



# Beacon Academy Trust

A COMPELLING VISION FOR SUCCESS

## DISCIPLINARY POLICY & PROCEDURE

<b>Approving Body</b>	Trust
<b>Date of Last Review</b>	January 2018
<b>To be Reviewed</b>	January 2021
<b>Statutory (Y/N)</b>	N
<b>Signed/Authorised</b>	

## **I. INTRODUCTION – PURPOSE AND SCOPE**

1. This policy has been drafted in line with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 and complies with employment and education law requirements, including:
  - a. The Dispute Resolution Regulations 2004; and
  - b. The Employment Act 2002; and
  - c. The School Staffing (England) Regulations 2003; and
  - d. The Equality Act 2010.
2. This policy is designed to help and encourage all employees to achieve and maintain at least satisfactory standards of conduct; and to ensure consistent and fair treatment for all employees.
3. This procedure does **not** cover:
  - a. Staff grievances – see '[Grievance Policy and Procedure](#)'.
  - b. Redundancy, ill health dismissals and the non-renewal of fixed-term contracts.
  - c. Capability matters – see '[Capability Policy and Procedure](#)'.

## **II. GUIDING PRINCIPLES**

4. Responsibility: The responsibility for disciplinary matters lies with the Trust Executive.
5. Promptness and reasonableness: Disciplinary matters will be dealt with promptly and the decision to take disciplinary action will be reasonable, having due regard to all the circumstances.
6. Equality and diversity: This policy will not be used to discriminate against members of staff on the grounds of age, race, sex, sexual orientation, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, religion/belief or trade union membership.
7. Informal resolution will be considered, where possible and appropriate.
8. Opportunity to be heard: At all stages of a disciplinary matter, employees will be allowed to put their case.
9. Investigation: Disciplinary action will not be taken until a full and impartial investigation has been conducted.

10. Stage of implementation: This procedure may be implemented at any stage if the circumstances so warrant e.g. because misconduct is too serious for informal action.
11. Timescales: Due to the complexity and or circumstances of a case, the timescales in this procedure may be extended on notice.
12. Suspension: At any stage in this procedure, if appropriate, an employee may be suspended. Suspension is not a penalty and is not an indication of culpability. There is a presumption that suspension will be on full pay.
13. Confirming action in writing: Any disciplinary action shall be confirmed in writing to employees and, on request, to their representatives.
14. Right of accompaniment:
  - a. Employees have a statutory right to be accompanied at formal disciplinary hearings by a colleague, trade union representative or an official employed by a trade union ['companion']. They should be advised of this in writing.
  - b. Formal disciplinary hearings are those which may result in disciplinary action, such as a formal warning, demotion, dismissal or the confirmation of an appeal hearing.
  - c. The right of accompaniment does not extend to informal or investigatory meetings, as they cannot result in disciplinary action. However, where appropriate and on reasonable request, BMAT will consider allowing employees to be accompanied at investigatory meetings.
  - d. To exercise their right of accompaniment, employees must make a reasonable request (e.g. by giving BMAT sufficient time to prepare for a companion's attendance).
  - e. If a companion cannot attend a meeting which is subject to the statutory right of accompaniment, then the employee should request to postpone to a convenient time, no more than **five school days** after the original date. BMAT **must** agree to a request which meets this requirement.
  - f. A trade union representative who is not an employed official must have been certified by their union as being a competent companion.
  - g. Companions may address the hearing, put the employee's case and confer with him/her in private,

- h. Companions may not answer questions on the employee's behalf, address the hearing against the employee's wishes or prevent either side from putting its case.

15. Right of Appeal: Employees may appeal against any formal disciplinary action against them. However, in doing so, they are expected to comply with the formalities, spirit and nature of this policy.

