

# **STAFF DISCIPLINARY, CONDUCT AND GREIVANCE POLICY AND PROCEDURE**

This document applies to Community and Voluntary Controlled Schools and is advisory for Foundation and Voluntary Aided Schools.

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## SCHOOL'S DISCIPLINARY, CONDUCT AND GRIEVANCE POLICY AND PROCEDURE

### Purpose

The school is committed to providing an environment where employees can perform their roles to the best of their ability; and are proud of the willingness and loyalty that exists in the organisation to deliver outstanding services. Clear guidance about the standards of behaviour expected and any rules that need to apply in the school are provided to employees in the Code of Conduct and other related documents [Schools Employment Manual](#).

The purpose of a disciplinary procedure is to ensure the safe and effective operation of the School and to promote fair treatment of individual employees. The following procedure provides a framework to address any lapses in conduct and encourages individual employees to achieve and maintain an acceptable standard. An incident of minor misconduct can often be dealt with informally, by having a discussion and bringing to the attention of the individual any rule or procedure they have breached. Often, this is sufficient to bring about a change in behaviour. Where this does not bring about an improvement, or where a more serious lapse in conduct has occurred, a formal procedure may need to be invoked.

The school is committed to ensuring that disciplinary offences are dealt with fairly and consistently and without prejudice, in confidence and in line with good practice guidance provided by ACAS. This policy does not apply to dismissals where the employment is terminated for a reason unconnected to disciplinary action, such as in the event of redundancy, or non-renewal of a fixed term contract. If these situations arise, a fair and reasonable procedure will be followed prior to any dismissal taking effect. This policy and procedure is not used to deal with issues of capability to do a role – a separate Capability Policy and Procedure exists for this purpose.

### Principles

In applying the Disciplinary Policy and Procedures, the following principles apply:

- Disciplinary matters will generally be dealt with by the Head Teacher or, through delegated authority, to a manager. Where it is the Head Teachers conduct that is a cause for concern, the role assigned to the Head Teacher/manager within this policy and procedure will be undertaken by the Chair of Governors.
- LCC will perform an advisory role to Head Teachers and Governing Bodies in disciplinary matters. This will generally be provided by the schools HR Provider, and may also involve representatives of Children's Services, in particular, where conduct of the Head Teacher is in question.
- Head Teachers/managers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, discussions or decisions.
- Relevant and necessary investigations, appropriate to the case, will take place.

- Employees will be informed of the basis of any allegations against them and will be provided with an opportunity to put their case in response before any disciplinary decisions are made.
- Employees will be afforded the right to be accompanied by a work colleague, Trade Union Representative or Trade Union Official at any formal disciplinary hearing.
- Employees will be afforded the right to appeal against any formal decision made.

### Misconduct

The disciplinary procedure may be activated for misconduct, which may include, but is not limited to, the following:

- ☐ breach of health and safety rules or procedures (some major breaches may constitute gross misconduct);
- ☐ engaging in activities or conduct that places an individual, e.g., a child, at risk, including the inappropriate disclosure of confidential information;
- ☐ lateness and poor timekeeping;
- ☐ inappropriate or excessive personal use of school property and/or equipment or a failure to report damage to school property and/or equipment as soon as possible;
- ☐ breaches of school and LCC policies;
- ☐ failure to follow a clear management request/instruction; (note that some cases may constitute gross misconduct);
- ☐ inappropriate conduct towards other employees, parents, clients, visitors;
- ☐ unauthorised absence from work (note that some cases may constitute gross misconduct);
- ☐ aiding or encouraging other employees to breach rules or procedures or to perform other acts of misconduct;
- ☐ any other acts the school deems to be misconduct.

### Gross Misconduct

Dismissal without notice (summary dismissal) will only be given for gross misconduct, which may include, but is not limited to, the following:

- ☐ dishonesty, including falsification of statutory or school documents;
- ☐ dangerous practice or infringement of safety rules, which may or may not result in injury or endanger health and safety;
- ☐ aggressive, abusive or indecent behaviour;
- ☐ some cases of refusal to carry out reasonable requests made by a manager;
- ☐ theft or attempted theft;
- ☐ serious cases of neglect of duty;
- ☐ wilful damage to property;
- ☐ unauthorised disclosure of confidential information (for exceptions refer to the Whistleblowing Policy);

- any action which contravenes the policies of the school, or brings or has the potential to bring, the school into disrepute.

