

# Disciplinary Policy

The school and governing body expects the highest standards from all its employees and has established a set of standards of behaviour that all employees are expected to maintain. These are set out in the school's Code of Conduct Policy and supporting policies and procedures.

A disciplinary matter arises when an employee breaches school policy or fails to meet the required standards regarding their conduct and behaviour. The purpose of this procedure is to support employees whose behaviour falls short of what we expect and provides a framework for the school to deal with any shortcomings in a fair and consistent way.

1	Responsibilities .....	1
2	Types of misconduct.....	1
3	Informal stage.....	2
4	Formal stage .....	3
5	Investigation .....	5
6	Disciplinary hearing .....	6
7	Performance hearing (capability).....	8
8	Appeal .....	10

Where the headteacher is the employee concerned, any reference to the headteacher in this policy should be replaced with the chair of governors.

## 1 Responsibilities

The School Staffing Regulations 2009 give governing bodies the option of delegating some powers relating to staffing issues to the headteacher. In certain circumstances, the school may decide to follow the "Collaboration for Governing Bodies" guide, which is available on the extranet. The guidance is available on the extranet. The responsibility for staff appointments and dismissals ultimately remains with a governing body.

Where governors make a decision to delegate Authority for sanctions up to and including dismissal to the headteacher, it would not be appropriate for the headteacher to then carry out the investigation. Under these circumstances, the investigation should be delegated to a member of the Senior Leadership Team.

### 1.1 Issues relating to the headteacher

Where concerns are raised about the conduct of the headteacher, the Chair of Governors is responsible for ensuring that an appropriate investigation takes place. Advice should be sought from the HR Advice and Support team. If the issue results in a disciplinary hearing being convened, it must be considered by school governors.

## 2 Types of misconduct

Disciplinary issues are categorised as misconduct or gross misconduct depending upon their severity and impact upon the employment relationship. There are some examples below, but it should be noted that there may be individual circumstances that mean it is appropriate to categorise them differently.

Examples of misconduct include, but are not limited to:

- Unauthorised absence
- Poor time keeping
- Inappropriate use of social media
- Insubordination or using abusive language
- Misuse of School facilities and equipment
- Refusal or failure to carry out a reasonable management instruction
- Unacceptable behaviour or attitude
- Unlawful discrimination and harassment
- Failure to follow school policies and procedures

Examples of gross misconduct include but are not limited to:

- Theft or fraud or a deliberate falsification of records
- Bribery, attempted bribery or knowingly allowing another person to offer a bribe
- Physical violence or bullying
- Deliberate and serious damage to School and other property
- Serious misuse of the School, or an associated organisation, property or name
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination
- Incapability at work through drugs, substances or alcohol
- Bringing the School, or an associated organisation, into disrepute (including comments on social networking)
- Gross negligence which causes, or might cause, unacceptable loss, damage or injury
- Serious breach of health and safety rules
- Criminal or other serious misconduct outside the workplace which affects the employee's suitability for the post
- Knowingly providing false information on any matter relating to the employee's employment
- Serious data breach or information security breach
- Serious breach of School policies and procedures including the Code of Conduct Policy
- Allegations against another person that are malicious or made for personal gain
- Criminal or serious misconduct involving children or vulnerable adults

### **3 Informal stage**

Upon becoming aware of the issue of conduct, the headteacher or authorised person will make initial enquiries, including informal fact finding with the employee, to determine the most appropriate course of action.

Minor misconduct issues can often be dealt with quickly and effectively through informal discussion between the employee and the headteacher to establish some initial facts. The headteacher will inform the employee of the concern and give them the opportunity to respond and explain any factors affecting their behaviour or conduct.

Where the issue is relating to safeguarding matters, school must advise the Local Authority Designated Officer (LADO).

As a result of the discussion, it may become evident that further action is not necessary, in which case the headteacher will make this clear to the employee and conclude the discussion. If there are issues which need further action, the headteacher may decide to issue a letter or management advice or decide that a formal investigation is required.

### **3.1 Letter of management advice**

Where the discussion has established that the problem is not serious enough to proceed to a formal investigation but the headteacher feels that it is appropriate for the issue to be recorded in writing, they may decide to issue a letter of management advice.

