



Disciplinary Procedure (LA)

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Purpose	This procedure applies to all permanent, fixed term and temporary school/academy based employees. The purpose being to improve discipline and have suitable rules and procedures in place.		

Document accessibility

If you would like this information in another language or format please speak to your Headteacher/Principal.

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Walsall Council

1.0 Introduction

- 1.1 This procedure applies to all permanent, fixed term and temporary school/academy based employees, it does not apply to contractors, external consultants or agency staff.
- 1.2 It is important that suitable rules and procedures are in place within schools and academies which will promote fairness and consistency in the treatment of individual employees and which reflect both the relevant policy on equal opportunities and legislation on the avoidance of discrimination.
- 1.3 This procedure is primarily concerned with improving discipline, not with applying disciplinary penalties. It aims for an outcome which is fair and constructive in pursuit of the delivery of high quality education.
- 1.4 The procedure aims to ensure that any employee who is subject to action under this procedure is dealt with as speedily as practicable, in a fair and effective manner.
- 1.5 A copy of the procedure is available to all staff and any employee who becomes subject to this procedure shall be provided with a copy.
- 1.6 Any employee who is subject to this procedure should be advised that they have the right to be accompanied/represented throughout the procedure by a work colleague or a representative of a trade union/professional association.
- 1.7 Advice may be sought from your human resources advisor at any stage in this procedure and it is recommended that advice is sought prior to any action being taken in accordance with the formal procedure.
- 1.8 The procedure has been implemented following consultation with the Joint Negotiating Committee for Schools and Academies (Schools and Academies JNC) (including representatives from the recognised school and academy unions) and may be amended from time following further consultation.

2. Scope of Procedure

- 2.1 This Disciplinary Procedure is separate and distinct from Competence and Sickness Absence Management Procedures. This procedure should be used where staff have willfully or deliberately refused to perform their duties in a satisfactory manner, or have committed an act of misconduct. Poor performance due to a lack of skill or ability and suspension/dismissal on health grounds are not regarded as disciplinary matters.
- 2.2 The procedure will be initiated by the Headteacher/Principal. If the Headteacher/Principal is subject to this procedure, then the role normally undertaken by them will be carried out by a nominated governor (usually the Chair of Governors), advised by an appropriate representative. These distinctions should be borne in mind and references to Headteacher /Principal in this procedure should be adjusted accordingly.

3. Standards of Conduct

- 3.1 The procedure is designed to help and encourage all employees to achieve and maintain standards of conduct. This procedure aims to ensure good practice by applying the standards set out in the relevant sections of the ACAS code of Practice on Disciplinary and

Grievance Procedures. The principles of natural justice will be applied in handling disciplinary procedures.

- 3.2 Normal standards apply to accredited representatives of recognised trade unions/professional associations, however no formal disciplinary action should be taken against such an employee until the case has been discussed with the relevant full time officer of the union/association.
- 3.3 The school/academy code of conduct (and relevant professional codes) expands further on the relevant standards required by the school/academy.

4. Responsibilities

- 4.1 The Governing Body is responsible for maintaining fair, consistent and objective procedures for matters relating to staff discipline in the school/academy.
- 4.2 Employees have a responsibility to:
- conduct themselves appropriately;
 - obey the reasonable directions of the employer;
 - behave in a trustworthy manner at all times;
 - take care over the work assigned to them; and
 - strive to maintain good employment relationships.
- 4.3 Employees are expected to observe all reasonable rules, policies and procedures which cover the following/amongst other things:
- absence procedure
 - timekeeping;
 - standard of dress;
 - Health and Safety;
 - use of the School/Academy facilities and equipment;
 - anti-discrimination;
 - anti-bullying and harassment

5. Equalities

- 5.1 If any employee has difficulty at any stage of the procedure because of a disability, they should discuss the situation with their line manager.
- 5.2 In addition to their work colleague or a representative of a trade union/professional association, employees who need a carer (for reasons of their disability), or an interpreter/translator to attend a meeting with them, arrangements should be made with the person hearing the case.
- 5.3 An employee who requires assistance accessing a meeting should inform the person requesting their attendance and appropriate venues allowing access will be made available.

