



Managing Investigations

Guidance to support Disciplinary and Grievance Procedures

The Exceed Academies Trust has adopted this guidance (developed by PACT HR through consultation with the Trade Unions)

Guidance date: 31 October 2017

To be reviewed on: As necessary

Introduction

The Managing Investigations guidance aims to provide a framework to enable the Trust to carry out fair and consistent investigations into staff conduct.

The guidance contained within this document should be used in accordance with the relevant policy or procedure, as determined by the nature of the issue under investigation. The guidance may be used in conjunction with the Disciplinary and Grievance Policies.

Any staff asked to undertake an investigation should seek HR advice.

Examples of misconduct

The following are examples of misconduct. The list is not exhaustive:

- Unauthorised absence
- Negligence
- Inadequate standards of work caused by carelessness
- Careless damage to or wastage of school property and/or equipment
- Failure to carry out reasonable instructions
- Insubordination
- Improper behaviour or conduct
- Disregard of safety instructions
- Aggressive behaviour
- Timekeeping offences
- Improper disclosure of confidential information
- Smoking in prohibited areas
- Harassment and/or bullying
- Breach of the Trust's guidelines on e-mail/internet use
- Breach of the Trust's approach to equality
- Conduct which contravenes Trust policies or school procedures

Examples of gross misconduct

Gross Misconduct is generally seen as misconduct serious enough to destroy the employment relationship between the employer and the employee and make any further trust and confidence and future working relationships impossible.

The following list provides some examples of actions which may constitute gross misconduct:

- Theft of school, staff or public property
- Fraud and/or deliberate falsification of records
- Deliberate damage to or neglect of school property and/or equipment
- Gross insubordination
- Serious harassment, bullying, discrimination and/or intimidation
- Physical violence

- Actions which risks bringing the school into disrepute
- Incapability whilst on duty brought on by alcohol or drugs
- Conduct at work likely to offend decency, including improper relationship with students
- Gross negligence which causes or might cause unacceptable loss, damage or injury
- Serious infringement of health and safety procedures
- Serious breach of confidence e.g. disclosure of confidential information and breach of data protection requirements.
- Criminal activities outside work where such conduct is incompatible with the individual's employment
- Matters/conduct relating to child protection
- Sexual Misconduct
- Refusal to follow a reasonable instruction

When to consider informal or formal action

Consideration should always be given to whether it is appropriate to deal with a matter formally or informally (and the process to be followed).

If there is a concern that the allegation may be serious or there is uncertainty as to whether to initially tackle the matter informally or formally, advice must be sought from HR before any action is taken to decide the most appropriate method of dealing with the matter.

Child protection allegations

In the event of an allegation of a child protection nature, a basic fact-finding exercise may be required to establish the initial details. HR must be contacted for advice before any fact-finding takes place. Any matters that meet the threshold of an allegation of abuse against staff must be reported to the Local Authority Designated Officer in accordance with the Local Safeguarding Children procedures.

Suspension

Who can suspend / lift suspension?

In cases where suspension is considered, please contact HR for advice.

Headteachers

- Headteachers can suspend any member of staff employed or engaged at the school
- If suspension occurs, the governing body must be immediately informed

- Headteachers do not have the power to lift suspensions; this must be done by the governing body. The governing body may delegate this duty to the Headteacher.

Governors

- The governing body can suspend / or lift the suspension of any member of staff employed or engaged at the school, including the Headteacher
- If suspension occurs, the governing body must inform the Headteacher (in these circumstances this function would either be carried out by the Chair of Governors or a delegated governor). Suspension should not be discussed at full governing body level, in order to avoid compromising the impartiality of governors that may be required to consider matters at a later stage.

When suspension may be appropriate

Suspension is a neutral act, not a disciplinary sanction, and the employee will receive normal pay. Suspension may be considered at any stage of the process.

Suspension may be appropriate in the following circumstances;

- When a child or children may be at risk
- Where an allegation is so serious that dismissal for gross misconduct is possible
- Where suspension is necessary to allow the conduct of the investigation to proceed unimpeded

Where the police are involved in an investigation, management must consult with the Police Officer in charge prior to suspension being considered.

Alternatives to suspension

The member of staff whom the allegation is against should not automatically be suspended and alternatives to suspension should be considered. These may include;

- Paid leave of absence or mutual agreement to refrain from work (known as garden leave). This should only be considered as a short term arrangement while further information is being gathered
- Alternative duties/locations
- Removal from contact with child(ren) that may be involved in the investigation

In the case where issues relate to a child protection matter, the Local Authority Designed Officer should be consulted regarding alternatives to suspension. In cases where a multi-agency or strategy meeting is required, all parties should have input into any decisions regarding suspension.

Process for suspension

Meet the member of staff

- A meeting with the member of staff should normally be undertaken outside pupil contact time and as soon as possible in a discreet location.
- Where suspension is being considered, the employee should be advised that they may seek advice from their trade union representative.
- The employee may be accompanied by a work colleague not involved in the matter or a trade union representative. Where a trade union representative is not available to attend the meeting, the member of staff may be suspended and then given the opportunity to make representations while accompanied by their trade union representative at a later date.
- The Headteacher or member of the governing body conducting the meeting may be accompanied by HR.

