

# The Blue Kite

## Academy Trust

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**Title of Policy/Procedure:** Disciplinary Procedure

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**Reviewer(s):** Director of Operations

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**To be read in conjunction with the following policies:** Disciplinary Guidance Notes

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**Consultation Process:** A consultation took place with the Finance, Personnel and Resources Committee.  
  
The policy has been adopted from Swindon Borough Council and amended to suit the Trust

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**Policy Date:** May 2017

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**Review Date:** May 2019

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## **1. Scope and purpose of the disciplinary procedures**

- 1.1 This procedure applies to staff employed by The Blue Kite Academy Trust
- 1.2 The purpose of the Trust's disciplinary rules and procedures is to help all employees to achieve and maintain acceptable standards of conduct, attendance and job performance. Examples of conduct that would be considered unacceptable are given at the end of this procedure. The Trust recognises that disciplinary action should not be viewed solely as a means of imposing sanctions but rather as a means of encouraging improvement.
- 1.3 The procedure follows the principles of the ACAS Code of Practice:
- a written statement from the employer setting out the grounds for action and inviting the employee to a meeting;
  - a meeting where certain requirements must be observed;
  - the employer's decision and notification to the employee of the right of appeal; and
  - an appeal process.

## **2. Principles**

- 2.1 It is the duty of each employee to conduct him/herself appropriately and avoid acting negligently in carrying out his/her work.
- 2.2 No employee will be dismissed for a first breach of discipline except in a case of gross misconduct.
- 2.3 All cases of formal disciplinary action under these procedures will be fully investigated and the investigation findings recorded on the employee's personal file for the duration of any disciplinary sanction imposed.
- 2.4 In the event that, following investigation, a case is withdrawn or not upheld all reference to the alleged disciplinary offence will be expunged from the employee's personal file.
- 2.5 No disciplinary action beyond informal counselling will be taken against an accredited trade union official until the circumstances of the case have been discussed with a senior trade union representative.
- 2.6 At an early stage in the formal procedure employees will be advised in writing of the nature of the complaint against them; of the right to be accompanied by a trade union representative or a work-based colleague of the employee's choosing and will be given the opportunity to prepare for a formal meeting within this procedure and at such a meeting will be given the opportunity to state their case before any decision is made.
- 2.7 Employees will have the right to appeal against any disciplinary sanctions.

- 2.8 In operating this policy, line managers will apply the Trust's commitment to equality by treating all employees fairly and without discrimination on the grounds of colour, race, ethnic or national origins, sexual orientation, age, marital status, disability, trade union association or religious beliefs.
- 2.9 In adopting this procedure Trustees will determine in advance how they will delegate authority for issuing warnings and making initial dismissal decisions in the case of disciplinary cases, having regard to the size of the academy and the Head's ability to remain independent. (In compliance with the School Staffing (England) Regulations 2009)

### **3. Child Protection Allegations**

Allegations about the safeguarding and protection of children must be handled in accordance with statutory guidance and the procedures of the Local Safeguarding Children Board (LSCB). The role of the Local Authority Designated Officer (LADO) is crucial in handling all allegations of these allegations and the LADO has a statutory duty to ensure that allegations about safeguarding are handled properly and expeditiously.

A strategy meeting, normally arranged within two working days of the allegation, will determine whether the allegation should be investigated by the police or by some other agency or by the academy under its disciplinary procedure

If the matter is handed back to the academy, whether at the first strategy meeting or at some later stage, the academy must take account of the recommendations of the strategy meeting and must liaise with the LADO and the Trust Human Resources Team regarding the next steps.

Further advice can be found in the Guidance for Headteachers Dealing with Child Protection Allegations against School based staff and the DfE guidance Dealing with Allegations of Abuse against Teachers and Other Staff, available at [Schoolsonline](http://Schoolsonline).

### **3. Informal counselling**

- 3.1 Informal counselling may be a more appropriate response to minor offences rather than formal disciplinary action. If appropriate, counselling will take the form of a discussion with the object of determining and agreeing the improvement required. A note of the conversation will be sent to the employee and a copy kept on file for 3 months. Where this informal approach fails to bring about the desired improvement, the formal procedure will then be followed.