16. Records:

- a. BMAT keeps a written record of all disciplinary cases.
- b. Copies of meeting records should be given to employees. BMAT may withhold information to protect witnesses.
- c. First warnings shall be spent and disregarded for disciplinary purposes after **one year** of satisfactory conduct.
- d. Any final warning shall be spent and disregarded for disciplinary purposes after **two years** of satisfactory conduct and performance.
- e. Decisions to dismiss will be securely destroyed after **six years**.
- f. Disciplinary action will not be based on spent misdemeanours, but the fact that they exist may explain why BMAT does not substitute a lesser sanction.
- g. All records are retained in accordance with the Data Protection Act 1998, which requires the release of certain data to individuals at their request.

17. HR involvement: HR should attend formal disciplinary meetings to take notes and advise, where appropriate.

18. Confidentiality: Disciplinary matters are confidential and will not be disclosed unless prescribed by law or this policy, so far as it is in accordance with the law.

19. Overlapping Grievance and Disciplinary Matters: If an employee feels that the disciplinary process has been administered improperly and/or unfairly, then s/he should raise an appeal rather than a separate grievance. However, if the grievance is that disciplinary action amounts to discrimination, bullying or harassment then BMAT may suspend the disciplinary procedure to investigate the grievance first.

20. Disciplinary action against Trade Union Officials: If disciplinary action is being considered against a trade union representative or official, then it should be discussed with the Regional Union Office and a full-time trade union official.

21. Criminal offences: If an employee is charged with, or convicted of, a criminal offence, consideration will be given to the relevance and effect the charge or conviction has on the employee's suitability to perform their job and their relationship with colleagues, students and parents.

22. Referrals:

- a. Prohibition from teaching: BMAT may refer an allegation of serious misconduct against a teacher to the National College for Teaching and Learning ['NCTL'] if it is so serious that it warrants a decision on whether the teacher should be prohibited from teaching.
- b. Safeguarding: When an allegation against a teacher is in any way connected to the risk of harm or actual harm to a child, a referral will be made to the Disclosure and Barring Service ['DBS'], the Local Authority Designated Officer ['LADO'], and the police and/or social services if appropriate. Allegations may also be referred to social care and/or the police. See '[Safeguarding and Child Protection Policy](#)'. If a safeguarding issue also involves misconduct by a teacher, a referral should be made to the DBS and NCTL.

### **III. INFORMAL SUPPORT**

23. Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally, as part of day to day management.

24. In such cases, a member of SLT or an appropriate delegate (e.g. performance manager) will meet with employees to:

- a. Remind them of the expected standards;
- b. Discuss possible shortcomings in conduct;
- c. Allow them to explain their conduct; and
- d. Encourage improvement.

25. Coaching may be provided:

- a. If provided, the SLT member or appropriate delegate will complete an informal Staff Interview/Coaching Statement, sign it, and ensure that the employee countersigns it. Both parties will retain a copy.
- b. The employee will be advised when the matter(s) will be reviewed.
- c. If further problems arise before the review date, then appropriate action will be taken.

26. Brief notes will be kept.

#### **IV. INVESTIGATION**

27. If informal action does not bring about an improvement, or the problem is too serious to be dealt with informally, then BMAT will conduct a full and impartial investigation.

28. The appropriate school principal or a member of HR will appoint a member of the Senior Leadership Team ['SLT'], a Trust Executive or an appropriate manager to act as an investigating officer. S/he will establish the facts and obtain written witness statements. If the matter involves a member of SLT, it will be handled by a Trust Executive. If the matter involves a Trust Executive, it will be handled by the CEO. If the matter involves the CEO, it will be handled by a Trustee.

29. Investigations are confined to establishing the facts of a case - disciplinary action may **not** be considered or decided during investigation. If it becomes apparent that disciplinary action may be necessary, then this will be determined at a formal disciplinary hearing.

30. In some cases, an investigatory meeting will be held with the employee:

- a. Employees will be given advance warning of the date, time and location of the meeting.
- b. Meetings will be led by the investigating officer.
- c. The allegations against the employee will be explained and the employee will have an opportunity to state his/her response.
- d. Although the statutory right of accompaniment does not extend to investigatory meetings, where appropriate and on reasonable request, BMAT will consider allowing employees to be accompanied.

