

Disciplinary Procedure

Create Learning Trust



Approved by	Date	Review Schedule	Date of Review
Board of Trustees	7th July 2023	Annually	July 2024

CREATE LEARNING TRUST

SCHOOL STAFF DISCIPLINARY PROCEDURE

The Board of Create Learning Trust has adopted this policy. It will be reviewed annually by the Board of Trustees

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1.0 Introduction

- 1.1 This Disciplinary Procedure applies to staff (Headteachers, teachers and support staff) of Create Learning Trust.
- 1.2 Disciplinary hearings where the range of possible outcomes does **not** include dismissal will normally be chaired by a Designated Officer who will be a member of the Leadership Team (including the HR representative) or the Headteacher. Additionally, where the Trust/Local Academy Board (LAB) has delegated the initial dismissal decision (IDD) to the Headteacher, the Headteacher may Chair a Disciplinary Hearing where dismissal is a possible outcome.
- 1.3 A Designated Officer cannot hear the case in the following circumstances:
 - Where he/she has been directly involved in an investigation leading to a recommendation of disciplinary action. (This does not include a decision to suspend, commission a disciplinary investigation or accept a recommendation from a disciplinary investigation.)
 - Where he/she is a witness to particular conduct giving grounds for a disciplinary investigation
 - Where the Trust has made representations to the Chair of the LAB on grounds of serious concerns about the performance of the Headteacher
 - The Headteacher is the subject of the disciplinary action, or
 - The Trust has not delegated the initial dismissal decision (IDD) to the Headteacher

In these circumstances the case will be heard by a Hearing Panel of the LAB.

- 1.4 The “Hearing Panel” will normally include at least 3 members of the LAB who have had no detailed involvement in the investigation or case generally. In relation to the Chair of the LAB, this does not include a decision to suspend, commission a disciplinary investigation or accept a recommendation from a disciplinary investigation. Where there are insufficient members who have had no detailed involvement in the case the decision will be delegated to two LAB members. The existing Business Risk and Audit committee may be re-constituted to perform this function.
- 1.5 The Director of the Trust or a representative has / will be accorded the right to attend to give advice, at any stages when dismissal is a possible outcome or is being considered.
- 1.6 The Headteacher (except where s/he is the person concerned) may also be present at all hearings when dismissal is a possible outcome.
- 1.7 Support Staff employees in their Probationary Period are subject to the provisions of that procedure only.

2. Action short of discipline

- 2.1 Cases of minor misconduct will be dealt with informally. There will, however, be situations where matters are more serious or where an informal approach has been unsuccessful.
- 2.2 Management support and guidance will be given which is designed to improve an employee's conduct and are a normal feature of the manager's function.
- 2.3 A Headteacher or line manager may issue an instruction, confirmed in writing to the employee, setting the standards of expected behaviour and advising the employee that failure to adhere to

the instruction may result in formal disciplinary procedures being instigated, is the most appropriate tool to deal with minor misconduct.

- 2.4 Where there is an allegation that an employee's conduct continually, repeatedly, substantially or grossly falls short of required standards the formal disciplinary procedure will be applied.

3. Initial Enquiries

- 3.1 Where a concern is raised which may potentially be dealt with under the Disciplinary Procedure, there needs to be some preliminary fact finding to establish the basic details to assess whether the Disciplinary Procedure is the most appropriate mechanism to use. This preliminary assessment will also include consideration of whether the individual has a protected characteristic (e.g. a disability) that needs to be taken into account.
- 3.2 Assuming the initial enquiries establish that the Disciplinary Procedure is the most appropriate mechanism to use, the Headteacher or Chair of the LAB will then appoint an Investigating Officer, commission an investigation and set its terms of reference. At the earliest possible opportunity, the employee will be informed of the allegation made against them and that an investigation will take place.
- 3.3 Consideration may be given to suspending an employee, depending on the nature of the allegation. A decision to suspend will be taken by either the Headteacher or Chair of the LAB.

