

# **Whole School Model Disciplinary Procedure for all Staff in Schools with Delegated Budgets including General Rules of Conduct**

## **1. Introduction**

1.1. The Headteacher and Governing Body have a responsibility to assist all members of staff (both teaching and non-teaching) in the school to achieve an acceptable standard of professional conduct. This will normally be achieved in an informal way through the normal day to day management of the school.

1.2. It has to be recognised that some employees may not always reach and maintain acceptable levels of conduct and that, in these instances, certain procedures will need to be put into effect. They have the following objectives;

- to ensure that any action, when necessitated by an employee's misconduct, is administered justly;
- to ensure that all employees are aware of the relevant procedures;
- to identify the various levels of management which are responsible for instituting and taking disciplinary action.

1.3. Under the Education Reform Act 1988, the Governing Bodies of schools with delegated budgets assume, the responsibility for disciplinary matters including dismissal. To this end the Governing Body must have established a Disciplinary Committee, made up of at least three Governors and an Appeals Panel which should again comprise three governors none of whom should be members of the Disciplinary Committee.

1.4. The Director of Education or her Representative and the Headteacher (except where the Headteacher is the person concerned) have the right to be present, for the purpose of giving advice, at all proceedings when dismissal is being considered. If the Headteacher has previously suspended the employee, or is otherwise involved, then he/she must withdraw while the Disciplinary Committee or Appeals Panel (in case of an appeal) consider their decision.

1.5. Disciplinary action against a Union/Association official can lead to a serious dispute if it is seen as an attack on the functions of a Trades Union. Therefore, although normal standards of conduct shall apply to Union Representatives as employees formal disciplinary action will not be taken against accredited Representatives of Safety Representatives until the circumstances of the case have been discussed with a senior Trades Union Representative or full time Official.

1.6. These procedures reflect conditions of service, the articles of Government and appropriate legislation. It should be noted that they are quite separate from grievance procedures

and do not cover aspects of competence, absence and sickness and/or physical capacity. Nor should there be any direct link with these procedures and processes of staff appraisal.

## **2. Grounds for Action**

2.1. Discipline, in the employment context, is the right of management to set and enforce minimum standards of work and behaviour for staff. These standards must exist if the school is to function effectively. On one level, discipline is a continuous informal process, taking place on a day to day basis. However, at a certain point, perhaps because of a particular action by a member of staff, the informal maintenance will not be enough. At this point, formal disciplinary action will be taken, through the disciplinary procedure.

2.2. In the normal cases of misconduct (excluding gross misconduct) the full range of warnings will be applied in increasing order of severity but where the alleged misconduct is of a particularly serious nature, the procedure may be started at a higher level.

2.3. Complaints of gross misconduct may lead to a consideration of dismissal.

2.4. No member of staff will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be summary dismissal without notice.

2.5. If a member of staff is accused of an act of gross misconduct he/she may be suspended from work on full pay, while a full investigation of the alleged offence is carried out.

Suspension should only be considered appropriate when it is necessary either to protect the individual who has been accused of an act of gross misconduct, or to facilitate the investigation.

If, on completion of the investigation and the full disciplinary procedure, the governing Body is satisfied that gross misconduct has occurred, the result may be summary dismissal without notice.

## **3. Informal Procedure**

3.1. Where the Headteacher believes there is cause for concern about the conduct of an employee, he/she can deal with the matter informally, telling the employee of his/her concern and inviting comment or explanation from the employee concerned, at this stage, the employee must be advised of his/her right to the support of a work colleague or Union Representative.

#### **4. Formal Procedure**

4.1. In the case of further concern about the conduct of the employee, the Headteacher shall inform the employee that it will be necessary to carry out an investigation of the alleged misconduct, at this stage the employee must be reminded of his/her right to the support of a work colleague or Union Representative.

4.2. It is recommended that an investigating officer, other than the Headteacher be appointed, as the Headteacher will be chairing the disciplinary hearing at this stage of the procedure.

