





# Disciplinary Procedure – School-based Employees

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# Disciplinary Procedure – School-based Employees

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## **1 Purpose**

- 1.1 This procedure is designed to help and encourage all employees to achieve and maintain appropriate standards of conduct, resolve incidents of misconduct within the workforce and ensure prompt, fair and consistent treatment. It supersedes all local protocols relating to the staff to which it applies. The policy has been drafted in line with the ACAS code of practice and is intended to support corrective actions, rather than punishment, for employees.
- 1.2 All issues under this policy must be dealt with speedily, with no unreasonable delays to meetings, decisions or appeals. Reasonable advance notice must be given for any planned meetings and adequate time for preparation should be afforded to the employee.

## **2 Scope of the procedure**

- 2.1 This procedure applies to all Leicester City Council school-based employees. It also applies to all teachers employed directly by Leicester City Council, subject to appropriate amendments being made in the context of management responsibilities.

### **3. Management responsibility for disciplinary action**

- 3.1 In this procedure the term 'manager' means the Headteacher or, where appropriate, another manager nominated by the Headteacher or, where the employee is the Headteacher, the governing body or chair of governors.

### **4. Informal Action**

- 4.1 A manager should address minor misconduct by taking informal action, such as giving an informal reprimand to the employee. A note may be taken which will be logged onto the employee's file. Notes taken during informal action will be discounted for the purposes of formal action/sanction under this procedure.
- 4.2 If these actions do not bring about an improvement in conduct, or the manager judges that the alleged misconduct is more than minor, the manager should take formal action.

### **5. Formal Action**

#### **5.1 Suspension/Temporary Transfer during Investigation**

- 5.1.1 At any point in cases of alleged misconduct the Headteacher, or an appropriate member of the governing body, may suspend or temporarily transfer the employee on full pay if, after careful consideration, they judge this appropriate. These are not disciplinary sanctions but neutral acts, intended to protect the interests of both employer and employees.
- 5.1.2 All decisions to suspend members of staff in maintained schools must be notified to the local authority Human Resources Department.
- 5.1.3 The period of suspension will be kept to a minimum. Suspension will be subject to ongoing review by the Headteacher and to appropriate periodic review by the local authority's Head of Human Resources.
- 5.1.4 Headteachers will be responsible for lifting a suspension, as authorised by a representative of the governing body, as appropriate.

#### **5.2 The Investigation**

- 5.2.1 The investigator, who will be identified by the Headteacher or, where the employee is the Headteacher, by the governing body, will gather and evaluate all information relevant to the facts of the alleged misconduct. This may include interview evidence from witnesses, documents, and other material evidence. Investigations should be proportionate to the misconduct that has occurred and should take account of any admissions given by employees.
- 5.2.2 The investigator may meet with the employee in order to understand their account of the alleged misconduct. The employee will have the right to be accompanied by a trade union representative or work colleague at this meeting. However, if the meeting is delayed several times at the instigation of the

employee, the investigator may give consideration to withdrawing the right to be accompanied if this would mean that the investigation would be unreasonably delayed.

### **5.3 Representation**

- 5.3.1 The employee has the right to be represented by a work colleague or trade union representative at hearings held under this procedure. The employee has no right to legal representation unless such representation is permitted by law.
- 5.3.2 The representative should be permitted to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed and confer with the employee during the hearing. The representative does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the effective hearing of the case.

