

MODEL DISCIPLINARY PROCEDURE FOR TEACHING AND SUPPORT STAFF IN COMMUNITY & VC SCHOOLS

This model procedure will apply to both teaching and non-teaching staff working in Wiltshire Schools and has been agreed with the following recognised unions: NEU, NAHT, NASUWT, ASCL, Unison, Unite and GMB

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1. Policy Statement

- 1.1 Governing bodies have a statutory obligation to adopt formal policies and procedures for dealing with staff conduct and discipline (School Staffing (England) Regulations 2003). A sound standard of discipline is essential for the efficient and effective management of schools.
- 1.2 This procedure is designed to help and encourage all employees to achieve and maintain satisfactory standards of behaviour and attendance and comply with the rules of the Governing Body. It provides a method of dealing with any apparent shortcomings in conduct and can help an employee to become effective again. It aims to ensure consistent and fair treatment for everyone and for matters to be dealt with speedily.
- 1.3 This procedure is therefore recommended by Wiltshire Council for adoption by the Governing Body and following its adoption, the procedure must be made known to all staff and remain accessible to them.
- 1.4 Schools buying the HR Advisory service are strongly encouraged to read this procedure in conjunction with the guidance notes provided.

2. Who does this procedure apply to?

- 2.1 This procedure is based on Sections 35(8) and 36(8) of the Education Act 2002, and the ACAS Code of Practice on Disciplinary and Grievance Procedures 2009. It has been drawn up following consultation with the recognised Trade Unions and Teachers' Professional Associations. It applies to and is designed to help and encourage employees within schools with delegated budgets.
- 2.2 This procedure does not apply where there are matters of:
 - **minor misconduct** that can be settled informally by means of counselling or informal reprimand in order to improve conduct;
 - **grievance** which is dealt with under a separate procedure adopted by the Governing Body;
 - **competency or capability** for which there is a separate procedure adopted by the Governing Body, unless it is clear that the employee is capable of reaching the required standard and has actively not done so;
 - **ill health** for which there is a separate procedure adopted by the Governing Body, unless there is good reason to believe that the absence or ill health is not genuine;
 - **bullying, harassment, discrimination and/or victimisation** which are dealt with in the first instance, under the Dignity at Work Policy.

3. Who is responsible for discipline and dismissal?

- 3.1** The Governing Body has the overall responsibility for dismissing staff, with powers to delegate to the Head Teacher responsibilities up to and including initial staff dismissal decisions. Under the Education Act 2002 School Staffing (England) Regulations 2003, the Head Teacher should be given the delegated responsibility to make decisions up to the initial dismissal decision, (except in certain circumstance, see 3.2 below) following which there is an opportunity to appeal to a panel of Governors. Dismissal and notice periods are effective from the initial dismissal decision. Should the appeal be successful reinstatement will also be from the original date with no break in continuity.
- 3.2** Head Teachers may therefore lead the process of making the initial dismissal decision unless the following circumstances apply:
- the Head Teacher is unwilling to perform these functions and their previous history at the school did not include any such responsibilities.
 - the Head Teacher has been directly involved in disciplinary procedures leading to dismissal, has instigated a proposal to dismiss or is a witness of particular conduct giving grounds for the dismissal in question.
- 3.3** In situations where it is not appropriate for the Head Teacher to perform these functions (see paragraph 3.2 above), the staff discipline/dismissal committee of the Governing Body will be responsible for the process of making such decisions. However the LA recommends wherever possible that the staff discipline/dismissal committee deals with cases of gross misconduct and Head Teachers are delegated the responsibility to deal with all other cases.
- 3.4** The Governing Body should nominate three of its members, who are not staff members to form the staff discipline/dismissal committee and a different three Governors, to form the appeals committee.
- 3.5** HR will offer advice at all stages of these procedures to client schools. It is strongly recommended that Head Teachers seek advice from an HR Advisor (Schools) as early as possible.

4. What are the principles?

- 4.1** This procedure is primarily concerned with improving discipline, not applying disciplinary penalties. It aims for an outcome which is fair and constructive. It is not intended that the procedure should replace normal communication between the Head Teacher and a member of staff in the day to day running of a school, whereby comments may be made informally. It is important that staff are made fully aware of the school's standards and expectations of conduct and behaviour and the possible consequences of falling below this.
- 4.2** Employees should be encouraged to seek the advice of a trade union or professional association at an early stage. At all stages of the procedure the employee will be informed of their right to be accompanied by a work colleague or trade union representative. The accompanying person can address the meeting but not answer

questions on behalf of the employee.