The headteacher must explain to the employee how their conduct or behaviour has caused concern and the letter should record the details of this discussion and what standard of behaviour is expected in the future.

Letters of management advice are considered to be informal action and used by the headteacher to retain a record of the discussion and any advice offered to the employee. There is therefore no set time limit for the retention of management advice or right of appeal.

## **4 Formal stage**

Where it has been established that a more detailed investigation is required, an Investigating Officer will be appointed. This may be the headteacher or another nominated member of the Senior Leadership Team. Where the allegations concern the headteacher, it will be necessary for the Chair of Governors to deal with the matter (see section 1.1).

In certain circumstances, a decision may be made for the investigation to be undertaken by another governing body representative or an external independent Investigating Officer and may also include the involvement of internal audit. The school may also decide to follow the 'Collaboration for Governing Bodies' guide.

The Investigating Officer will investigate the alleged misconduct, produce a report and make recommendations as to whether a disciplinary hearing is required.

### **4.1 Special considerations**

#### **4.1.1 Fraud and financial irregularities**

The Chief Internal Auditor and Corporate Fraud Manager will be informed when the allegation involves possible financial irregularities, or a breach of the school's financial regulations. In these circumstances, the investigation will be carried out in conjunction with the Internal Audit Team.

#### **4.1.2 Safeguarding and professional bodies**

Where the allegation relates to safeguarding and the employee works with children, the Local Authority Designated Officer (LADO) will be informed.

In some cases, the school is required to notify, and possibly provide evidence or information to, the appropriate professional body of investigations, warnings, dismissals or restrictions placed on practice. Depending on the seriousness of the allegations, the Investigating Officer may be obliged to inform the professional body at any stage of the formal procedure.

### **4.1.3 Trade union representative**

If the employee is a trade union representative, an official from their union will be informed, after obtaining the employee's agreement.

### **4.1.4 Criminal charges or convictions**

If an employee is charged with, or convicted of, a criminal offence not related to work, this may not in itself be reason for disciplinary action. Similarly, an employee may not be dismissed solely because they are absent from work as a result of being remanded in custody. Consideration will be given to the charge or conviction and the likely effect upon the employee's ability to carry out his or her duties.

The Investigating Officer will liaise with the Police to determine whether the disciplinary investigation can proceed in parallel with the criminal investigation.

### **4.1.5 Resignation during disciplinary investigation**

Where an employee submits their resignation before the disciplinary process has been concluded, the Investigating Officer will continue with the disciplinary process during the employee's notice period.

Where the allegation(s) are of a safeguarding nature, the investigation will continue and if the recommendation is for the matter to progress to a disciplinary hearing then arrangements should be made for the hearing to take place, even if the employee's notice period has ended and the hearing is conducted in their absence. Any sanction issued will be given 'if the person had continued to be employed' and reported to the appropriate professional body.

### **4.1.6 Grievance during disciplinary process**

Where an employee raises a grievance during the disciplinary process advice should be sought from the HR Advice and Support team. It may be appropriate to deal with the issues concurrently, however, in certain circumstances the disciplinary process may need to be suspended in order to deal with the grievance.

## **4.2 Suspension**

In certain circumstances, it may be necessary to suspend the employee from work while the investigation is carried out. This is a precautionary measure to enable the Investigating Officer to conduct a fair and impartial investigation. It should only be considered where absolutely necessary and only after all other reasonable alternatives have been exhausted. Every effort should be made to keep an employee at work and the following alternatives to suspension may be considered:

- Restricting the duties they can carry out whilst the investigation takes place
- Limiting access to resources, such as ICT
- Alternative workplace

Suspension is not a disciplinary sanction and is without prejudice on full contractual pay. It is essential that the period of suspension is kept as brief as possible and the decision to suspend is regularly reviewed by the headteacher. Where the headteacher is suspended, this will be reviewed by the Chair of Governors.

An employee who is suspended must be available for work during their normal working hours in order to attend investigation meetings, as appropriate. A suspended employee must not undertake any other work during normal working hours. The ending of a suspension is in accordance with the School Staffing (England) Regulations 2009.

