



GMAT POLICIES

Disciplinary

Greater Manchester Academies Trust

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With you...for you...about you...

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The Policy

Introduction

This Recruitment and Selection Policy has been produced in line with the “Safeguarding Children and Safer Recruitment” guidance. This policy aims to ensure both safe and fair recruitment and selection is conducted at all times. Making safeguarding and promoting the welfare of students an integral factor in recruitment and selection is an essential part of creating safe environments for students.

Applying for employment with Greater Manchester Academies Trust (GMAT) must be as satisfactory an experience as possible. Failure of the Trust to present itself in as attractive a way as possible may deter applications from candidates. Failure to treat applicants with respect will send out the wrong messages. Adverse experiences of job applicants will impact negatively on the image of Trust as a whole.

This policy should be read in conjunction with the Recruitment Guidance document in the shared area of the Trust's Intranet.

Employees Covered by this Policy and Procedure

This procedure applies to all Greater Manchester Academies Trust employees but not agency workers or casual staff.

This procedure is referred to in the Statement of Particulars and forms part of an employee's contract of employment.

Delineation with other Policies and Procedures

In order for managers to manage conduct issues effectively and maintain a positive employee relations climate it is essential they understand the Trust's Disciplinary Policy and Procedure and its delineation from other Trust policies and procedures, including but not limited to: Capability (Performance) Policy and Procedure, Sickness & Attendance Policy, Grievance Policy and Procedure etc.

Policy Statement

Disciplinary rules are necessary to set standards of conduct and performance at work and make clear to employees what is expected of them. They should be recognised as reasonable by all parties, management, the recognised trade unions and individual

employees and be in accordance with statutory rules and guidance.

Knowing and observing the rules and being aware of the consequences of contravening those rules assist employees in attaining standards of conduct and behaviour.

The disciplinary rules are not intended to cover all the possible incidents which may arise. The omission of a particular type of conduct from the policy does not mean that disciplinary action is thereby excluded, the policy gives examples only and any breach of normal good conduct or standards of work may be subject to disciplinary action.

The Trust's aim is to encourage improvement in individual conduct and performance in order to both develop the individual in accordance with the needs of the Trust and meet the Trust's objectives.

This procedure sets out the action which will be taken when the Trust's rules are breached. It is intended to encourage employees to conform to acceptable standards.

The procedure must be applied fairly and consistently and particular care must be taken not to discriminate on the grounds of any of the protected characteristics covered by the Equality Act 2010.

Principles

Where possible, or if appropriate to do so, disciplinary problems should be resolved by informal discussions as part of the day-to-day responsibilities of a line manager, without being referred to the formal procedure.

No disciplinary action will be taken against an employee until a thorough investigation of the allegations has been completed.

All employees are contractually obliged to make themselves available to attend Investigatory Interviews and Disciplinary Hearings when required to by management, whether they are at work or not (i.e. absent from work due to sickness or suspension).

An employee will be entitled to be accompanied by a Trade Union representative or work colleague at all investigatory interviews and disciplinary hearings. A Trade Union representative or work colleague will be present to observe proceedings and advise an employee, but he/she cannot answer questions on an employee's behalf. There will be no right to external legal representation in any internal disciplinary proceedings.

An employee will have the right to appeal against any disciplinary sanction imposed under the formal disciplinary procedure.

The same officer must not conduct the investigation, and chair the Disciplinary Hearing or Disciplinary Appeal Hearing in any one case.

Managers (or Governors) involved in the disciplinary process (i.e. the Chair and the Investigating Officer) must not have any interest or business association, or be a witness, relative, friend, or be personally involved in any way with the employee being investigated/disciplined beyond that which would apply to the generality of staff. In cases of repeat misconduct prior involvement in an earlier case shall not be deemed a conflict of interest.

In the event of an employee resigning or having his/her contract of employment terminated under a different policy whilst a disciplinary investigation is ongoing, then, in cases involving potential gross misconduct, it may be appropriate to proceed with a hearing in accordance with this procedure in any event. The outcome of the hearing will be recorded on the former employee's file and may be a finding that had the person still been an employee, he/she would have been dismissed (see referrals to the DBS and Teaching Agency concerning Teachers in the Gross Misconduct section).