The investigation should be carried out as quickly as possible, normally within 10 working days, although this may be extended by mutual agreement.

4.3. Following the investigation, the Headteacher, after consulting the Director of Education or her Representative as necessary, may conclude that:-

- no further action is necessary;
- that the matter may be dealt with informally;
- or that the formal procedures shall be followed as set out below, including, if the investigation indicates it is appropriate, the procedure for gross misconduct.

The employee concerned shall be informed by the Headteacher, in writing, of the outcome of the investigation within five working days of its completion stating what action, if any, will be taken in accordance with the following procedures and also informing the employee of their right of appeal at any stage of the procedure.

#### **5. Formal Oral Warning**

5.1. Where an employee fails to respond satisfactorily to advice, the Headteacher may issue an oral warning. This warning should be confirmed in writing and the Headteacher will keep a copy for information.

The letter should include a statement that further misconduct could lead to a written warning and indicate the period of time over which the effect of the warning extends and shall also include a statement informing the employee that he/she has the right of appeal against the warning to the Disciplinary Committee of the Governing Body.

5.2. The expungement period for a formal oral warning will normally be three months. The Headteacher should advise the employee that this oral warning is being given in accordance with the Code of Disciplinary Procedure.

## **6. First Written Warning**

6.1. Should there be further allegations of misconduct following the issue of a formal oral warning and where the Headteacher considers that the investigation indicates misconduct but not gross misconduct, the Head shall write to the employee requiring him/her to attend a formal disciplinary interview.

The employee shall be given at least 10 working days notice of such a meeting, provided with copies of all appropriate papers, including details of the allegations and given an opportunity of being accompanied by a work colleague or Union Representative.

6.2. At the interview, the Headteacher shall outline the case against the employee and the employee shall be given reasonable opportunity to state his/her case, either directly or through a Representative, including referral to written evidence or the testimony of any witnesses they may wish to present.

The employee may question the Headteacher and any witnesses and may themselves be questioned by the Headteacher. At the conclusion of the meeting, the employee and the employee's Representative shall withdraw whilst the Headteacher consider his/her decision. The Headteacher may be advised by the Director or his/her Representative if present at the meeting but the decision is that of the Headteacher alone.

6.3. If the Headteacher considers that the allegations are justified, he/she may give a Formal Warning to the employee. This should be given in writing and delivered by hand or sent by recorded delivery within five working days.

The letter issuing the warning should specify the misconduct that is the subject of the warning and include a statement that further misconduct, would be likely to lead to a referral to the disciplinary committee of the Governing Body.

The letter shall indicate the period of time over which the effect of the warning extends and shall also include a statement informing the employee that he/she has the right of appeal against the warning to the Disciplinary Committee of the Governing Body within five working days.

The expungement period (for the purpose of future disciplinary proceedings) should be six months. Written confirmation that the expungement period has been completed shall be issued to the recipient of the warning.

## **7. Further Written Warnings**

7.1. If further allegations are made about the employee's conduct, after the issue of a first written warning, the procedure set out above shall be repeated.

7.2. If the further allegations are found justified, the Headteacher may issue a further written warning which should again specify the nature of the misconduct and that this could, after investigation, be referred to the Disciplinary Committee of the Governing Body for consideration. The letter should be delivered by hand or recorded delivery within five working days.

## 8. Final Written Warning

8.1. If further misconduct occurs after the issuing of a second or further written warning, then following an investigation, the matter may be referred to the Disciplinary Committee of the Governing Body.

The employee must be given at least 10 working days notice of the meeting of the Disciplinary Committee and will be entitled to attend and be accompanied by work colleague or Union Representative.

Copies of all documents to be considered by the Disciplinary Committee shall be supplied to the employee at least 10 working days before the meeting.

8.2. The disciplinary committee may decide that the employee should be given a **final written warning** in which it is made quite clear that future misconduct could lead to dismissal and inform the employee of their right of appeal to the Appeals Panel. A written submission of appeal shall be delivered to the Head within 10 working days of the disciplinary committee's decision.