The above list is intended to include those actions which take place on school premises, or in the course of school duty, or conduct outside of work. Employees' who engage in conduct outside of work which could damage the reputation and standing of the school or LCC, or the employee's own reputation, or the reputation of other members of the school or LCC or Councillors, may be subject to disciplinary action – see the Code of Conduct. Acts committed whilst not in the course of duty, i.e. convicted of a criminal offence, may be considered to be gross misconduct if they are potentially damaging to the school or LCC.

### Disciplinary Procedure

It is important to attempt to resolve matters informally where it is appropriate. The Head Teacher will bring to the attention of the employee, through an informal discussion, issues or concerns about conduct and this may be enough for the employee to improve or prevent the issue from re-occurring. This discussion includes ensuring the promotion of health and wellbeing, taking account of the nature of the work undertaken by the employee and the requirements of the school. Notes will be taken of the conversation with the employee, and the outcome of the meeting, including any remedial action, will be recorded using a Record of Actions (ROA) form with a copy provided to the employee with 5 working days of the meeting. These forms will be retained locally by the Head Teacher/manager. The Head Teacher/manager should remove the ROA from local files six months from the last action/entry as stipulated in section SC105 of the LCC Retention and Disposal Schedule Guidance, which the school complies with.

Where the issue is a more serious incident or informal steps have not succeeded in resolving matters, then the formal disciplinary procedure outlined below may be invoked.

### Definitions

- Throughout this policy the term "disciplining manager" refers to the Head Teacher, other manager or Governor.
- The term "investigating officer" refers to the individual responsible for carrying out the investigation. This may be the Head Teacher or manager who is conducting the disciplinary procedure, however, in some instances may be an independent investigator appointed to undertake the investigation, for example, a member of the LCC Audit team, or an external investigator.
- "Working days" are defined as week days (Monday-Friday), excluding bank holidays and statutory holidays, regardless of the actual days worked by any employee.
- At any stage of this procedure, if any underlying medical issues are suggested as contributing to the reasons for the misconduct, Head Teachers/managers may consider it appropriate to refer the employee to Occupational Health for advice. Employees who are absent from work due to sickness, may also be referred to Occupational Health for advice

on assisting their return to work and/or their participation in this procedure including recommendations of reasonable adjustments if appropriate.

## Investigations

It is important to carry out necessary, reasonable and fair investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In most cases this will require the holding of a formal investigation before proceeding to any disciplinary hearing. In other cases, the investigatory stage will be the collation of evidence by the disciplining manager for use at any disciplinary hearing.

Prior to a formal investigation being commissioned, the Head Teacher/manager will undertake preliminary considerations, including talking to the employee(s) involved where this is relevant, to establish if there is a need for formal investigation.

If an employer investigation is to be carried out, an appropriate independent investigation will be undertaken, as soon as is practicable.

The Head Teacher/manager has the right to appoint an external investigator if it deems this appropriate due to the complexity, seriousness or detail of the issue, or where an external perspective would be of value.

The investigator will maintain a record of all investigatory meetings, and collate witness statements (see toolkit for template) where appropriate, which may be referred to in a disciplinary hearing. Disciplinary action may be taken if an interviewee is found to have deliberately provided false information or discussed the issue outside of the investigatory interview.

Through the investigation process, an employee may be accompanied by a work colleague or trade union representative or official to meetings, providing this does not delay the investigation. There is no statutory right to be accompanied to an investigatory interview. It is the employee's responsibility to request a representative and to make arrangements for them to be present.

The investigator will prepare a report to be passed on to the disciplining manager, who will then determine whether or not a formal disciplinary hearing is required.

## Suspension

Whilst the alleged offence is being investigated or considered, the employee may be suspended on full pay pending the outcome of the investigation and any subsequent disciplinary hearing. The decision to suspend will be advised to the employee and confirmed in writing (see toolkit for template letter). Whilst suspended the employee must be available to be contacted during their normal working hours, and they should ensure that they do not engage in any other form of paid, unpaid or bank/casual work. Suspension should be used where there is a clear need for doing so, or where the continued presence of the individual subject to investigatory or disciplinary procedures, would impede any ongoing investigation or present a significant safeguarding risk.

