



# **Disciplinary Policy November 2016**

The Local Governing Body of [NAME] Academy adopted this policy on [DATE]  
It will be reviewed annually, by the Trust Personnel Committee no later than 30  
November 2017

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# Disciplinary Policy for dealing with the conduct of employees

## Introduction

This policy applies to all Academies within The Spencer Academies Trust. The Directors may approve a transitional policy for recently converted academies in exceptional circumstances. The Scheme of Delegation for each Academy within the Trust outlines the delegated responsibility for staffing matters and the pay and conditions of all staff.

This policy has been developed taking into account the requirements of both education and employment law and recognises the guidance set out in the ACAS code of practice in force at the date of adoption of this policy. The policy provides a fair method of dealing with alleged failures to observe standards of conduct within the Trust/Academy.

The principal or their appointed representative, supported by the Trust HR Manager will be responsible for managing the procedures. Reference to the Principal includes the Chief Executive Officer (CEO) and the senior leader responsible for the Academy, as applicable, taking into account the management structure of the Academy.

The Spencer Academies Trust expects all employees to recognise their obligations to the Trust, their Academy, the public, pupils and other employees and to conduct themselves properly at all times and in accordance with the Trust expectations, code of conduct and standards and all other policies and procedures both on and away from Academy premises. Governors consider that the disciplinary policy is not just a means of imposing sanctions but is a means of encouraging improvements in employees whose standard of conduct is unsatisfactory.

This procedure does not apply to employees still in their probationary period that will be dealt with under probationary procedures unless the alleged failure constitutes gross misconduct in which case this policy will apply.

The power to consider employees' conduct and warn them with regard to future conduct or dismiss them has been delegated to the Principal in collaboration with the Chief Executive Officer. The Principal or Directors of the Trust will appoint the appropriate manager to investigate alleged failures. In exceptional circumstances the Principal may undertake the role of investigating officer. In such cases the matter will then be heard by the CEO, Executive Principal, their appointed representative or a panel of governors comprising of between one and three governors.

Disciplinary matters concerning the Principal, Executive Principal or the CEO will be managed in the case of the Principal or Executive Principal by the CEO or their appointed representative and in the case of the CEO by the Chair of Directors of the Trust or their appointed representative.

This policy is in two sections. Part A covers conduct of employees and Part B sets out the formal arrangements for dealing with allegation of child abuse against employees.

This policy should be read in conjunction with The Spencer Academies Trust policy on Safeguarding and Child Protection.

Guidance on managing disciplinary procedures is available to investigating officers from the Trust HR Manager who must be consulted before commencing these procedures.

## **Part A: Conduct**

### **Preliminary considerations**

Before instigating disciplinary proceedings consideration will first be given about whether or not formal action is in fact required. It may be more appropriate to resolve the matter through informal discussions with the employee concerned.

### **Suspension**

At any stage prior to, during, or following the investigation, the employee may be suspended. The suspension should only occur if one or more of the following applies:

- I. in cases of serious misconduct
- II. where the employee's continued presence in the workplace would render an investigation impossible
- III. where working relations have broken down and there is no other way of avoiding conflict while the matter is resolved
- IV. where the safety of pupils may be compromised.

It will be explained to the employee that suspension in itself is not a disciplinary sanction and does not indicate or presume the outcome of any disciplinary hearing. Suspension will be with full pay. The suspension will be confirmed in writing as soon as possible, normally the next working day. The confirmation will include a named contact in the academy and the reason for the suspension. Since suspension is not a disciplinary sanction, there is no right of appeal against the decision. Suspension will be reviewed to ensure it is not unnecessarily protracted.

Where an employee is suspended the Principal will consult with the Chief Executive Officer and inform the Local Chair of Governors. In the case of the Principal and Chief Executive Officer this will be the Chair of Directors of the Trust. The Local Governing Body will be informed on a confidential basis as soon as possible.

### **Investigation**

When allegations of misconduct are made, an appropriate manager will be appointed to investigate the allegations. The investigating officer will present the case at any subsequent disciplinary hearing.

Any allegation of misconduct will be dealt with as a matter of urgency. The employee will be advised, as soon as practicable, of the allegations/complaints made against them and asked to make a written statement. No disciplinary action will be taken until the case has been fully investigated.

The investigating officer should interview any witnesses and take statements from them. These statements should be signed and dated by the witnesses. A copy of the statement should be furnished to the witness. The witnesses should be advised that they may be required to support

their statements orally at any subsequent disciplinary hearing. Student witnesses will not normally be required to attend disciplinary hearings.

