



Schools' Disciplinary Policy and Procedure

Aim of this Policy and Procedure

This policy and procedure is designed to help and encourage all employees to achieve and maintain appropriate and acceptable standards of conduct. This will ensure a fair and consistent approach in managing conduct issues, which is in-line with best practice and the ACAS Code of Practice.

This policy assumes that the Governing Bodies of Foundation, Voluntary Aided and Foundation Special Schools, have agreed in writing that the Local Authority (LA) can attend meetings, interviews and hearings in an advisory role. In the absence of such an agreement the Secretary of State can make the determination. For Community, Voluntary Controlled, Community Special and Maintained Nursery Schools, the LA has an automatic right to attend in order to provide advice.

Scope

The policy and procedure extends to all school based employees and is incorporated into the contract of employment.

Equality Statement

Blackburn with Darwen Borough Council Schools are committed to treating all employees fairly and promoting equality of opportunity, providing clear performance and behaviour expectations to recognise and promote diversity as well as continually monitor and evaluate equality analysis. There is a zero-tolerance approach to any form of discrimination, victimisation, bullying and harassment. The recruitment and selection process will aim to ensure that people who join schools have shared values.

Exclusions

These procedures do not apply to matters more appropriately dealt with under separate procedures. Such matters include:

- Attendance and capability issues dealt with in accordance with the Schools' Attendance Management policy, Performance Management policy, Appraisal policy and Capability policy and procedure.
- Cases of harassment and bullying when the Dignity at Work policy applies in the first instance
- Issues of conduct arising during the probationary period



If the complaint is about a trade union representative, the policy must be followed but the matter must first be discussed with an official employed by the relevant union after obtaining the employee's agreement.

Principles

The disciplinary policy sets out a clear framework for managing employee misconduct. All occasions of alleged misconduct should be addressed fairly, transparently and at the earliest opportunity to minimise any anxiety or stress for the employee concerned, as well as ensure that the outcome reached is fair, reasonable and proportionate to the misconduct. Where an allegation is upheld, it is important that corrective action is taken to modify and improve future conduct and reduce the likelihood of repeat misconduct occurring.

Wherever possible and appropriate, first occurrences of minor breaches of discipline / standards should be dealt with informally, either through the normal course of management counselling and supervision or the informal procedure.

HR advice must be sought before making a decision to suspend or before any disciplinary action is taken against an employee. This will ensure that action initiated is fair and consistent across all schools.

No disciplinary action will be taken against an employee until the case has been sufficiently and independently investigated and a disciplinary hearing has taken place. The employee will be advised in writing of the nature of the complaint against them and the arrangements for the hearing including their rights to representation. Any disciplinary process should clearly highlight the maximum sanction to be considered. It should inform the employee that in cases where Gross Misconduct may be proven, there will be the potential for dismissal.

The employee will be given the opportunity to set out their case, ask relevant questions and respond to allegations before any decision is made.

The employee will have the right to be accompanied by a work colleague or recognised trade union representative at all stages of the procedure, this does not include legal representation. Where there is a need for immediate precautionary action to be taken, such as placing the individual on alternative duties or suspension, and a trade union representative is unavailable to accompany the employee, then the alternative duties/suspension meeting may take place with a mutually agreed independent witness present.

Under this policy and procedure, no employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the sanction can be dismissal without notice.

An employee will have the right to appeal against any disciplinary sanction imposed.



The procedure may be implemented at any time if the employee's alleged misconduct warrants such action, i.e. the disciplinary sanctions are not necessarily sequential.

HR advisors may be present at any of the formal stages of the procedure to advise and give guidance on policy, procedures and legislative requirements.

Please refer to the School's Delegated Responsibility Decision Sheet for information on who may suspend, carry out investigations, present a management case or hear a particular case or appeal.

Please note that no one who has previously been involved in the investigation leading to a disciplinary or appeal hearing will act in any way as a designated member of a hearing panel.

The intimidation or victimisation of persons prior to or following any complaint/allegation will not be tolerated and is a disciplinary offence in itself. Any complaints/allegations found to be malicious or vexatious will be treated as a disciplinary matter.

The timescales within the procedure will be adhered to, wherever possible, and there is an obligation on all parties to allow for matters to be dealt with without delay. However, where there are good reasons, e.g. the need for further investigation or the lack of availability of witnesses or companions, each party may request that the other agrees to an extension of the permitted timescale.

The School should monitor disciplinary data at least annually to ensure the policy is operating fairly, consistently and effectively.