Suspension should not be interpreted as any form of guilt or punishment. It is a step that is taken to enable a fair and thorough investigation or consideration of the case to take place, and whilst on suspension, the employee remains on full pay and employed by the school. Furthermore, the school should carefully consider whether suspension is appropriate and it should be a last resort after concluding that there are no steps the school can take to avoid the suspension. Alternative steps the school could consider include temporary redeployment into a different role, or ensuring the individual is accompanied by a colleague whilst in the workplace.

### Major/Serious Conduct Issues

The school reserves the right to involve relevant teams in serious or major conduct issues to ensure appropriate and thorough investigations are carried out and to ensure appropriate outcomes and/or sanctions are applied, and lessons learned. This includes but is not limited to:

- a safeguarding issue;
- an issue that involves potential criminal activity, and/or includes multiple people or counter allegations;
- is fraud or theft, including misuse of school property

Examples of the teams or functions who may be involved within this procedure are:

- Local Authority Designated Officer (LADO)
- Legal Services
- Internal Audit

This list is not exhaustive and the school is committed to involving relevant and appropriate teams when deemed necessary.

### Safeguarding Concerns

Where the matter concerns a safeguarding issue, i.e. there is a concern regarding the conduct of an employee in respect of a child, the Head Teacher will ensure that the Local Authority Designated Officer (LADO) are made aware, if they are not already aware by other means.

Where an allegation against a member of staff relates to the sexual, physical or other abuse of a child the procedures within the Lincolnshire Safeguarding Children's Board will be followed and the matter will be discussed as soon as possible with the LADO. No action should be taken until the LADO has offered advice. At this stage the employee should not be told that the matter has been raised in order to avoid the employee from discussing the issue with the child before the child has been spoken to by the appropriate officers. It is important that hasty decisions to suspend an individual are not made before any assessment has been made as to the substance of an allegation. This can be a traumatic experience for the employee concerned and the child and must be managed carefully and efficiently.

Any safeguarding and employment investigations may run at the same time or jointly, where possible and appropriate. Employment investigations need not wait until after the resolution of any safeguarding concerns (unless there are on-going police enquiries in which case, the HR representative will advise the appropriate way to proceed). Safeguarding actions however, must take priority until risks are satisfactorily managed.

### Financial Issues

Where the matter is of a financial nature it may be appropriate for the matter to be partly investigated by an appropriately qualified person. In such cases it may be that the Head Teacher (in consultation with the Chair of Governors) invites officers of LCC's Counter Fraud and Investigation Team to look into the matter and provide the School with a report. This will form part of the School's investigation into the issues. The report may also include wider recommendations regarding the financial management of the School.

### Alleged Criminal Activity

An employment investigation may run in parallel to a police, audit and/or child protection or adult abuse investigation, and should not be held up by any such investigations unless considered prejudicial to those investigations to proceed. It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action.

### Disciplinary Hearings

If, after an investigation has been carried out, it is considered that there is a case to answer, an employee will be notified in writing of the nature of the allegation against them and be invited to attend a formal disciplinary hearing. This meeting will ordinarily be conducted by the Head Teacher or appropriate manager within the school, or the Chair of Governors may be approached to provide a relevant Governor where this is required.

The disciplining manager will arrange for a note-taker to attend all formal disciplinary hearings.

The following will apply in disciplinary hearings:

- The employee will receive written notification of the requirement for them to attend a hearing. This notification will contain sufficient information about the alleged misconduct, and that disciplinary action may be taken as a result of the meeting, to enable the employee to prepare to answer the case at the meeting. Copies of any written evidence, including witness statements where appropriate, will be provided prior to the hearing by both parties to enable appropriate preparation. The documents provided prior to the hearing should include all documentation that will be relied on in the hearing to support or dispute the allegation.
- The disciplinary hearing notification will provide at least 10 working days' notice of the meeting, and will confirm the details of the time and venue. It will also advise the employee of their right to be accompanied at the meeting.