## **Investigatory Meeting**

It is not always necessary to hold an investigatory meeting. If a meeting is held, notice will be given to allow time to prepare. The notification will contain sufficient information about the alleged misconduct and the possible consequences. It will also contain the details of the time and place of the meeting; and will advise the employee that they may be accompanied by a companion who may be a colleague or a trade union representative.

The employee will be given the opportunity to provide their response to the allegation(s) and asked to provide and/or sign a full written statement. At the meeting, the investigating officer will ask questions of the employee and expect answers from them. Notes of the meeting will be taken and a copy given to the employee to be signed and dated as a true reflection of the meeting.

The investigating officer will confirm during the meeting exactly what is being alleged and that the matter may result in a formal disciplinary hearing at which they would have a right to be accompanied.

After establishing the facts, the investigating officer or Principal may consider that there is no need to proceed with a formal disciplinary hearing and that it is sufficient to talk the matter over with the employee concerned. There will be clarity about the difference between counselling of this kind and a verbal warning issued as a part of the formal procedure. The employee will be left in no doubt about which sort of action has been taken. Counselling may be documented on the employee's personal file.

The employee will be informed of the outcome of the investigation in writing or in person as appropriate, as soon as practicable following the completion of the investigation. The decision maker I.e, the person or persons hearing the disciplinary, not the investigating officer, will make the final decision as to whether or not a disciplinary hearing will be held.

## **Hearing**

Following the investigation, if there are sufficient grounds on which to proceed formally, a hearing will be arranged. At least five working days' notice will be given of the hearing. The notification will contain sufficient information about the alleged misconduct and the possible consequences. It will also contain the details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague or a trade union representative. The investigating officer will also provide copies of any documentary evidence they are intending to present.

The employee will be given the opportunity to send a written submission or evidence to the Principal, or governor(s) hearing the case where this is not the Principal; This should be received by them at least three days before the hearing and must also be made available to the investigating officer for consideration prior to the hearing. If no submission is received, the employee will not be able to introduce one at the hearing.

Notes of the hearing will be taken and a copy sent to the employee.

## Hearing Protocol

1. The investigating officer will present the documentary evidence to the Principal/Governor(s) in the presence of the employee and companion. Witnesses may be called individually, by the investigating officer, to support the case.
2. The investigating officer and any witnesses may be asked questions by the employee and their companion on the evidence presented.
3. The witnesses may then be asked further questions by the investigating officer.
4. The Principal/Governors may ask questions of the investigating officer and witnesses on the evidence submitted or to clarify responses to questions asked in the hearing.
  - *After completion of the above stages the witnesses will be instructed not to discuss the case in any way, asked to retire and unless otherwise determined the witnesses may be subject to recall*
5. The employee or companion will state their case and answer any allegations made in the presence of the investigating officer. Witnesses may be called by the employee individually, to support the employee's case.
6. The employee and any witnesses called may then be asked questions by the investigating officer.
7. The witnesses may then be asked further questions by the employee or companion on the evidence presented.
8. The Principal/Governor(s) may ask questions of the employee and their representative and any witnesses called.
  - *After completion of the above stages the witnesses will be instructed not to discuss the case in any way, asked to retire and unless otherwise determined the witnesses may be subject to recall*
9. The investigating officer will sum up the case against the employee.
10. The employee or their companion will sum up their case and offer the Principal/Governor(s) details of any mitigating circumstances they considers should be taken into account.
11. The Principal/Governor(s) will confirm the adjournment, giving an indication of the likely timescale for the decision. In most cases the adjournment will be to the following day. The employee, companion and investigating officer shall then withdraw.
12. The Principal/Governor(s) and their HR adviser will then deliberate in private, only recalling the parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties will return, notwithstanding that only one of them is concerned with the point giving rise to doubt.
13. After deliberating, the Principal/Governor(s) will give the decision to the employee, companion and investigating officer, personally. The right of appeal against the decision will also be explained. The Principal will then formally write to the employee within three working days confirming the decision and appeal rights.

## Disciplinary response

In terms of a disciplinary response to the conduct of the employee, the following options are open to the Principal:

- ***A verbal warning***
- ***first written warning***
- ***final written warning***
- ***dismissal (with notice)***
- ***dismissal (without notice) in cases of gross misconduct***

The outcome of the disciplinary hearing will be confirmed to the employee in writing within three working days. Details of any disciplinary action retained on the employee's personal file will be reviewed after six months (verbal and written warnings) or twelve months (final written warning) with a view to determining whether the warning is 'spent'. If the warning remains current, further reviews will take place at intervals of no greater than 6 months and the maximum period for regarding the warning as current will be three years. The employee will be informed, in writing that the warning has been extended.

## Appeals

Employees may make an appeal in writing within five working days of the date of the written confirmation of the outcome, stating fully the grounds of their appeal.