Confidentiality

Disciplinary proceedings and records are confidential to those persons involved. Schools should be mindful of the requirements of the current legislation relating to Data Protection/Human Rights Act.

If at any stage, the employee has given authority for any communication, information or documentation relating to the investigation process to be shared with their representative, then this will be facilitated and provided at the same time as it is forwarded to the employee.

Any information that the Investigating Officer or the employee intends to rely upon at a hearing or appeal should be made available to the relevant parties. Any personal or confidential data should be redacted from documentation to maintain confidentiality and protect an individual's identity. Confidentiality must be maintained and information should only be disclosed to the relevant individuals.

Wellbeing Support

It is recognised that employees, being subject to any action under this policy, may become anxious about the process and potential outcome. It is important, therefore, to make them aware of wellbeing support which is available to them, including the Employee Assistance Programme (EAP). This is a free, confidential and independent service offering both practical and emotional support. It is accessible 24 hours per day, 365 days per year.

Procedure

Preliminary Assessment

A preliminary assessment should be undertaken following any allegation of misconduct. The purpose of a preliminary assessment is to establish the basic facts of an incident so that a conclusion can be reached as to whether it is more or less likely that the allegation occurred and what the appropriate next steps should be.

In cases where the Manager is supported by HR at the preliminary assessment then the employee will have the right to be accompanied either by a recognised trade union representative or a workplace colleague.

A preliminary assessment is not a formal investigation and should not seek to establish all the facts of an incident as its purpose is only to establish enough information to make an informed assessment on whether the incident may have occurred and the appropriate next steps.

Following a preliminary assessment, the manager will reach a decision on whether any further action is necessary. This may include a decision to recommend whether:

- a formal investigation is undertaken;
- temporary alternative duties or suspension are put in place, as a precautionary measure;
- informal action will resolve the matter;
- whether no further action should be taken.

Being suspended or interviewed as part of the assessment process is not to be regarded as prejudging the matter. Nor is it to be considered a disciplinary measure.

Before any employee is suspended, authorisation must be obtained from the Governing Body or, in the case of a community and voluntary controlled school, from the Deputy Director – Schools and Education.

Alternative Duties and Suspension



All alternatives to full suspension must be considered whilst further information is gathered.

An employee would only be suspended from duty if a preliminary assessment has taken place and which has attained sufficient information to establish a reasonable belief that the allegation may have occurred and is potentially gross misconduct.

Suspension is a precautionary measure, the purpose of which is to enable a fair, reasonable and unhindered investigation to take place. Suspension should only be imposed after careful consideration following advice from HR, and where the following requirements have been met:

- The allegation(s) are potentially gross misconduct;
- Alternatives to suspension have been considered and are deemed not appropriate. In such cases the rationale for the decision should be given.

The employee will have the right to be accompanied by a work colleague or recognised trade union representative at all stages of the procedure, this does not include legal representation. However, where there is a need for immediate precautionary action to be taken, such as placing the individual on alternative duties or suspension, and a trade union representative is unavailable to accompany the employee, then the alternative duties/suspension meeting may take place with a mutually agreed independent witness present.

In cases concerned with allegations of safeguarding children, any decisions not to suspend an employee following an allegation of abuse must be fully documented and endorsed separately by an independent Senior Leader from within the school. This should be done in consultation with the relevant Safeguarding lead. This information will be made available to the LADO, who will share this with local authorities and the police where appropriate.

The management representative, in consultation with the Independent Investigating Officer, will review the continued need for the employee's suspension at appropriate intervals, dependent upon the circumstances of the case.

A wellbeing contact for the employee will be arranged, who may be, where necessary, independent from the school. This individual will ensure that the employee's wellbeing is being supported throughout this procedure. Details of the welfare contact and the rationale for selecting a particular contact will be highlighted in the suspension letter.

Cases involving suspension should always be expedited as quickly as possible.

Informal Procedure

Unless the matter causing concern is sufficiently serious to justify formal action, the management representative should, in the first instance, deal with the issue through



informal discussions. This is with a view to agreeing on the actions required to resolve the situation without recourse to the formal procedure.

The informal discussions may take place on more than one occasion and should not be regarded as forming part of the formal disciplinary procedure.

The informal discussion is an opportunity for supportive interventions to take place. The discussions should allow the employee and their line-manager to meet on a one-to-one basis to discuss any concerns, expectations and support, which can be used to assist the employee and to prevent similar occurrences or behaviors arising in the future. However, the employee may be accompanied by a recognised trade union representative or work colleague if they wish.

