

**PERS 52
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Schools' Model Disciplinary Policy

This Policy has been formally adopted by the Governing Body of

The Westminster School on 07/12/17.

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1.0 Introduction

- 1.1 This policy and procedure is intended to help Governing Bodies fulfil their responsibilities as required by the School Staffing (England) Regulations 2009 with regards to disciplinary procedures.
- 1.2 The Local Authority recommends Schools to adopt this Policy, especially where Sandwell MBC is the employer. This Policy will also be used for Unattached Teachers employed by Sandwell MBC.
- 1.3 This Policy is intended to provide a fair and consistent method of dealing with disciplinary matters and must be applied alongside the Disciplinary Rules.
- 1.4 The process is not exhausted within the School/Council until the appeal process has been completed.
- 1.5 Copies of this Policy should be made available to all employees to whom it applies.

2.0 Scope

- 2.1 This Policy applies to all School based employees (Non-Teaching and Teaching staff, including Headteachers), as well as all employees of Pupil Referral Units (PRUs).
- 2.2 In cases where allegations are made against the Headteacher, the role normally undertaken by them will be carried out by a nominated Governor (usually the Chair of Governors). In such circumstances advice must be sought from the School's HR provider before any action is taken. References to the Headteacher in this Policy should therefore be adjusted accordingly.
- 2.3 In PRUs the references in the Policy to Governing Body Committees will mean the Management Committees.
- 2.4 This policy also applies to Unattached Teachers who are employed in non-standard settings by Sandwell MBC. Teachers not working in Schools should substitute Headteacher, Chair of Governors and Governing Body Committees for the appropriate delegated authority of line management.
- 2.5 Where there is an allegation of abuse (including inappropriate physical contact) by a member of staff against a child or young person the matter must be taken seriously and examined objectively. In the first instance, the Designated Person must immediately consult the Council's Local Authority Designated Officer (LADO) for further advice and action as appropriate.
- 2.6 This Policy should **not** be used for:
 - concerns relating to poor performance of Teachers, in these circumstances the Capability Procedure for Teaching Staff should be referred to.
 - concerns relating to an employee's incapability due to ill health; in these circumstances the Management of Absence Policy and Guidance should be referred to.

- workers (e.g. people engaged through Templink or Teachers engaged via a supply agency).
- non-teaching staff in their probationary period.

3.0 Definitions

- (a) **Designated Person(s):** The Designated Person is the Headteacher. However, the Governing Body may agree to delegating authority to the Deputy Headteacher or equivalent to take Informal Action.
- (b) If the matter concerns a Headteacher then the Designated Person is the Chair of Governors.
- (c) A Schedule defining the people designated to take the appropriate action as defined within this policy shall be prepared, updated and agreed between the Governing Body/the Council as necessary and set out in the Schedule of Designated Officers.
- (d) **Representative:** an employee is entitled to be accompanied at each Formal Stage or as otherwise stated in 4.9 below by an accredited trade union representative or work colleague if they so wish.
- (e) **The Committee:** means the Committee appointed by the Governing Body with delegated powers to undertake the functions prescribed for a Committee in this Policy and consists of a minimum of 3 members.
- (f) **Appeals Committee:** means the Committee consisting of a minimum of 3, or equivalent to the number on the Committee. Members of the Appeals Committee should have had no prior involvement in the case.
- (g) **Personal File:** means that file maintained by and/or for the Director of Children's Services relating to the specific individual concerned.
- (h) **Conduct or Capability:**

It is important to identify whether concerns relate to conduct or capability as different procedures may apply.

- 'conduct' generally relates to where an employee will not do something asked of them i.e. they are capable but unwilling. Misconduct or unacceptable behaviour occurs when the disciplinary rules (HR53s) are broken through the employee's action or inaction.
- 'capability' is where an employee cannot do their job to the required standards due to lack of skills or ability.

- (i) **Misconduct or Gross Misconduct**

- 'misconduct', when the disciplinary rules are broken, attracts a series of warnings, aimed at explaining what the employer regards as unacceptable and the consequences if they do not improve. Employees should not be dismissed for a single breach of disciplinary rules, except in the case of gross misconduct.

- '*gross misconduct*' is misconduct which is serious enough to end the employment contract such that the employer can no longer tolerate the continued presence of the employee. The contract of employment may be brought to an end without going through the series of warnings.

