

LANCASHIRE TEACHING AGENCY (LTA)

DISCIPLINARY PROCEDURE (SEPTEMBER 2020)

1. PURPOSE

This procedure is intended to be open, fair and transparent and to clarify the rights and responsibilities of management, trade unions and supply teachers. It sets out the course of action that will be followed in the event of disciplinary action being considered necessary.

The nature of engagement of supply teachers is that their actual contract of employment may be of short duration. This procedure is intended to give supply teachers equivalent rights to those available to other teachers if a complaint is made about them. However, not all aspects of the procedure which apply to permanent teachers can apply to supply teachers. Supply teachers are paid when they work. During the course of a Disciplinary investigation, the LTA reserve the right not to place supply teachers. However, to reflect this absence of earning capacity for the Supply Teacher, the procedure will be applied speedily but without any reduction to the rights of the individual in respect of fairness or the right of representation.

For the purposes of this procedure 'working day' shall be one of the openings contained within the School Term and Holiday Patterns document, circulated by the Authority on an annual basis.

2. SCOPE

This procedure applies to all teachers employed by Lancashire County Council through the Lancashire Teaching Agency in schools as centrally managed staff. Schools in which a Supply Teacher may be placed have no formal role in applying this procedure but do have a role in applying good management practices.

3. DE-REGISTRATION

One of the possible outcomes from a disciplinary investigation could be that the Supply Teacher is de-registered, particularly in cases of serious or gross misconduct, or repeated/recurring misconduct. De-registration means that the supply teacher will no longer be able to work for LTA.

Following de-registration, relevant reports will be forwarded to the Disclosure and Barring Service/Teaching Regulation Agency (TRA) for consideration as appropriate.

4. GROSS MISCONDUCT

Where LTA supply teachers are de-registered for a reason that constitutes gross misconduct, the employee will be referred to the Disclosure and Barring Service/Teaching Regulation Agency (TRA) for consideration.

5. CONTEXT

Good management practice includes ensuring a proper induction into the LTA and a welcome and introduction to the school, giving appropriate support and guidance and recognising that in many cases the right word, at the right time, and in the right way may be all that is needed. This will often be a more satisfactory method of dealing with a minor breach of discipline or unsatisfactory conduct than taking action via a formal investigation and a formal hearing. This procedure should not be used in such circumstances.

Supply teachers are expected to undertake their role in line with their Statement of Particulars and the Professional Standards of the LTA. In addition, they are encouraged to seek support and guidance to facilitate their role and contribution to schools where they work.

This procedure does not apply in relation to capability issues which should be addressed under the LTA Capability Procedure.

6. INVESTIGATION

Lancashire Teaching Agency processes personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with its data protection policy. In particular, data collected as part of the investigation stage and any subsequent stages of disciplinary action is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the County Council's data protection policy. It may also constitute a disciplinary offence.

No disciplinary action will be taken against any supply teacher until the matter has been investigated, information has been collected by the Investigating Officer (normally the LTA Branch Manager) and the teacher has had an opportunity to respond to the allegations. Before a teacher is asked to respond to any allegations he/she will be notified that an investigation is taking place and of the nature of the allegations. Details will be gathered promptly and will include any comments the teacher concerned wishes to make at that stage. The teacher will have the right to be accompanied by a trade union representative or work colleague at any meeting convened under

the formal procedure. The teacher will be kept informed of progress of the investigation in all instances.

LTA reserves, at its discretion, the right not to offer the Supply Teacher any placements during the investigation process.

7. CONSIDERATION OF DISCIPLINARY ACTION

On completion of the investigation, the LTA Branch Manager's report will be considered by a Designated Officer (normally the Lancashire County Council LTA Project Manager) who will determine, on the basis of the evidence collected, whether arrangements should be made for a formal Disciplinary Hearing to proceed. If it is decided that there should not be a hearing the teacher may be given advice, guidance or a written instruction as appropriate. Where the alleged misconduct is gross misconduct, or further misconduct following a 'live' final written warning, or where the circumstances of the case otherwise justify it, a Disciplinary Hearing will be arranged before a LCC Head of Service. In other cases of misconduct the hearing will be arranged before the LCC LTA Project Manager and disciplinary action may be taken.

8. FORMAL PROCEDURE

8.1 Notice of the hearing/rights to representation

The teacher will be given 10 working days' notice of the Hearing in writing. This notice should outline the purpose of the Hearing, the nature of his/her alleged misconduct and the right to representation by a trade union representative or work colleague. The disciplinary report and any relevant documentation should be attached. A mutually convenient date should be agreed with the teacher and his/her representative if possible. Where this is not possible and the teacher's chosen trade union representative is not available on the specified dates, the teacher has a statutory right for the hearing to be postponed for up to five working days if he/she can provide a reasonable alternative time within this five day period. This statutory right relates only to the availability of the chosen trade union representative. It does not apply in relation to a work colleague.

Where the teacher fails to attend or to be represented at a meeting, the matter may be considered in his/her absence.

8.2 Disciplinary hearing

The procedure to be followed at any Disciplinary Hearing (or any Disciplinary Appeals Hearing) is as set out in Annex 1.