If felt necessary, a Management Instruction may be issued under the informal procedure. This instruction should include details of any agreed actions, and the management representative should put in writing to the employee details of the corrective action, the timescale over which improvements are expected and the possible consequences of the employee failing to meet the corrective action.

A Management Instruction should not exceed 6 months in length and should be removed from the employee's personal file once it has expired. Discretion should be permitted to extend this timeframe, taking into account the nature of the incident or periods of absence i.e. school closure dates or long-term sickness.

Pre-Agreement

It is an acceptable part of the disciplinary procedure for an agreement to be reached and take place prior to the hearing between both parties. This can only apply where the relevant facts are not in dispute and both sides are in agreement about the outcome of the procedure.

In these circumstances, a letter agreeing to the variation of the disciplinary procedure must be signed by the employee. This would normally be expected to follow discussions with recognised trade union representatives. In signing this letter, the employee is waiving their right to appeal against the warning. Where agreement is not reached, the normal procedure is resumed.

This approach will **NOT** apply to allegations of gross misconduct or where dismissal is a possible outcome.

Formal Procedure

In Schools, where the LA is the employer, the Headteacher must consult the Governing Body, the LA (Deputy Director of Children's Services and Education) HR, and where appropriate the Diocese, for advice at the earliest opportunity, and prior to any hearing being arranged in cases which may potentially result in the dismissal of an employee.



Schools must also consult with the LA when considering alternatives to dismissal, for example settlement agreements.

Local authority advice

In community, voluntary-controlled and maintained nursery schools, the local authority has a statutory entitlement to send a representative to all proceedings relating to the selection or dismissal of any teacher (including the headteacher and deputy headteacher) and offer advice. If the local authority decides to send a representative they must be allowed to attend. Any advice offered as a result must be considered by the governing body (or those to whom the function has been delegated) when reaching a decision.

The local authority does not have the same level of entitlement to advise on these issues in regard to foundation, voluntary-aided and foundation special schools. The exception would be where an agreement between the governing body and the local authority provides for it to do so. Any agreement must be in writing and give details of what advisory entitlements the authority has been given. Whilst the agreement remains in force any advice offered by the local authority, in accordance with the agreement, must be considered by the governing body (or those to whom the function has been delegated) when reaching a decision.

In all circumstances relating to advice offered by the local authority and decisions made by the governing body in the light of such advice, it is recommended that the advice given and decisions subsequently undertaken are fully documented.

Step 1 – Commencement of the Formal Procedure

The employee will be informed of the following:

- the allegations made against them and the basis of the allegations;
- that the formal disciplinary procedure is to be used and that Step 2 (Investigation) of the procedure is to commence;
- any suspension from work and the conditions of suspension, or duties agreed as an alternative to suspension;
- their right to be accompanied / represented at all stages of the procedure by a recognised Trade Union Representative or workplace colleague.

This will be confirmed in writing and the employee will also be supplied with a copy of the Schools' Disciplinary Policy and Procedure.

Step 2 – Investigation



Where a Head-teacher has delegated powers it is their responsibility to identify an appropriate independent person to undertake the investigation, in consultation with HR.

The designated independent and trained Investigating Officer will promptly investigate the alleged disciplinary matter to ensure that all parties have the opportunity to make representations in relation to their view of events.

Where an employee is invited to attend an investigatory interview, they will be informed at the outset of the interview that this is an investigatory interview and not a disciplinary hearing.

The employee will be given 5 working days' notice of the interview other than where a shorter period has been mutually agreed. The notice will be in writing and will inform the employee of:

- the purpose of the interview and that it will be held under the school's Disciplinary Procedure;
- the nature of the alleged misconduct;
- their right to be accompanied / represented by a recognised Trade Union Representative or workplace colleague (this does not include a right to legal representation);
- the arrangements for the interview.
- where the employee cannot attend on the date proposed and provides a good reason for failing to attend, the interview will be adjourned to another day by mutual agreement. This will normally be within 5 working days of the original date of the hearing. The new arrangements will be confirmed in writing to the employee.

On conclusion of the investigation, the Investigating Officer will determine if there is a disciplinary case to answer or if there is no case to answer. Where there is no disciplinary case to answer, the employee will be notified of this decision in writing and the disciplinary procedure will end. Where there is a disciplinary case to answer, the employee will be notified of this decision in writing and a disciplinary hearing will be scheduled to take place.