### **4.2.1 Contact officer**

The suspended employee should be provided with a Contact Officer as their first point of contact for any issues regarding work and the investigation.

The role of the Contact Officer is to keep the employee up to date, as appropriate, with the progress and likely timescale of the investigation, however, detailed information relating to the investigation will not be shared with the employee. The frequency of contact will be determined by both the Contact Officer and the employee and dependent upon the length and complexity of the investigation.

### **4.2.2 Sickness and annual leave during suspension**

If an employee becomes ill during their suspension, the employee must inform the headteacher as soon as possible and will be required to self-certify or submit fit notes, as appropriate. The employee will be classed as being on sick leave and will be managed through the Attendance Management Policy.

Annual leave can be taken during suspension subject to approval through the normal procedures.

## **5 Investigation**

The purpose of the investigation is to gather facts relating to the allegation(s) made to enable the Investigating Officer to decide whether or not there is a case to answer.

The Investigating Officer will:

- Interview the employee who is the subject of the allegation(s);
- Interview any witnesses;
- Gather evidence relating to the case;
- Take a balanced view on whether there is sufficient evidence to proceed to a formal disciplinary hearing.

Every effort should be made to allow an employee who is under investigation to be accompanied by a trade union representative or work colleague of their choice provided they will not prejudice the investigation. It is up to the employee to make these arrangements, however, if their chosen companion is unable to attend the meeting, the process will not be unreasonably delayed.

The order of the interviews will depend on the nature of the case, and it may be necessary to interview people more than once as the investigation progresses and further information comes to light or clarification is required. All witnesses who are to be interviewed will be invited in writing by the Investigating Officer. The employee and witnesses should be aware they will be asked to agree and sign a written statement, which will form part of the investigation report. Witnesses may be called upon to provide evidence at any subsequent disciplinary hearing or appeals process.

Should further allegations come to light during the course of the investigation, the Investigating Officer will write to the employee informing them of the additional allegations and the employee will be provided with an opportunity to respond to them during the course of the ongoing investigation.

The investigation process is confidential and the employee under investigation and witnesses must not discuss the details of the case with anyone other than their chosen representative.

## **5.1 Final investigation meeting**

To conclude the investigation, the Investigating Officer will offer a final meeting with the employee who the allegations were raised against.

The Investigating Officer will use this meeting to:

- Outline the key points of the investigation including who has been interviewed;
- Allow the employee the opportunity to highlight any areas they feel have not been sufficiently investigated;
- Allow the employee the opportunity to respond to any key additional information or evidence that has come to light during the investigation.

The Investigating Officer will collate a report of the findings and determine whether there is sufficient evidence to progress to a disciplinary hearing. It is not the Investigating Officers role to make a recommendation as to the level of sanction to award.

Where an external investigator undertakes the investigation on behalf of the School, it is appropriate for the Chair of Governors, headteacher or appropriate representative to review the content of the report, prior to presenting it, where appropriate, to the relevant committee for consideration.

## **6 Disciplinary hearing**

The employee will be informed by the Investigating Officer that a hearing will be arranged to consider the issues that have been investigated. The employee will usually receive written confirmation of the hearing, providing at least 7 school days' notice of the date and will be provided with a copy of the Investigation report. At this time, both the Investigating Officer and employee will also be asked to confirm if they would like any witnesses to attend.

The employee must submit any documents that they wish to be considered at the hearing at least 3 school days before the hearing. If relevant documentation is not received within these timescales, it would be at the discretion of the committee as to whether this information could be considered at the hearing.

### **6.1 At the hearing**

The hearing will allow governors to consider all the evidence related to the case and reach a decision with regards to whether a disciplinary sanction is appropriate.

The Investigating Officer and the employee (or their trade union representative) will present their case, call any relevant witnesses and ask relevant questions to seek clarification where necessary. Once all information has been shared, the governors will adjourn the hearing to deliberate and reach a decision as to whether there is a case to answer, whether a sanction should be issued and what the level of any such sanction should be.

Following deliberation, the hearing will usually reconvene, and the governors will inform the employee of their decision and this will be confirmed in writing, usually within 5 school days of the hearing.

Where collaboration with another governing body has been agreed please refer to the "Collaboration for Governing Bodies" guide.