4. Investigation

- 4.1 The Investigating Officer will gather all the relevant information promptly. If there are witnesses, they will be interviewed at the earliest opportunity and notes of the interview will be produced. These will be signed and dated and the witnesses will be made aware that they may be asked to attend at a disciplinary hearing.
- 4.2 During any investigatory interviews, the employee under investigation has the right to be accompanied by an accredited trade union official or work colleague. Fellow workers do not have to accept a request to accompany an employee.
- 4.3 Information gathered during an investigation will be put together as a written report and sent to the commissioning officer for consideration.
- 4.4 At the end of the investigation the Headteacher or Chair of the LAB will decide to either:
- Take the case forward to a disciplinary hearing or,
 - Take no further action where there is insufficient evidence to uphold the allegation or the employee provides a satisfactory explanation or,
 - where there are some concerns about the employee's conduct but these are not deemed sufficiently serious to be dealt with under formal proceedings, instruct the employee in accordance with paragraph 2.3.
- 4.5 The decision will be notified to the employee in writing.

5. Suspension

- 5.1 Suspension is a neutral act and will not be an automatic response. It will be considered where there are concerns about the safety of children, risks to people, risks to property, that the allegation is so serious that it might be grounds for dismissal or there are other concerns that might compromise an investigation. The Headteacher or Chair of the LAB will consider whether

there are alternatives to suspension. The power to suspend rests with the Headteacher / Chair of the LAB. Where suspension is unavoidable it will be with full pay whilst an investigation is conducted.

- 5.2 The employee will be informed in writing why they are being suspended and will be provided with a copy of the Disciplinary Policy and Procedure. The provision for suspension is not, in itself, to be regarded as a disciplinary action and does not involve prejudgment of any eventual outcome.
- 5.3 During a period of suspension the employee will continue to receive their normal wage/salary (which may for example be sick pay if they are off sick) i.e. the pay that they would have received if not suspended.
- 5.4 During the period of suspension the employee must adhere to any conditions set out in the letter of suspension. Any breach of those conditions may result in pay being stopped immediately, and may of itself be a ground for disciplinary action. The conditions of suspension are as follows:
 - The employee must be contactable by school.
 - They must not attend school unless it is agreed by the Headteacher. They must not discuss the allegations with any other employees without permission. They may of course contact their accredited trade union representative and their support officer if one has been allocated. They must not contact any other employee or person specified in writing by the Headteacher without permission.
 - If appropriate, they must return keys and other school property, and collect any personal belongings, under supervision. Access to ICT will be disabled.
 - The employee will be allowed access to information and other employees in order to respond to the allegations. This should be requested through the Investigating Officer in the first instance.
- 5.5 Suspension will not be allowed to become excessively long and will not normally exceed three months. The school's HR advisers will liaise on a regular basis with the employee or their appointed Trade Union representative or work colleague as to the progress of the investigation and the employee informed accordingly. Suspension will normally be reviewed monthly, and the outcome will be notified to the employee.
- 5.6 If the employee is not in a Trade Union, they will be allocated a contact officer, who is not involved with the investigation. The contact officer is there to facilitate two-way contact during the suspension. If the employee is a member of a Trade Union, this role would normally be undertaken by their Trade Union Representative.
- 5.7 If an employee is sick during a period of suspension, they will be managed in accordance with the school's Absence Management Procedure.
- 5.8 An employee who is suspended may still take annual leave that has already been approved, and may make further requests to take leave which will be considered by their manager in the usual way.
- 5.9 No action under this procedure, including suspension will take place in respect of an officer who is an accredited representative of a trade union, and whose status has been notified to the authority in writing, until the circumstances of the case have been discussed with a full-time official of the trade union concerned.
- 5.10 Only the LAB under the onus of the Trust has the power to lift a suspension.

