



STAFF DISCIPLINARY PROCEDURE POLICY

Date of Last Review: February 2016

Date of Next Review: February 2019

Responsibility:

Advisory Body Signature:



This procedure does not form part of your contract of employment, except to the extent required by law.

N.B. The DfE and the GTC will be informed of the outcome of any investigation, should the outcome include dismissal or if the member of staff resigns while being investigated.

Introduction

Policy statement

The aims of this Disciplinary Procedure is to set out the standards of conduct expected of all staff and to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.

It is our policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.

This procedure has been agreed following consultation with our staff. This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

Relationship with the other Procedures

This procedure does not apply to incompetence, incapability or other poor performance unless this is attributable to misconduct.

This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies, capability or poor performance. The capability procedure approved by the Advisory Body is available to all staff.

Minor Conduct issues

Minor conduct issues can often be resolved informally between an employee and their line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on the employee's personnel file but will be ignored for the purposes of any future disciplinary hearings. In some cases an informal verbal warning may be given, which will not form part of the employee's disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

An employee will not normally be dismissed for a first act of misconduct, unless we decide it amounts to gross misconduct or the employee has not yet completed their probationary period.

If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with Deputy Headteacher, Staff Development as soon as possible.

Grievance

If a grievance is raised in the course of the procedure, the Head/Disciplinary Panel will decide whether the procedure should be suspended for a short period while the grievance is dealt with. In coming to this decision the Head/Disciplinary Panel will consider this in line with the ACAS Code of Practice.

Confidentiality

Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved.

All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter. An employee, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

An employee will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless we believe that a witness's identity should remain confidential.

Investigations

The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from an employee and any witnesses, and/or reviewing relevant documents. The Headteacher will usually appoint an Investigating Officer to carry out the investigation.

Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

An employee does not normally have the right to bring a companion to an investigative interview. However, we may allow an employee to bring a companion if it helps to overcome any disability, or any difficulty in understanding English.

An employee must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.

Criminal charges

Where an employee's conduct is the subject of a criminal investigation, charge or conviction we will investigate the facts before deciding whether to take formal disciplinary action.

We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to your employment.

The right to be accompanied

An employee may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. An employee must tell the Deputy Headteacher, staff Development who their chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

If an employee's choice of companion is unreasonable we may ask you to choose someone else, for example:

- if in our opinion your companion may have a conflict of interest or may prejudice the meeting; or
- if your companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards.

We may, at our discretion, allow an employee to bring a companion who is not a colleague or union representative (for example, a member of an employee's family) if this will help overcome a disability, or if you have difficulty understanding English.

1. INFORMAL PROCEDURE

Cases of minor misconduct will normally be dealt with informally by a line manager. This may involve giving clear advice on how an employee's conduct can be improved. In such an event the Head will be informed of the nature of the misconduct and the action taken.

It is the Headteacher's responsibility to decide at which point formal disciplinary procedures should be initiated. (There must be no confusion between where the informal action ends and the formal procedures begin)

Suspension

If the issue that is the subject of the disciplinary action is thought at any stage to involve gross misconduct or it is in the interests of the School, a student, an employee or the member of staff, the Headteacher may immediately suspend the member of staff from work on full pay and benefits whilst the investigation proceeds.

The suspension will be for no longer than is necessary to investigate the allegations and we will confirm the arrangements to you in writing. While suspended you should not visit our premises or contact any staff member or student, unless you have been authorised to do so by the Head.

Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. You will continue to receive your full basic salary and benefits during the period of suspension.

2. FORMAL DISCIPLINARY PROCEDURES

2.1 The Investigation Stage:

Investigation: Any disciplinary issue will be investigated (see above) and a written report will be produced identifying the sequence of events and the details of the investigation. If, after investigating the matter, it appears that there are no reasonable grounds for concern, the person(s) concerned will be informed and, if relevant, allowed to return to work as normal.

2.2 The Formal Disciplinary Steps

Step 1: Notification

Following any investigation, if we consider there are grounds for disciplinary action, an employee will be required to attend a disciplinary hearing. We will inform an employee in writing of the allegations against them, the basis for those allegations, and what the likely range of consequences will be if we decide after the hearing that the allegations are true. We will also include the following where appropriate:

- a summary of relevant information gathered during the investigation;
- a copy of any relevant documents which will be used at the disciplinary hearing; and
- a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

We will give an employee written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but an employee will be given a reasonable amount of time, usually two to seven days, to prepare a case based on the information we have provided.

Step 2: The Meeting

Right to be accompanied: The member of staff can make a reasonable request to be accompanied by a fellow worker, or a trade union official of their choice at the Disciplinary Hearing (see above).

2.3 Rights of the Employee's Companion

There is a right of the companion to:

- address the hearing, putting the employee's case to the hearing;
- sum up the case;
- respond on the employee's behalf to any views expressed at the hearing; and
- confer with the employee during the hearing.

The companion may not answer questions on behalf of the employee, and may not address the hearing if the employee indicates that he/she does not want the companion to do so.

The companion may not stop the employee explaining his/her case, or prevent anyone else at the hearing from making a contribution.