8.3 Disciplinary sanctions

The following disciplinary sanctions are not necessarily sequential and the level of sanction that is issued will be dependent upon the seriousness of the teacher's alleged misconduct. The level of Hearing where each sanction can be issued is outlined on the table below:

Sanction	Authority to issue the sanction	Period of 'live' warning*
First written warning	LCC LTA Project Manager/Head of Service	6 months
Second written warning	LCC LTA Project Manager/Head of Service	12 months
Final written warning	LCC LTA Project Manager/Head of Service	2 years
Dismissal/De-registration	Head of Service	n/a

* subject to the exceptions outlined in Note (a) below

In all cases where warnings are issued, the Supply Teacher will be advised of the reason for the warning, of the areas in which improvement is required and of his/her right of appeal. The warning must be confirmed in writing and a copy of the letter placed on the Supply Teacher's personal file.

A Final Written Warning should be issued if there is a failure to improve conduct during the duration of another live disciplinary warning, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal and/or de-registration (in effect both first and final warning). In such cases, in addition to being advised of the reason for the warning, the areas in which improvement is required and the right of appeal, the Supply Teacher should also be warned that further misconduct, whether or not of a similar nature to the previous misconduct, may result in their dismissal or de-registration.

NOTES

- (a) Records of warnings will be expunged at the end of the stated time and any note or reference thereto removed from the teacher's personal file. However, under *Keeping Children Safe in Education (2020)*, an employer has a duty to retain records of all safeguarding allegations, except malicious allegations, until the teacher's normal retirement age or for 10 years, whichever is the longer.
- (b) A warning will not be disregarded if a subsequent warning is issued in relation to further misconduct, whether of a similar nature or otherwise, which occurs whilst a warning remains 'live' on file (it is the date of the further misconduct not the date of the hearing in respect of the later

misconduct which determines whether an earlier warning remains live).
The original warning will run concurrently with the most recent warning.

8.4 Disciplinary hearing

If there is further misconduct after the issue of a Final Written Warning, or where the circumstances are such as to warrant immediate consideration of dismissal, a report on the relevant issues will be prepared for the Head of Service, and the teacher shall be informed that an adverse report is being submitted.

A Disciplinary Hearing will, wherever practicable, take place within 20 working days of the date the teacher is informed by the LCC LTA Project Manager that an adverse report is being submitted to the Head of Service for a Disciplinary Hearing. The teacher will be given 10 working days' notice of the date of the hearing and will be supplied with a copy of the adverse report as soon as it is available (not less than 10 working days prior to the hearing date).

In cases where the Head of Service is of the view that the circumstances warrant severe action, they may conclude that the teacher should be dismissed and/or de-registered (this may be with a recommendation that the LTA consider re-registration of the teacher after a specified period of time against the registration criteria then relevant)

If a teacher is dismissed and/or removed from the Register the Disclosure and Barring Service/Teaching Regulation Agency (TRA) (as appropriate) will be notified.

9. **ACCREDITED TRADE UNION REPRESENTATIVES**

No formal disciplinary proceedings will be taken against any accredited trade union representative until the circumstances of the case have been discussed with a full time official of the Union concerned.

10. **NON-PLACEMENT OF A SUPPLY TEACHER UNDER INVESTIGATION**

LTA reserves the right not to place a Supply Teacher during the course of a Disciplinary Investigation.

Non-placement is not a disciplinary measure and must not be viewed as a judgement of alleged, suspected or known misconduct. A teacher shall be informed of the reasons for non-placement at the time and will be given confirmation of it in writing. The teacher will not be paid during the course of their non-placement.

It is intended that any investigation and action will be pursued speedily. The need to continue with the non-placement of a teacher shall be reviewed at not less than monthly intervals by the LCC LTA Project Manager and, if non-placement is continued, the teacher will be informed of this and the reasons for its continuation.

The teacher must also be kept informed of the progress of the investigation at not less than monthly intervals and must be notified of a 'Contact Officer' who will maintain regular monthly contact with the teacher.

11. LEVELS OF DISCIPLINARY MISCONDUCT

It is not the purpose of this procedure to classify all levels of misconduct. Each incident which may give rise to the consideration of disciplinary action will be judged independently according to the particular circumstances of the case including the previous conduct of the particular teacher. However, examples of misconduct are included at Annex 2. Attention is specifically drawn to the fact that any act of gross misconduct as listed could result in dismissal, and/or de-registration.

12. APPEALS AGAINST DISCIPLINARY ACTION

A teacher will have the right of appeal against any disciplinary penalty imposed, including de-registration, within ten working days of receipt of the decision. The original decision may only be upheld at appeal or a lesser penalty imposed, the penalty may not be increased. The appeal will normally be heard within 20 working days and conducted in accordance with Annex 1. The appellant will be given ten days' notice of the hearing.

Appeals against dismissal will be heard by a representative of the Director – Children's Services, who will be advised by a member of the Schools HR Team. No officer hearing the case will have had any previous involvement in the case under consideration. Advice may also be sought from a Legal Services representative.

There is no further right of appeal under this procedure. This does not remove any statutory rights for an individual to raise the concern with an Employment Tribunal.

