NYES | Human Resources

Disciplinary Policy & Procedure

Brooklands School

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1. Introduction

1.1 This policy is intended to be used in conjunction with the associated guidance, the Code of Conduct, the Hearings and Appeals policy, and where appropriate, applicable guidance relating to managing allegations against staff. The Governing Body have adopted this policy as the statement of their commitment, and their processes, regarding Disciplinary matters within school. This policy and the accompanying guidance complies with the ACAS Code of Practice for Disciplinary and Grievance.

1.2 This school is committed to encouraging all employees to achieve and maintain high standards of conduct. This policy promotes best practice and is implemented with the aim of supporting all employees to achieve and maintain the required standards of conduct, and to ensure appropriate treatment for all when addressing matters of discipline.

2. Scope

2.1 This policy applies to all employees of the school, with the exception of employees within their probationary period.

2.2 The school is responsible for undertaking any process relating to disciplinary matters without unreasonable delay, and for reaching conclusions within a reasonable timescale. Additionally, the school is responsible for providing reasonable and appropriate support for employees' wellbeing during disciplinary matters.

2.3 School leaders are responsible for taking informal action outside of the disciplinary policy as appropriate, and for communicating at appropriate and regular intervals with the employee during any disciplinary process.

2.4 Employees are responsible for participating and co-operating with this policy and any disciplinary process as required**.**

2.5 In line with Sections 35 and 36 of the Education Act 2002 and the School Staffing (England) Regulations 2009, Governing Bodies have the right to delegate initial staff dismissal decisions to the Headteacher or to a group of governors, either with or without the Headteacher. Staff dismissal decisions relating to a Headteacher should be delegated to a group of governors. In cases which may result in dismissal with or without notice, a representative of The Director of Children and Young People's Service is entitled to attend.

2.6 Where disciplinary decisions are delegated to the Headteacher, and where dismissal is not a consideration, the Governing Body may extend this delegation to a Deputy Headteacher or Assistant Headteacher .

2.7 If a concern, issue or grievance is raised regarding any aspect of this policy and the accompanying guidance it should be dealt with as promptly as possible within this process. Matters should only be referred to be dealt with through the Resolving Issues at Work Procedure where they are not related to the application of this policy for that individual case.

2.8 Copies of records relating to disciplinary matters will be retained on the employee's file in line with GDPR.

2.9 In certain circumstances the school may deem it appropriate to engage and commission independent and or external persons/bodies to provide services or advice relating to the implementation of this policy and procedure.

3. Procedure

3.1 Informal action

3.2 Formal disciplinary action should only be considered in respect of matters of misconduct where normal line management action has either failed to achieve the required standards or would be inappropriate in the circumstances. Managers should take timely informal action where standards of employee conduct give cause for concern, drawing any deficiencies to the attention of the employee and indicating that formal disciplinary action will be considered if standards do not improve. Such action does not constitute a formal disciplinary sanction, but may be referred to as management advice, or informal conduct discussions. Managers should make an appropriate record of such conversations and provide a copy to the employee, but clarifying the status of the discussion as informal.

3.3 Investigation

3.4 Where the initial facts suggest that formal disciplinary action may be necessary, an Investigator will be appointed to gather evidence. The employee will be informed that an investigation is to be undertaken. An Investigator may take no part in the decision making process.

3.5 Right to be accompanied

3.6 Employees have the legal right to be accompanied by a Trade Union Representative or work colleague at Disciplinary Hearings and Appeal Hearings. The school extends this right to other formal meetings of the Disciplinary Procedure e.g. investigatory interviews. The accompanying Trade Union Representative or work colleague has a statutory right to address the hearing or meeting but no statutory right to answer questions on the employee's behalf.

3.7 Employees or their representatives must not make any electronic recordings of any meetings or hearings conducted under this procedure.

3.8 Child protection/criminal offences/financial irregularity cases

3.9 Where child protection concerns and/or criminal offences are suspected, those procedures will normally take precedence. A disciplinary investigation may be delayed when matters are being considered under statutory/criminal procedures. Where matters of financial irregularity are suspected, or other matters within an internal audit remit, Veritau on behalf of North Yorkshire Council must be informed, who may undertake their own investigation.

3.10 Precautionary action

3.11 In some cases it may be necessary to take precautionary action, such as to redeploy the employee temporarily or to suspend them from duty, whilst an investigation takes place. Such action is not prejudicial in any way to the outcome of the investigation, and the employee will receive their normal pay during any period of precautionary action.

