

Disciplinary procedure

for locally maintained schools

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**This policy complies with the ACAS code of practice on
disciplinary and grievance procedures**

1. Introduction

This procedure applies to all the school's employees and is designed to help and encourage them to achieve and maintain appropriate standards of conduct. Its aim is to ensure consistent and fair treatment, without discrimination, for all staff.

2. General principles

- 2.1 Informal action will be considered, where appropriate, to resolve problems.
The disciplinary procedure will be used where the alleged misconduct is more serious or where a series of minor acts of misconduct have been committed. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct.
- 2.2 No disciplinary action will be taken against an employee until the case has been fully investigated by the Headteacher, line manager or governor, as appropriate.
- 2.3 The employee will be advised of who is conducting the investigation and, in cases where a hearing is required, of who will form the disciplinary panel. The panel may either be the Headteacher (where they have not conducted the investigation) or a panel of governors.
- 2.4 In any case where an outcome may be dismissal, the dismissing panel will be as set out in the school's scheme of delegation. (*)
- 2.5 Where there is a disciplinary case against a Headteacher then the Governor (s) who is dealing with the case (usually including the Chair of Governors) will have the support of an HR Consultant from Integra throughout the entire process. The case must not be discussed at a full meeting of the Governing Body otherwise a subsequent panel could have a biased view of the case.
- 2.6 At all stages of the procedure, the employee has the right to be accompanied by a companion who may be a professional association representative/trades' union representative or workplace colleague. A professional association/trades union representative must have been certified by their union as being competent to accompany an employee.

(*) The law delegates dismissal decisions to one or more governors, the Headteacher, or one or more governors and the Headteacher. Governors should confirm in this policy, from their scheme of delegation, who has the authority to dismiss

- 2.7 Where an employee wishes work colleagues to give evidence as witnesses at hearings in support of their case, it must be explained to those colleagues that they may choose whether or not they wish to be involved. Should they agree to act as a witness for the employee they will be entitled to reasonable paid time off to carry out these duties.
- 2.8 Where an employee has understanding or language difficulties, the services of an interpreter or facilitator should be made available. Where an employee has a disability, reasonable adjustments will be made to accommodate their needs.
- 2.9 Where the employee is a trades' union official, the matter will be discussed with the full-time official before any action is taken, after obtaining the employee's agreement.
- 2.10 An employee may be suspended while an allegation is investigated if there is no reasonable alternative option. This is not an assumption of guilt and is not considered to be a disciplinary sanction. The employee will be given the name of a person to contact (not the investigating officer) particularly if the period of suspension is likely to be lengthy. The contact officer will give the suspended employee advice and support as necessary but this will not extend to helping them prepare their case.
- 2.11 The employee will be told about the nature of the allegation against them, in writing, before a disciplinary hearing takes place. The employee will be given the opportunity to state their case before any decision is made.
- 2.12 If the employee's chosen companion is not available at the time of the proposed hearing, then the hearing will be postponed to the time that the employee proposes, provided that the alternative time is reasonable and not more than 5 working days after the original date of the proposed hearing.
- 2.13 An employee will have the right to appeal against any disciplinary sanction given at a formal disciplinary hearing.
- 2.14 The disciplinary sanctions in the procedure are not necessarily sequential. An employee may be given a sanction at any level appropriate to the misconduct.

- 2.15 There must be no covert or overt recording made of any meeting or hearing which takes place at the school. Any such recording may be considered as potential misconduct, and employees may be liable to formal disciplinary action.

3. Disciplinary action

- 3.1 If, at a disciplinary hearing, the panel considers that there is no case to answer, the employee will be informed in writing of this decision.
- 3.2 Where the Headteacher or governors' staffing panel considers that there is a case to answer but is not serious enough to warrant a formal sanction, they may decide to issue a letter of management instruction. The letter should confirm future expectations in respect of conduct and identify any support that may be required to achieve this. This could include counselling, mentoring, or training and will confirm that disciplinary action may be taken if there are further instances of similar conduct.
- 3.3 If the panel believes, on the balance of probabilities, that the alleged misconduct has occurred, the panel will decide the appropriate disciplinary action. The sanctions available are:

3.3.1 First written warning

A first written warning may be issued:

- for an employee's first act of misconduct,
- or for further acts of minor misconduct.

A copy of a written warning will remain live on file for 1 year. The warning will be disregarded for disciplinary purposes after the time limit has expired.

3.3.2 Final written warning

A final written warning may be issued:

- where the first misconduct is sufficiently serious;
- or where there has been a failure to improve conduct after a first written warning and that warning remains live;
- or where the employee has committed an act of gross misconduct, but the panel decides not to dismiss.

A copy of a final written warning will remain live on file for 2 years. The warning will be disregarded for disciplinary purposes after the time limit has expired.

3.3.3 Dismissal

An employee may be dismissed:

- for an act(s) of further misconduct after a final written warning has been given and it remains live; dismissal will be with notice
- for an act(s) of gross misconduct; dismissal will be without notice (i.e. summary dismissal).