2.4 Witness statements

If statements have been obtained from witnesses during the course of the investigation all parties will be given a copy of them. In certain circumstances it may be necessary to preserve the anonymity of a witness, but this should be rare, since it is important for the employee to be able to question the evidence.

2.5 Procedure at disciplinary hearings

If an employee or their companion cannot attend the hearing they should inform us immediately and we will arrange an alternative time. An employee must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If an employee fails to attend without good reason, or are persistently unable to do so (for example for health reasons), we may have to take a decision based on the available evidence.

The hearing will be chaired by the Head/Disciplinary Panel. The Investigating Officer and/or a member of SLT or the Advisory Body will also be present. The employee may bring a companion to the disciplinary hearing (see paragraph above).

At the disciplinary hearing we will go through the allegations against the employee and the evidence that has been gathered. The employee will be able to respond and present any evidence of their own. The employee's companion may make representations to us and ask questions, but should not answer questions on behalf of the employee (see above). An employee may confer privately with their companion at any time during the hearing.

An employee may ask relevant witnesses to appear at the hearing, provided they give us sufficient advance notice to arrange their attendance. An employee will be given the opportunity to respond to any information given by a witness. However, an employee will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise.

We may adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing. An employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

2.6 Disciplinary Panel

The Head (or representative) will normally make decisions at all stages up to the Final Written Warning/Dismissal. (NB. If the Head is the subject of the disciplinary hearing the Advisory Body will appoint a Disciplinary Panel to hear the matter regardless of the seriousness of the charge.) The Investigating Officer shall not be a member of the Disciplinary Panel.

2.7 Decision making

On completion of the hearing, the Head/Disciplinary Panel will retire to consider the decision. Neither the employee, nor the accompanying person, nor the Investigating Officer will be allowed to take part in, nor be present during the Head's/ Disciplinary Panel's deliberations.

2.8 Communication of decision

When the Head/ Disciplinary Panel has made a decision, it will be communicated in writing as soon as practicable. If the complaint is upheld, the member of staff will be informed of the action to be taken, explanation of any penalty imposed, and of the right to appeal against the decision. Where possible we will try and explain this decision to you in person.

If the decision has been taken to dismiss the employee, he/she will be informed as soon as reasonably practicable of the reasons for the dismissal, the date on which the contract between the parties will terminate, the appropriate period of notice or pay in lieu of notice (where appropriate), as well as information regarding the right to appeal.

3 DISCIPLINARY ACTION

Sanctions: Depending upon the nature of any misconduct found to have been committed, any explanation given and any mitigating circumstances, the Head/Disciplinary Panel may impose any of the following sanctions:

- A formal oral warning;
- A first written warning;
- A final written warning; and
- Dismissal with notice (or summary dismissal in cases of gross misconduct)

An employee may be dismissed for a first offence or cumulative misconduct.

It is now possible for a line manager to issue oral and written warnings and for any appeal to be heard, and decided upon, by a more senior manager e.g. a Deputy Head.

Disciplinary penalties

The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. We aim to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

Stage 1 - First written warning.

A first written warning may be authorised by the Headteacher. It will usually be appropriate for a first act of misconduct where there are no other active written warnings on your disciplinary record.

Stage 2 - Final written warning.

A final written warning may be authorised by the Headteacher. It will usually be appropriate for:

- misconduct where there is already an active written warning on an employee's record; or
- misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.

Stage 3 - Dismissal.

Dismissal may be authorised by the Headteacher. It will usually only be appropriate for:

- any misconduct during an employee's probationary period;
- further misconduct where there is an active final written warning on an employee's record; or
- any gross misconduct regardless of whether there are active warnings on an employee's record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are set out below.

Alternatives to dismissal.

In some cases we may at our discretion consider alternatives to dismissal. These may be authorised by the Headteacher and will usually be accompanied by a final written warning. Examples include:

- Demotion.
- Transfer to another department or job.
- A period of suspension without pay.
- Loss of seniority.
- Reduction in pay.
- Loss of future pay increment or bonus.
- Loss of overtime.

The effect of a warning

Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.

A first written warning will usually remain active for six months and a final written warning will usually remain active for 12 months. In exceptional cases verging on gross misconduct, a final written warning may state that it will remain active indefinitely. Your conduct may be reviewed at the end of a warning's active period and if it has not improved sufficiently we may decide to extend the active period.

After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

3.1 Gross misconduct

Gross misconduct, is where the conduct of the employee is so serious that it may warrant dismissal, even for a one-off-event. Where there has been gross misconduct the Head/Disciplinary Panel may dismiss without normal notice. Examples of what the School considers to be gross misconduct are set out below:

