SCHOOLS

MODEL DISCIPLINARY POLICY & PROCEDURE
FOR
SCHOOL BASED STAFF

This procedure should be read in conjunction with the Schools Disciplinary Policy and Procedure Guidance for school based staff
Adopted by Iveson Primary Board of Governors 27th May 2021

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CONTENTS

1. Introduction

2. Scope of the Procedure

3. Core Principles

4. Management of Staff

5. Allegations of a Serious Nature

6. Misconduct and Gross Misconduct

7. Suspension

8. Stages of the Disciplinary Procedure

9. Disciplinary Hearing

10. Appeals against Disciplinary Action

11. Record of Warnings

See also **Disciplinary Procedure Guidance**

Appendix 1 - The Investigating Officer

Appendix 2 - Suspension

Appendix 3 - Conduct of Disciplinary Hearings

Appendix 4 - Staff facing allegations of abuse

Appendix 5 - General Guidance

Appendix 6 - Flowchart

LEEDS CITY COUNCIL

MODEL DISCIPLINARY PROCEDURE FOR SCHOOL BASED STAFF

1. INTRODUCTION

1.1 This disciplinary procedure applies to all school based staff appointed by the Governing Body (except staff employed by DSO), where the Governing Body has agreed its adoption.

1.2 This procedure should be read in conjunction with the Schools Disciplinary Policy and Procedure Guidance for school based staff

2. SCOPE OF PROCEDURE

2.1 The Disciplinary Rules and Disciplinary Procedures have been drawn up to comply with ACAS Code of Practice 1 *Disciplinary and Grievance Procedures April 2009*. It is intended to provide a system which can deal speedily with disciplinary matters whilst ensuring that the principles of natural justice are preserved.

2.2 The Procedure also complies with CLEA's (Council of Local Education Authorities) Staff Facing an Allegations of Abuse Guidelines on Practice and Procedure (see Appendix B) and has been agreed with the Leeds Safeguarding Children Board (LSCB).

2.3 Trade Union Officials

Normal disciplinary standards apply to union officials as employees. Where it is proposed to take disciplinary action against a Trade Union official, HR Schools Advisory Team (LCC) will consult with or notify a senior Trade Union representative or full time official immediately.

3. CORE PRINCIPLES

- It is a fundamental principle that disciplinary matters are dealt with at the lowest possible level;
- The procedure should be used primarily to help and encourage employees to improve rather than as a way of imposing a punishment;
- Issues should be dealt with as thoroughly and promptly as possible;
- The employee should be informed of any complaint/allegation against him/her; and be provided with as much information as deemed appropriate without compromising the investigation;
- The employee should be provided with an opportunity to state his/her case before decisions are reached;
- Any action taken should be reasonable in the circumstances of the case;
- An employee should not be dismissed for a first disciplinary offence , unless it is a case of gross misconduct, in which case dismissal may be the outcome;
- An employee should be told what the required standards of behaviour and conduct are;

- Where an employee has been warned before about their conduct or behaviour, it should be made clear at the time, that if there is a further instance of misconduct, formal disciplinary action could be taken;
- The employee should be given the right to appeal against any form of disciplinary action;
- The employee should have the right to be accompanied by a trade union representative or a work colleague at any stage during the Procedure (including the investigatory interview);
- The Hearing Officer (Headteacher or panel of governors) should not have had any prior involvement with the investigation. Those conducting an appeal should not have had any prior involvement with the investigation or the disciplinary hearing.

4. MANAGEMENT OF STAFF

4.1 All staff (except the Headteacher)

The day to day supervision of staff is part of the normal managerial process. In most cases the supervisor is the Headteacher. It is important therefore that the immediate supervisor clarifies with employees the duties to be performed and the standards expected.

On receipt of a complaint, the Headteacher should first assess if the possible disciplinary matter can be dealt with informally. If this is done there is likely to be less recourse to the formal procedures.

4.2 If an immediate superior has a concern about an employee's standards of conduct, it should be brought to the attention of the employee at the earliest possible opportunity. Where such a meeting takes place, the supervisor /nominated person should explain at the meeting to the employee the area(s) of concern and give the employee the opportunity to respond.

4.3 It is important that the supervisor/nominated person tries to establish if there are any mitigating circumstances that may have contributed to the employee's conduct. The supervisor/nominated person should deal sympathetically with the employee but at the same time ensure that the employee is in no doubt as to the conduct required.