31. In others, the investigation will involve the collation of evidence for use at any disciplinary hearing (e.g. where a repeated pattern of misconduct or an instance of misconduct has been clearly established).

32. In all cases, the investigating officer will keep a written record of the investigation.

33. Suspension with pay may be necessary while investigations are conducted:

- a. Suspension with pay is not a disciplinary sanction or an assumption of guilt – it is an investigatory tool.
- b. The period of suspension with pay should be reviewed to ensure it is as brief as possible. If practicable, it should not exceed **two weeks**.

- c. Suspension with pay may be necessary to investigate alleged gross misconduct, cases where relationships have broken down, cases where there are risks to members of BMAT or BMAT property, or where there is evidence of tampering with evidence, witnesses or potential witnesses.
- d. Employees should be informed in person of any decision to suspend and must be informed in writing.

## **V. DISCIPLINARY HEARING**

34. If it is decided that there is a disciplinary case to answer, then the employee will be notified in writing. The notification should include:
- a. Sufficient information about the alleged misconduct and its possible consequences, to enable the employee to prepare his/her case; and
  - b. Copies of any written evidence, including witness statements; and
  - c. Details of the time and venue of the disciplinary hearing; and
  - d. Details of the procedure to be followed, including the employee's statutory right of accompaniment.
35. Employees will be given no less than **five school days'** notice of a disciplinary hearing. The purpose of the hearing is to decide whether or not disciplinary action should be taken.
36. Both sides should give notice of their intention to call witnesses.
37. If the employee intends to be accompanied at the hearing, s/he should make a reasonable request. If a companion is unavailable, then the employee should request to postpone the meeting to a convenient time, no more than **five school days** after the original date.
38. The hearing will be chaired by the appropriate school principal or other Trust Executive. It will be chaired by the CEO if the subject of the hearing is a Trust Executive. It will be chaired by the Chair of the Trust (or the Vice-Chair if the Chair of the Trust conducted the investigation) if the CEO is the subject of the hearing. HR should attend to advise and take minutes. The investigating officer will attend to explain his/her findings.
39. If the employee misses the hearing without communication and/or a valid excuse, then it may lawfully proceed in their absence.
40. At the hearing:

- a. The chair and/or investigating officer will explain the complaint and/or allegation against the employee and go through any evidence, including witness evidence;
  - b. The employee should be informed if dismissal is a possible outcome;
  - c. The employee should be allowed to put their case, ask questions, present evidence and call relevant witnesses;
  - d. The employee's companion may ask questions and confer privately with the employee;
  - e. Someone who is not involved in the case will take minutes (usually a member of HR);
  - f. The main points of the hearing will be summed up and the employee will be asked if they have anything further to say.
41. If necessary, the hearing may be adjourned. Advice should be sought from HR and/or legal professionals before doing so.
42. The hearing will be adjourned before a final decision is taken about whether disciplinary action is required.
43. The hearing will be reconvened within a reasonable time and usually on the same day. Where it is not possible to reconvene on the same day, all parties will be contacted to arrange a suitable time. If a mutually agreeable time cannot be arranged, disciplinary action may be communicated in writing. Disciplinary hearings are reconvened to communicate the decision, not to introduce new submissions or evidence.
44. Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, BMAT will make a decision on the evidence available

## **VI. DISCIPLINARY ACTION**

45. Written notice of any disciplinary action should be given to the employee as soon as the decision is made and within **ten school days** of the disciplinary hearing (extendable on written notice).
46. In most cases, employees should be given a first written warning, specifying:
- a. The nature of the misconduct;
  - b. The improvement(s) or changes required and the timescale for doing so;
  - c. The sanction and, where appropriate, how long it will last;

- d. The timescale for lodging an appeal and how it should be made; and
- e. The possible consequences of further misconduct.

47. If an employee has a current warning, or if the first instance is sufficiently serious, then it may be appropriate to move directly to a final written warning.