- 4.3** If the subject of a disciplinary matter is an official representative of a trade union/professional association, no action must be taken within this procedure until the circumstances have been discussed with the relevant senior officer or full time official, after obtaining the employee's agreement.
- 4.4** No disciplinary action will be taken without a prompt and thorough investigation into the circumstances.
- 4.5** Employees will be informed of the nature of the complaint(s) against them and will be given the opportunity to state their case before any decision is made at a disciplinary investigation meeting.
- 4.6** Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary investigation meeting.
- 4.7** No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice (summary dismissal).
- 4.8** The employee will have the right of appeal against any formal disciplinary action under this procedure.
- 4.9** The procedure outlines what disciplinary action may be taken against an employee.
- 4.10** The procedure ensures that the employee is given an explanation for any sanction.
- 4.11** The procedure ensures that the employee will be heard in good faith and that there is no pre judgement of the issues. The procedure ensures that where the facts are in dispute, no disciplinary penalty is imposed until the case has been carefully investigated and a decision is taken looking at the balance of probability that events did or did not occur.
- 4.12** The procedure can be started at any stage. The first stage will depend on the nature of the alleged misconduct.
- 4.13** Where the Head Teacher is the subject of the procedure, the Chair of the Governing Body or other designated Governor, will replace the Head Teacher in initiating any action, which has to be taken. In such cases the Chair of Governors should notify and contact their HR Advisor (Schools) for advice before any action is taken.
- 4.14** For the purposes of this procedure "Head Teacher" means the most senior member of staff who has management responsibility for the employee concerned.
- 4.15** As an employee faced with possible disciplinary action is likely to find the situation stressful, the Head Teacher should make the employee aware of the wellbeing services available. Full details are available on Schools HR Online.

5. Raising a Grievance

5.1 Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. A discussion will therefore take place between school management, Human Resources and the employee (normally through their trade union representative or directly if they are not represented) about whether or not the disciplinary procedure should be suspended so that the grievance issues can be dealt with separately under the grievance procedure or whether the grievance should be raised by the employee at relevant disciplinary interviews, hearing or appeal.

5.2 Suspending the disciplinary procedure would normally take place when:

- the grievance relates to a conflict of interest that the investigator is alleged to have
- bias is alleged in the conduct of the disciplinary meeting
- there is an allegation that management have been selective in the evidence they have supplied to the investigator
- there is possible discrimination.

6. What is misconduct?

6.1 Misconduct involves an employee breaking specific rules about behaviour or conduct. It is conduct that falls below expected standards and is usually wilful. There may be occasions when negligent conduct amounts to misconduct.

6.2 Examples of misconduct include the following. This list is not exhaustive:

- misuse of school and / or Wiltshire Council facilities such as email and internet
- poor time keeping
- unauthorised absences
- failure to improve faults that build into a pattern of unacceptable behaviour, performance or attitude
- undermining the achievement of team, service or corporate goals
- wilful failure to adapt to changing technologies, methods and patterns of work (as distinct from inability to adapt which is dealt with under the capability procedure)
- insubordination
- any act or omission that might otherwise, if the context and impact were judged to be more serious, be dealt with as a matter of gross misconduct.

6.3 Gross Misconduct is a term used to describe serious misconduct, which may destroy the employment contract between the employer and the employee and make further working relationships and trust impossible. Examples of the sort of conduct that could be regarded as gross misconduct, rendering the employee liable to dismissal without notice, or payment in lieu of notice are:

- dishonesty, including theft, fraud or deliberate falsification of records or acceptance of bribes
- physical violence or bullying against other employees, pupils or members of the