#### **4. Mediation**

An independent third party or an accredited mediator can sometimes help to resolve disciplinary issues. Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement. Mediation can be used as either an alternative to formal disciplinary proceedings or to rebuild relationships after a formal dispute has been resolved.

#### **5. Investigations**

5.1 No action will be taken by the academy before a proper investigation has been undertaken.

The investigation will normally be conducted by the Chief Executive, Headteacher, Deputy, Assistant Head, Business Manager or Chair of Governors, unless the Chair of Trustees and the CEO jointly decide this is inappropriate. As part of the investigation the employee will be given full details of their alleged misconduct and be given the opportunity to explain their actions. Witnesses will be interviewed and statements taken/provided.

If an allegation is made against the Chief Executive or Headteacher, the Chair of Trustees will nominate a non-staff Trustee to undertake the investigation.

5.2 Witnesses must be told the following before any investigatory interview:

- The nature and purpose of the investigation;
- That whilst there is no statutory right to representation at an investigatory interview, an employee may, if they wish, arrange to be accompanied by a trade union representative or work colleague during an investigatory interview but this must not cause undue delay to the conduct of the investigation;
- That a factual statement will be taken and may be used at any subsequent disciplinary hearing;
- That a witness may be called to give evidence at any subsequent disciplinary hearing;
- That the employee accused of misconduct may be given a copy of the statement at some point in the future and will be present at any hearing;
- That if the statement is used in any report submitted to the disciplinary hearing that the original statements will also be made available.

5.3 Note on interviews with pupils who are possible witnesses in a disciplinary investigation:

- If it is necessary to interview pupils as part of an investigation their parents/carers must be advised and consent must be obtained. A parent/carer may accompany a child during the interview but must not significantly contribute to the interview.
- Wherever possible the employee's representative will have the opportunity to be present at an interview with a pupil to avoid the necessity of interviewing the pupil more than once, as long as this is not prejudicial to the disclosures likely to be made by the pupil. If it is established that the presence of another adult may

intimidate or inhibit the pupil the employee's representative will be provided with a transcript of the interview.

- Wherever possible a factual record of the interview will be agreed to avoid the pupil being called as a witness at any subsequent disciplinary hearing.

## 6. Suspension

6.1 If appropriate the Trust may suspend the employee from work on full pay for a specified period during which time such an investigation will be undertaken. **Suspension can only be imposed by the Chief Executive or Trustees.** Suspension should be confirmed in writing explaining the reasons for the suspension. During the period of suspension the employee will not be entitled to access to the academy's premises, except with the prior consent of the Trust and subject to such conditions as the academy may impose.

6.2 Suspension would normally be imposed only if:

The allegations are of serious or gross misconduct such that dismissal is a possibility;

- The suspension is required to enable an investigation to proceed unimpeded;
- The employee is the subject of a police investigation or has been charged with a criminal offence.

6.3 In situations where suspension is not appropriate but it would be sensible for the employee to not be present at work it may be appropriate to consider the possibility of the employee being directed to work at home.

## 7. Disciplinary hearing

7.1 If, under these procedures, the academy decides after an investigation has been concluded to hold a disciplinary hearing in relation to the matter complained of, the employee will, in accordance with the statutory discipline and dismissal procedure, be given details of the complaint against them at least five working days before any disciplinary hearing takes place.

7.2 The Trustees will in adopting this procedure have determined the arrangements for dealing with disciplinary matters in line with the School Staffing Regulations 2009.

- Investigations will usually be conducted by a senior member of staff; jointly determined by the Chief Executive and Chair of Trustees.
- Where an investigation indicates that the allegation is likely to have occurred and if proven would constitute misconduct, the hearing could be conducted by a Staffing panel of Trustees, the Head or an independent Deputy Head (i.e. one not involved in the investigation).
- A Staffing Panel of Trustees or the Chief Executive will hear all cases where the allegation, if proven, could lead to dismissal – i.e. gross misconduct or cumulative misconduct where a final written warning has not yet expired.
- In cases where the Head has been involved in the case a panel of Trustees will hear the case.