At the meeting

- The member of staff should be informed that at the conclusion of the meeting, they may be suspended
- Explain that the meeting is not a formal disciplinary hearing but is for the purpose of raising a serious matter which may lead to suspension and further investigation
- The member of staff should be given information regarding the allegation(s) and the reasons for any proposed suspension
- The employee may make representations regarding the consideration of suspension
- Management may also want to give consideration to alternatives to suspension
- A brief adjournment should be offered to the member of staff prior to management's response
- If suspension is considered necessary, the individual should be advised that he or she is suspended from duty with immediate effect and should also be informed of the reasons for and the terms of their suspension
- Advise the employee that access to ICT systems & other relevant equipment will be immediately removed for the duration of the suspension
- Written confirmation of the suspension may be given at the end of the meeting or otherwise provided as soon as possible (normally within one working day).

In cases where suspension occurs, contact with the employee should be maintained and the suspension reviewed monthly.

Support for staff during the period of suspension

According to the needs and wishes of the member of staff to be kept informed, an appropriate senior member of staff may provide information about developments in the life of the school. The suspended member of staff will also be given the name of a contact person within school. The role of the contact person is to provide any relevant information and be a point of contact for the member of staff.

Social contact with colleagues and friends at the school should not be precluded except where it is likely to be prejudicial to child protection enquiries, criminal investigations or disciplinary processes.

In some cases, it may be appropriate to ask whether counselling or the support of Occupational Health may be helpful.

Confidentiality

Where a parent has made the allegation they may be confidentially informed of the suspension and any developments, where it is necessary to provide reassurance. The reasons given should be agreed between the concerned employee, their representation and the Headteacher.

Senior teachers in the school who need to know of the reason for the suspension should be informed, as far as is necessary. The Headteacher/Chair of Governors should take a decision on informing other staff colleagues in the school of the suspension, however, the number of people informed of the suspension should be kept to a minimum.

In certain circumstances, e.g. child protection investigations, it may be necessary for the Headteacher (in consultation with the Chair of Governors) to provide immediate reassurance to parents and children in the school and there may be a need for information to continue to be provided during the course of an investigation to parents, children and other colleagues.

Guidance should be sought from the Local Authority Designed Officer, Social Services and/or the Police, where relevant.

The Investigation

Who should investigate?

- When it is decided that a formal investigation is appropriate, the Headteacher or governors should determine who will be the investigating officer. If it is likely that the investigation may result in a disciplinary or grievance hearing, where the Headteacher may hear the

case, It is advisable that an alternative member of the senior leadership team, another appropriate member of staff, or an external investigator is commissioned in order to conduct the investigation.

- If it is likely that the investigation may result in a disciplinary or grievance hearing, where the governors may hear the case, it is advisable that the Headteacher, an alternative member of the senior leadership team, another appropriate member of staff or an external investigator is commissioned in order to conduct the investigation.
- If the Headteacher or senior member of staff is a key witness, or has knowledge which could be seen to prejudice the investigation, it is not recommended that they conduct the investigation, present the case at a hearing or hear the case.

External investigators

The school may also contact HR with a view to commissioning an external investigator. If an external investigator is commissioned, they will report to the nominated governor/s that will retain responsibility for the case.

The external investigator should liaise with HR for advice on procedural matters and to keep HR informed of developments in the case.

How to conduct the investigation

Principles of conducting an investigation

- The investigation should be free from bias and meet the requirements of natural justice. All concerns should be put to the employee and they should be allowed to respond
- At all stages of the process, confidentiality must be maintained by all parties
- A timescale should be provided at the beginning of the investigation to all parties concerned and every effort should be made to achieve this. However, if this is not possible, all parties should be informed and given reasons why
- All parties have the right to be accompanied by a trade union representative or work colleague not involved in the case throughout the investigation process

Meet the Member of Staff

The investigating officer will meet the member of staff whom the allegation is against (with their Trade Union Representative or a work colleague should they wish) and explain that it is a formal investigation. The member of staff will be given information about the allegation (verbally and in writing) and the procedure to be followed will be explained. The information should be given in sufficient detail for the member of staff to understand the overall matter of concern.

Before commencing the investigation

- Identify details of the precise issue to be investigated, e.g. details of allegations made etc.
- Suggested methodology for conducting investigations, e.g. identification of initial information needed
- witnesses, copies of policy being breached etc.
- Under which policy or procedure the investigation is being conducted under
- Clarify what purpose and by whom any investigation report will be used.

Investigation interviews

Preparation for the investigation interviews

The investigating officer should:

- Ensure that enough time has been set aside to hold the interview confidentially, in a private room that is available without any interruptions.
- Ensure that all necessary information is available during the course of the meeting. e.g. copies of policies / procedures etc.
- Prepare a list or structure of challenging questions in relation to the alleged incident / allegation.
- Ensure that an appropriate person is available to take detailed notes of the meeting, for use within the investigation process / report where appropriate.