4.0. General Principles

- 4.1 The Policy does not form part of the terms of an employee's contract with Sandwell MBC/the School which are provided separately.
- 4.2 The Local Authority strongly recommends that this Policy must be applied in conjunction with the Schools' Model Disciplinary Policy Guidance and those affected should also be provided with a copy of this Guidance.
- 4.3 This Policy takes into account current employment legislation, good practice and the appropriate provisions of the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice.
- 4.4 The requirements of the Equality Act 2010 have been fully incorporated into the Policy. Reasonable adjustments will be considered on request to enable employees to fully participate in the process.
- 4.5 At any stage in the process, following investigations, the Designated Person may invoke an alternative Policy.
- 4.6 All parties will deal with issues promptly and not unreasonably delay meetings/hearings, decisions or confirmation of those decisions.
- 4.7 Where a meeting/hearing needs to be rescheduled, it can normally only be rescheduled once. A new date must be agreed within five working days of the original date. The actual meeting/hearing date need not be within those five days but should be as soon as possible.
- 4.8 All matters will remain confidential at every stage in accordance with the Data Protection Act 1998, except in circumstances where there is a legal obligation to disclose such information.
- 4.9 Employees must be informed of their right to be accompanied by a work colleague or trade union representative at any suspension, investigation interview, disciplinary hearing and appeal hearing as appropriate.
- 4.10 The employee must be informed of their right of appeal against a decision made during the formal process.
- 4.11 The final appeal hearing exhausts the internal process.
- 4.12 All formal records and copies of correspondence will be retained on the employee's personal file.
- 4.13 If an employee lodges a grievance relating to the disciplinary matter then the grievance will be dealt with through the disciplinary appeals process.

5.0 Disciplinary Outcome

The disciplinary policy contains the following provisions:

- a) No Action / Informal Action
- b) Formal Written Warnings
 - Formal (Recorded) Verbal Warning (up to 4 months)
 - First Written Warning (up to 8 months)
 - Final Written Warning (up to 12 months)
- c) Dismissal
- d) Appeal

The importance of following the procedure in all cases is stressed. Allegation/s must be investigated and a disciplinary sanction can only be issued (if appropriate) following the case being heard at a disciplinary hearing. Case law has shown that failure to follow an agreed procedure is prima facie unfair.

5.1 No Action

5.1.1 If there is no case to answer or no further action is required then the employee will be informed verbally and in writing.

5.2 Informal Action

5.2.1 It is recognised that less serious breaches of conduct can often be dealt with informally through normal supervision and management conversations by drawing to the employee's attention the unsatisfactory conduct/behaviour, explaining what conduct is expected and setting clear and reasonable timescales for the employee's conduct/behaviour to improve. It may also be appropriate to consider additional support e.g. coaching, training or counselling depending on the circumstances of the case.

5.2.2 Where appropriate the Designated Person following a meeting with the employee may decide to resolve the issue informally if they are dealing with a minor issue or addressing an isolated incident.

5.2.3 Informal action is not formal disciplinary action taken under the Policy but the employee shall be informed that if they fail to learn from the informal action or any further breaches of discipline occur or if the employee fails to attain the required standard as appropriate then formal disciplinary action may be taken against him/her.

5.3 Formal Written Warnings: Guiding Principles

At all Formal Stages the following will apply:

5.3.1 The employee will be informed of the allegation/s against them before being interviewed.

5.3.2 An officer will be appointed by the Designated Person to investigate the allegation/s. The investigation will include (where necessary) investigatory

meetings with the employee, colleagues and witnesses and consideration of relevant documents. A different person to the Headteacher (or Governors) chairing the disciplinary hearing will be responsible for the investigation.