13. RECORDS

Files relating to disciplinary matters are to be treated as confidential and only accessible to those involved in investigating or hearing the case.

14. CRIMINAL OFFENCES

In the event of a criminal offence being suspected on the part of a teacher, which is connected with his/her employment, the LTA will seek the advice of the Director – Children's Services and/or the Head of Legal Services.

If the allegations involve financial or accounting irregularities or circumstances which may suggest irregularities affecting cash, stores, property, remuneration or allowances, the LCC Audit Team may be involved in the investigation.

If the allegations relate to potential safeguarding matters, the LTA should seek the advice of the LCC Schools HR Team and Local Authority Designated Officer (LADO). Serious allegations of this nature **must** be referred in accordance with *Keeping Children Safe in Education (2020)*.

Where a teacher is convicted of a criminal offence which has a bearing upon his/her employment, whether within or outside of work; he/she may, subsequently, be subject to disciplinary action in accordance with this procedure.

In addition to the matter being dealt with by the Police and the LTA (via the disciplinary procedure), in some cases of serious/gross misconduct the matter may also be referred to the Teaching Regulation Agency (TRA) or Disclosure and Barring Service (DBS) by the LTA. The DBS have a statutory power to bar any person from working with children and young people or vulnerable adults. The Teaching Regulation Agency (TRA) has the power to impose a Prohibition Order, which can restrict or remove the right to work as a teacher in the UK.

Annex 1: Disciplinary Hearings/Appeals Procedure

The following procedure is appropriate for any officer level hearing or appeal hearing. At either hearing, advice on the procedure and evidence may be provided by a Human Resources representative.

1. Procedure at the hearing

- 1.1 The Management case will (normally) be presented by the LCC LTA Project Manager or LTA Investigation Officer, who will be entitled to call witnesses to support the case.
- 1.2 The employee and/or his/her representative and the person hearing the case will be entitled to question the persons referred to at 1.1 above.
- 1.3 The employee and/or his/her representative will be entitled to present a statement of case and will be entitled to call witnesses to support the case.
- 1.4 The LCC LTA Project Manager/LTA Investigation Officer and the designated person hearing the case will be entitled to question the persons referred to at 1.3 above.
- 1.5 The LCC LTA Project Manager/LTA Investigation Officer will have the opportunity to sum up. No new evidence may be introduced at this stage.
- 1.6 The employee and/or his/her representative shall then also have the opportunity to sum up. No new evidence may be introduced at this stage.
- 1.7 At the conclusion, all parties will withdraw except the person conducting the hearing and the HR representative, in order that the person conducting the hearing can deliberate in private. Should either party need to be recalled to clarify any points of uncertainty, both parties should return, even if the point giving cause for concern relates to one party only.
- 1.8 The decision will be conveyed orally and confirmed in writing within 5 working days. The confirmation letter will also indicate any right of appeal.

Annex 2: Levels of Disciplinary Misconduct

The lists below are for general guidance and should not be taken as definitive or comprehensive. Failure to adhere to the LTA professional standards may be treated as misconduct at any level, dependent upon the individual circumstances.

Examples of minor misconduct

Minor time wasting
Occasional lateness
Minor instances of insubordination

Examples of serious misconduct

Persistent or serious instances of insubordination
Persistent bad timekeeping
Continued repetition of previous offences
Failure to attend a placement without good reason

Examples of gross misconduct

Gross misconduct, which may result in dismissal and/or de-registration, is regarded as misconduct of such a nature that it fundamentally breaches the relationship between the employee and the employer. Examples of gross misconduct include:

- Stealing from the employer, members of staff, the public, pupils and parents, other offences of dishonesty;
- Child protection/safeguarding matters
- Criminal activities
- Sexual misconduct at work;
- Harassment of other employees, children or parents on the grounds of sex, ethnicity, sexual orientation, disability, religion, belief or age
- Misuse of the internet, email, mobile telephone or other school facilities;
- Fighting, physical assault;
- Serious violation of the County Council's policies relating to conduct at work, e.g. anti-bullying policy, computer security policy;
- Falsification of a qualification which is a stated requirement of employment or which results in financial gain;
- Deliberate damage to or misuse of the employers property;
- Drunkenness or being under the influence of alcohol or drugs at work;
- Falsification of records or claims for personal gain e.g. timesheets, performance management/Pay Progression evidence, application documentation;
- Wilful disregard of health and safety regulations;
- Serious negligence which causes unacceptable loss damage or injury;
- Intimidation of whistleblowers or witnesses to Hearings;
- Other similar acts which may come within the general definition of gross misconduct.

It should also be noted that disciplinary action may be considered in relation to acts of misconduct which take place outside of work hours, for example, in instances of criminal prosecution and/or conviction/caution for such actions. In addition, disciplinary action may be considered as a result of a Teacher's personal use/misuse of electronic communications and social media, including social networking sites. The considerations should be the relevance of the offence to the teacher's duties, the effect on the contractual relationship with the employer and/or on colleagues/pupils/parents or whether the actions of the Teacher brings the reputation of the School/LTA into disrepute. Disciplinary measures will not automatically be appropriate in these instances.