4.4 This form of approach is considered as being outside the formal disciplinary procedures but clearly a supervisor would wish to consider the extent of such an approach before invoking formal procedures.

4.5 The Headteacher will initiate the disciplinary procedure:

a) Where the Headteacher / nominated person has assessed that the matter cannot be dealt with informally;

b) Where the member of staff has been given a previous management warning for behaviour of a similar nature;

c) Where the allegation is of a ‘child protection’ nature, following consultation with the Local Authority Designated Officer (LADO) ;

The Headteacher is advised to consult with the HR Schools Advisory Team (LCC) before appointing an Investigating Officer to investigate the allegations using the formal disciplinary procedure.

4.6 Concerns about the conduct of the Headteacher

Where a matter of concern involves the Headteacher it is for the governing body to determine who would be the most appropriate person to be appointed as the Nominated Person / Investigating Officer to deal with the matter, e.g.:

- a member of the governing body such as the Chair or Vice Chair. However it should be noted that this **would** prevent that governor from taking part in any subsequent disciplinary hearing.
- an officer of Leeds City Council (eg. HR Officer) in exceptional circumstances.

That person would be deemed to be the nominated person/investigating officer. (See Appendix 1 of guidance)

5. ALLEGATIONS OF A SERIOUS NATURE

In some cases it may be appropriate to involve the police, particularly in cases involving alleged child abuse. It may also be appropriate where an alleged criminal act has taken place. Advice on these matters should be sought from the HR Service. **Where the allegations are of a child protection nature these MUST be reported to a member of the HR Schools Advisory Team (LCC) immediately.**

Where an allegation of this nature has been received against a member of staff, refer to the guidelines and procedure outlined in **Appendix 4 of guidance: Staff Facing an allegation of physical/sexual abuse. Please also refer to the School's Child Protection Policy.**

6. MISCONDUCT AND GROSS MISCONDUCT

6.1 Misconduct

This is a breach of discipline which on its own is not sufficiently serious to warrant dismissal, but will warrant action being taken under this procedure. In cases where misconduct takes place and live warnings for this or another type of misconduct are still in force, then unless mitigating circumstances are proven, the employee may be dismissed without notice.

Examples of misconduct are listed below. This list is not intended to be exclusive or exhaustive and there may be other incidents of misconduct of a similar gravity:

- Poor timekeeping including unauthorised absence
- Failure to observe reasonable instructions
- Failure in Duty of Care towards pupils and staff at the school

- Failure in protecting the Health, Safety and Wellbeing of pupils and staff at the school
- Minor instances of neglect of duties and responsibilities
- Wilful failure to work in harmony with employees of the school
- Deliberate breaches of the school's policies and procedures
- Misuse of the school's facilities (eg. telephone and the internet including social networking site

6.2 **Gross Misconduct**

This is a grave breach of discipline which may be serious enough to destroy the employment contract between the school and the employee making any further working relationship and trust impossible.

Gross misconduct would normally lead to dismissal or a final written warning, even first incidents of gross misconduct. The list is not intended to be exhaustive and there may be other incidents of gross misconduct of a similar gravity which could result in dismissal.

- Theft or fraud
- Falsification
- Serious breaches of the school's Code of Conduct & other Professional Codes of Conduct
- Refusal to register with mandatory professional bodies (including persistent failure)
- Failure in Duty of Care to protect pupils or young adults at the school by placing them at significant risk
- Physical violence or bullying
- Unlawful discrimination or harassment
- Serious and deliberate damage to property
- Serious insubordination (e.g. Deliberate; inexcusable; rebellious; refusal; wilfully disobeying)
- Serious incapability at work brought on by alcohol or illegal drugs
- Serious abuse of the school's Internet Policy (e.g. in relation to accessing pornographic internet sites or sending and receiving offensive or obscene material
- Serious misuse of school's facilities (e.g. telephone and the internet including social networking sites)
- Causing loss damage or injury through serious negligence

7. SUSPENSION

See Guidance notes in Appendix 2 of guidance for further information

In certain cases a period of suspension from work on full pay may be considered whilst the case is being investigated or before a Disciplinary Hearing is held.

Suspension should not be undertaken without good reason, circumstances in which suspension properly occurs include:

- where there are sound reasons to believe that pupils and/or staff and/or property are at risk;

- where it is believed that the continued presence of the employee might prejudice enquiries or influence witnesses;

- Where the allegations are so serious that dismissal for gross misconduct is possible.