Misappropriated or fraudulent loss found to have been caused to the Trust by the employee may result in the employee being requested to make recompense to the Trust either in whole or in part. Failure to do so may result in the Trust pursuing the employee in the County Court. The employee may agree to this being deducted from his/her final payment.

Where other agencies are investigating the matter (e.g. the Police, the Health and Safety Executive) an internal investigation may continue and be concluded where it is not prejudicial to the police investigation OR it may be necessary to suspend the internal investigation at the request of these agencies. (Where the police are involved it is usual that internal investigation is suspended to avoid potential interference with a criminal investigation. In these circumstances any suspension that has been enacted will remain in force pending the outcome of the external agency's investigation. However both employees and trade union representatives should be aware that a decision not to pursue a prosecution by an external agency or an extremely lengthy external investigation does not necessarily preclude the possibility of internal disciplinary action).

Where an employee, who is an accredited representative of a trade union recognised by GMAT, is suspected or alleged to have committed an act or acts of misconduct, no action under the formal disciplinary procedure, other than precautionary suspension

when alleged gross misconduct is being investigated, will be taken until the full-time official of that trade union has been notified.

If, during the course of the formal disciplinary process the employee concerned raises a related grievance then consideration should be given to dealing with this as part of the on-going disciplinary process. Alternatively it may be appropriate to suspend the disciplinary process and consideration be given to the grievance as a separate matter. Neither process should be unduly delayed.

Any behaviour, which subsequently proves to be frivolous and vexatious, could result in disciplinary action being taken against the perpetrator.

It is intended that this procedure will provide a speedy, fair and equitable basis for effective and consistent disciplinary action to be taken, when necessary.

At all times regard must be had to the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the data protection legislation.

The Procedure

The Informal Stage

Informal instruction, reminders or reprimands regarding the standard of conduct expected should be given to the employee where minor acts of misconduct occur, and recorded where appropriate in writing to the employee, by the line manager.

An employee's failure to learn from informal action, written instruction, reminders, or reprimands will be subject to formal disciplinary action.

Where minor acts of misconduct have been unchecked by management the formal disciplinary procedure should not be invoked until the informal process described above has been carried out.

Suspension from the workplace

Where an allegation involves potentially gross misconduct the employee may, when deemed necessary, be suspended on normal pay in accordance with contractual entitlement, pending a thorough investigation. The period of suspension will be as brief as circumstances allow; and is a neutral act. (Management may wish to seek the advice of a Human Resources Adviser on the appropriateness of suspending an employee).

Suspension from the workplace does not represent disciplinary action and does not involve pre judgements or an assumption of guilt. A period of suspension must be kept under review to ensure it does not become unnecessarily protracted.

The suspension of an employee will be reviewed at regular intervals by the Investigating Officer who will inform the employee of the current position and any progress/delays to date.

An employee's contract of employment will remain in force during a period of suspension.

A suspended employee will be required to hand over equipment, in his/her possession belonging to the Trust, pending the completion of an investigation e.g. keys, security passes, ID badges, IT equipment etc.

Whilst on suspension an employee must make him/herself available to attend meetings in connection with the disciplinary investigation.

Whilst on suspension an employee must not book any leave without having first obtained the written authorisation of his/her manager. Where an employee has pre-booked annual he/she should confirm this in writing with the Investigating Officer.

A period of suspension, and the terms of suspension, will be outlined in writing with an employee, normally within 5 working days, of suspension commencing. The letter will confirm that the suspension is a precautionary measure and not a disciplinary sanction and that the period of suspension is pending the outcome of an investigation and any subsequent disciplinary proceedings.

Investigations

When the informal route has been exhausted or where the matter is serious enough to justify formal action, a thorough investigation "as much as is reasonable in the circumstances" must be undertaken by an Investigating Officer. No disciplinary action will be taken until an investigation has been completed. The investigation must be concluded as quickly as possible.

The Investigating Officer will normally be the officer who has been made aware of the alleged breach of conduct, usually the employee's line manager. He/she will take the decision to instigate formal action.

The Investigating Officer will review where the investigation is up to at regular intervals, and notify the employee of progress or reasons for any delays.

An employee will be notified of the general nature of the allegation(s) against

him/her, in writing, during the investigation stage, as soon as practicable, and where possible of known specific allegations, including dates and times, provided this does not compromise the integrity of the investigation. (The employee will be notified in any event of the specific allegation(s) once the investigation has been concluded and he/she receives the letter requiring him/her to attend a disciplinary hearing).