All staff interviewed as part of the investigation are entitled to be accompanied by a trade union representative or a work colleague (who is not involved in the matter). The employee should be written to stating the date/time and venue, the purpose of the meeting and the right to be accompanied.

Conducting the investigation interviews

Where possible, the interviews should be conducted in the following suggested order;

- The person raising the allegation should be interviewed first
- Witnesses should be interviewed one at a time. There may be a need to re-interview witnesses during the investigation process. Additional witnesses may be identified during the investigation and must also be interviewed.
- The person whom the allegation is against should be interviewed last.
- Care should be taken to avoid any opportunity for collusion.

When interviewing children that may be involved as witnesses please refer to HR for advice.

The structure of the investigation interview

- Explain the context of the interview and the member of staff's right to representation.

- For what purpose the meeting notes and subsequent record of interviews will be used.
- How and when the interviewee will be able to check the notes /record of interviews.
- Reiterate the importance of confidentiality.

The interview itself is to ascertain facts and there may be times when a series of specific questions requiring specific answers may need to be put to interviewees. Fair, open and challenging questions may be used to probe answers to establish the facts. The interviewer should avoid any speculation or opinion.

Introductions and greetings

To the person making the allegation, witnesses (or others with information) explain;

- The procedure to the interviewee and try to put them at their ease.
- Their right to be accompanied by a trade union representative
- This is part of a formal process, their evidence may be used if the matter proceeds to a hearing and they may have to be called as a witness
- They will be given a copy of their final record of interview
- The member of staff will have the right to know who is making the allegation (or providing information about the matter).The member of staff will also receive a copy of the record of interview should the matter proceed to a hearing
- The matter is strictly confidential and must not be discussed at any stage. Reassure the interviewee that management will also maintain strict confidentiality.
- This should appear in the record of interview.

Taking a record of interview from the member of staff

Explain that:

- This is part of a formal process
- They have a right to representation
- The allegations against them may proceed to a hearing, and the potential outcomes
- They will be given a copy of their final record of interview

Questioning

- Use open questions (who, what, why, when, how etc)
- Use closed questions in order to clarify points. Leading questions should not be used when interviewing witnesses
- Discuss and enquire into any additional information for clarification
- Ensure that specific examples are provided when unsubstantiated descriptions are given, i.e. 'bullying' or inappropriate behaviour' etc
- Where physical force is alleged to have been used then the degree of force used should be clarified

- Once questioning is complete, re-cap and clarify main points of discussion, ensuring that the notes taken are accurate and answer any appropriate questions or concerns raised

Closing Statement

- Explain the next steps, confirming how / when the record of interview is to be prepared and verified and when the investigation is expected to be completed.
- Ensure that contact details of the investigating officer are provided, and ensure confidentiality is fully understood.

At the end of the investigation interview the investigating officer should have obtained from each witness:

- The names of those present or involved
- Date / time / place of the alleged incident/allegation
- Details of what took place, and the order in which they happened
- How the individual reacts to any other documents or witness evidence which is inconsistent with their account
- The steps taken since the alleged incident/allegation, including any steps taken to resolve the matter

Records of interviews

- Any notes taken during the investigation interviews should be typed, checked and signed by the interviewee. The record of interview should record the facts, written (within reason) in the language used by the interviewee following the train of events.
- If there is any ambiguity or gap in the account these should be clarified with the interviewee.
- The interviewee must be given the opportunity to review the statement and must only sign to confirm it as a true and accurate version of events.
- Once the record of interview is typed the employee should be allowed sufficient time to read it through, make any amendments/additions as necessary and sign and date the record at the bottom of each page. Any amendments should be initialled. Where possible it is advised that the record is typed and signed as soon as the interview has been completed.
- Where records of interviews cannot be taken, the investigating officer may ask the interviewee to provide a written statement, which can be prepared with their Trade Union representative. In these cases, the statement should be checked by the investigating officer and included in the investigation report.

Evaluating the evidence

All of the relevant evidence gathered during the investigation should be reviewed and collated for use within the investigation report. This should include;

- Any record of interviews
- Notes from investigation interviews
- Relevant policies & procedures
- Evidence of custom and practice etc.

This evidence should be evaluated, particularly where there are contradictions or conflicts, which the investigating officer must consider. In evaluating evidence, each case should be judged on its merits; however, the following points should be considered;

- Direct witness evidence will usually be stronger than indirect information relating to the incident / allegation
- Evidence which is inconsistent with documents produced at the time is questionable
- Evidence which is vague, is unsubstantiated opinion or hearsay, omits significant details or contains inherent contradictions is questionable
- Anonymous evidence should be reviewed with caution as it is often difficult to substantiate
- Consideration should be given to any bias, motivation or influence individual witnesses may have
- Where possible the factual accuracy of points raised in records of interviews should be verified by the investigating officer if they are material to the allegations.

It is important to remember that in reviewing the evidence and recommending appropriate courses of action, the investigating officer only has to show they have a reasonable belief of what happened based on their assessment of the evidence. Unlike a legal case, there is no requirement to prove a case 'beyond reasonable doubt'.