Suspension is not a disciplinary sanction. Headteachers may consider a temporary redeployment as an alternative to suspension.

Suspension will be on full pay without prejudice to the outcome of the investigation

When a Headteacher is considering a suspension advice SHOULD be sought from the HR Schools Advisory Team.

Where the matter of concern is regarding the conduct of the Headteacher, the Chair of Governors should consult with the HR Schools Advisory Team prior to considering a suspension.

The employee should be notified in person of the decision to suspend and should have the right to be accompanied by a Trade Union representative or work colleague. The employee should normally be sent confirmation of the suspension in writing within 1 working day. Any restrictions relating to an employee's suspension should be included in the letter.

8. STAGES OF THE DISCIPLINARY PROCEDURE

8.1 The Headteacher should frame the allegations, with advice from HR, or in the case of allegations against the Headteacher, the Chair of Governors should seek advice from HR before framing the allegations.

The Headteacher or nominated person should verbally advise the employee of the allegation(s) made against them and advise them that an Investigative Officer has been appointed to investigate the allegation(s). This should be confirmed to the employee in writing.

Where the matter of concern involves the Headteacher it is for the governing body to determine who would be the most appropriate person to be appointed as the Nominated Person / Investigating Officer to deal with the matter, in accordance with paragraph 4.6 of this procedure.

8.2 The Investigating Officer, nominated by the Headteacher (**See Appendix 1 of guidance)** should be a person with no involvement whatsoever in the matter under investigation. This person should, wherever possible, be a senior member of the school's staff. The Headteacher should not be the Investigating Officer, unless there are exceptional circumstances as explained in **Appendix 1 of guidance, paragraph 3.**

If the matter under investigation involves an allegation(s) of physical/sexual abuse and the Police or child protection agencies are involved then the school's investigation may have to be held in abeyance until the external investigation has been completed. See Appendix 4 of the Guidance.

8.3 The investigating Officer's brief will be to establish the facts of the case. All investigations will be undertaken in the strictest confidence.

8.4 As part of the investigation a meeting should be arranged with the employee as soon as possible, giving a minimum of 5 working days notice, or less if all parties are in agreement, in writing to the employee, who will have been advised beforehand that he/she may be accompanied by a trade union representative or a colleague of his/her choice (not acting in a legal capacity).

8.5 At the meeting, the Investigating Officer should present the allegation(s) to the employee who should be invited to respond in full and to any other information submitted by the Investigating Officer.

8.6 At any point during the meeting the employee may request a short adjournment to consult his/her representative.

8.7 If new allegations emerge during the course of the investigation it will be necessary to re-interview the employee or witness in seeking to establish the facts.

8.8 The investigation should be conducted as soon as possible. Where reasonable the investigation should be completed within 20 working days. However, if the investigation is not completed within 20 working days then the employee will be informed of this and given regular information as to how the investigation is progressing.

8.9 As part of the investigation the Investigating Officer will determine the appropriate action and a written report should be prepared on the facts of the case which will include a list of every individual who has been interviewed, together with records of interviews, and any other evidence. These will be made available to all parties should a disciplinary hearing ensue.

8.10 The Investigating Officer in consultation with the HR Adviser, should decide and advise the employee accordingly that he/she intends to:

a) take no further action under the disciplinary procedure

b) convene a disciplinary hearing before the Headteacher in cases of alleged misconduct / or in cases of alleged gross misconduct where the governing body have formally given delegated powers to the Headteacher

c) Convene a disciplinary hearing before a panel of Governors in the following cases:

- cases of alleged misconduct where the Headteacher cannot hear the case because he/she has prior knowledge of the case, or has acted as Investigating Officer, or is required as a witness **(see Appendix 1 of guidance: Nomination of Investigating Officer)**.

- cases of alleged gross misconduct

- cases of cumulative misconduct

- where the subject of the investigation is the Head teacher whether the case is misconduct, cumulative misconduct or gross misconduct.

Examples of Misconduct and Gross Misconduct can be found in Paragraph 6

8.11 After the investigative process has been completed and the Investigating Officer has consulted with the appropriate HR Adviser, the member of staff must be informed immediately in writing of the decision taken by the Investigating Officer.

8.12 Where the outcome is not to refer the matter to a disciplinary hearing, there should be a meeting with the employee to advise them of this decision. The employee may be accompanied or represented by a trade union representative or a colleague of his/her choice.