- public
- deliberate and serious damage to school property
- misuse of the school's property or name, or bringing the school into disrepute
- serious abuse of the school's computer equipment / software; including deliberately accessing internet sites containing pornographic, offensive or obscene material
- serious insubordination, including serious act(s) or persistent repetition of a failure to comply with a reasonable instruction
- unlawful discrimination or harassment
- being under the influence of illegal drugs or alcohol whilst at work
- causing loss, damage or injury through serious negligence
- a serious breach of health and safety rules
- a serious breach of trust and/or confidence
- breach of any professional code of conduct applicable to the job, which could bring the profession or the school or Wiltshire Council into serious disrepute
- serious negligence which causes or might cause unacceptable loss, damage or injury
- a relevant criminal conviction that undermines the school and/or Wiltshire Council's confidence in the employee and/or undermines the employee's ability to undertake their work
- misuse of official position for personal gain

7. Misconduct - Formal Procedure

7.1 Investigation

Where there is a complaint of misconduct that warrants formal investigation, the Head Teacher should arrange for a full investigation, as soon as possible after the allegations have been made. It is not usually appropriate for the Head Teacher to carry out the investigation as they may be required to deal with the matter formally at any stage up to and including dismissal. The Head Teacher should therefore wherever possible nominate a senior member of staff to conduct the investigation. If the complaint is against the Head Teacher or the Head Teacher has been involved in the complaint, then the Chair of Governors should undertake the investigation themselves or appoint someone else as appropriate, who may be external and approved by Wiltshire Council.

Managing Child Protection allegations

- Where the allegations involve Child Protection and the alleged behaviour might be criminal, involve harm to a child or put a child at risk of harm, the relevant area Designated Officer for Allegations (DOFA) at Wiltshire Council must be notified immediately. Where appropriate a strategy meeting attended by appropriate Council officers, the Police, Social Care and the Head Teacher (or designated governor where the allegation is against the Head Teacher) will be convened.

Conducting the Investigation

- The aim of the investigation is to establish the facts of the case as quickly and thoroughly as possible.
- The employee must be informed in writing:
 - that an investigation is taking place and that they will be given the opportunity to respond to the allegation(s) – date and time of meeting;
 - of the details of the complaint/allegation(s);
 - that they may be accompanied by a work colleague or trade union official to any meetings.

Suspension

- Where there appears to be serious misconduct or risk to property or other people, a period of suspension with pay should be considered while the case is being investigated. In accordance with the Education Act, either the Head Teacher or the Governing Body (normally the Chair of Governors) can suspend an employee at the school, but only the Governing Body can lift the suspension. Both the Head Teacher and the Governing Body must keep each other informed of any action they may take in relation to suspension. Advice should always be sought from an HR Advisor (Schools) before taking such action and in any event Wiltshire Council should be notified of any suspension from duty.
- Suspension with pay should only be undertaken after careful consideration and should be kept in place for the shortest possible time period and reviewed regularly. Suspension should not be regarded in any sense as a disciplinary measure or implying guilt, but as an exceptional measure to enable a proper investigation to take place.
- The employee will normally be invited to a meeting at which they will be informed of their suspension. The school will try to secure the attendance of the trade union representative at the suspension meeting. However, if the representative is unable to attend, the meeting will take place and the trade union representative will be briefed about the details of the suspension as soon as possible. If circumstances do not allow for a suspension meeting to be arranged, or if the employee is unwilling or unable to attend, the school will attempt to make contact by phone. In any event the employee will be informed by letter of the suspension and the reasons for this.
- If an employee to be suspended is a trade union official, no steps in the procedure may be started until the circumstances have been discussed with a senior representative or paid official of the trade union/professional association after obtaining the employee's agreement.
- The decision to suspend and the reasons will be confirmed to the employee in writing by the school within one working day.
- Suspension will be on full pay, unless, the employee has a period of sickness during the suspension. They will be paid for the period of sickness in accordance with their contractual entitlement to sick pay, and must provide a Doctor's fit note from the first day of sickness.
- An elected senior member of staff, (e.g. Head teacher/deputy head/governor/manager) not involved in the investigation, should keep in contact

with the employee to keep them informed of the progress of the investigation and update them of any general developments in connection with their job or team.

- Your allocated HR contact will be available for the employee to contact if they have any procedural queries.

Concluding the Investigation

- After the investigation is complete the person who conducted it will produce a report and decide whether or not there is a case to answer. The outcome of the investigation will be notified to the employee. If there is no case to answer, or the matter is regarded as trivial, then the matter will be closed and the employee informed in writing. The Head Teacher may arrange counselling or take informal action.
- If there is a case of misconduct to answer which will require more than informal measures the matter will be referred to a formal disciplinary hearing before the Head Teacher or the staff discipline/dismissal committee of the Governing Body. The employee will be notified in writing.