7.3 Offences under the Academy's disciplinary procedures fall into two main categories:

- (a) **Misconduct** – Misconduct is defined as wrongful, improper or unacceptable conduct
- (b) **Gross misconduct** – Gross misconduct is generally defined as misconduct serious enough to destroy the employment contract between the employer and the employee and to make any further working relationship and trust impossible. A fundamental breakdown of trust and confidence has occurred.

Examples of what constitutes misconduct and gross misconduct are given at the end of this procedure.

7.4 In accordance with the statutory discipline and dismissal procedure, disciplinary hearings will be convened in writing giving at least five working days notice, giving details of the complaint against the employee. Documents to be referred to during the hearing should be made available to all parties at least five working days in advance. These timescales may be varied with the agreement of all parties.

Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available in the absence of the employee.

7.5 At any disciplinary hearing the employee or their representative will, in accordance with the statutory discipline and dismissal procedure, be given an opportunity to state their case.

7.6 Following the disciplinary hearing a decision will be taken as to whether the complaint against the employee is upheld. In accordance with the statutory discipline and dismissal procedure, this decision will be confirmed in writing.

7.7 The following sanctions may be applied as a result of a disciplinary hearing concluding that the complaint against the employee has been upheld:

**(a) Stage I - Oral warning**

If conduct or performance is unsatisfactory, the employee will be given a formal oral warning which will be recorded and will remain on the employee's file for a period of three months but, subject to satisfactory conduct will not be automatically built upon for future incidents following the expiry of that period.

**(b) Stage II - First written warning**

If the offence is of a more serious nature or if, following an oral warning, the employee's conduct is still unsatisfactory, a first written warning will be given to the employee, which will state the reason for the warning and will require an improvement in the employee's conduct, failing which further disciplinary action will be taken. The written warning will remain on the employee's file for a period of 12

months but, subject to satisfactory conduct and performance, will not be referred to in any subsequent disciplinary case following the expiry of that period.

**(c) Stage III - Final written warning**

If the offence is considered serious enough to warrant consideration of dismissal if there is a repetition but does not amount to gross misconduct, or if following a first written warning the employee's conduct is still unsatisfactory, a final written warning will be given which will state the reason for the warning and will require an improvement in the employee's conduct, failing which further disciplinary action will result which could ultimately lead to dismissal. This warning will normally remain on the employee's file for a period of 12 months but may, depending upon the nature of the offence, remain on the employee's file for up to three years. Subject to subsequent satisfactory conduct, a final written warning will not be referred to in any subsequent disciplinary case following the expiry of that period.

**(d) Stage IV - Dismissal**

If, following a final written warning there is no satisfactory improvement in the employee's conduct within the specified time period, the employee may be dismissed.

The Trust reserves the right to offer to make a payment in lieu of notice on the termination of the employee's contract, other than in cases of gross misconduct.

These warnings are normally issued in sequence, however in cases of serious or gross misconduct or where there is a pattern of persistent misconduct, the sequence of warnings outlined above may not be followed. The procedure may be instigated at any stage felt appropriate by the Academy.

Warnings issued under this procedure will remain on the employee's file for the life of the warning. If there is no further instance of misconduct the warning will be expunged from the file when it expires. No reference will be made to expunged warnings in subsequent disciplinary proceedings.

**Note:** In addition to the disciplinary warnings outlined above, in cases of serious or gross misconduct further disciplinary measures may be invoked. These alternative measures include: demotion to a lower grade, or reasonable deductions from salary to cover repayment for loss or damage to Academy property.

If it is established, after investigation and a disciplinary hearing at which the employee's explanation of the matter is heard, that the employee has committed an act of gross misconduct the employee will be summarily dismissed, i.e. without notice and/or any pay in lieu thereof. While the alleged gross misconduct is being investigated the employee may be suspended in accordance with the provision set out above. If the Academy takes the decision to dismiss the employee will be advised of the reason for the dismissal and the date upon which the employee's employment will be terminated. In cases of gross misconduct this will usually be the date that the letter is sent.