3.12 Precautionary action should be the last resort but may be appropriate where: the allegation(s) constitute potential gross misconduct

- where the employee continuing their work may hamper the investigation
- where they may commit further misconduct, or
- where they, or other people, may be put at risk by them remaining at work.

3.13 Any decision to take precautionary action should only be made with full consultation with the Chair of Governors and NYES HR.

3.14 Any precautionary action taken will be kept under periodic review during the investigation as a consequence of the evidence gathered, and will be kept to the minimum necessary.

3.15 Outcome of investigation

3.16 Following the conclusion of any investigation, an appointed school leader will consider the facts and evidence obtained, and decide on appropriate next steps. At this stage, they will make a decision whether no further action is required, whether further investigation is necessary or whether a Disciplinary Hearing needs to be convened to consider the allegations, in order to make a decision regarding disciplinary sanction/s. The employee will be informed in writing of the decision taken at this stage.

3.17 In certain circumstances it may be appropriate to issue a disciplinary sanction outside of a disciplinary hearing but only where this has been requested by the employee and there is genuine mutual agreement. This should not be regarded as normal practice and should not be considered where there is a safeguarding concern, or where the allegation/s are potentially deemed to be gross misconduct. This situation can arise when, for example, an employee is made aware of the results of a formal investigation, agrees with the findings and requests to accept a formal warning without having the case heard by a Disciplinary Panel hearing.

3.18 **Disciplinary Hearing**

3.19 No employee will be dismissed for a first breach of conduct except in the case of gross misconduct when it may be appropriate to dismiss without notice. A fair process should always be followed in line with the policy and procedure, and associated guidance. Examples of actions that could potentially amount to gross misconduct are outlined within this policy.

3.20 Where a disciplinary hearing is to be convened, reasonable written notice of the date of the hearing will be given (a minimum 10 working days). The letter will confirm the allegations to be heard, the right to be accompanied, the names of the Panel members and the names of any witnesses to be called. Working days only includes days when school would normally be open in term time. All parties must

submit full documentary evidence to be presented at the hearing together with details of any witnesses they wish to call as soon as possible and no later than 5 working days prior to the Hearing.

3.21 The purpose of the Disciplinary Hearing is to establish whether there are reasonable grounds that the employee has committed the alleged misconduct, and to decide on the appropriate disciplinary sanctions if applicable.

3.22 Disciplinary sanctions

3.33 Written warning: If the employees misconduct is sufficiently serious a written warning can be given. The sanction will normally be disregarded for disciplinary purposes after twelve months satisfactory conduct.

3.34 Final written warning: If the employee has committed repeated misconduct, or the misconduct is sufficiently serious to justify only one written warning but not serious enough to justify dismissal, a final written warning can be given. The warning will normally be disregarded for disciplinary purposes after fifteen months satisfactory conduct.

3.35 Dismissal/action short of dismissal: If the employee commits repeated misconduct whilst within the period of a final written warning, or they commit gross misconduct, it may be appropriate to dismiss them from employment. In the case of gross misconduct, dismissal will normally be without notice (no payment in lieu of notice will be made). If there are exceptional mitigating circumstances the Panel may decide to take action short of dismissal where, otherwise, dismissal would occur. Such action may be to apply a final written warning, possibly valid for future disciplinary purposes for an extended period above the normal 15 month period. In exceptional circumstances (i.e. where no repeat of an act of misconduct could ever be tolerated) a 'life of employment' final written warning may be issued. Action short of dismissal may also include a demotion and/ or transfer to a different role. A variation to contract cannot be imposed or implemented without agreement, and therefore any action short of dismissal considered that results in a change of contract for the employee would need to be proposed to the employee for their consideration and written agreement (where applicable).

3.36 Disciplinary sanctions and impact on pay progression

3.37 Support Staff: When any formal disciplinary sanction is issued it will result in the loss of any pay progression while the warning is live or, for staff already on the top spinal column point of the pay band or qualification bar, their salary will be reduced by one spinal column point only with effect from the following April. The loss or withholding pay progression will not span two financial years.

3.38 Teaching Staff: Where any formal disciplinary sanction is applied, and the school has adopted disciplinary as performance criteria under the school pay policy, there will be no entitlement to pay progression at the next review point.