- 5.4 The school/academy is committed to fairness and equality of treatment for all employees and will comply with the requirements of the Equality Act 2010 in the implementation of these procedures.

6. Child Protection

- 6.1 If the child protection procedure is involved, other disciplinary procedures will begin only if and when the matter has been referred back to the school/academy. The fact that external agencies have not taken action should not be taken as an indication of the employee's innocence or guilt.
- 6.2 If allegations are made against staff which involves child protection issues, the Child Protection Procedure must be followed irrespective of how the allegations arises. Employees may be suspended on full pay pending the outcome of the Child Protection Procedure. In accordance with the Child Protection Procedure you should contact your HR advisor for guidance as suspension should not be the default option. If the relevant child protection agencies decide not to pursue action against the employee, the matter will be referred back to the school/academy for consideration under the appropriate procedure.

7. Criminal Charge

- 7.1 Where the staff member's conduct is the subject of a criminal investigation or the staff member is charged with a criminal offence or given a caution, the school/academy will determine to what extent it needs to conduct its own investigation of the facts before deciding whether to take formal disciplinary action. The school/academy may take into consideration any criminal conviction or caution in relation to the conduct concerned, when considering disciplinary action.
- 7.2 The school/academy will not usually wait for the outcome of any prosecution before deciding what action, if any, to take (unless specifically asked not to do so by the Police). Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the school/academy may have to take a decision based on the available evidence.
- 7.3 A criminal investigation, charge or conviction relating to an employee's conduct outside work may be treated as a disciplinary matter if the school/academy considers that it is relevant to their employment; for example if the allegations relate to action that brings the school/academy into serious disrepute.

8. Disciplinary Rules

- 8.1 Disciplinary rules indicate the standards of conduct expected of an employee. Examples of behaviour which could be regarded as gross misconduct are provided below, but this list should not be regarded as exhaustive.
- 8.2 If an employee is suspected of committing a criminal offence and is charged by the Police, or it appears that the misconduct would make them unsuitable for the type of work being undertaken, the employee will normally be suspended. The individual circumstances of the case will need to be reviewed before a decision is made as to whether disciplinary action is taken before or after any court hearing.

8.3 The distinction between misconduct and gross misconduct is often a matter of degree and is therefore not easily defined. However gross misconduct is usually regarded as misconduct which is serious enough to destroy the employment contract between the employer and the employee and make any further working relationship and trust impossible.

The following examples are likely to be regarded as gross misconduct:

- serious breach of school/academy standing orders, financial regulations or the employees' code of conduct;
- misuse of school/academy property or name, or bringing the school/academy into disrepute;
- serious abuse of the school/academy computer equipment/ software;
- serious breach of any professional code of conduct applicable to the job;
- dishonesty, including theft and deliberate falsification of records;
- acceptance of bribes;
- physical violence;
- serious bullying, unlawful discrimination or harassment;
- deliberate damage to property;
- serious insubordination;
- being incapable of adequately performing duties as a result of illegal drugs or drink;
- serious negligence which causes or might cause unacceptable loss, damage or injury;
- serious infringement of health and safety rules;
- sexual offences or sexual misconduct;
- serious breach of confidence;
- falsifying information as to qualifications, entitlement to work (including immigration status) and pre-appointment medical checks;
- Unauthorised use of disclosure of confidential information or failure to ensure that confidential information in an employee's possession is kept secure – including pupil data; and
- Making untrue allegations in bad faith against a colleague.

9. Suspension

9.1 An employee can be suspended on the authority of either the Headteacher/Principal or the Chair of Governors and, where practicable, the decision will be taken jointly. Each must inform the other and the employer if they take such action. Any decision relating to the suspension of a Headteacher/Principal should be taken jointly by the Chair and Vice Chair of Governors, having taken advice from their Human Resources provider and having notified the relevant authorities.