48. Dismissal, Demotion or Transfer:

- a. A decision to dismiss, demote or transfer must be taken or authorised by the appropriate school principal or another Trust Executive.
- b. If an employee is demoted or transferred, s/he will be warned that dismissal could result if there is no satisfactory improvement.
- c. In cases of dismissal, employees will be informed in writing of the reasons for dismissal, the date on which their employment contract will end, the appropriate period of notice and their right of appeal. Where practicable, this will be within **14 days** of the decision to dismiss.
- d. A decision to dismiss, demote or transfer will not be based on spent misdemeanours, but the fact that one exists may explain why BMAT does not substitute a lesser sanction.
- e. Unless an employee is being dismissed for reasons of gross misconduct, s/he will receive the appropriate period of notice or payment in lieu of notice.

49. Cases of Gross Misconduct:

- a. Gross misconduct may call for summary dismissal without notice for a first offence.
- b. Employees who are accused of gross misconduct may be suspended with full pay while the alleged offence is investigated.
- c. If, following an investigation and disciplinary hearing, BMAT is satisfied that gross misconduct has occurred; the employee will be summarily dismissed without notice or payment in lieu of notice.
- d. Employees will be informed in writing of the reasons for dismissal, the date on which their employment contract will end, the appropriate period of notice and their right of appeal. Where practicable, this will be within **10 school days** of the decision to dismiss.
- e. See Appendix B –Examples of Gross Misconduct.

## **VII. APPEAL**

50. Where an employee feels that disciplinary action taken against them is wrong or unjust, they may appeal against the decision. Common grounds for appeal include:
- a. Undue severity;
  - b. Inconsistency in disciplinary action;
  - c. Bias or discrimination of/by the investigating officer or chair of the disciplinary hearing.
51. Within **five school days** of the decision to take disciplinary action, employees must submit the Disciplinary Appeal Form (Appendix C) to HR, in person or at [hr@beaconacademytrust.co.uk](mailto:hr@beaconacademytrust.co.uk).
52. The onus is on the appellant to establish the ground(s) of appeal; materiality to the decision to take disciplinary action; and the detriment they have suffered as a result
53. HR will inform the CEO and/or Chair of Governors of the appeal and a meeting of an appeal panel will be held no later than **20 school days** from the submission of the appeal. The Panel will be constituted of three members of the Trust Executive and/or Governing Body as appropriate and an HR or legal professional to advise.
54. Appeals by members of staff who provide services directly to BMAT will be dealt with by an Appeal Panel of BMAT, which will meet no later than **20 school days** from the submission of the appeal. The Panel will be constituted of three members of the Trust Executive and/or Trustees as appropriate and an HR or legal professional to advise.
55. All parties will be informed of the time, date and venue of the appeal hearing at least **five school days** prior.
56. Appeals must be impartial and cannot result in an increase to any penalty. The Committee may ratify, nullify or reduce the severity of the disciplinary action.
57. Appeals will **not** take the form of a rehearing unless the employee submits material evidence to suggest that there was bias or discrimination in the investigatory and/or disciplinary process.
58. At the Hearing:
- a. The procedure for the hearing shall be the same as the disciplinary hearing set out above, except that the employee shall put the case for appeal first.

b. The statutory right of accompaniment applies. If a companion is unavailable, then the employee should request to postpone the hearing to a convenient time, no more than **five school days** after the original date.

59. The chair will notify employees in writing of the outcome as soon as reasonably practicable and no later than **10 school days** after the hearing.

60. The outcome of the appeal hearing will be final in respect of internal procedures.

**APPENDIX A – INFORMAL STAFF COACHING FORM (TEMPLATE ONLY)**

<b><u>DETAILS</u></b>	
Date	
Employee's Name	
Coach's Name	
What are the possible shortcomings in conduct?	
What are the employee's targets for appropriate/improved conduct?	