The protocol outlined above will be followed to hear any appeals where the appeal is on the grounds that the hearing was procedurally flawed. In other cases, the Chief Executive Officer, their appointed representative or appeal governor(s) may review the original decision based on the paperwork and the contents of the appeal.

Appeals heard will be arranged without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion apply as with the hearing. Notes will be taken and a copy sent to the employee.

The appeal will be dealt with impartially and, wherever possible, by individuals who have not previously been involved in the case. The employee will be informed in writing of the results of the appeal as soon as possible. There is no further right of appeal under this or other Academy/Trust procedures.

## Misconduct referrals

If an employee is dismissed or resigns before a disciplinary process is completed, it is the employer's statutory duty to decide whether a **teacher's** misconduct is sufficiently serious, i.e. in cases of serious professional misconduct or child protection, to be referred to the National College for Teaching and Learning and for **all employees** whether a referral should be made to the Disclosure and Barring Service (DBS).

# **PART B – Allegations of Child Abuse against Employees**

## **Introduction**

Whilst the power to discipline employees in line with Part A of this policy remains unchanged, allegations of child abuse against employees require the Trust/Academy to act in accordance with the locally agreed Child Protection procedures and statutory guidance from the DfE.

This part of the policy is about managing cases of allegations that might indicate a person would pose a risk of harm if they continue to work in regular or close contact with children, under 18 years of age, in their present position, or in any capacity. It should be used in respect of all cases in which it is alleged that a member of staff (including volunteers) has:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children.

The Academy will operate within statutory guidance when handling cases of child protection and will comply with the local authority safeguarding procedures.

Because of their daily contact with children in a variety of situations, employees are vulnerable to accusations of abuse. Their relationships with pupils may lead to allegation being made against them by pupils or parents. Such allegations may be false, malicious or misplaced and may be either deliberate or innocent of such intent. The allegation may also be true. It is essential; therefore, that everyone involved maintains an open mind in dealing with such allegations.

## **Reporting allegations**

Any allegations made against an employee which involve child protection issues must be reported to the Principal and / or designated person, who will consult the Local Authority Designated Person (LADO). The LADO will be contacted immediately and before further action is taken. The Chief Executive Officer and Nominated Child Protection Governor will be informed.

Where the allegation or complaints are against the Principal, Executive Principal or Chief Executive Officer these must be reported to the Chair of the Trust Board who will consult the Designated Person Trust HR Manager, and Nominated Governor. The LADO will be contacted immediately and before further action is taken. Where the Principal or Chief Executive Officer is accused, other difficult issues may arise which the Chair of the Trust Board and or local Governing Body would be required to manage.

## **Suspension**

Suspension will be considered in line with Part A of this policy and will also take into account guidance in the reference documents and the advice of the LADO. Suspension will be with full pay pending the outcome of the Child Protection procedures.

The Academy recognises its duty of care to its employees. The Academy will provide effective support for anyone facing an allegation and provide the employee with a named contact if they

are suspended. It is essential that any allegation of abuse made against a member of staff or volunteer is dealt with appropriately, in a fair and consistent way that provides effective protection for the child and at the same time supports the person who is the subject of the allegation. Although there is an obvious need to act speedily and decisively, it is important not to make hasty judgements or take precipitous action.

## **First Response**

The allegations must be recorded by the Designated Person who should:

- a) obtain details of the allegation in writing, signed and dated by the person who receives the allegation and countersigned by the Designated Person
- b) record any information about times, dates, locations and names of potential witnesses.

Following initial responses the LADO will be contacted within 24 hours. This discussion may instigate joint agency strategy discussions.

## **Initial Assessment**

In consultation with the LADO a decision will be taken regarding the appropriate course of action. The possible outcomes are:

1. Immediate referral to children's social care under the local child protection procedures. If this is the case there may also be a police investigation.

If Child Protection Procedures are invoked, the Academy's Disciplinary procedures will be suspended and the LADO will discuss the next steps and any action to be taken by the Academy with the Principal. Procedures under Part A of this policy will only commence if and when the matter has been referred back to the Academy. Whether external agencies do or do not take action should not be taken as an indication of the employee's innocence or guilt.

2. LADO decision that the allegation does not meet the threshold for referral but the allegation may require investigation as inappropriate behaviour or bad practice by the employee

If the relevant child protection agencies decide not to pursue action against the employee, the matter will be referred back to the Academy for consideration under Part A of this policy or other appropriate procedure.

3. Other appropriate action where the allegation is agreed to be without foundation or malicious.

In such cases appropriate support will be given to the employee and the child making the allegation. In the case of malicious allegations consideration will be given to appropriate procedures.