### **5.4 Formal Hearing**

- 5.4.1 If, on conclusion of the investigation, the Headteacher (or, where the employee is the Headteacher, the Chair of Governors) concludes that there is a case to answer, a disciplinary hearing will be arranged. The case will be heard by the governor's disciplinary panel or may be delegated to the Headteacher and one governor if deemed appropriate and where the Headteacher was not acting as investigator. If the decision is that there is no case to answer, employees must be notified as soon as is practicable.
- 5.4.2 The employee will be informed of the date and time of the disciplinary hearing and will be provided with full details of the allegations against them together with any evidence to be relied on at the disciplinary hearing, including any witness evidence, not less than ten working days prior to the hearing. The employee must provide the clerk to governors with details of any witnesses and evidence they wish to rely on at a reasonable time prior to the hearing.
- 5.4.3 At the hearing the chair of the panel will resolve any procedural issues raised by either side. The investigator will present their case, evidence, and witnesses, and take questions from the employee and the panel. The employee will have the right to respond, by presenting their case, evidence, and witnesses, and taking questions from the Investigator and the panel.
- 5.4.4 The employee, and anyone accompanying them, must not make electronic recordings of any hearing conducted under this procedure unless as a reasonable adjustment under the Equality Act 2010, in which case advance notification should be given by the employee. In any event, a note of any hearings under this procedure will be taken.
- 5.4.5 If the employee fails to attend a disciplinary hearing, due consideration should be given to the reasons for this. If an employee unreasonably fails to attend a hearing, or persistently fails to attend a meeting, a decision may be made in their

absence based upon the available evidence. Employees must still be offered the right to appeal this decision.

## **5.5 Fast-track action**

- 5.5.1 If the employee admits to their misconduct the Headteacher can progress the case to an outcome without the need for a hearing, with the agreement of an appropriate member of the governing body, if appropriate, and the employee. In such cases, however, a full investigation must be carried out and the employee must be allowed to account for their conduct and put forward any mitigating factors.
- 5.5.2 Before proceeding to a fast-track process, the employee must be satisfied that they understand the process and the potential implications of accepting a sanction at this stage.
- 5.5.3 There are certain cases where it would not be appropriate to apply a fast-track process and, in these cases, this policy must be followed in full. Those circumstances are where the case is potential gross misconduct or in cases of repeat misconduct where the employee has already received a final written warning.
- 5.5.4 Under no circumstances should the fast-track process be used to negotiate a lesser sanction for the employee.
- 5.5.5 Upon being given a sanction, the employee still has the right to appeal, as set out in section 7 of this policy
- 5.5.6 At any point during the fast-track process the Headteacher has the right to refer the case to a full hearing. In exceptional circumstances, the Headteacher may also refuse to allow the case to be fast-tracked.

## **6. Outcomes**

### **6.1 Sanctions**

- 6.1.1 The panel will evaluate all information presented, and is empowered to determine an outcome, as follows:
- a) Disciplinary action is not justified, or
  - b) Misconduct has been proved. The panel will then apply one of the following:
    - First written warning (lifespan six months)
    - Final written warning (lifespan one year)
    - Dismissal
- 6.1.2 Warnings will only be taken into account in relation to a further disciplinary sanction where they remain live. In all other circumstances, previous warnings will only be considered for the purposes of determining the sanction where they

are evidence of similar conduct, for example in relation to mitigation put forward by the employee.

6.1.4 The panel may make recommendations to help the employee re-establish acceptable behaviour or performance standards, either during the hearing or in writing after the hearing. The employee will be informed of the outcome in writing, as soon as is reasonably practicable.

6.1.5 Where the employee is dismissed the council will confirm the dismissal within 14 days of being notified in accordance with the School Staffing (England) Regulations 2009 (as amended from time to time).

## **6.2 Gross misconduct and summary dismissal**

6.2.1 Gross misconduct is generally defined as misconduct so serious that it justifies dismissal without warning. Acts which constitute gross misconduct will be very serious and will be determined by the panel in the light of the circumstances of the case.

6.2.2 The following list, which cannot be considered exhaustive, provides some examples of actions which will normally be regarded as gross misconduct:

- (a) serious theft or fraud
- (b) physical violence
- (c) bullying and/or harassment (including on the grounds of a protected characteristic, i.e., age, disability, race, gender, gender identity, gender reassignment, sexual orientation, marriage and civil partnership, pregnancy and maternity, religion, or belief)
- (d) harming, or placing at risk of harm, a vulnerable person
- (e) deliberate and serious damage to property
- (f) serious misuse of the school's property or name
- (g) deliberately accessing internet sites containing pornographic, offensive, discriminatory, illegal, or obscene material
- (h) serious insubordination
- (i) unlawful discrimination
- (j) bringing the school or the City Council into serious disrepute
- (k) serious incapability at work caused by alcohol or illegal drugs
- (l) causing loss, damage, or injury through serious negligence
- (m) serious breach of health and safety rules
- (n) serious breach of confidence
- (o) serious breaches of the Code of Conduct (support staff only)

6.2.3 If the panel, at the end of the full disciplinary procedure, is satisfied that the employee has committed an act of gross misconduct, the employee will normally be dismissed without warning and without notice or payment in lieu of notice.