- Any documentation, that either the Head Teacher/manager or the employee wishes to be considered at the hearing, must be made available no later than 7 working days prior to the hearing to enable (where practicable) distribution of full documentation packs to all parties by 5 working days prior to the hearing. If there is a late submission of evidence, the Head Teacher/manager will decide whether or not this will be accepted.
- The employee may bring a companion who is a trade union representative, a work colleague, or an official employed by a trade union. No other companions will be permitted to attend the hearing. Where there are grounds for a reasonable adjustment for a disabled employee to be made, to permit an alternative companion, the employee should discuss this with the disciplining manager. In all cases, the employee must tell the disciplining manager who their chosen companion is, at least 24 hours before the hearing.
- If the trade union official is not known to the school, they will be required to provide documentation from the trade union in question, stating that the companion is a union representative and is authorised by that union to represent employees.
- The companion, if employed by the school, 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 the employee or companion is unavailable at the time the hearing is scheduled, a request can be made to re-schedule it to take place within the following 5 days. Employees will be advised at that time that if they fail to attend the re-arranged hearing, and there is no justification for this, their case and/or representation may be considered by management in their absence, based on the written submissions.
- The companion will be allowed to address the hearing to present and sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the employer from explaining their case.
- The decision of the Panel or Head Teacher may be communicated to the employee at the end of the hearing, following an adjournment, or will be confirmed as soon as is reasonably possible following the hearing. The decision, together with the reasons for any warning, the duration of the warning, what will happen if further offences occur, and the right of appeal, will also be confirmed in writing to the employee as soon as reasonably practical.

## Disciplinary Sanctions

### Written Warning

The outcome of the hearing may be to issue a written warning. The employee will be advised of the reason for the warning being issued, and this will be confirmed in writing. A copy of the written warning will be kept on the employee's personal file, and will normally be disregarded for disciplinary purposes after 6 months. In limited circumstances, an expired warning may be taken into consideration in relation to further acts of misconduct, for example, a warning in



relation to a safeguarding concern, will remain on file indefinitely and may be referred to if future safeguarding concerns arise.

### Final Written Warning

Where there is a failure to change behaviour within the duration of a prior warning, or a further act of misconduct occurs, or where the offence is sufficiently serious, the employee may be given a final written warning. The employee will be advised of the reason for the warning being issued and this will be confirmed in writing. A copy of the written warning will be kept on the employee's personal file, and will normally be disregarded for disciplinary purposes after 12 months. In limited circumstances, an expired warning may be taken into consideration in relation to further acts of misconduct, for example, a warning in relation to a safeguarding concern, will remain on file indefinitely and may be referred to if future safeguarding concerns arise.

### Dismissal

If the employee's conduct still fails to improve, or another act of misconduct occurs during the life of a prior warning, the employee may be dismissed, with notice.

Any of the above stages may be omitted and / or added to, depending on the seriousness of the misconduct.

### Summary Dismissal

In the case of gross misconduct only, the employee may be summarily dismissed without notice.

### Sanction outside of a hearing

If it is evident from the preliminary enquiries that there is misconduct at a level that would warrant a formal written warning; that a full investigation is unlikely to uncover any further misconduct or evidence; and the employee accepts the allegations, it may be in the interests of the school and the employee to save the time and distress of a full investigation and offer a formal written warning outside of hearing at this point. If accepted there will be no right of appeal. If the employee does not accept this then a full investigation will be undertaken.

Similarly, where an investigation takes place and the employee accepts its findings, the Head Teacher/manager may offer the employee a suitable disciplinary sanction without the need for a disciplinary hearing. Where the sanction is accepted by the employee, they will have no right of appeal.