## Formal investigations

There are three possible types of investigation which may arise from such allegations:

- Enquiry conducted by Children's Social Care (NSCB procedures). These investigations are conducted by appropriate social care and health professional.
- Police investigations into possible criminal offences
- Internal investigations (Academy disciplinary policy). This will only happen when the above investigations have concluded and should be conducted in line with Part A of this policy.

## Student records

Where a pupil has made an allegation, a copy of the statement or the record made of it must be kept in a confidential file which is not open to disclosure, together with a written record of the outcome of the investigation. The pupil's school file should be marked with a red c to indicate that there is a confidential file which is held separately. If criminal or civil proceedings arise, records may be subject to disclosure. No assurances can therefore be given of confidentiality in this respect.

## Review

Following such a distressing and difficult incident, the Chief Executive Officer, Principal and Local Governing Body may consider whether any general matters arose which could warrant a review of the Trust's policy and procedures. Specific training needs of employees should be considered along with implications for pupils and their parents. The publication of any such information to governors, employees or other interested parties should preserve confidentiality about the employee and the children involved in the investigation.

## Reference documents

Interagency Safeguarding Children Procedures of the Nottinghamshire Safeguarding Children Board (NSCB) and the Nottingham City Safeguarding Children Board (NCSCB) 2016 [www.nottinghamshirescb.proceduresonline.com](http://www.nottinghamshirescb.proceduresonline.com)  
Derby and Derbyshire SCB Procedures 2016 [www.derbyshirescbs.proceduresonline.com](http://www.derbyshirescbs.proceduresonline.com)  
Leicestershire, Leicester City and Rutland SCB Procedures 20156 [www.llrchildcare.proceduresonline.com](http://www.llrchildcare.proceduresonline.com)  
Keeping children safe in education - DfE guidance – 2016 [www.gov.uk/government/publications/keeping-children-safe-in-education](http://www.gov.uk/government/publications/keeping-children-safe-in-education)  
Working Together to Safeguard Children guidance – 2015 [www.gov.uk/government/publications/working\\_together\\_to\\_safeguard\\_children--2](http://www.gov.uk/government/publications/working_together_to_safeguard_children--2)  
Dealing with Allegations of Abuse against teachers and other staff – DfE Guidance October 2012 [www.gov.uk/publications/docs/dfes\\_allegations.pdf](http://www.gov.uk/publications/docs/dfes_allegations.pdf)  
The Children Act 2004 (2007) <http://www.legislation.gov.uk>  
The Spencer Academies Trust Safeguarding and Child Protection Policy - November 2016

# **General Principles Underlying This Policy**

## **Confidentiality**

Confidentiality is an important part of the procedures provided under this policy. Everyone involved in the operation of the policy is responsible for observing the high level of confidentiality that is required. Details of the matter must only be disclosed on a "need to know" basis. Breach of confidentiality may give rise to disciplinary action under this Policy. Information about the procedures will be placed on file, along with a record of the outcome and of any notes or other documents compiled during the process and marked as confidential. These will be processed in accordance with the Academy's Data Protection Policy.

## **.Consistency of Treatment and Fairness**

The Spencer Academies Trust and Local Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

## **Delegation**

The Scheme of Delegation sets out the rules in respect of the delegation of functions by Directors, CEO, Local Governing Bodies, Principals or senior leader responsible for the Academy.

## **Grievances**

Where a grievance is raised during the procedure set out in this policy, and that grievance has relevance to the procedure, the process may be temporarily suspended, if appropriate, until the grievance has been resolved or answered. In the situation where there is more than one grievance from the same person these will be heard together. If a grievance restates a complaint they have already raised and had heard or dealt with in the past, they will be asked to explain how the new grievance differs, what new incident has occurred and/or what new evidence has come to light. Where it is clear to the investigator that there is nothing new being raised the grievance can be rejected by the investigator without a formal grievance meeting.

## **Sickness**

If long term sickness absence appears to have been triggered by the commencement of the disciplinary procedure, the case will be dealt with in accordance with the Academy's Attendance Management Policy and will be referred immediately to the occupational health service to assess the employee's health and fitness for continued employment and the appropriateness or otherwise of continuing with formal procedures. In some cases, it may be appropriate for disciplinary procedures to continue during a period of sickness absence.

## **Monitoring and Evaluation**

The Chief Executive Officer, Local Governing Body and Principal will monitor the operation and effectiveness of the Academy's disciplinary arrangements.

## **Retention**

The Local Governing Body and Principal will ensure that all written disciplinary records are retained in a secure place in line with the retention of records protocols and then destroyed.

## **Equality Impact Assessment (EIA)**

An Equality Impact Assessment (EIA) has been completed in relation to this policy.