3.3.4 Demotion

Demotion to an existing suitable vacancy may be considered as an alternative sanction to dismissal in exceptional cases, provided that the employee is prepared to accept such an offer. The employee must agree to the pay and conditions appropriate to the new post (i.e. there will not be any pay protection) and the employee will be issued with a final written warning.

4. The disciplinary hearing

- 4.1 The Clerk to Governors/Chair of panel will normally make the appropriate arrangements for the hearing.
- 4.2 The employee should be given at least 5 working days' notice in writing of a hearing including:
 - the date, time and location of the hearing
 - who will be present at the hearing
 - the nature of the allegation being made
 - the names of any witnesses who will be present at the hearing (where applicable)
 - the right to have a companion present

Copies of any supporting information, including statements already taken as part of an investigation should accompany the letter and a copy of the disciplinary procedure must be provided.

- 4.3 The employee must make every effort to attend the hearing. The employee should provide copies of documents, the names of any witnesses they wish to call and details of their companion, as appropriate, at least two days before the hearing.

- 4.4 An LA representative (and, in the case of a VA school, a diocesan representative, as well) may be invited to attend as adviser to the panel. This will normally be a representative from Integra Schools HR.
- 4.5 In the case of a possible dismissal in a locally maintained school, an LA representative must be invited to attend as adviser to the panel.
- 4.6 Where an employee is unwilling or unable to attend the hearing within a reasonable timescale or without good cause, the hearing will proceed in their absence and a decision will be taken on the evidence available. Their representative will be given the opportunity to present the employee's case on their behalf. The employee may submit their case in written form, and their representative will be given the opportunity to present the employee's case on their behalf.
- 4.7 If new facts emerge during the hearing it may be necessary to adjourn the meeting to investigate these facts, if they may have a substantial impact on the case. The hearing will be reconvened as necessary.

5. Confirmation of disciplinary action

- 5.1 The employee will be provided with written confirmation of the outcome of the hearing, together with details of their right of appeal.

Where the outcome is dismissal of the employee then the panel should give a written instruction to the LA. The LA must issue notice of termination of employment, as appropriate, within 14 days of receiving the written instruction. In the case of VA schools, the authority to dismiss rests with the Governing Body and not the LA, so it is for the Governing Body to process the dismissal.

6. The appeal process

- 6.1 An employee may appeal against any disciplinary sanction given by the panel.
- 6.2 When an employee wishes to appeal, they should notify the Clerk to Governors, in writing, normally within 5 working days of written notification of the decision, giving the reasons for the appeal.
- 6.3 The appeal hearing may either be a review of the disciplinary sanction or a re-hearing, depending on the grounds of the appeal.
- 6.4 The appeal hearing will be conducted by a panel of governors who have not had previous involvement in the case under consideration.

- 6.5 The role of an appeal panel is to consider the grounds of the employee's appeal against the disciplinary sanction given by the first panel. The decision of the appeal panel is final subject to the circumstances in 6.6.
- 6.6 In exceptional circumstances, the appeal panel may consider increasing the level of sanction issued at the hearing stage. In such a circumstance, the employee will be given a further right of appeal against this decision and the decision of the second appeal panel is final.

Disciplinary procedure: appendix A

Gross misconduct

Gross misconduct is generally seen as misconduct serious enough to overturn the employment contract between the employer and the employee, making any further working relationship and trust impossible thus justifying summary dismissal.

The following list, which is not exhaustive, provides examples of misconduct, which the Headteacher/ Governing Body would normally regard as gross misconduct:

- Sexual behaviour towards children or young people.
- Serious misconduct which breaches expectations outlined in the statutory DfE document 'Keeping Children Safe in Education'.
- Violent behaviour.
- Behaviour which involves a breach of a position of trust. This may include a sexual, or otherwise inappropriate, relationship with a pupil (regardless of whether the pupil is over the age of consent).
- A sexual offence against someone over the age of 16.
- Committing a criminal offence, the nature of which renders the employee unsuitable for continued employment with the school.
- Bringing the school into serious disrepute.
- Drug trafficking and other drug related offences.
- Being under the influence of alcohol or illegal drugs at work.
- Theft or fraud

- Deception in relation to employment, e.g. false claims about qualifications or employment history.
- Wilful and/or malicious verbal abuse, bullying or harassment of a personal or discriminatory nature.
- Multiple convictions, unless of a very minor nature.
- Behaviour which involves a breach of the standards of propriety, such as falsifying pupil records or assisting pupils to cheat or gain unfair advantage in examinations.
- Deliberate and serious damage to property.
- Unauthorised use of school materials, equipment, facilities or other resources for private purposes.
- Deliberately accessing internet sites containing pornographic, offensive, or obscene material.
- Serious and wilful insubordination.
- Unlawful discrimination.
- Causing loss, damage or injury through serious negligence.
- A serious breach of health and safety rules.
- A serious breach of confidence.
- Engaging in work or activities incompatible with absence on sick pay.
- Improper use of position as a Council employee for personal gain.

NB: Note this list is indicative and is not exhaustive. The Headteacher/Governing Body will take into account any special circumstance which might make it appropriate to adjust the severity of the penalty.