9.2 Any decision to suspend should only be taken after careful consideration of all the circumstances, an assessment of the risk in allowing the employee to continue working, and having due regard for the welfare of the employee whilst under suspension. However,

suspension is most likely to be appropriate where there is an allegation of serious or gross misconduct, or where the employee's presence at the school/academy may interfere with the impartiality of the investigation.

- 9.3 Suspension will be on full pay and must be confirmed to the employee in writing, along with confirmation that it is a neutral act and does not constitute a disciplinary penalty. The appropriateness of the continued suspension should be kept under review and the suspended employee updated accordingly.
- 9.4 While suspended, an employee must not attend school/academy premises without prior permission from the Headteacher/Principal or Chair of Governors. If appropriate, supervised access for the employee, and/or their representative will be allowed.
- 9.5 If the circumstances allow, the employee may be represented at the suspension meeting by a trade union/professional association representative or colleague not otherwise involved in the investigation. If representation cannot be arranged in time, then the suspension meeting may continue but a review meeting should be arranged within reasonable time to allow for the employee and companion to participate fully and have their say.
- 9.6 An employee will remain on full pay for the duration of their suspension. Should a suspended employee be off sick during suspension then normal sick pay arrangements will apply, including welfare visits, stages and half/no pay entitlements.

10. Disciplinary Procedure

Investigation

- 10.1 Disciplinary procedures must incorporate the principles of natural justice and any complaints or allegations against an employee must therefore be carefully investigated, prior to any decision being taken regarding further disciplinary action.
- 10.2 The aim of an investigation is a fact-finding exercise in order to obtain a fair and balanced view of the circumstances surrounding the allegation, and present this and any other supporting information in writing.
- 10.3 Investigation interviews should be carried out as soon as possible, ideally by someone other than the Headteacher/Principal if they may be required to hear the case at the Formal Hearing. Each person's statement and/or record of their interview should be signed and dated by the interviewee. Anyone interviewed as part of the investigation should be advised that:
- they may have a colleague or trade union/professional association representative with them;
 - the procedure and issues discussed are confidential;
 - their statement may be used at any future disciplinary hearing; and
 - they may be required to attend any hearing as a witness, if appropriate.
- 10.4 It will be necessary to interview the person who is the subject of the allegation/complaint. They must be given reasonable notice of this meeting, including details of the allegation and their right to be accompanied by a trade union/professional association representative or fellow employee. It is recommended that this is confirmed in writing, particularly if the allegation is one of gross misconduct, so that there can be no confusion regarding the

purpose or serious nature of the interview. Full notes should be taken and the employee invited to read and sign them as a true record of the interview.

- 10.5 On completion of the investigation, a report should be compiled which includes all relevant statements and documents and which can be copied to those involved in any disciplinary hearing.
- 10.6 Advice and assistance in carrying out an investigation can be sought from your Human Resources advisor. You are strongly advised to contact Human Resources regarding any cases of serious or gross misconduct.

Grievances

- 10.7 Sometimes an employee may raise a grievance in accordance with the grievance procedure during the course of a disciplinary case. Where this happens and depending on the circumstances, it may be appropriate to suspend the disciplinary procedure for a short period to allow the grievance to be considered, although this should not be the default position.

Informal Advice

- 10.8 Some issues can and should be resolved informally. Formal procedures should be used for problems which are serious in themselves, or serious because they remain unresolved after informal steps have not achieved a satisfactory outcome.
- 10.9 If the misconduct is minor and has not previously been identified to the employee as a problem, the Headteacher/Principal (or their designated representative with the knowledge of the Headteacher/Principal) may decide to give advice or instructions to the employee for the purpose of improving their future conduct.
- 10.10 Any written records of informal advice should be retained on file and copied to the employee, but will not be regarded as part of any formal disciplinary proceedings at this time.