8.3. If no further allegations of misconduct are made within one year of the **final written warning** being issued, the warning shall be expunged for the purpose of future disciplinary proceedings and the action confirmed in writing.

## 9. Dismissal

9.1. If further misconduct occurs after the issuing of a **final written warning**, then following an investigation, the matter will be referred to the Disciplinary Committee of the Governing Body for consideration that may lead to dismissal

## 10. Gross Misconduct

10.1 Gross misconduct is generally seen as conduct of a degree or form which, in view of the nature of the employee's duties, makes it unreasonable for that person to continue to be employed to perform those duties.

10.2 Where the Headteacher believes that an employee may be guilty of gross misconduct, he/she may suspend the person concerned on full pay, where this is seen to aid the process of investigation, informing the Governing Body of his/her action as soon as possible thereafter. (N.B. Either the Headteacher of the Governing Body may suspend a member of staff but only the Governing Body may end a suspension).

10.3 The Headteacher (or Chairman of the Governing Body if the person involved is the Headteacher), shall inform the Director of Education as soon as possible after an employee has been suspended from duty.

10.4 An employee who is to be suspended from duty has the right to have a work colleague or Union Representative present when being informed of the suspension.

The employee shall be informed of the reasons underlying the suspension.

10.5 The Headteacher shall investigate the circumstances surrounding the alleged gross misconduct, the employee being given an opportunity to explain his/her conduct to the Headteacher. At such a meeting, the employee shall have the right to be accompanied by a work colleague or Union Representative.

10.6 Where the Headteacher considers it necessary, he/she should make arrangements for a meeting of the Disciplinary Committee of the Governing Body to consider the matter, informing the employee in writing of the action to be taken.

The employee will be entitled to attend the meeting accompanied by a work colleague or Union Representative. Copies of all documents to be considered by the committee shall be supplied to all parties at least 10 working days before the meeting.

Witnesses needed to give evidence should be notified within the same 10-day period and all parties shall be informed of their identity and the content of their statements.

10.7 When the Disciplinary Committee decides that the employee shall be dismissed, the employee has a right of appeal against the decision to the Governing Body. A written submission of appeal shall be delivered to the Head within 10 working days of the Disciplinary Committee's decision.

## **11. Conduct of the Headteacher**

11.1 Should the Headteacher be the subject of disciplinary proceedings, the above procedure should be followed with the Chair/Chairman of the Governing Body taking the role which otherwise would have been performed by the Head and with the Director of Education or her Representative providing professional advice to the Chair/Chairman.

## **12 . Procedure for Hearings related to Disciplinary Matters**

The procedure outlined below is that which should be used for all formal hearings of disciplinary matters by the Disciplinary Committee or Appeals Panel of the Governing Body. However, in the case of appeals the focus will be on the grounds of appeal and the hearing will not normally involve a full re-hearing of the case. It is recommended that no hearing should exceed four hours in length in any one day, or continue beyond the hour of 10.00 p.m.

### **12.1 Presentation of the Case Against the Employee**

(I) The Headteacher or Representative of the Disciplinary Committee makes an opening address outlining the case.

(ii) The Headteacher or Representative of the Disciplinary Committee calls witnesses, if any, so that taking each one in turn:

- he/she questions each witness;
- the employee or Representative has the opportunity to put questions to each witness;
- the Headteacher or Representative of the Disciplinary Committee may clarify any issues by further questions to the witness;
- the members of the Governing Body have the opportunity to question each witness.

(iii) Each witness withdraws after giving evidence.

### **12.2 Presentation of the Employee's Case**

(I) The employee, or the employee's Representative, makes an opening address outlining his/her case.

(ii) The employee or the employee's Representative calls witnesses, if any, so that taking each one in turn;

- he/she questions each witness;
- the Headteacher or Representative of the Disciplinary Committee has the opportunity to put questions to each witness;
- the employee or Representative may clarify any issues by further questions to the witness;
- the members of the sub-committee/panel have the opportunity to question each witness.