Step 3 – Disciplinary Hearing

The employee will be given 10 working days' advance notice of the hearing. The notice will be in writing and will inform the employee of:

- the purpose of the hearing and that it will be held under the school's Disciplinary Procedure;

- the nature of the alleged misconduct;
- their right to be accompanied / represented by a recognised paid trade union Representative or workplace colleague and to call witnesses;
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- Their right to make representations to the hearing panel;
- the arrangements for the hearing;
- the witnesses to be called by the Investigating Officer;
- the date for the exchange of documents, where applicable;
- the potential that, if proven, the outcome could result in their dismissal or in the case of serious misconduct, the most severe level of sanction which could be issued.

Postponement of a Hearing/Investigation Interview

Where the employee cannot attend on the date proposed and provides a good reason for failing to attend, the hearing will be adjourned to another day by mutual agreement. This will normally be within 5 working days of the original date of the hearing. The new arrangements will be confirmed in writing to the employee.

Hearings in Absentia

Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, it will usually take place in the employee's absence. The employee's representative (workplace colleague or recognised trade union Representative) may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be entitled to make written submissions in such a situation.

Exchange of Documents and Information

The employee will be provided with all relevant written information that management intends to rely upon during the hearing (including witness statements) not less than 10 working days in advance of the hearing, unless otherwise agreed by both parties.

Similarly, the employee will provide management with all relevant written information that he / she intends to rely upon during the hearing and the names of witnesses to be called. In normal circumstances this should not be less than 5 working days in advance of the hearing, however, in the event of exceptional circumstances beyond the employee's control, the Chair of the hearing can agree an alternative date for receipt, up to and including the day of the Hearing.



Late Submission of Documents

Only in exceptional circumstances and at the discretion of the Chair of the panel hearing the case, will new documents be accepted at the hearing and relevant time allowed to either party to consider such information, where required. Such documents will only be accepted where they are deemed to have direct relevance to the case and could not have been submitted earlier.

Outcome

At the conclusion of the disciplinary hearing, the panel hearing the case will determine one of the following:

- that the employee has given an adequate explanation and / or there is no real evidence to support the allegations. In this case no further action is necessary.
- that the evidence supports the allegations and / or the employee has not given an adequate explanation. In this case disciplinary action against the employee may be necessary.

The Chair of the panel will inform the employee of their decision and of any disciplinary action to be taken, giving an explanation for any sanction. This should take place as soon as possible after the conclusion of the hearing. All decisions will be confirmed in writing, within 5 working days of the hearing. The outcome letter will include the notification of the employee's right of appeal under this procedure (where applicable) and how to exercise it.

Disciplinary Actions

The following disciplinary actions may be taken.

Stage 1 – First Level Written Warning

Where a minor offence or offences have been committed, a first written warning will normally be given. The warning will state that any further misconduct / failure to improve may lead to more severe disciplinary action.

A First Level Written Warning may be issued for a period up to but not exceeding 6 months subject to the employee's satisfactory conduct and the conditions set out in the section relating to Warnings Involving Safeguarding Issues. During this period of time, it will remain live on the employee's file.

Stage 2 - Second Level Written Warning

If the offence is a serious one, or if a further offence or no improvement occurs within 6 months of the First Level Written Warning, a Second Written Warning will normally



be given. The warning will state that any further misconduct / failure to improve may lead to more severe disciplinary action.

A Second Level Written Warning may be issued for a period up to but not exceeding a period of 12 months, subject to the employee's satisfactory conduct and the conditions set out within the section relating to Warnings Involving Safeguarding Issues. During this period of time, it will remain live on the employee's file.

Stage 3 - Final Written Warning

If the offence is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal, and where a further offence or no improvement occurs within 12 months of the second written warning having been given, then a Final Written Warning will normally be given.

A Final Written Warning may be issued for a period up to but not exceeding 18 months subject to the employee's satisfactory conduct and the conditions set out in the Section relating to Warnings Involving Safeguarding Issues. During this period of time the warning will remain live on the employee's file.

Where applicable, if the warning is an alternative to dismissal, it should be noted that this will be referenced in the Final Written Warning.

Stage 4 - Dismissal and Alternatives to Dismissal

If it is the case that previously a Final Written Warning has been issued and a further offence or no improvement has occurred within the period the Final Written Warning is 'live', dismissal will normally result. Dismissal in these circumstances will be with notice or with payment in lieu of notice. The decision to dismiss will be confirmed in writing as soon as practically possible and within 5 working days of the decision.