Formal Hearing

- 10.11 This will be carried out where the Headteacher/Principal, following investigation, concludes that the misconduct warrants formal action. The Headteacher/Principal will write to the employee arranging to meet with them (HR can provide model template letter), giving at least five working days notice of the date of the hearing and including the following points:
- details of the alleged offence including any evidence intended to support these allegations;
 - the employee's right to be accompanied/represented throughout the procedure by a fellow employee or representative of a trade union/professional association;
 - confirm that the employee will be given the opportunity to respond to the allegations, challenge any evidence presented and offer a statement in mitigation;
 - advise the employee that they may submit written evidence no later than two working days before the hearing;
 - details of any witnesses the Headteacher/Principal intends to call; and
 - advise the employee that they may call witnesses, subject to the Headteacher/Principal being given details of any witnesses at least two working days prior to the date of the meeting.

10.12 The Headteacher/Principal should ensure that the hearing takes place in private and all parties should be reminded that the issues discussed are to be treated as confidential. A suggested format for the hearing can be found at appendix 1. At the end of the hearing, the Headteacher/Principal may require an adjournment to consider their decision and/or seek further advice. The employee will be advised of the decision at the conclusion of the hearing following deliberations without the parties present, and this decision will be confirmed in writing at the earliest opportunity.

10.13 The decision will be one of the following:

- a) no further formal action i.e. the Headteacher/Principal considers that the alleged offence is unfounded;
- b) Formal Recorded Verbal Warning;
- c) Written Warning; or
- d) Final Written Warning

10.14 All warnings will be confirmed in writing (HR can provide model template letter) and will include the following:

- the level of the warning and the length of time that it will remain in place;
- details of the misconduct as identified at the meeting;
- confirmation of the improvement in conduct which is expected along with advice/instruction on how the improvement can be achieved;
- the timescale for improvement;
- the likely consequences of further misconduct/insufficient improvement;
- the right of appeal; and
- a reminder of any active warning already on file

Formal Verbal Warning

10.15 Where the Headteacher/Principal is satisfied that the employee's conduct has been below the required standard, a formal recorded verbal warning may be issued. The record of this warning will be retained on the personal file and expunged after a period of 6 months satisfactory conduct. Conduct will not be deemed to have been satisfactory if a further warning has been issued within the 6 month period.

Formal Written Warning

10.16 In more serious cases, or where one or more recorded verbal warnings appear not to have had the desired effect, a formal written warning may be issued. The record of this warning will be retained on the personal file and expunged after a period of 12 months satisfactory conduct. Conduct will not be deemed to have been satisfactory if a further warning has been issued within the 12 month period.

Formal Final Written Warning

- 10.17 A formal final written warning may be issued after more than one formal warning or in circumstances where the misconduct is sufficiently serious to warrant such action. The letter to the employee must make it clear that any further unsatisfactory conduct could result in dismissal. The record of this warning will be retained on the personal file and expunged after a period of 2 years satisfactory conduct. Conduct will not be deemed to have been satisfactory if a further warning has been issued within the 2 year period.

11. Dismissal Procedure

- 11.1 In cases of alleged gross misconduct, or where further misconduct has occurred following a formal final written warning, the Headteacher/Principal shall consider referral to the Staffing Committee. If it is the view of the Headteacher/Principal having taken advice from Human Resources, that consideration is to be given to dismissal of the employee, dismissal proceedings will be initiated. The Education Act 2002 provides for dismissals to be undertaken by the Headteacher/Principal. However in order to demonstrate a fair and objective procedure, schools/academies are strongly advised to refer potential dismissals to a sub committee of the Governing Body, i.e. the Staffing Committee. This is particularly important in smaller schools/academies where the Headteacher/Principal is likely to have already been involved in identifying/investigating the alleged misconduct.
- 11.2 Referral to the Staffing Committee shall be initiated by the Headteacher/Principal, advised by a Human Resources Consultant, and the Headteacher/Principal shall notify the employee in advance in writing, giving the reasons. The employee shall be entitled to put their case to the Staffing Committee, the composition of which shall comply with the appropriate Regulations in relation to school/academy governance. An example letter for calling the employee can be obtained through Human Resources.
- 11.3 The decision shall be one of the following:
- a) to exonerate the employee and direct that all references to the matter be removed from their personal file;
 - b) to find that the allegations are proven in whole or in part and accordingly;
 - resolve that no action be taken;
 - issue a warning;
 - withhold incremental progression;
 - determine that the employee be dismissed from their post and be immediately offered another post (of lower status and/or salary) which is deemed to be more suitable (this decision would be regarded as a dismissal), or
 - determine that the employee ceases to work at the school/academy and is to be summarily dismissed without notice.
 - determine that the employee ceases to work at the school/academy and is dismissed with contractual notice or pay in lieu of notice for support staff only
- 11.4 If an allegation of gross misconduct is upheld following careful consideration of all the evidence and any mitigating factors, summary dismissal will normally follow. Alternative courses of action are only likely to be appropriate in situations where dismissal is being