8.13 If the employee has been suspended and it is not intended to proceed with any form of disciplinary action, the suspension should be lifted immediately by the Headteacher/Governing Body. The Headteacher/Chair of Governors should meet the member of staff to discuss the member of staff's return to work.

8.14 No record of the investigation will be kept on the member of staff's personal file. However it would be kept in a confidential file within LCC HR Schools Team confidential files, in accordance with the periods specified under the Data Protection Act. Where a formal sanction has been issued, a record should be kept on the employee's personal file until such time as the warning has expired. However, records of a 'child protection' nature MUST be retained at least until the person has reached normal retirement age or for a period of 10 years from the date of the allegation(s) if that is longer (see **Appendix 4**, 17.1 'Records' within the Guidance document).

8.15 Other than in the event of dismissal, the head teacher/nominated person should ensure the opportunity for informal counselling. This could be used to give appropriate guidance, support and reassurance and to help rebuild, where necessary a member of staff's confidence. There may also be a need for specific guidance and sympathetic consideration may need to be given to other employment options, in consultation with LCC HR Schools Team

8.16 If disciplinary action is to be taken, the Investigating Officer's report will be made available to all parties in the bundle of papers, prior to the disciplinary hearing.

The Investigating Officer should ensure the potential outcome of gross misconduct and possible dismissal is communicated throughout the process, in all formal letters to the member of staff.

9. DISCIPLINARY HEARING

9.1 Notification of a disciplinary hearing

9.1.1 The Investigating Officer will be responsible for the administrative arrangements for the hearing. He/she will advise the employee verbally of the decision to conduct a disciplinary hearing, and confirm this in writing within three working days. The employee will be given at least seven clear working days notice, in writing, of the arrangements for the hearing, but not more than 20 working days under normal circumstances

9.1.2 The investigating officer will arrange a date for the hearing, and agree with the Headteacher/Governing Body who is to present the case, whether it be the investigating officer or in exceptional circumstances another senior member of the school's staff or a HR Adviser. Where the hearing date is postponed at the request of the employee or his/her representative, only 1 further hearing date will be arranged. In the event that the employee is unable to attend the second date arranged, the Headteacher/governing body may go ahead with the hearing in the employees absence, based on the evidence available.

9.1.3 The letter inviting the employee to the hearing must state the nature of the allegations and if they involve documents that will be used in evidence, these should be dispatched to the employee with the letter. A copy of the investigating officer's report must also be made available to all parties. The employee must be advised that if she/he wishes to produce any document in evidence or references/ testimonials, then these should be forwarded to the investigating officer at least three working days in advance of the hearing. If witnesses are to be called by either party, their names and status must be made available at the same time as any documentary evidence.

9.1.4 The employee must be advised that she/he has the right to be represented by a trade union official or other person (not acting in a legal capacity).

9.2 **Disciplinary hearing before the headteacher**

9.2.1 The disciplinary hearing should be conducted by the Headteacher in the manner described in **Appendix 3**

9.2.2 **Disciplinary action available to the Headteacher**

(See Appendix 5 Guidance Notes, Paragraph 2, which indicates the factors that should be taken into account when deciding what action is appropriate)

Following a disciplinary hearing the Headteacher may:

- Take no action
- Issue a verbal warning

- Issue a formal written warning to the employee
- Issue a final written warning to the employee
- Dismissal – incases where Headteacher has delegated powers (see 8.10b)

9.2.3 **Implementing the action**

The Headteacher wherever possible should advise the employee verbally and confirm his/her decision in writing not later than three working days after the hearing. The written notification should:

- state the precise nature of the misconduct
- specify the disciplinary action being taken
- state, if appropriate, the period of time given for improvement which is expected.
- indicate the likely consequences of further misconduct
- inform the employee of his/her right to appeal within ten working days of receiving the written decision of the Headteacher.
- state to whom the appeal should be made

Where a decision has been taken to recommend dismissal of an employee, and the Headteacher is satisfied that dismissal is justified, the Headteacher may consider, in consultation with the employee, whether a transfer to an alternative post or job, at the same or lower grade within the school, could properly be offered as an alternative to dismissal.

In the event of no further actions being taken then all record of the disciplinary hearing shall be removed from the member of staff's file.

9.3 Disciplinary hearing before a governing body

9.3.1 The HR Adviser to the Governors will arrange a hearing before a panel of governors and will be responsible for all the necessary administration. The hearing will be conducted in accordance with the procedures outlined in **Appendix 3**, Paragraph 2.0.