## 6.2 Postponing the hearing

The employee must make all reasonable efforts to attend the hearing, including securing the attendance of their representative, but if they are not able to attend and request that the date be re-arranged, they will be offered one alternative date. This should normally be within 5 school days of the original date, although this can be extended by mutual agreement.

If the employee fails to attend the original or rearranged hearing without explanation the hearing may proceed and a decision reached in their absence. The employee can choose to put their case in writing for consideration by the governors or an employee's representative may attend and present the case in their absence.

## 6.3 Right to be accompanied

Employees have a statutory right to be accompanied by either a work colleague, a trade union representative or an official employed by the trade union at disciplinary hearings. The individual accompanying the employee must not be someone whose presence would prejudice the hearing or who has a conflict of interest. The employee's representative can play an active role in the hearing, however they should not answer questions that are put directly to the employee.

If the employee's chosen representative is not available on the original date for the meeting, the employee has the right to have one postponement, within 5 school days of the original date, although this can be extended by mutual agreement. The hearing will not be unreasonably delayed due to the availability of the employee's chosen representative.

## 6.4 Possible outcomes

The outcomes available to the governors are:

<b>No further action</b>	Insufficient evidence of any wrongdoing.
<b>Informal action</b>	The employee's conduct is considered to be unsatisfactory but not serious enough to warrant formal disciplinary action.  The matter will be referred back to the headteacher for further consideration. This may include issuing a letter or management advice.
<b>Written warning</b>	For a first instance of misconduct. This will usually remain live for 12 months, although this can be extended.
<b>Final written warning</b>	There has been further misconduct while a written warning is still live i.e. within 12 months or the first instance of misconduct is considered to be serious but would not justify dismissal. This will usually remain live for 18 months, although this can be extended.
<b>Dismissal with notice</b>	For further misconduct where a previous warning is still live. An employee will not be dismissed for a first breach of misconduct, except in cases of gross misconduct.
<b>Summary dismissal</b>	Dismissal without notice for cases of gross misconduct.

Where a formal disciplinary sanction is issued, the sanction will remain in place for the relevant time period and will be disregarded for disciplinary purposes thereafter. However, where issues of safeguarding or a pattern of behaviour have been identified, a previous warning maybe taken into consideration, even where the warning is no longer live.

#### **6.4.1 Alternatives to dismissal**

In exceptional circumstances, where the governors have taken the decision to dismiss but there are mitigating circumstances, they may consider alternatives such as transferring the employee elsewhere within the School or demotion.

The transfer or demotion will be offered in writing, as an alternative to dismissal and considered by the employee. If they accept, the employee will be issued with a final written warning and there will be no protection of salary. If an alternative to dismissal is refused the employee will be dismissed.

#### **6.4.2 Referral to professional bodies**

Where the employee is subject to a Disclosure and Barring Service (DBS) check, the DBS and/or other relevant professional body will be informed of the outcome of the disciplinary hearing where a sanction is issued.

## **7 Performance hearing (capability)**

Where the employee is subject to capability and has reached the formal stage of the Capability Policy (Support Staff) and it has been determined that a performance hearing is necessary, the following process will be followed.

The employee will be informed by the headteacher that a hearing will be arranged to consider the ongoing performance issues. The employee will receive written confirmation of the hearing providing at least 7 school days' notice of the date and will be provided with a copy of the headteacher's report.

Both the headteacher and the employee must submit a statement of case at least 3 school days before the hearing. The employee's statement of case should detail their responses to the issues set out in the report. Any documents that the employee wishes to be considered at the hearing should also be submitted at this time. If documentation is not received within these timescales, this may lead to an adjournment of the hearing.

Witnesses will not be allowed to attend the meeting, as the hearing is to consider an employee's individual performance.

### **7.1 At the hearing**

The hearing will be conducted by a committee of governors to consider all the evidence related to the case and to reach a decision with regards to whether a disciplinary sanction is appropriate.

The headteacher and the employee will present their statement of case and ask relevant questions to seek clarification where necessary. Once all information has been shared, the committee will adjourn the hearing to deliberate and reach a decision as to whether there is a case to answer, whether a sanction should be issued and what the level of any such sanction should be.