The key purpose of an investigation is to ascertain the facts through the scrutiny of manual and computerised files, records and documents, complaints, etc. An employee will also be interviewed along with witnesses as appropriate.

At the interview the employee should know the details of the allegation(s) and have the opportunity to present their side of the matter. If further allegations come to light further interviews will be necessary.

A record of all interviews held will be made. The record will not be verbatim notes of an interview but a summary of the key points. Employees are entitled to submit a written account of their explanation/answers at any interviews, which will be taken into account by the Investigating Officer.

Witnesses

It may be necessary to interview witnesses as part of the investigation. Witnesses have the right to be accompanied by a trade union representative or work colleague.

Witness statements will be produced and a signed copy retained by the Investigating Officer.

Witnesses will be informed that their statements may be used at a subsequent hearing, appeal or Employment Tribunal and that they may also be required to provide testimony at a subsequent hearing, appeal or Employment Tribunal.

If at any time, or on completion of the investigation the allegations are shown to be unfounded or less serious, the Investigating Officer can recommend that the disciplinary suspension be lifted and the employee returned to work. There may still be sufficient grounds for proceeding to a disciplinary hearing and in such cases employees will be advised of this.

Similarly, in an investigation that didn't initially require suspension, the information may change during the course of the investigation and the alleged misconduct become gross misconduct. At that point suspension may be considered.

As soon as reasonably practical after the completion of an investigation, (normally within 5 working days), an employee will be notified in writing that the investigation has been completed and whether or not the case will proceed to a hearing.

The Disciplinary Hearing

The purpose of a disciplinary hearing is for the Chair to establish the facts of the case, and then decide whether or not the employee should be disciplined and to take the appropriate action. Normally a Chair will sit alone however if the case is complex the Principal/Head may request that the hearing is conducted by a panel with one member acting as Chair.

The employee, and if appropriate his/her representative, will be notified in writing that he/she is required to attend a disciplinary hearing, and be given sufficient notice to prepare for the hearing, usually 10 working days. The Investigating Officer will determine the date of the hearing after consulting with the employee's representative (where applicable).

An employee will receive copies of all relevant information, which may include statements from witnesses the Investigating Officer intends to call, no less than 10 working days in advance of the hearing. The same information will also be provided to the Chair of the hearing (and any supporting Human Resources Adviser).

If an employee intends to present any documents as evidence, including witness statements, these must be submitted to the Investigating Officer 5 working days in advance of the hearing.

Statements of case (the presentations), both management and employee side will be exchanged concurrently at 2 working days in advance of the hearing at which time they will be provided to the Chair (or panel) designated to hear the case.

At the disciplinary hearing an employee, or their representative, will have the opportunity to present his/her case, together with any witnesses, before any decision is taken.

If an employee, or his/her chosen representative, cannot legitimately attend a disciplinary hearing, on an appointed date, the hearing will be re-arranged and, as far as is reasonably practical, the Trust will endeavour to reschedule the hearing normally within 5 working days of the original date.

If an employee or his/her representative, is unable to attend the re-arranged hearing it will normally proceed in his/her absence with the Chair/Panel giving due consideration to any written statement(s) submitted by the employee in advance of the re-arranged hearing. A Trade Union representative or work colleague can attend in an employee's absence and make representation on his/her behalf.

The Chair of the hearing will decide whether or not to accept the submission of any

late evidence, i.e. not previously submitted, and whether or not to adjourn the hearing in light of the new evidence.

The hearing may be adjourned at any time if the Chair deems further investigation is necessary or additional information is required or at the request of either party if the Chair decides the reason to be valid. The Chair will determine the length of the adjournment.

An employee will receive written confirmation of the outcome of the hearing. This letter must be sent within 5 working days of the conclusion of the hearing.

Disciplinary Sanctions

Disciplinary sanctions need not be sequential. For example, if a single breach of discipline is considered to be serious but not serious enough to warrant dismissal, a final written warning may be given even though the employee may not have previously received a written warning. This could also include additional disciplinary action (see below).

With the exception of gross misconduct, an employee will not be dismissed for a first breach of discipline.

Before arriving at a decision, the Chair of a disciplinary hearing will consider the seriousness of the offence, any mitigating circumstances and the employee's previous employment record.