- (iii) Each witness withdraws after giving evidence.

It is strongly advised that a similar procedure should be adopted at all disciplinary hearings.

### **12.3 Summing Up and Withdrawal**

(I) The Headteacher or Representative of the Disciplinary Committee and the employee, or his/her Representative, have the opportunity to sum up their case if they so wish, the member of staff to have the last word.

- (ii) Both parties then withdraw.

### **12.4 The Decision**

(I) The Disciplinary Committee or the Appeals Panel, with the Director of Education of her Representative (if either is present), are to deliberate in private, only recalling the parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return even if only one is concerned with the point-giving rise to doubt.

(ii) The decision will be announced at the close of the hearing. The Chair/Chairman of the Committee or Appeals Panel, as appropriate, will confirm the decision in writing within 7 days of the decision.

(III) In the case of an appeal against the decision of the Disciplinary Committee, the Appeals Panel can confirm, quash or substitute a lesser penalty for the decision of the original hearing.

## **13. Review of the Procedure**

13.1 It is recommended that Governing Bodies maintain a regular review of adopted procedures for dealing with disciplinary matters.

13.2 It is also recommended that the LEA monitor and review arrangements made by Governing Bodies and review and update this recommended model, where appropriate, on an annual basis.

# General Rules of Conduct

## 14. Disciplinary Procedure

14.1. The disciplinary rules applicable to you are set out in the school's disciplinary procedure, a copy of which will be provided to you by the school. If you are dissatisfied with any decision taken under this procedure, you should apply in the first instance to the Headteacher, Chair/Chairman of Governors who will advise you how to process your complaint.

14.2 The general rules of conduct are listed below. They cover both misconduct and gross misconduct but are neither exhaustive nor exclusive. They are not designed to cover every circumstance.

## 15. Misconduct

15.1 Issues of misconduct will normally lead to warning under the disciplinary process. Persistent misconduct may eventually lead to dismissal.

- a) regular lateness for work;
- b) unauthorised absence from work;
- c) regular failure to follow absence notification rules;
- d) refusal to obey a reasonable request by a Supervisor/Manager;
- e) negligence at work leading to loss or damage of Council or public property.
- f) discrimination/harassment against a member of the public or Council employee (e.g. on grounds of sex, colour, creed, nationality, ethnic origin, disability).
- g) wilfully inadequate work performance - poor performance or lack of capability will normally be considered as an issue of capability and not conduct. It is only where it is wilfully inadequate that the disciplinary process will be initiated.

## 16 GROSS MISCONDUCT

16.1 Gross misconduct is conduct which is serious enough to destroy the contract of employment. The significance of gross misconduct is that such acts are regarded as so serious that the penalty of dismissal is justified for a first offence.

16.2 Listed below are some examples of gross misconduct. They are not designed to cover

every circumstance, but to promote consistency of application and, at the same time recognise that mitigating circumstances may influence disciplinary decisions.

- a) Unauthorised removal and /or use of Council property.
- b) Stealing from the Council, its employees or the public
- c) Fighting at the workplace, serious threatening or abusive behaviour
- d) Wilfully causing serious damage to Council property
- e) Serious breach of the Council's financial regulations
- f) Serious breach of the Council's or Department's safety policies or practices
- g) Serious unfair discrimination/ harassment against a member of the public or Council employee
- h) Being incapable of adequately performing duties as a result of the abuse of alcohol or drugs.
- I) Criminal offences outside work which have a direct bearing on the individual's employment.
- j) Serious breach of the Employee Code of Conduct
- k) Instigating malicious complaints

Headteachers must seek guidance from the Education Personnel Manager when faced with serious cases of potential gross misconduct.

LA policy June 2009

Governor approved: Oct 2011

Reviewed 01/10/2014

Governor approved: 12/10/16