7.2 The Disciplinary Hearing

- **Notification of a Disciplinary Hearing**

- The Head Teacher is normally responsible for the arrangements for a disciplinary hearing conducted by the Head Teacher, and the Clerk to the Governors is normally responsible for the arrangements for formal hearings before the staff discipline/dismissal committee. This includes notifying employees in writing of such hearings, giving at least 10 working day's notice.
- The employee should be given details of the specific complaint/allegations and should be informed that either party can produce witnesses and/or written statements and relevant supporting documents at the hearing, should they so wish. An exchange of all documents expected to be referred to at the hearing should take place at least 5 working days before the hearing.
- The school will make provision for any reasonable adjustments to accommodate the needs of a person with disabilities at the meeting. The school needs to be informed of requirements at least 48 hours before the hearing.
- If their chosen companion cannot attend, an employee may offer a reasonable alternative time within five working days of the original date, unless mutually agreed otherwise. Refer to the guidance notes for employees which explains what will apply in instances where the employee's preferred representative is not able to attend to support them.

- **Witnesses**

- If witnesses are called to give evidence their identity will be disclosed to the other party in advance, unless exceptional circumstances prevent this e.g. where anonymity is to be preserved.
- The other party will receive advance copies of written witness statements to which reference will be made at the hearing. It is preferable that the authors of statements attend the hearings as witnesses, although in certain circumstances e.g. in the case of juveniles, or where anonymity is to be preserved, it is acknowledged that this should not be a requirement.
- **Failure by the Employee to Attend**
 - An employee who cannot attend a meeting should inform the Head Teacher in advance whenever possible.
 - If the employee fails to attend through circumstances beyond their control e.g. illness, the Head Teacher should rearrange the meeting to another date taking into account the reason. Sickness absence must be supported by a medical certificate.
 - A decision to proceed may be taken in the employee's absence if they fail to attend the rearranged meeting without good reason. The employee should be notified of this possibility in advance.

7.3 Procedure to be followed at the hearing

- **Minutes**
 - notes of the hearing should be taken by a Clerk to the Governing Body or another suitable person as arranged by the school and copies of the notes circulated to all parties as soon after the meeting as practicable. The Clerk does not take any other part in the formal process.
- **Agenda**
 - An agenda should be produced
- **Making the Decision**
 - The Head Teacher or the disciplinary/dismissal committee will deliberate in private, with the HR Advisor, only recalling the parties to clear points of uncertainty on evidence already given. If a recall is necessary both parties are to return even if only one is concerned with the point giving rise to doubt.
 - The decision will be announced at the close of the hearing whenever possible. The Head Teacher or chair of the disciplinary committee will confirm the decision in writing within 24 hours of the hearing.
- **Case not Substantiated**
 - If the Head Teacher or disciplinary/dismissal committee considers that the case against the employee is unfounded, the employee wherever possible will be informed of this at the close of the meeting and the decision will be confirmed in writing.

- **Case Substantiated - Formal action**

- If the Head Teacher or disciplinary/dismissal committee believes on the balance of probabilities that the alleged misconduct is substantiated, the appropriate disciplinary action will be determined, having regard to all the circumstances. Wherever possible, the employee will be informed of this at the hearing and the decision will be confirmed in writing.

7.4 Disciplinary action

Stage 1 - Written warning

- For a serious breach of conduct a written warning will be given with the reasons for the warning and any change in behaviour or improvements required. An action plan may be used to clarify. It will also advise that further action under the procedure will be considered if the change in behaviour or improvements required are not met and inform the employee of the right of appeal. A copy of the warning will be kept but will be disregarded for disciplinary purposes after 12 months, subject to continuous satisfactory conduct during this period.

Stage 2 - Final written warning

- A final written warning, with the reasons for the warning and any change in behaviour or improvements required (an action plan maybe used to clarify), will be given:
 - for a very serious offence which would be insufficient to justify dismissal but would warrant only one written warning;
 - For a very serious offence which would justify summary dismissal for gross misconduct, but a lesser penalty is appropriate in the circumstances; or
 - Where there is still a failure to improve conduct following previous written warning(s).
 - A final written warning will give the reason for the warning, advise that dismissal will result if there is no satisfactory improvement and state the right of appeal. A copy of the warning will be kept, but will be disregarded for disciplinary purposes after 18 months, subject to continuous satisfactory conduct during this period.