- Indecent or violent behaviour (actual or threatened) whether committed at or outside work, which is likely to damage the school's reputation;
- Deliberate and serious misuse of, or deliberate damage to, School property;
- Fraud, forgery, theft or dishonesty including fabrication of expenses or time sheets;
- Deliberately accessing internet sites containing pornographic, offensive, or obscene material;
- Serious misuse of social networking accounts including but not limited to Facebook, Linked In, MySpace, Twitter etc.
- Serious misuse of the School's property or name;
- Being on duty whilst unfit due to the influence of drugs and/or alcohol;
- Bullying/harassment;
- Conduct, words and/or conviction (whether committed at or outside work) which is likely to damage the School's reputation or brings the School into disrepute;
- Causing loss, damage or injury through serious negligence;
- Unlawful discrimination (including harassment or victimisation) on grounds of any of the protected characteristics;
- Serious or repeated breach of health and safety rules/requirements or serious misuse of safety equipment;
- Causing loss, damage or injury through serious negligence;
- Wilful neglect or refusal of duty;
- Unauthorised use or disclosure of confidential information or failure to ensure confidential information in your possession is kept secure;
- Accepting a bribe or other secret payment from a third party including but not limited to parents and children;
- Conviction of a criminal offence that in our opinion may affect our reputation or our relationships with staff, children and/or parents and may affect your suitability to continue working for the school;
- Offences related to drug abuse, sexual misconduct and the abuse of children;
- Serious incapability at work brought about by alcohol, drugs or other factors having the same effect;
- Unauthorised use, processing or disclosure of personal data contrary to our data protection legislation;

- Repeated or serious failure to obey instructions, or any other serious act of insubordination. Knowing breach of statutory rules affecting your work;
- Unauthorised use, processing or disclosure of personal data contrary to our data protection legislation;
- Harassment of, or discrimination against, employees, contractors, clients or members of the public, related to gender, marital or civil partner status, gender reassignment, race, colour, nationality, ethnic or national origin, disability, religion or belief or age;
- Refusal to disclose any of the information required by your employment or any other information that may have a bearing on the performance of your duties;
- Giving false information as to qualifications or entitlement to work (including immigration status) in order to gain employment or other benefits;
- Knowingly taking parental, paternity or adoption leave when not eligible to do so or for a purpose other than supporting a child;
- Making a disclosure of false or misleading information under our Whistleblowing Policy maliciously, for personal gain, or otherwise in bad faith;
- Making untrue allegations in bad faith against a colleague;
- Victimising a colleague who has raised concerns, made a complaint or given evidence or information under our Grievance Procedure, Disciplinary Procedure or otherwise;
- Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of e-mail and the internet);
- Undertaking unauthorised paid or unpaid employment during your working hours;
- Unauthorised entry into an area of the premises to which access is prohibited.

This is not an exhaustive list.

4. APPEAL

4.1 Right of appeal:

If you feel that disciplinary action taken against you is wrong or unjust there is a right of appeal to an Appeal Panel against any penalty imposed by the Head/ Disciplinary Panel. The Appeal Panel shall consist of members of the Advisory Body appointed by the Chairman and shall not include the Head/any member of the Disciplinary Panel nor the Investigating Officer and shall comprise two/three persons.

4.2 Appeal procedure

Such a right of appeal must be exercised in writing to the Head within 7 calendar days of being notified of the decision of the Disciplinary Hearing, giving full and clear details of the reasons for the appeal.

The Appeal Panel will arrange a review hearing, or a re-hearing, to take place as soon as reasonably practicable. If an employee's raises any new matters in their appeal, we may need to carry out further investigation. If any new information comes to light we will provide an employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing.

The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at our discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.

The procedure at the Appeal Hearing shall be the same as that for the Disciplinary hearing, save that there will be no right of appeal from the decision of the Appeal Panel.

We may adjourn the appeal hearing if we need to carry out any further investigations in the light of any new points an employee has raised at the hearing. An employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Following the appeal hearing we may:

- confirm the original decision;
- revoke the original decision; or
- substitute a different penalty.

We will inform you in writing of our final decision as soon as possible, usually within one week of the appeal hearing. Where possible we will also explain this to you in person. There will be no further right of appeal.

The Appeal Panel will be entitled to reach a different conclusion and impose a different sanction than that imposed at the Disciplinary Hearing.

The decision of the Appeal Panel is final.

4.3 Employment status

If an appeal is made against a dismissal decision, that dismissal decision will have immediate effect so that, if the dismissal is by notice, the period of notice will have begun at the date given in the dismissal decision.

If summary dismissal without notice has been imposed, there will not be an entitlement to be paid for the period between that decision and the decision of the appeal unless the member of staff has been reinstated on appeal.

If the employee, having been dismissed, is then reinstated on appeal, continuity of employment will be unaffected. The employee will also, subject to the outcome and disciplinary sanction imposed, receive pay for the period in which the employee would have worked but for the earlier dismissal.

5. ROLES AND RESPONSIBILITIES

5.1 Advisory Body

The members of the Advisory Body are the employers and have the responsibility to ensure that the procedures are fair, just and reasonable. The Advisory Body will monitor the working of the policy and review it once per year.

5.2 Appointment of Appeal Panel

The Advisory Body will appoint a group of Board members from whom any appeal panel of two/three can be drawn. The Chair will appoint the Appeal Panel in each case.

5.3 The Head

The Head is responsible for hearing and making the appropriate decision as he sees fit, at each stage of the procedures, as set out in this document.

5.4 Investigating Officer

The School may appoint a senior member of staff to carry out the investigation ("*the Investigating Officer*").