In all instances of offering a disciplinary sanction outside of a hearing, the following will apply:

- The Head Teacher/Chair of Governors will write to the employee to invite them to a meeting, and advise that they may be accompanied. The Head Teacher/Chair of Governors will arrange for a note taker to be present. The employee will be provided

with 10 working days' notice of the meeting, and will be advised it is to consider a sanction outside of a hearing;

- included with the letter will be any investigation report or any other relevant documentation or evidence to be relied on in the discussion;
- the employee can decline, and request that a full investigation or full hearing is carried out;
- at the meeting, the relevant facts and evidence will be discussed and the employee will be advised of the sanction being proposed to be issued, and the length of time it will be live. This will only be issued if the employee accepts this;
- where a sanction outside of a hearing is agreed, this will be confirmed in writing to the employee after the meeting within 5 working days. The employee will be required to confirm in writing that they accept and understand the sanction outside of a hearing;
- the ability to issue a sanction outside of a hearing or investigation does not apply in cases of potential dismissal – whether it is a gross misconduct allegation, or where a live warning is currently in place and the next sanction may be dismissal; □ there is no right of appeal against a sanction issued outside of a hearing.

### Extension of a live warning

If there are further allegations during this period, following investigation and with the employee's agreement, a Head Teacher/Chair of Governors may extend the period of a current live warning rather than issue a next stage warning or proceed to dismissal, if it is deemed this is an appropriate sanction in the circumstances. The period of extension can be:

- A written warning can be extended for a period of up to a further 6 months
- A final written warning can be extended for a period of up to a further 12 months

Live warnings will also be extended if an employee has had a lengthy period of absence during the life of an existing warning. This will only apply if the employee has been absent for 28 days (1 month) or more. This may apply for absences related to sickness, family leave or any other circumstance.

The period of extension must not exceed the length of the period of absence; and, the effect must not extend the warning for a live period of longer than the original life of the warning. For example, if an employee has a warning for 6 months, and after 4 months they are absent for a period of 3 months, the warning may be extended on their return for a period of 2 months so the cumulative effect is the warning is live, whilst the employee is in work, for a period of 6 months.

### Some Other Substantial Reason

The school has a number of procedures in place that deal with situations that could result in the dismissal of an employee. These are:

- Disciplinary
- Capability
- Managing Change (Redundancy)

There are occasions where a dismissal situation may occur, but the reason for this does not fall within the policies provided, or fall within the misconduct or gross misconduct categories outlined in this policy. Under the Employment Rights Act 1996, this is termed as dismissal for Some Other Substantial Reason (SOSR). An example of SOSR is imprisonment or other criminal conviction, which may affect the employee's ability to carry out normal duties.

#### Withholding Incremental Salary Progression

For Support Staff only - in cases in which it is decided that a formal written warning (or dismissal with notice) is the appropriate sanction, any pay increment(s) due to the employee concerned during the live period of the warning or notice period, may be withheld.

#### Redeployment

In cases other than dismissal, there may be circumstances where it is jointly agreed that it is not appropriate for the employee to return to their substantive post. In discussion with the employee a voluntary transfer to another post, at the same or a lower grade, should be considered. As this is a voluntary transfer, 'At Risk' status and Salary Protection does not apply.

Any agreement between the employee and Head Teacher/manager on such a transfer/redeployment will be confirmed in writing, and will be separate to any disciplinary warning issued.

#### Referrals To Statutory Bodies

The school has a legal duty to refer information to statutory bodies where this is required. An example is to refer information to the Disclosure and Barring Service (DBS) where an individual has been removed from working or volunteering, or where there are concerns in respect of an individual's contact with children or vulnerable adults. For further information refer to the Recruitment and Vetting – Criminal Records Checks Policy. Other statutory bodies include The Teaching Regulation Agency, or the Health and Care Professions Council.

#### Appeals

If an employee disagrees with the outcome of any disciplinary hearing, an appeal may be made in writing within 10 working days from the date that the disciplinary letter is deemed to have been received. For full details of the appeals procedure, refer to the Schools Appeals Policy.

#### Employee Records

The school is committed to the appropriate and relevant retention of disciplinary and conduct information, in accordance with relevant legal requirements. Key dates and outcome information concerning disciplinary matters will be held on the school's secure system for employee records, which will be accessible by the Head Teacher, during the live period of a warning, and for a following retention period. A scanned copy of any disciplinary papers will also be maintained in a secure manner by HR on its relevant document management system,

which is accessible only by HR, and which will be destroyed after the relevant retention period as stipulated in section SC105 of the LCC Retention and Disposal Schedule Guidance, which the school complies with.