Where a "reasonable belief" in the employee's "blameworthiness" of the misconduct alleged is established, based on the evidence submitted, and on the "balance of probabilities", there are a number of formal sanctions available to the Chair of the Disciplinary Hearing:

- First Written Warning
- Final Written Warning
- Dismissal
- Summary Dismissal

First Written Warning - A formal written warning will normally be issued to an employee whose conduct is considered to be of a serious nature or if previous unheeded warnings have not prevented further acts of the misconduct.

The First Written Warning will remain live on the employee's record for 12 months. A First Written Warning will usually be followed by a Final Written Warning should an employee commit a subsequent act of misconduct.

Final Written Warning - A final written warning will normally be given for a more serious offence, or in the case of repeated additional offences for which a previous written warning has already been issued and is still in force. A final written warning will remain live on an employee's personal file for 24 months.

Dismissal - An act or acts of further misconduct, other than gross misconduct, by an employee who already has a final written warning in force (i.e. 24 months), could result in the employee being dismissed with notice (i.e. for persistent misconduct). The Chair also has the facility to issue a further written or final written warning, if the act of misconduct is not the same or similar to that to which the final written warning was given.

Summary Dismissal - In cases where gross misconduct has been established, an employee may be summarily dismissed. In the case of summary dismissal the employee's contract will be terminated immediately and he/she will not be entitled to notice or pay in lieu of notice. The employee will receive payment for any untaken annual leave.

Action as an alternative to dismissal - In cases justifying dismissal, if there are special circumstances or significant mitigating circumstances (e.g. evidence that the behaviour was so out of character), the Chair of the disciplinary hearing may consider, if practicable, another sanction as an alternative to dismissal, which must be agreed by the employee. Such other sanctions would be a final written warning, which might be in conjunction with the following:

- suspension for up to two weeks without pay, or
- permanent or temporary transfer to a different job or working pattern, which may include demotion (with no protection of grade/salary)

Additional Disciplinary Action - as well as the disciplinary sanctions detailed above, the Chair of a disciplinary hearing may decide that, if relevant to the allegations, additional disciplinary action is also required. An examples: withdrawal of paid leave for attendance at college/professional qualification courses (after falsely claiming attendance).

An employee will be provided with written reason(s) for the decision to issue a formal warning normally within 5 working days.

An employee has the right of appeal against formal warnings and dismissal. Any appeal must be made within 10 working days of receipt of the letter confirming the warning or the dismissal. An employee must state the specific reasons for his/her appeal i.e. whether it is against the finding that he/she committed the alleged misconduct, the procedure was not followed and/or the level of the disciplinary sanction given.

Referral of Teachers to the Disclosure and Barring Service (DBS) and the Teaching Agency

Referrals to the DBS

The Trust must refer to the DBS all cases of teacher misconduct that have a child protection element (previously these referrals would have been made to the DCSF/ISA).

Misconduct referrals to the Teaching Agency

The Teaching Agency will only become involved in the most serious cases of teacher misconduct, in order to make a decision about whether the teacher should be prohibited from teaching.

'Unacceptable professional conduct' is defined as 'conduct which falls short of the standard expected of a registered teacher... and is behaviour which involves a breach of the standards of propriety expected of the profession'.

Cases tend to fall into six Principal/Head categories:

1. Inappropriate language and/or inappropriate conduct in respect of pupils
2. Actions which undermine the Trust and/or parents
3. Misconduct relating to the management and administration of examinations
4. Fraud and financial impropriety
5. Misrepresentation of qualifications and other matters
6. Misconduct relating to contractual matters

A Teacher Regulation Referral Form can be found on the Teaching Agency website.

Appeals

In normal circumstances the Appeal should be heard within one calendar month of the receipt of the written notification of the Appeal.

The written notification of appeal must be submitted to the Chair of the hearing, by the employee, within 10 working days of receipt of their letter confirming the outcome of the disciplinary hearing.

The employee's written notice of appeal must specify the basis upon which the appeal is being made, and to save time should provide details of the employee's and representative's availability to attend the appeal over the next month. There are three basis of appeal:

- the finding that he/she was guilty of committing the alleged act(s) of misconduct

- the severity of the disciplinary action imposed
- the procedure was not followed

Appeal hearings will normally be conducted by a level of senior management more senior than the original chair of the disciplinary hearing.