4. Appeals

4.1 Employees have the right of appeal against any formal disciplinary sanction. They must give written notice of their decision to appeal within 10 working days of receipt of the letter confirming the sanction and set out the grounds of appeal.

4.2 Appeals will be heard at the earliest opportunity and will be heard by an Appeals Panel.

4.3 All parties must submit full documentary evidence to be presented at the hearing together with details of any witnesses they wish to call as soon as possible and no later than 5 working days prior to the Appeal Hearing.

4.4 The focus of the Appeal Hearing should be the basis of the decision and sanction imposed by the Disciplinary Panel, in addition to the specific grounds of appeal. This will not under normal circumstances require a full re-hearing of the case and consideration of all of the original evidence. The remit of the Appeal Panel is to satisfy itself that the decision taken by the Disciplinary Panel was reasonable in the circumstances and that due process was followed.

4.5 The outcome of the Appeal Hearing must be confirmed in writing, normally within 5 working days of the date of the hearing.

5. Referrals to external agencies

5.1 Where an employee is dismissed consideration must be given as to whether the matter should be reported to any professional bodies which require the reporting of misconduct issues e.g. Disclosure and Barring Service (DBS), Teaching Regulation Agency. Advice should be sought from the NYES HR.

6. Resignations

6.1 There may be cases in which an employee offers to resign or resigns prior to a Disciplinary Hearing. In these circumstances it should be made clear to the employee that the Disciplinary Hearing may still go ahead, to ensure that:

- The school complies with any statutory requirement to conclude the process as outlined in Keeping Children Safe in Education
- the school can report the outcome to any professional bodies which require the reporting of misconduct issues in such circumstances.
  The school can refer to any outcome of the process in any references provided as appropriate.

7. Employee Support

7.1 The employee should be given details of any support available to them during the disciplinary process, including any employee assistance scheme. Where allegation/s relate to safeguarding matters and are also being managed in line with the NYSCP procedures for managing allegations, the NYSCP leaflet regarding such allegations should be provided.

8. Unavailability and Sickness Absence

8.1 If an employee is absent due to sickness during the disciplinary process, the relevant school leader should determine the nature and likely duration of the absence. Advice may be sought from Occupational Health regarding the employee's ability to take part in the process.

8.2 Where an employee is suspended and subsequently notifies their manager that they are unwell, normal notification/medical certification requirements will apply. Such absence will count against the employee's occupational sick pay entitlement and their absence record.

8.3 Reasonable time should be allowed for the employee to recover. However, if it is likely that the absence will be prolonged, with the employee continuing to be unfit to take part in an investigation/hearing, the disciplinary process may proceed in their absence. The employee's representative may give evidence and state the case for the employee. The employee may provide a written statement.

9. Determining whether allegations should be deemed as misconduct or gross misconduct

9.1 Misconduct

9.2 Misconduct tends to cover minor misdemeanours. Behaviour like this would not warrant dismissal for a first offence but may lead to a formal written warning. Continued misconduct of this nature could result in dismissal, subject to the proper procedures being followed.

9.3 Examples of misconduct may include:

- Dishonesty
- Failure to follow a reasonable instruction
- Unauthorised absence and/or persistent poor time keeping
- Inappropriate behaviour including bullying and/or harassment
- Negligence in carrying out duties in accordance with relevant policies and procedures
- Misuse of the school's facilities and assets (electronic communications, phones, internet, vehicles, data etc.)
- Minor breaches of the school's policies and procedures
- Personal misconduct occurring outside of the workplace, which is deemed sufficiently serious to affect an employee's position at work
- Failure to abide by professional codes of conduct or standards

9.4 Gross misconduct

9.5 Gross misconduct is much more serious and can take many forms, ranging from offences which jeopardise the functioning of the school, or safety and wellbeing of employees, pupils and/or the wider school community.

9.6 Incidences described below would normally result in dismissal without notice. Action short of dismissal may be taken in the event of exceptional mitigating circumstances.