## **8. Appeals**

- 8.1 In accordance with the statutory discipline and dismissal procedure, if a disciplinary sanction is imposed the employee will be notified of the right to appeal. If the employee wishes to appeal against any disciplinary decision taken by the Academy, the employee may do so, in the first instance, by lodging an appeal with the Chief Executive or Chair of Trustees within ten working days of the disciplinary decision being received. The employee should state the reason for their appeal.
- 8.2 Appeal hearings will be convened in writing giving at least five working days' notice. Documents to be referred to during the hearing should be made available to all parties at least five working days in advance. These timescales may be varied with the agreement of all parties.
- 8.3 The Trustees appeal panel will hear the case –the panel being made up of at least three Trustees who have had no prior involvement in the case.
- 8.4 The employee will be entitled to attend the appeal hearing to state their case. They may be accompanied by an academy work colleague or a union representative who may present the employee's case on their behalf. The appeal panel may:
- Uphold the appeal and overturn the disciplinary action taken;
  - Reject the appeal and confirm the disciplinary action taken;
  - Having considered the appeal decide to impose a different disciplinary sanction.
- 8.5 The decision of the appeals panel will be final within the disciplinary procedure.
- 8.6 If following dismissal the employee is re-instated on appeal their salary, pension and NI contributions will be back paid to the date of the original termination.

## **9. Referrals**

- 9.1 Where a teacher has been dismissed for serious misconduct (or may have been dismissed for serious misconduct if the teacher had not resigned) the Trust must refer the circumstances to the National College for Teaching and Leadership.
- 9.2 If a case includes allegations against a teacher that involves both misconduct and safeguarding (ie the risk of harm, or actual harm, to a child), the National College for Teaching & Leadership will contact the Disclosure and Barring Service (DBS).

## **10. Documentation**

- 10.1 Where disciplinary action relates to child protection issues, the relevant documentation should be retained on the employee's personal file until the employee reaches 65 years or 10 years whichever is the longer, but will not form part of any subsequent disciplinary action if it is time-expired.

## EXAMPLES OF DISCIPLINARY OFFENCES

### 1 MISCONDUCT

Offences that might normally to be regarded as misconduct:

- Poor timekeeping
- Rude or offensive behaviour
- Unauthorised absence from school
- Failure to obey a lawful or official instruction including failure to observe an operational requirement of the school
- Unauthorised use of equipment on school premises

### 2 GROSS MISCONDUCT

Gross misconduct is generally defined as misconduct serious enough to destroy the employment contract between the employer and the employee and to make any further working relationship and trust impossible.

Offences that might normally to be regarded as gross misconduct:

- Unauthorised removal, theft or use of academy property/assets
- Fighting/physical assault of another person or intimidation
- Abuse, misuse or damage to academy property
- Incapability through, or being under, the influence of alcohol or illegal drugs
- Wilful act or omission that causes unacceptable risk of loss, damage or injury (gross breach of sfe working practices)
- Criminal activity during the course of employment
- Off-duty conduct that has a direct adverse effect on the employment
- Sexual harassment of, or sexual misconduct with, colleagues or pupils
- Discriminatory behaviour on the grounds of sex, age, marital status, creed, race, religion or belief, ethnic origin, sexuality or disability.
- Serious harassment or bullying of colleagues

These lists of offences are not intended in any way to be exhaustive or prescriptive. The second list does, however, illustrate the types of cases where dismissal without notice - **SUMMARY DISMISSAL** (after full and detailed investigation and consideration of the facts) - can be justified.

Each instance must be assessed on the nature of the conduct and behaviour within the context of the nature of the job, the employee's record and any other relevant circumstances.

**Ratified by:**

Signature of Chair/Vice-Chair: ..... Date: ..... May 2017 .....

- Local Governing Body
- Board of Directors