## **7. Appeal**

- 7.1 An employee has the right of appeal against a first written warning, a final written warning or dismissal. The employee should send written grounds of appeal to the person as notified in the disciplinary outcome letter within 10 working days. The appeal will be heard by an appeal panel of governors with no prior involvement in the case. An HR Adviser will also be present.

The appeal panel will have the power to:

- (a) uphold the sanction
  - (b) overturn the sanction
  - (c) impose a lesser sanction
- 7.2 Appeals submitted beyond the 10-working daytime limit will only be heard in exceptional circumstances.
- 7.3 The employee will be informed of the outcome of their appeal in writing.

## **8 Employee does not or cannot attend hearing**

- 8.1 Where the employee is unable or unwilling to attend a hearing or investigation meeting under this procedure without good cause, the panel may decide to make a decision on the outcome, or whether there is a case to answer, based on the evidence available, and in the absence of the employee.
- 8.2 If the employee becomes ill and is unable to attend either an investigation, or disciplinary or appeal hearing, they must provide a doctor's certificate for illness beyond the self-certification period.
- 8.3 If the illness is of short duration, the hearing may be arranged for a later date. Where the illness may become long term, the employee will be referred to the council's Occupational Health Service to ascertain whether or not they are fit enough to attend a hearing. The employee will be advised that the hearing may proceed in their absence. They will be told that they can make written representation directly themselves, or through their representative if their representative agrees to this.
- 8.4 Any grievance raised by an employee who is subject to disciplinary action will either be dealt with under this procedure, where it relates to the disciplinary issues or the procedure itself; or otherwise it will be addressed by the grievance procedure, in which case disciplinary proceedings need not be stopped whilst the grievance is heard.

## **9 Action against a Trade Union representative**

- 9.1 Where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is strongly recommended that the matter is discussed at an early stage with an official employed by the union, after obtaining the employee's agreement.



## 10. Criminal charges or convictions

10.1 Where employee conduct is the subject of a police investigation, or where an employee has been charged with a criminal offence, the investigator will liaise with the police and Legal Services to ascertain whether there are any reasons that the disciplinary process should not be commenced by the school. The investigator will make an informed decision as to whether or not this procedure will be progressed. If the investigator determines that it would not be appropriate to progress with the investigation, this procedure will not apply if the police investigation or criminal charges are likely to result in significant delay in the school being able to follow this procedure. In these circumstances a decision regarding the employee conduct may be based on the available evidence.

## 11. Records

11.1 The clerk to governors will make a written record of the case, which should be placed on the employee's file. The file should include:

- (a) the allegation against the employee
- (b) the employee's defence, findings made, and actions taken
- (c) the reason for decisions made and actions taken
- (d) whether an appeal was lodged
- (e) the outcome of the appeal
- (f) any grievances raised during the disciplinary procedure, which relate to the disciplinary action
- (g) notes of any formal meetings.

11.2 In cases with safeguarding implications, records must be sufficient to meet the formal guidelines for such cases.

11.3 The panel will ensure that a formal record of the hearing is made and will seek the employee's agreement that it presents a true and accurate record of what was said and agreed at the hearing. In the absence of the employee's agreement, this will be noted on the record of the hearing.

## 12 Review

12.1 This policy will be reviewed and updated in line with relevant legislation, case law and emerging good practice.

## Document Control

Implementation Date	Author	Summary of Changes	Date to be reviewed
Agreed 7.11.2014 Individual school implementation dates subject to local determination	Jo Poynton	Revised procedure	As required.

22/09/2015	Kirsty Haridas	Changes to paragraph 6.2.2 (c) to specify inclusion of protected characteristics.	
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