9.7 Examples of gross misconduct include:

- Abuse of position of trust or actions that demonstrate unsuitability to work with children
- Verbal, physical or indecent assault in the workplace to fellow employees or other people
- Discrimination, bullying or harassment of a serious, wilful and/or sustained nature
- Theft or attempted theft, fraud or fraudulent falsification of accounts, or other official records.
- Deliberate damage to the property of the school or that of any other individual
- Serious breaches of the school's policies and procedures
- Serious negligence or wilful failure to comply with legal requirements of the school or relevant policies and procedures
- Serious negligence which causes or might have caused unacceptable loss, damage or injury.
- Behaviour which has brought the school into serious disrepute.
- Serious misuse of the school's facilities and assets including accessing pornographic internet sites or sending and receiving offensive or obscene material.
- Personal misconduct occurring outside of the workplace, including actions which result in the employee being unable to conduct, or unsuitable for, their type of work.
- Serious breach of professional codes of conduct or standards.
- Serious and sustained insubordination.
- Being incapable of work, or of working safely due to the influence of alcohol or drugs - unless the capability and/or occupational health procedures are deemed to apply.
- Serious breaches of confidentiality - unless subject to the protection afforded by the Whistleblowing Policy or Public Interest (Disclosure) Act 1998.
- Serious or multiple acts of dishonesty

9.8 Please note, these lists are not exhaustive. They are provided to give examples of the types of behaviour that could be regarded as misconduct and gross misconduct.

9.9 When deciding if an allegation should be considered as misconduct or gross misconduct, consideration must be given as to whether the alleged misconduct is so bad that it may destroy the employer/employee relationship and may merit dismissal without notice or pay in lieu of notice, even where any individual act would not constitute gross misconduct. The decision must be reasonable and fair in the circumstances.

Appendix 1: Issuing a disciplinary sanction without disciplinary hearing

1. In certain circumstances it may be appropriate to implement disciplinary action outside of a disciplinary hearing but only where this has been initiated and requested by the employee and where there is genuine mutual agreement. This should not be regarded as normal practice and should not be considered where there is a safeguarding concern, where the allegation/s are potentially deemed to be gross misconduct, or if a sanction of dismissal is within the range of reasonable sanctions available.

2. This situation can arise when, for example, an employee is made aware of the results of a formal investigation, agrees with the findings and / or accepts the allegations, and requests to accept a formal warning without going to panel for a disciplinary hearing. Any request for consideration of the issuing a sanction outside of a hearing should be made to the Commissioning Manager. It is essential that due process is followed in accordance with these guidelines to avoid accusations of unfairness or undue pressure, subsequent misunderstandings or appeals.

3. It is management's responsibility to establish the facts of any case before consideration of a sanction and therefore a disciplinary investigation will be required and the evidence assembled in the usual way.

4. Upon receiving a request from an employee (or their chosen representative), the Commissioning Manager should consider whether it is appropriate to consider issuing a disciplinary sanction in absence of a disciplinary hearing.

5. Where this is deemed appropriate, a meeting must be arranged between the employee and a relevant school leader with the authority to issue a sanction (in line with the scheme of delegation) at which the employee can hear a full explanation of the evidence and at which they can comment and question the facts of the case and level of penalty proposed. If the employee has admitted to the misconduct a summary of the evidence should suffice.

6. The employee must be advised of their rights to a formal hearing and be given a copy of the formal procedure with explanation as necessary. They should be asked to confirm their understanding.

7. The employee must be given the right and encouraged to be accompanied by a chosen companion and be given adequate opportunity to take separate advice before the meeting, in any adjournment and/or following the meeting or to seek independent advice within a reasonable period of time following the meeting.

8. The Commissioning Manager should arrange to be accompanied by another manager or HR representative who will act as a witness to what is said and agreed.

9. If there is agreement to the proposed sanction, the Commissioning Manager must confirm in writing to the employee the facts of the case and the process that has been followed including the date of the meeting, those present, the information and advice given about the employee's rights under the formal procedure, their understanding of these and the proposed sanction and its duration, and any impact on pay progression.

10. The employee must be given the opportunity to consider the letter and take further independent advice before formally confirming their agreement in writing to that effect. A maximum period of 10 working days should be allowed for further advice and consideration.

11. Copies of the agreement signed by both parties should be retained on the employee's personal file. The agreed sanction may then be taken into account in any subsequent disciplinary process up to the time limits specified in the formal procedure. The warning period will begin from the date the employee signs the agreement and will have an effect on pay progression in line with the policy, procedure and guidance.

12. Although unlikely to be required after agreement has been reached, the employee has the right of appeal against a disciplinary sanction issued under this procedure. In such cases the employee must write stating their grounds of appeal within 10 working days of receipt of the sanction letter. In such cases the Hearings and Appeals Procedure will be followed.