How is the employee going to be supported in achieving these targets?	
On what date will the employee's conduct be reviewed?	
Signed	<u>Employee's Signature:</u>  <u>Coach's Signature:</u>

## **APPENDIX B – EXAMPLES OF DISCIPLINARY OFFENCES AND GROSS MISCONDUCT**

### **Examples of Disciplinary Offences**

The Teachers' Standards may be found on the GOV.UK website:

<https://www.gov.uk/government/publications/teachers-standards>

Matters that BMAT views as amounting to disciplinary offences could include, but are not limited to the following, which may amount to gross misconduct if sufficiently persistent and/or serious

- Persistent bad time keeping
- Unauthorised absence
- Damage to the organisation's property
- Failure to observe the organisation's procedures
- Any act which has a negative impact on the reputation of the organisation
- Unreasonable or abusive behaviour
- Unreasonable refusal to follow an instruction issued by a manager or supervisor
- Poor attendance
- Smoking or use of an e-cigarette in non-designated areas of the organisation's premises
- Breaches of legislation.

### **Examples of Gross Misconduct**

The following list is neither exclusive nor exhaustive and therefore does not preclude the possibility of dismissal for other offences of similar gravity. BMAT may arrive at a decision other than summary dismissal having regard to all the circumstances.

- Theft, fraud or embezzlement in relation to employment.
- Offences relating to Child Protection.
- Fighting and offences involving violence against others at work.
- Serious bullying or harassment.
- Serious insubordination.

- Serious breach of the General Teaching Council Professional Code of Conduct.
- Misuse of BMAT's property or name and/or bringing BMAT into serious disrepute.
- Serious incapability whilst on duty brought on by alcohol or drugs.
- Acting in an unprofessional manner on any BMAT premises or at any BMAT event.
- Deliberate acts of abuse, discrimination, bullying or harassment on a protected characteristic.
- Victimisation.
- Unauthorised access to, and use of, computer records and electronic data.
- Breach of the IT policies including accessing offensive or pornographic material and attempting to download material likely to damage BMAT IT systems.
- Being convicted of any criminal offence or any action likely to bring BMAT into disrepute.
- Malicious or vexatious claims of any nature.
- Unauthorised use or disclosure of confidential information, including via social media or leaving confidential information unsecured.
- Gross inefficiency or neglect of duty.
- Serious breach of health and safety issues.
- Serious negligence which causes or might cause unacceptable loss, damage or injury.
- Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998).
- Unauthorised removal of, or malicious damage to, the property of BMAT, of its employees or of persons in relation to whom BMAT and/or its employees are in a position of trust.
- Falsification of time records, travel, subsistence and expense claims in relation to his/her employment.
- Sexual offences and sexual misconduct whilst at work.
- Serious breaches of safety regulations endangering other persons, including deliberate damage to, neglect of, or inappropriate use of safety equipment.

**APPENDIX C – DISCIPLINARY APPEAL FORM**

<b><u>CONTACT DETAILS</u></b>	
Name	
Job Title & Department	
<b><u>APPEAL INFORMATION</u></b>	
Date	
Date of Disciplinary Hearing	
Name & Job Title of the Chair.	
Name & Job Title of the Investigating Officer.	
Were you informed of the disciplinary action taken against you within 14 days of the 10 school days of the hearing?	Yes <input type="checkbox"/> No <input type="checkbox"/> <b>If no, were you informed of the reasons for delay?</b> Yes <input type="checkbox"/> No <input type="checkbox"/>
Summary of Appeal –  <u>Please explain:</u> <ul style="list-style-type: none"> <li>• The ground(s) of your appeal;</li> <li>• Their materiality to the decision to take disciplinary action and/or the disciplinary action taken; and</li> <li>• The detriment you have suffered as a result.</li> </ul> Provide as much detail as possible. Attach additional sheets if required.	

**APPEAL INFORMATION**

Outcome Requested – if your appeal is successful, what steps would you like to be taken and why would it be appropriate to take them?

Declaration

I confirm that the above statements are true to the best of my knowledge, information and belief.

Signature:

Date:

**APPENDIX D. FLOWCHART OF PROCEDURE FOR STAFF DISCIPLINARY ACTION.**