6.0 Arrangements for a Disciplinary Hearing

- 6.1 If the outcome of the investigation is that a disciplinary hearing is necessary, the employee will be provided with a copy of the Disciplinary Policy and Procedure (unless previously provided at the time of suspension) and be advised of:
- place, date and time of the hearing.
 - full details of the alleged offence(s) and given copies of all the supporting documentation.
 - the right to be represented by an accredited trade union representative or work colleague.
 - the right to submit documentation.
 - the right to call witnesses.
- 6.2 The letter will be handed to the employee, sent by first class and recorded delivery and/or by electronic means. Reasonable time (a minimum of 10 working days) will be allowed between receipt of the letter and all supporting documents and the hearing so as to allow the employee time to prepare their case.
- 6.3 Where possible, the employee's accredited trade union representative or workplace colleague will be consulted about the date and time of any hearing to ensure that this is convenient for them. If the representative cannot attend on the proposed date, the employee can suggest an alternative time and date so long as it is reasonable and is not more than 5 days later than the original date, or both sides may agree an alternative date beyond this period.
- 6.4 Where the employee intends to rely on a written Statements of Case or other written evidence, these must be submitted at least 5 working days prior to the hearing. Management and employee written papers will be sent to the Designated Officer / Panel 4 working days prior to the Hearing.

7.0 Disciplinary Hearing

- 7.1 The conduct of the hearing will be as set out in **Appendix 1** to this procedure.
- 7.2 The Designated Officer / Hearing Panel will be empowered to determine disciplinary action. They will consider whether the employee's conduct justifies formal disciplinary action having regard to all the circumstances of the case including the gravity of any misconduct, any mitigating circumstances and the employee's previous record.
- 7.3 The following disciplinary sanctions are available:
- verbal warning (which will be confirmed in writing)
 - first written warning
 - final written warning
 - dismissal with notice
 - summary dismissal
 - in some circumstances, demotion/redeployment may be used as an alternative to dismissal, this will also include a final written warning and no pay protection will be given.

7.4.1 The decision of the hearing will be confirmed by letter, signed by the Designated Officer / Chair of the Hearing Panel, and will either be handed to the employee, sent first class and recorded delivery or sent by electronic means.

7.5 The letter will state:

- the decision of the hearing and the disciplinary sanction being applied
- the reason for this
- the right of appeal
- in the case of warnings, the ways in which the employee's work or conduct must improve detailing, if appropriate, any assistance to be given and/or timescales in which the improvement is to be achieved. It will also state the period during which the warning is effective and that any further misconduct of any kind may result in a final warning.
- in the case of a final written warning, the letter will clearly indicate the possibility of dismissal in the event of any further misconduct of any kind.
- In the case of a dismissal, the date from which the dismissal will take effect. The dismissal letter will be written on behalf of the LAB.

7.6 The duration of warnings is as follows:

- Six months from the date of the disciplinary hearing for a verbal warning
- Twelve months from the date of the disciplinary hearing for a first written warning
- Twenty-four months from the date of the disciplinary hearing for a final warning.

7.7 In certain circumstances, the Trust/school has a statutory duty to refer the matter to the relevant professional or safeguarding bodies (e.g. the National College and the Disclosure and Barring Service). The employee may also have a duty to refer the matter.

7.8 Provided the employee's conduct is satisfactory throughout the period, the warning will thereafter be disregarded for the purposes of determining progressive disciplinary sanctions. However, there may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to lapse very soon thereafter. Where a pattern emerges and there is evidence of abuse, expired disciplinary sanctions will be borne in mind when considering any further offences.

7.9 Exceptionally, there may be circumstances where the misconduct is so serious that it cannot ever be completely disregarded for future disciplinary purposes. In such circumstances this will be made clear at the time the sanction is imposed and that any further misconduct may lead to dismissal.