considered as a result of repeated, but individually less serious, acts of misconduct. In this situation, demotion or withholding an increment may be appropriate, supported by a further warning that any subsequent misconduct is likely to result in the employee being required to cease work at the school/academy.

- 11.5 The decision shall be given to the employee in writing by the Clerk to the Governing Body, and a copy shall be sent to the employer. Notification of the decision only shall be confirmed to the rest of the Governing Body.
- 11.6 If the employee is under suspension and is not dismissed, the suspension will be lifted with immediate effect. Advice should be sought from Human Resources on re-introduction to the workplace.
- 11.7 Where a Committee has determined that an employee should cease to work at the school/academy, the employee should be notified of their right of appeal and simultaneously written notification should be sent to the employer. The dismissal will then be actioned on behalf of the employer within 10 working days of the notification being given. If appropriate, the employee will be given notice or pay in lieu of notice in accordance with their contract or with the statutory minimum, whichever is the greater.
- 11.8 If the outcome is summary dismissal, i.e. termination of employment without notice or pay in lieu of notice, payment of salary to the employee should cease immediately, as the effective date of termination will be the date of the Staffing Committee.
- 11.9 The Headteacher/Principal shall be entitled to attend, for the purpose of giving advice, all proceedings of the Governing Body relating to a determination that an employee should cease to work at the school/academy.

12. Rights of Appeal

An employee will have the right of appeal. If they choose to do so, they will use the Appeals Procedure by giving the required notice in writing to the Chair of the Appeal Committee, setting out the grounds for their appeal.

13. Arrangements for Meetings of the Staffing/Appeal Committee

Following a decision to initiate dismissal proceedings, or notification of an appeal, the Clerk to the Governing Body shall arrange a meeting of the relevant Committee within 15 working days or as soon as reasonably possible. All written evidence to be considered by the Committee and the names of witnesses to be called shall be submitted to the Clerk to the Governing Body at least five working days before the date of the meeting. An employee subject to this procedure shall be entitled to:

- be represented by a trade union/professional association representative or fellow employee
- receive 5 working days notice of the date, time and venue of the meeting
- 5 working days before a meeting of the Staffing Committee, receive a copy of the report outlining the allegations, including sufficient detail to enable the employee to prepare a response
- be given a copy of any written material which is to be presented at the meeting

- be advised of the name of the presenter of the case and of any witnesses to be called.

The time periods set out in this procedure may be varied by mutual agreement.

The decision of the Appeal Committee is final and there is no further right of appeal within school/academy procedures.

14. Referral to DBS, TRA and other organisations

The school/academy has a legal duty to refer information to the Disclosure and Barring Service (DBS) where it has removed an individual from working, volunteering or has concerns with respect to an individual's contact with children. The individual should be advised that the case is being reported to the DBS and/or other professional bodies such as The Teaching Regulation Agency (TRA).

Appendix 1**Procedure for Disciplinary Hearings – Suggested format**

1. The Chair will introduce everyone
2. The Chair reads out the allegations
3. Presenting Manager presents case
4. Presenting Manager calls witnesses and questions them
5. The employee can question these witnesses and the Presenting Manager
6. The Chair and the Panel can question these witnesses and Presenting Manager
7. The employee will present their defense
8. The employee will then call their witnesses and questions them
9. The Presenting Manager will then question these witnesses and the employee
10. The Chair and the Panel can question these witnesses and the employee
11. The Presenting Manager then sums up case
12. The employee will then sum up their defence
13. Adjournment
14. Re-convene for Panel's Decision