Stage 3 - Dismissal

- For failure to improve or for act(s) of further misconduct after a final written warning has been given and remains live. Dismissal will be with notice or pay in lieu of notice.
- For act(s) of gross misconduct, dismissal will be without notice (summary dismissal). The decision to dismiss can only be taken after a hearing before the Head Teacher or disciplinary/dismissal committee of the Governing Body, but may be taken before an appeal hearing takes place. In such cases pay will cease when the decision to dismiss is made and reinstated in full if an appeal is subsequently successful.

- In both cases above, the employee will be provided as soon as reasonably possible with written notice of dismissal, the date on which the contract is to end, the appropriate period of notice (if notice is to be given), the reason for dismissal and the right of appeal.

7.5 Appeals

- **Right of Appeal**
 - If an employee feels that the outcome of the disciplinary hearing is wrong or unjust they have the right of appeal against the decision in line with the schools appeal policy.
 - The appeal panel, hearing an appeal against disciplinary action including dismissal, may
 - Dismiss the appeal;
 - Allow the appeal
 - Allow the appeal and substitute a different warning

8. Written Records

- A record of the documentation relating to the case will be retained and will include:
 - the complaint / problem against the employee
 - the employee's views / defence
 - any grievances raised during the disciplinary process
 - findings made and actions taken
 - the reason for actions taken
 - whether an appeal was lodged
 - the outcome of the appeal
 - subsequent relevant developments
 - notes of any formal meetings
- Records will be treated as confidential and kept in accordance with the General Data Protection Regulations 2016 and the Data Protection Act 2018 so that an employee has the right to request and have access to relevant information. In certain circumstance (for example to protect a witness) it may be appropriate for the school/academy to withhold some information. Information about how an employee's data is used and processed is provided in the School's/Academy's Privacy Notice (insert name of school/academy).
- A warning will be disregarded for disciplinary purposes after the following periods from the date of the hearing when the warning was issued, providing there has been satisfactory conduct and unless a Head Teacher / Manager / Governor(s) decide(s) to increase these time limits (see paragraph below):
 - Written warning – 12 months

- Final written warning – 18 months
- There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long any warning should last.
- No disciplinary records relating to the safety and welfare of children and young people will be withdrawn from an employee's personal file for holders of posts covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Whilst the warning will remain on file, it is not 'live' and will only be taken into account if it is relevant and reasonable to do so in the context of the responsibility for the protection of children.
- **Referral to other agencies**
On behalf of the Academy, Education HR will also refer on to the Teaching Agency (TA) those serious misconduct cases relating to registered teachers, which do not raise issues relating to the safety and welfare of children and young people, who are dismissed through this procedure or where the proceedings would have led to dismissal had the employee not resigned.

Where grounds for dismissal relate to issues relating to the safety and welfare of children and young people these will be referred by HR to the Independent Safeguarding Authority (ISA) or its replacement body the Disclosure and Barring Agency (DBS).

9. Related policies and other information

A comprehensive toolkit is provided only to client schools of the HR Advisory service to support this Disciplinary Policy and Procedure, it contains:

Appendix 1 – Process flow-chart

Appendix 2 – Guidance notes for managers

Appendix 3 – Guidance notes for note takers

Appendix 4 - Guidance notes for employees on suspension

Appendix 5 – Model Disciplinary hearing report

Appendix 6 – Model agenda and proceedings advice for disciplinary meetings

Appendix 7 - Guidance notes for employees

Appendix 8 – Model letters

Appeal policy

See other HR policies referred to at **2.2** where these are more relevant to the issues raised including:

- Capability Policy and Procedure
- Ill health Policy and Procedure

- Dignity at Work Policy;
- Whistleblowing Policy and Procedure

10. Equality Impact Assessment

This policy has had an equality impact assessment conducted by a joint equality impact assessment panel and the results of these assessments are published on the Wiltshire Council website. If on reading this procedure you feel there are any equality and diversity issues, please contact a Schools HR Advisor who will, if necessary, ensure the policy/procedure is reviewed by the HR Policy Team.