- 5.3.3 Investigations to establish the relevant facts should be carried out promptly. The investigation should collect all relevant and supporting documents.
- 5.3.4 Where it is alleged that an employee has committed an offence of gross misconduct the Headteacher (or Chair of Governors if the allegation is against the Headteacher where further advice and guidance must be sought from the School's HR provider before any action is taken) should suspend the employee on full pay, to enable investigations to take place. Suspension is without prejudice and is not a disciplinary penalty. Separate suspension guidance is available.
- 5.3.5 Where an employee is unfit to attend meetings as part of the disciplinary process, they will be referred to the Occupational Health Unit, to assess their fitness to engage in the disciplinary process.
- 5.3.6 The employee shall receive written notice of any formal disciplinary hearing not less than five working days before the date of the hearing (or not less than 10 working days for a hearing with the Committee). Notification will set out the specific nature of the allegations, and where appropriate the possibility that the disciplinary hearing could result in dismissal. Copies of the disciplinary investigation report and any evidence to be presented at the hearing must be supplied with the notification.
- 5.3.7 The employee will be given the opportunity to state his/her case (which shall include the right of the employee or his/her representative to make a statement, ask questions of any witness and/or produce documents on his/her behalf) before decisions are reached. However, the representative cannot answer questions on an employee's behalf.
- 5.3.8 Action taken under this Policy shall depend upon the nature of the employee's offence, any mitigating circumstances where these may be reasonably taken into account and, if appropriate, the employee's past disciplinary record.
- 5.3.9 A first offence, unless it is considered to be gross misconduct, shall not normally result in dismissal but it may, depending upon the facts, result in any other of the disciplinary sanctions defined in the Policy.
- 5.3.10 Where formal action is taken in accordance with this procedure, it shall be the responsibility of the Headteacher/Committee taking such action to:
- notify the employee concerned in writing of the outcome of the hearing, including the level of warning, the period it shall remain live for, and the consequences of further breaches of discipline;
 - ensure that at the interview/hearing and in the subsequent notification, that they inform the employee of the right of appeal to the Governing Body. Also, that if he/she wishes to exercise that right, he/she must do so in writing to the Director of Children's Services within 10 working days of the written notification of the decision, and that the appeal letter should set out the

grounds for the appeal;

- ensure that a copy of the notification is retained on the employee's personal file for the duration of the sanction.

Formal (Recorded) Verbal Warning (up to 4 months)

- 5.3.11 Where a member of staff has not heeded previous Informal Action, or where the offence is such that it would warrant a Formal (Recorded) Verbal Warning, the Headteacher will meet to discuss the matter with the member of staff and his/her representative.
- 5.3.12 If, in the Headteacher's opinion after the necessary investigation, such action is justified, the employee will be given a Formal (Recorded) Verbal Warning for up to 4 months. Improvement targets will be set if appropriate.
- 5.3.13 A copy of the warning will be placed on the employee's personal file, but will be disregarded for disciplinary purposes at the expiry of the warning, subject to satisfactory conduct *and improvement (*as appropriate).

First Written Warning (up to 8 months)

- 5.3.14 Where an employee has not heeded previous warnings or where the offence is such that it would warrant a written warning, the Headteacher after the necessary investigation, will hear the case at a convened disciplinary hearing. The employee has the right to be accompanied by his/her representative.
- 5.3.15 If, in the Headteacher's opinion, the allegations are substantiated, the employee will be given a First Written Warning for up to 8 months. Improvement targets will be set if appropriate.
- 5.3.16 A copy of the warning will be placed on the employee's personal file, but will be disregarded for disciplinary purposes at the expiry of the warning, subject to satisfactory conduct *and improvement (*as appropriate).

Final Written Warning (up to 12 months)

- 5.3.17 Where an employee has not heeded a previous (First) Written Warning, or that where the alleged offence is such to warrant a Final Written Warning if, after the necessary investigation, the Headteacher in his/her opinion considers the employee has a case to answer and, that if substantiated, the allegations would warrant a Final Written Warning, the matter shall be referred to a disciplinary hearing with the appropriate Committee of the Governing Body.
- 5.3.18 If, in the Committee's opinion, the allegations are substantiated, the employee will be given a Final Written Warning for up to 12 months. Improvement targets will be set if appropriate.
- 5.3.19 The Final Written Warning will include the reason for the warning and reference that if there is a further act of serious misconduct (or if there is no improvement during the period of the warning) action will be taken which will lead to the implementation of the next stage (Dismissal).
- 5.3.20 A copy of the Final Written Warning will be placed on the employee's personal file, but will be disregarded for disciplinary purposes at the expiry of

the warning, subject to satisfactory conduct.