The Head of HR or his/her representative must be informed of the date of the hearing and has the right to be present.

9.3.2 Disciplinary action available to the governing body

(See Appendix 5 Guidance Notes, Paragraph 2 which indicates the factors that should be taken into account when deciding what action is appropriate.)

Following the disciplinary hearing, the Governors panel may:

- take no action
- Issue a verbal warning
- Issue a formal written warning to the employee
- Issue a final written warning to the employee
- Dismissal - Notify LCC HR of their determination that an employee should cease to work at the school (in cases where a HR Adviser is not present).

The employee shall be given such notice as required under their contract to terminate that contract, except in cases of gross misconduct where the contract maybe terminated without notice

9.3.3 **Implementing the action**

Wherever possible the panel of Governors will convey their decision verbally and the HR Adviser to the panel will advise the employee in writing of the panels decision, not later than three working days after the hearing. The written notification should:

- state the precise nature of the misconduct
- specify the disciplinary action being taken
- state, if appropriate, the period of time given for improvement which is expected
- indicate the likely consequences of further misconduct
- inform the employee of his/her right to appeal within ten working days of receiving the written decision of the Governing Body
- state to whom the appeal should be made

Where a decision has been taken to recommend dismissal of an employee, and the Governing Body is satisfied that dismissal is justified, the Governing Body may consider, in consultation with the employee, whether a transfer to an alternative post or job, at the same or lower grade within the school, could properly be offered as an alternative to dismissal.

In the event of no further actions being taken then all record of the disciplinary hearing will be removed from the member of staff's file.

10. APPEALS AGAINST DISCIPLINARY ACTION

See Appendix 3 for further guidance.

10.1 Employees have the right of appeal against disciplinary action. The appellant must set out the specific grounds for the appeal by completing a disciplinary appeals form. The appellant and his/her representative can, in conjunction with the person presenting the school's case, seek to agree the information needed for the appeal. This will enable the Appeals Panel to conduct the appeal on the particular grounds that the appeal has been made or by the way of a complete rehearing. (see Appendix 3). In cases where there were multiple allegations at the Disciplinary Hearing, and some were dismissed and some found proven, the Appeals Panel will rehear only those allegations that were found proven.

10.2 A panel composed of three members of the Governing Body will hear an appeal against disciplinary action.

10.3 The appeal should be made in writing to the HR Adviser to the hearing within ten working days of receipt of the written decision

10.4 A different panel of the same Governing Body will hear an appeal against action taken by a disciplinary panel of the Governing Body. The number of Governors shall be the same for both panels.

10.5 The Headteacher, or Chair of the original Panel, as appropriate may be invited by either side to attend the appeal hearing as a witness.

10.6 The notes of the previous disciplinary hearing should be transcribed and made available to all parties together with any other new evidence and/or new witnesses , within 5 working days of the appeal hearing.

10.7 In addition to the above the appeals panel will receive copies of all the documents submitted at the disciplinary hearing.

10.8 **Action available to an appeals body**

The Appeals Body may decide to:

- confirm the original decision, or
- uphold the appeal, or
- substitute a lesser penalty.

10.9 **Notification of decisions made by appeals body**

Wherever possible the Appeals Body will convey their decision verbally and the HR Adviser to the panel will be responsible for conveying their decision in writing to the employee. These decisions will be conveyed in writing within three working days.

11.0 RECORD OF WARNINGS

11.1 A copy of the warning will be held on the personal file of the employee concerned for:

- Verbal warning - 3 months
- Written warning - 6 months
- Final written warning - 12 months

11.2 Warnings will cease to be `live' following the specified period of satisfactory conduct and will not be referred to for future disciplinary purposes.

11.3 In cases of gross misconduct where a final warning has been issued, and in the opinion of the Headteacher or Governors Disciplinary Panel, the misconduct is so serious that it cannot be disregarded for future disciplinary or managerial purposes, then the final warning shall remain live for a longer period, and the employee shall be so advised. This facility shall only apply where the welfare, safety of a pupil, member of the public or fellow member of staff might be placed at risk. In such cases the employee may appeal to the Appeals Panel against the warning and/or against the decision for the warning to remain live.

11.4 If an employee is dismissed or resigns before the disciplinary process is completed in circumstances where they would have been considered for dismissal, the Headteacher / nominated person must inform the member of staff about the employers' statutory duty to report the case to the Department for Education and Employment Teachers' Misconduct Section and/or any other relevant bodies.