In respect of a first written warning, the only right of appeal is to a member of the Senior Leadership Team. The employee will have no further right of internal appeal.

In respect of a final written warning, the only right of appeal is to the Principal/Head. The employee will have no further right of internal appeal.

In respect of an appeal against a dismissal, the right of appeal will be to the Trust's Disciplinary Appeals Committee (made up of 3 or 4 Governors). The employee will have no further right of internal appeal.

The employee will be given not less than ten working days notice in writing of the date, time, place and any other arrangements of the Appeals Hearing.

The decision of the Appeals Hearing will be confirmed in writing to all parties within 5 working days of the decision being given verbally.

In either case, the appeal decision may confirm, overturn or reduce the decision to impose one of the disciplinary actions set by the Chair of the original disciplinary hearing.

Interpreting this policy

For advice and guidance on the practical application of this policy and procedure see the Managing Disciplinary Guidance document on the intranet.

Monitoring

The Trust will collate anonymous diversity monitoring information regarding formal disciplinary cases and appeals lodged on quarterly basis, in accordance with the Equality Act 2010.

Appendix 1 – Example of Gross Misconduct

The following list, not intended to be exhaustive, provides examples of what may be considered gross misconduct and which through the application of the Disciplinary Procedure could lead to an employee being dismissed from the Trust:

- Physical violence, bullying or harassment; including wilful assaults or fighting

with fellow employees, students, parents or members of the public during working hours

- A sexual misconduct whilst working on Trust property
- Forming inappropriate relationships (including sexual) with any young person of Trust age
- Being under the influence of drugs or alcohol whilst at work, including being in possession, custody or control of illegal drugs on Trust's premises
- Bringing firearms or offensive weapons onto Trust premises
- Grossly offensive behaviour
- Any form of unlawful discrimination, victimisation, harassment and/or bullying on the grounds of sex, pregnancy, marital or civil partnership status, gender re-assignment, sexual orientation, race, colour, ethnic or national origin, religion or belief, disability or age
- Fraud, theft or incitement to steal
- Fraudulent time-keeping, abuse of leave entitlements, the Trust's sick pay scheme or similar procedure.
- Bringing Greater Manchester Academies Trust into disrepute
- Conduct outside the workplace which could result in a loss of trust
- Gross negligence in performing duties which causes or might cause unacceptable loss, damage or injury
- Physical violence, bullying or harassment
- Deliberate and serious breach of safety rules and instructions
- Deliberately disobeying a reasonable lawful contractual instruction from management or gross insubordination
- Misuse or unauthorised use of the Trust's computer systems/equipment e.g. e-mail and internet facilities including contravention of the Trust's guidelines for acceptable use of the Internet
- Downloading and/or circulating inappropriate, offensive, defamatory and/or illegal material
- Using social media sites to post inappropriate or offensive material which could damage the Trust or impact on its reputation
- Serious failure to protect confidential or sensitive information held on either portable devices or in paper format in transit, off site and/or at home
- Using or disclosing confidential, personal, secure or protected information obtained during the course of employment with the Trust. This would include issues involving confidentiality and the Data Protection Act 1998
- Accepting bribes or offering bribes
- Making false and misleading statements e.g. at an accident investigation or as part of a disciplinary investigation
- Claiming false qualifications, or other material fact, age or previous experience, or good health essential for an appointment with the Trust
- Failure to declare an interest when involved in Recruitment or similar activity where discretion can be applied
- Serious misuse of the Trust's brand, name, premises, property, or equipment
- Malicious damage to Trust property

- Failure to disclose a conviction detrimental to the performance of the employee's job (including a spent conviction) and any bind over order or caution if the employee's job involves access to children under 18 years or children under 21 years assessed as being "in need" under the Children's Act 1989.
- A criminal conviction which renders it unlawful for an employee to undertake the full range of duties as laid down in his/her job description or person specification e.g. the loss of a driving license where driving is a fundamental requirement of an employee's role or being in prison

Appendix 2 – Example of Misconduct

- Unsatisfactory timekeeping
- Absence without permission
- Unsatisfactory standards of work not related to capability
- Failure to follow recognised procedures, e.g. holiday and sickness notification
- Rudeness or incivility to students, parents, the public or fellow employees
- Failure to protect information held on either portable devices or in paper format in transit, off site and/or at home