Following deliberation, the hearing will reconvene and the committee will inform the employee of their decision and this will be confirmed in writing, within 5 school days of the hearing.

### 7.1.1 Postponing the hearing

The employee must make all reasonable efforts to attend the meeting but if they are unable to attend, they will be offered one alternative date. This should normally be within 5 school days of the original date, although this can be extended by mutual agreement.

If the employee fails to attend the original or rearranged meeting without explanation the meeting may proceed and a decision reached in their absence.

### 7.1.2 Right to be accompanied

Employees have a statutory right to be accompanied by a work colleague, a trade union representative or an official employed by the trade union at disciplinary hearings. The individual accompanying the employee must not be someone whose presence would prejudice the hearing or who has a conflict of interest. The employee's representative can play an active role in the hearing, however they should not answer questions that are put directly to the employee.

If the employee's chosen representative is not available on the original date for the meeting, the employee has the right to have one postponement, within 5 school days of the original date, although this can be extended by mutual agreement. The hearing will not be unreasonably delayed due to the availability of the employee's chosen representative.

## 7.2 Possible outcomes

The outcomes available to governors are:

No further action	The employee's performance is considered satisfactory and will be managed within school.
Informal action	The employee's performance is considered to be unsatisfactory but not serious enough to warrant formal disciplinary action. The matter will be referred back to the headteacher to develop a further action plan with the aim of improving performance.
Written warning	The performance issues are serious enough to warrant formal action and will set out the nature of the improvement required. This will usually remain live for 12 months, although this can be extended, and will be accompanied by an action plan developed by the headteacher.
Final written warning	There has been further performance issues while a written warning is still live i.e. within 12 months or the performance issues are considered to be significant. This will usually remain live for 18 months, although this can be extended, and will be accompanied by an action plan developed by the headteacher.
Dismissal with notice	Where an employee's performance does not meet a sustained and sufficient improvement following a previous warning(s), the employee may be dismissed, with notice.  An employee will not be dismissed at a first Performance Hearing.

Where a formal disciplinary sanction is issued, the sanction will remain in place for the relevant time period and then will be disregarded for disciplinary purposes thereafter.

### **7.2.1 Alternatives to dismissal**

In exceptional circumstances, where the decision is to dismiss but there are mitigating circumstances, they may consider alternatives such as a transfer or demotion.

The transfer or demotion will be offered in writing, as an alternative to dismissal and considered by the employee. If they accept, the employee will be issued with a final written warning and there will be no protection of salary. If an alternative to dismissal is refused the employee will be dismissed.

### **7.2.2 Referral to professional bodies**

Where the performance issues are in relation to a role that is governed by professional standards, the appropriate professional body will be informed of the outcome of the disciplinary hearing where a sanction is issued.

## **8 Appeal**

Employees have the right of appeal against any formal disciplinary action taken against them. An employee wishing to lodge an appeal should do so by following the Appeals Policy, which is available on the extranet.



This policy has been developed by the HR Advice and Support team, based on current legislation and best practice. If you would like any advice on the application of this policy, please do not hesitate to contact the team:

<b>Telephone</b>	03000 266688
<b>Email</b>	hradvice@durham.gov.uk

**Further support can be accessed by contacting (subject to SLA buy in):**

<b>Payroll and Employee Services</b>	<a href="mailto:pesschools@durham.gov.uk">pesschools@durham.gov.uk</a>
<b>Occupational Health</b>	<a href="mailto:occhealthadmin@durham.gov.uk">occhealthadmin@durham.gov.uk</a>
<b>Health and Safety</b>	<a href="mailto:hsteam@durham.gov.uk">hsteam@durham.gov.uk</a>
<b>Employee Assistance Programme</b>	<a href="http://www.healthassuredeap.com">www.healthassuredeap.com</a> Username: durham Password: council 0800 716017

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The school complies with all relevant statutory obligations. The school privacy notice provides more specific information on data collected and how it is handled, a copy of which can be accessed from the school. For more information please contact the school directly.

If you have any concerns about how your data is handled, please contact either the school Data Protection Officer (details available from the school office), or the Information Commissioner's Office.