiated and the decision was that you receive a written warning to remain on your file for …….. (duration as per policy). Enter specific details here and the reason for the decision.

Any further incidences of a similar nature or failure to improve conduct could result in further action being taken under the Disciplinary Procedure.

A note of the formal warning given to you will be recorded on your personal file and may be taken into consideration in the event of any future misconduct within the next ……. months (duration as per policy).

final written warning – The allegations made against you were found to be substantiated and the decision was that you receive a final written warning to remain on your file for …….. (duration as per policy). Enter specific details here and the reason for the decision.

Any further incidences of a similar nature or failure to improve your conduct could result in dismissal. A note of the formal warning given to you will be recorded on your personal file and may be taken into consideration in the event of any future misconduct within the next …….. months. (duration as per policy)

Dismissal (with notice) The allegations made against you were found to be substantiated and the decision of the panel is that you be dismissed with notice. The reasons for reaching this decision are as follows:…….

You are entitled to a period of notice in accordance with your contract of employment of …… (enter notice period here). Your last day of paid employment will therefore be ……

You should not attend the academy during the notice period.

Dismissal (without notice) The allegations made against you were found to be substantiated and the decision of the panel is that you be summary dismissed without notice. The reasons for reaching this decision are as follows:…….

Your last day of paid employment is …….. (enter date of hearing).

Enter appeal paragraph where applicable:

You have the right to appeal against this decision and if you wish to exercise this right you may do so by writing to ……. within 5 working days of receipt of this letter, stating the grounds of your appeal, on the enclosed pro-forma.

Yours sincerely

Principal/Chair of Hearing Committee

CC File (where appropriate) CC:(Trade union rep) if known and applicable

Appendix 5 Examples of Misconduct

- Misuse of academy and /or Exceed Learning Partnership facilities such as internet and email
- Poor time-keeping
- Unauthorised absences from work. Persistent and frequent absenteeism and failure to follow notification procedures
- Failure to follow reasonable management instructions
- Failure to improve faults of a similar nature, that build into a pattern of unacceptable behaviour, performance or attitude
- Deliberately undermining the achievement of the team, academy or Exceed Learning Partnership goals
- Wilful failure to adapt to changing technologies, methods and patterns of work (as distinct from inability to adapt which is dealt with under the capability procedure)
- Insubordination – i.e. failure to comply with reasonable management instructions
- Wilful neglect of duty
- Breaches of safety regulations and safe working practices
- Petty theft or embezzlement whilst at work
- Deliberately falsifying work records
- Being unfit for duty through drink or drugs (other than those which have been medically prescribed)
- Sexual misconduct at work including indecent behaviour, offensive behaviour or sexual harassment
- Discrimination against pupils, employees or members of the public on grounds of their colour, race, disability, ethnic origins, sex, sexual orientation, age, marital status or religious beliefs
- Fighting, physical assault or threatening behaviour towards a pupil, fellow employee or member of the public
- Bullying, abusing or threatening behaviour towards pupils and other employees
- Wilful damage to or concealment of official records
- Improper disclosure of written or verbal information which is clearly identifiable as confidential
- Knowingly aiding and abetting a disciplinary offence
- Knowingly making false or malicious statements about other employees or members of the LGB/MAT Board or Trust
- Deliberate failure to report evidence or suspicion of any impropriety or breach of procedure on the part of another employee
- Wilful non-compliance with Data Protection principles
- Smoking on academy/Trust premises

Appendix 6 Examples of Gross Misconduct

- Dishonesty, including theft, fraud or deliberate falsification of records or acceptance of bribes
- Stealing from the academy, members of staff, pupils or the public
- False claims for expenses or overtime
- Other offences of dishonesty
- Substantiated allegations in relation to child protection issues
- Harassment or abuse of any person, whether or not an employee, on grounds of race, gender, sexual orientation, religious belief, disability, marital status, age, gender reassignment or ethnic origin, or deliberate discrimination on such grounds
- Deliberately misusing, damaging academy or Exceed Learning Partnership property
- Providing false information to support an application for employment, this includes, but is not limited to falsification of qualifications necessary for the post
- Serious insubordination or wilful disobedience, including serious act(s) or persistent repetition of a failure to comply with a reasonable instruction
- Physical violence or bullying against other employees, pupils or members of the public
- Misuse of the academy's / Trust property or name, or bringing the academy or trust into disrepute
- Deliberate and or inappropriate use of academy's or Trust's computer equipment/software, including deliberately accessing internet sites containing pornographic, offensive or obscene material
- Inability to perform duties or improper conduct as a result of being under the influence of alcohol or drugs (other than those which have been medically prescribed)
- Corrupt or improper practice for private gain
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules
- A serious breach of trust and confidence
- Breach of any professional code of conduct applicable to the job which could bring the profession or Exceed Learning Partnership into disrepute
- Misuse of official position for personal gain
- Relevant criminal offences. However, criminal offences should not be treated as automatic reasons for dismissal regardless of whether the offences are relevant to the individual's employment. The main consideration should be whether the offence is one that makes the individual unsuitable for this type of work. Employees should not be dismissed solely because a charge against them is pending or because they are remanded in custody.
- Engaging in other employment during the employee's contracted working hours for the academy/Trust