Alternatives short of dismissal may be considered and they are:

- disciplinary transfer accompanied by an extension to the period of the Final Written Warning
- demotion accompanied by an extension to the period of the Final Written Warning

These alternatives will be subject to the availability of suitable posts.

Gross Misconduct

Definition of Gross and Misconduct (ACAS):

Some acts count as 'gross misconduct' because they are very serious or have very serious effects.



Examples of gross misconduct may include:

- theft, fraud, deliberate falsification of records or dishonesty;
- falsification of qualifications/references;
- acts of violence, obscene or abusive behaviour or enticing others to do so (including fighting or assault on another person or animal);
- acts of bullying, harassment or discrimination;
- acts of bribery;
- deliberate damage to or unauthorised use of School property or equipment;
- serious negligence which may cause unacceptable loss, damage or injury and wilful negligence;
- unprofessional conduct and / or failure to disclose the same;
- serious non-compliance with School, financial or other department regulations, including rules on email and internet usage;
- serious breach of health and safety rules;
- unauthorised entry to computer or other records and / or disclosure of confidential information / matters to public sources;
- serious incapability at work brought on by alcohol or illegal / non-prescribed drugs. Also refer to the School's procedure on "Alcohol and Other Substance Abuse".
- possession of or sale of illegal substances;
- Being subject to or failing to report a criminal investigation or conviction of a criminal offence (committed inside or outside of work) that makes the employee unsuitable or unable to carry out their duties;
- subject to a prohibition that makes the employee unsuitable or unable to carry out their duties;
- serious breach of trust and confidence
- Conduct which could damage the reputation of the individual or school and bring the school into disrepute

The above list is not exhaustive and contains examples of the types of misconduct, which may be considered as gross misconduct.



Consideration of suspension from work will be made on a case-by-case basis where there is an allegation of gross misconduct. This will allow for a full investigation to be undertaken. The employee will remain on full contractual pay. All alternatives to full suspension must be the first consideration. If, on completion of the investigation and the full disciplinary procedure, the School is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

Warnings Involving Safeguarding Issues

Where the misconduct involves a safeguarding issue, warnings will be retained on a separate file and, in the event of further misconduct at any time during the employee's employment in a job role where the employee is required to work with children or vulnerable adults, these warnings will be taken into account in disciplinary proceedings.

Safeguarding concerns to the Disclosure and Barring Service (DBS)

Employers, social services and professional regulators have a duty to refer information about individuals who may pose a risk to children and vulnerable adults to the DBS and/or the Teachers Regulatory Authority.

The employee should be informed that a referral has been made.

Following a disciplinary hearing, if there are any concerns relating to an employee's suitability to work with children or vulnerable adults, it is the school's responsibility to ensure a referral is made to the DBS and/or the Teachers Regulatory Authority, as soon as reasonably possible.

Concerns during the Disciplinary Process

If an employee feels that the disciplinary process has not been followed appropriately or has any concerns it is their responsibility to raise the issue with the Investigating Officer or the next level of management. This should be done at the earliest opportunity so that the matter can be considered and resolved wherever possible.

If the disciplinary process has been started and the employee subsequently submits a complaint, the circumstances will be considered on a case-by-case basis by the school and after seeking advice from HR. Particular consideration will be given to the specific nature of the issue being raised before deciding how to proceed. This may include the following options:

- whether or not to continue with a formal meeting i.e. a disciplinary hearing/appeal and consider the grievance separately or;



- to suspend the complaints until the disciplinary process is finalised or;
- if the issues are sufficiently related, to deal with both issues in the same process.

Appeals

If the employee wishes to appeal against a disciplinary decision, they must do so in writing within 10 working days of receiving written notification of the decision. All notices of appeal must be submitted to the Clerk to the Governing Body and must state the ground(s) on which the disciplinary decision should be reviewed.

The Clerk to the Governing Body will write to the employee, inviting the employee to attend an appeal hearing with a Governor Panel. The hearing will be held at a convenient date that is within 20 working days of receipt of the written statement of appeal.

The decision of the Governor Panel hearing the appeal is final and will be confirmed in writing no later than 5 working days after the hearing.

An appeal must never be used as an opportunity to punish the employee for appealing the original decision, and it should normally not result in any increase in penalty as this may deter individuals from appealing.

Monitoring and Review

Human Resources will work with the LA, Head-teachers and governing bodies to monitor the application of this policy. They may review any aspect of the procedure in light of changing circumstances at any time, in consultation with the recognised Trade Unions.

Approving Body & Date

LJNCC (Schools) - October 2024