7.10 In determining whether a warning is still 'live' and therefore to be taken into consideration should further misconduct occur, the relevant date is the date on which the later misconduct occurred, not the date of the hearing which may be some time later. In other words, if an employee is on a warning at the time of the allegation, but this warning has expired by the time of the hearing, it will still be taken into consideration as a live warning.

8.0 Attendance at Hearings

- 8.1 Decisions on postponement of a hearing at the employee's request will be made in accordance with the school's policy.
- 8.2 If the employee fails to attend a decision may be taken in the employee's absence.

9.0 Appeal Rights

- 9.1 An employee has the right to appeal against any formal disciplinary action under this procedure. They must write to the Headteacher / Chair of the Hearing Panel (whoever led the original hearing) within 10 working days of receipt of the letter confirming the action. The letter must stipulate the grounds of the appeal, whether:
 - The employee is appealing the finding or sanction or both;
 - New evidence has come to light; or
 - the employee considers that the disciplinary procedure was not correctly applied
 and set out the reasons and evidence to support their contention.
- 9.2 An Appeal against the findings, where new evidence has come to light or where the employee considers that the disciplinary procedure was not correctly applied will be conducted by way of a full re-hearing. The order of presentation will be in accordance with Appendix 1 to this Procedure, with additional provision for the trade union to present and management to respond to any grounds of appeal specific to the reasons for dismissal set out in the dismissal letter.
- 9.3 Appeals against the sanction only i.e. where the employee accepts that the allegation is upheld but believes the sanction is too harsh, will be conducted in accordance with Appendix 2.
- 9.4 Appeals will normally take place within 25 working days of the appeal being lodged.
- 9.5 Appeals will be heard by the Headteacher or an Appeal Panel of the Governing Body. An Appeal Panel will consist of at least three governors who have not previously been involved with the case (i.e. it must exclude members of the Hearing Panel). Where insufficient such governors are available, the appeal may be heard by two governors, but there will be no fewer than the number that made the initial decision.
- 9.6 The employee will be given a minimum of 10 working days' notice of the time and place of the hearing, and will be allowed to be represented by either their accredited trade union representative or a work colleague.
- 9.7 Where the employee intends to rely on a written Statement of Case or other written evidence, these must be submitted at least 6 working days prior to the Appeal hearing. Management and employee written papers will be sent to the Headteacher / Appeal Panel 5 working days prior to the Hearing.
- 9.8 At the appeal the employee may be accompanied by an accredited trade union official or work colleague.
- 9.9 The Headteacher/Hearing Appeal Panel may, in the light of the appeal, vary the disciplinary action taken, decreasing the severity of the sanction or setting it aside. The employee will receive written confirmation of the outcome of the appeal as soon as possible.

9.10 If an appeal results in the reinstatement of an employee this will be backdated to the final date of employment, pay will be reinstated and continuity of service will be preserved.

9.11 The decision at the Appeal Hearing is final.

10 Confidentiality

10.1 All parties have a responsibility to deal with disciplinary issues in a sensitive and confidential manner.

10.2 Information shared as part of the disciplinary process is confidential and must not be used or published for any other purpose, except as required by legislation, for example referrals to the Independent Safeguarding Authority. Failure by the employee or manager to observe this requirement could, of itself, lead to further disciplinary action.

APPENDIX 1**Conduct of Disciplinary and Appeal Hearings****Appeals will be heard by the Headteacher or an Appeal Panel of the LAB.**

The procedure to be followed at a disciplinary hearing or an Appeal by way of a full re-hearing will normally be:

1. The Hearing / Appeal will be conducted by either a Designated Officer (which includes the Headteacher) or a Panel of the LAB as appropriate.
2. The Designated Officer or Panel may be advised/supported by an HR Adviser.
3. The Designated Officer or Chair of the Panel will satisfy himself/herself/ that the employee understands the purpose of the Hearing / Appeal.
4. The management case will be presented normally by the Investigating Officer; Designated Officer or Chair of the LAB (where the Headteacher is the subject of the Hearing / Appeal) supported by an HR Adviser. The presenting manager will describe the case and the presentation may include witnesses, written statements or other documents where these are necessary. If written statements or other documents are to be presented copies of these will normally be sent to the employee and/or their representative with the letter convening the hearing.
5. The employee and/or representative will be given the opportunity to question the presenting officer as well as any witnesses who may have given evidence.
6. The employee or his/her representative will then be invited to respond to the case as presented. The employee may also produce witnesses, written statements or other documents in support of his/her case. (Where the employee intends to rely on a written Statement of Case or other written evidence these must be provided six working days prior to the hearing.) Where witnesses are school or Trust employees they should be given reasonable time off with pay to attend.
7. The presenting officer will be given the opportunity to question the employee, his/her representative and any witnesses called in his/her defence.
8. At any stage during the Hearing/Appeal the Designated Officer or Panel conducting the hearing and any adviser(s) may ask questions of the employee, the presenting officer or such other persons, as they may consider appropriate in order to ascertain the facts and arguments.
9. In the case of Appeals by way of a full re-hearing, the employee may present additional arguments relating specifically to the reasons for dismissal set out in the dismissal letter. In such cases, the management representative will be given an opportunity to respond prior to closing statements being invited.
10. The presenting officer will then be invited to make a closing statement not introducing any new material.
11. Finally the employee or his/her representative will be given the opportunity to make a closing statement also without introducing any new material.
12. Both parties will withdraw to allow the Designated Officer / Panel to review and consider the evidence in conjunction with any advisers.
13. The Designated Officer or Panel will then recall both parties to inform them of his/her/their decision. The decision will normally be announced personally to the parties as soon as it is possible on the day of the

Hearing/Appeal. If it is not possible to make a decision immediately the parties will be informed of this. In any event a decision must be made and communicated to the employee within five working days of the hearing. The decision will be confirmed in writing and delivered to the employee either by hand or recorded delivery and first class post (even if also sent electronically) with a copy (sent electronically) to the trade union representative or work colleague and the presenting officer.

APPENDIX 2

Conduct of Appeals against a Disciplinary Sanction only

The procedure at the hearing will normally be as follows:

1. The Appeal will be conducted by either the Headteacher or an Appeal Panel of the LAB as appropriate.
2. The Headteacher or Panel conducting the Appeal may be advised/supported by an HR Adviser.
3. The Headteacher or Panel conducting the Appeal will satisfy himself/herself/themselves that all those present understand the purpose of the hearing which is to consider arguments as to the severity of the sanction imposed.
4. No witnesses will attend for either side, but written character references may be submitted by the employee in advance (six working days before the Appeal).
5. The employee or his/her representative will be invited to present their case.
6. The management representative will be given the opportunity to question the employee or his/her representative.
7. The management representative will be invited to respond to the employee's case.
8. The employee and/or representative will be given the opportunity to question the management representative.
9. At any stage during the appeal any member of the Panel conducting the hearing and any adviser(s) may ask questions of the employee, their representative or the management representative, as they may consider appropriate in order to ascertain the facts and arguments.
10. The employee or their representative will then be invited to make a closing statement not introducing any new material.
11. Finally, the management representative will be given the opportunity to make a closing statement also without introducing any new material.
12. Both parties will withdraw to allow the Headteacher or Panel to review and consider the arguments in conjunction with any advisers.
13. The Headteacher or Panel will then recall both parties to inform them of his/her/their decision. The decision will normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately the parties will be informed of this. In any event a decision must be made and communicated to the employee within five working days of the hearing. The decision will be confirmed in writing and delivered to the employee either by hand or recorded delivery and first class post (even if also sent electronically) with a copy to the trade union representative (sent electronically) or work colleague and the management representative

11. Contact details

Chief Executive Officer	Susan Walters ceo@createlearning.co.uk 01270 360030
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