5.4 Dismissal

- 5.4.1 Where an employee has not heeded the Final Written Warning or where it is alleged that he/she has committed an act of gross misconduct he/she shall meet with the Headteacher accompanied by his/her representative as appropriate and be informed of the allegations against him/her.
- 5.4.2 In the case of alleged gross misconduct, the employee shall be suspended forthwith from duty. The Headteacher shall notify the Chair of the Governing Body of any such suspension.
- 5.4.3 Where the case of alleged gross misconduct is against the Headteacher then the Chair of Governors, having already taken further advice and guidance from the School's HR provider, must inform the Director of Children's Services if a suspension has taken place.
- 5.4.4 If after the necessary investigations, the Headteacher considers that the employee does not have a case to answer he/she shall consult the Chair of the Governing Body who shall end the suspension and the employee shall return to his/her normal duties. When ending a suspension, the Governing Body must immediately inform the Headteacher and the Director of Children's Services.
- 5.4.5 However, if after such investigations, the Headteacher considers that the employee does have a case to answer the matter shall be referred to a hearing with the appropriate Committee of the Governing Body if the Headteacher does not have the authority to dismiss.
- 5.4.6 The Local Authority, through a representative of the Director of Children's Services, is required to attend for the purposes of giving advice at potential dismissal hearings.
- 5.4.7 If the Committee finds that the allegations are substantiated:
- in the case of gross misconduct the employee shall be dismissed without notice (summary dismissal) and the effective date of his/her dismissal shall be the date upon which the decision is communicated to the employee by the representative of the Director of Children's Services*.
 - in other cases, the employee shall be dismissed with notice in line with their Statement of Written Particulars and the notice shall be effective from the date upon which the decision is communicated to him/her by the Director of Children's Services*. The Committee may decide that a payment in lieu of notice be paid to the employee.
 - alternatively the Committee may find the employee blameless or may choose to impose any lesser sanction as provided for in this policy.

***PLEASE NOTE:** If the Committee has made a determination that the employee be dismissed the Clerk to Governors will write within 5 days of the decision (providing full details of the rationale for the Committee's decision) to

the Director of Children's Services who shall ratify the dismissal, notifying the employee within 14 days of the initial dismissal decision, in accordance with the School Staffing (England) Regulations 2009.

If appropriate notification is not received from the School by the Local Authority in time to allow for the ratification of the dismissal, then the School understands and accepts that any liability for extended employment costs will pass to the School.

6.0 Referrals to Regulatory Authorities

- 6.1 The Local Authority, as the employer, has a legal duty to inform the Disclosure and Barring Service (DBS) where an employee has been dismissed, or would have been dismissed had they not resigned first, in cases where the employee is considered to have harmed a child or where a child was placed at risk of harm. The referral may result in the person being barred from working/volunteering with children.
- 6.2 Settlement agreements should not be used in cases related to child safeguarding. If such an agreement is made it will not override the statutory duty to make a referral to the DBS, where circumstances require this.
- 6.3 In Teachers' professional misconduct cases the Local Authority, as the employer, has a legal duty to refer cases of serious misconduct to the National College for Teaching and Leadership (NCTL) when they have dismissed a Teacher, or would have dismissed them had they not resigned first. The NCTL may then consider the misconduct so serious that it warrants a decision on whether the Teacher should be prohibited from teaching.

7.0 Appeals

- 7.1 An employee who wishes to appeal any formal disciplinary decision must do so within 10 working days of this decision, stating in writing the grounds for appeal, which should be one or more of the following:
 - The **decision** – the grounds for appeal should state why the finding or sanction is unfair/discriminatory;
 - The **facts** – the grounds for appeal should state where new evidence has come to light that was not available at the original hearing;
 - The **procedure** – the grounds for appeal should state how the disciplinary procedure was not used correctly, thereby prejudicing the disciplinary decision.
- 7.2 The appeal will be dealt with impartially by Governors who have not previously been involved in the case. The appeal will not normally be a full re-hearing, but will focus on the grounds of appeal as set out in the letter from the employee.
- 7.3 The Local Authority, through a representative of the Director of Children's Services, has an entitlement to attend for the purposes of giving advice at appeal hearings against dismissal.

- 7.4 The decision of the Committee shall be notified in writing to the employee by the Clerk to the Governors and a copy of the letter shall be retained on the appropriate employee's personal file.