



Lightwoods School

Policy Library

TITLE:

Disciplinary Procedure for School Based Staff

L062



Disciplinary Procedure For School Based Staff

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1. INTRODUCTION

- (a) This procedure applies to those employees of the Council who form the staffing complement of Lightwoods School

This procedure does **not**, however apply to:

- Head Teachers;
 - Staff employed by internal or external contractors;
 - Peripatetic non-teaching staff;
 - Non-school based teaching staff.
- (b) The procedure is intended to help Governing Bodies fulfil their responsibilities as required by the Education Reform Act 1988 with regards to disciplinary procedures.
- (c) The model procedure is intended to provide a fair and consistent method of dealing with disciplinary matters arising from breaches of Disciplinary Rules and arising from the incapability and/or misconduct of an employee.
- (d) The model procedure takes into account the appropriate provisions of the ACAS's Advisory Handbook 'Discipline at Work'.
- (e) Copies of this procedure should be made available to all employees to whom this procedure applies.

2. DEFINITIONS

- (a) Designated Person(s)¹ - it is essential that only the appropriate designated person carries out the disciplinary hearing. This ensures that the problem is brought to the appropriate level of management and avoids any difficulties in terms of appeals.

A schedule defining the people designated to take the appropriate action as defined within this procedure shall be prepared, updated and agreed between the Governing Body and the Council as necessary. The schedule shall be decreed to be incorporated into this procedure.

- (b) 'Representative' - an employee is entitled to be accompanied by a friend, or colleague, or solicitor and/or Trade Union Representative if they wish. When calling an employee to a disciplinary hearing he/she must always be informed of that right.
- (c) 'Working days' and 'Working months' - the period of time when the employee would normally work at the school, as referred to in the Teachers' conditions of service document and in the case of non-teaching staff the Contract of Employment.

1 *Ref: Working Practices Document*

- (d) 'Suspension from Duty' means suspension on full pay without prejudice to enable allegations to be investigated. Suspension is not in itself a disciplinary penalty under this procedure, nor shall it be considered formal action under this procedure. Suspension shall be with full pay and it should only be used pending investigation and action.
- (e) 'Disciplinary Committee' means the Committee appointed by the Governors Committee appointed by the Governors with delegated powers to undertake the functions prescribed for a Committee in this procedure and consists of a minimum of 3 members elected by the Governing Body.
- (f) 'Appeals Committee' means the Committee consisting of a minimum of 3, or equivalent to the number on the Disciplinary Committee. Members of the Appeals Committee should have had no prior involvement in the case.
- (g) 'Personal File' means that file maintained by and/or for the Developmental Director of Children's Services relating to the specific individual concerned.

3. PROCEDURES

General

- (a) The procedure is based on the following principles:
 - (i) The value of taking clear action without undue delay.
 - (ii) Investigations to find out the relevant facts should be carried out promptly. The investigation should collect all relevant and supporting documents.
 - (iii) That at each stage the employee will be informed of the complaint against him/her personally and in writing before being interviewed under this procedure.
 - (iv) The right of the employee to be present at any hearing and to be accompanied by a representative.
 - (v) The need for accurate and detailed written records throughout the procedure.
 - (vi) That the employee be given the opportunity to state his/her case (which shall include the right of the employee or his/her representative to make a statement, ask questions or any witness and/or produce documents on his/her behalf) before decisions are reached.

- (vii) That any formal decision should be communicated to the employee in writing within three working days of a hearing.
 - (viii) That the employee be notified of his/her right of appeal against any formal disciplinary action taken against him/her under the procedure.
- (b) Action taken under this procedure shall depend upon the nature of the employee's offence, any mitigating circumstances where these may be reasonably taken into account, and if appropriate the employee's past disciplinary record. A first offence, unless it is considered to be gross misconduct, shall not normally result in dismissal but it may, depending upon the factors aforementioned, result in any other of the disciplinary penalties defined in the procedure.

Where formal action is taken in accordance with this procedure, it shall be the duty of the designated person taking such action (or servicing the Committee taking such action):

- (i) to notify the employee concerned in writing of the action taken not later than three working days after the interview and to enclose all relevant documents and evidence under this procedure,
- (ii) to ensure that, if the employee has so requested, a copy of the notification is sent to the employee's representative (the designated person shall at an appropriate time inform the employee that he has the right to make such a request); and
- (iii) to ensure that a copy of the notification is retained on the employee's personal file.

(c) Withholding Increments

Where appropriate, the provisions of the employee's scheme of conditions of service concerning the interruption of normal incremental progression may be invoked at the same time as disciplinary action under this procedure is taken.

(d) Trade Union Officials

Where it is alleged that an official of a trade union or professional association has committed a breach of discipline, he/she shall be informed of the complaint against him/her in accordance with paragraph 3(a) above and the provisions of that paragraph above. The designated person taking disciplinary action shall notify the Developmental Director of Children's Services who shall inform the appropriate senior representative or full-time official of that trade union or professional association of the allegations before any further action is taken against the official.

(e) Provisions of the Procedure

The disciplinary procedure contains the following provisions:

- Reprimand
- Formal disciplinary action

- Appeal hearing.

The importance of following the procedure in all cases is stressed. Case law has shown that failure to follow an agreed procedure is prima facie unfair.

Where appropriate the designated person may interview the employee and may issue him/her with reprimand. The reprimand shall not be seen as formal disciplinary action taken under the procedure but the employee shall be informed that if any further breaches of discipline occur or if the employee fails to attain the required standard, formal disciplinary action may be taken against him/her.

(f) Formal Warnings

There are four levels of formal warnings:

- Formal (Recorded) Verbal Warning.
- Formal (Written) Warning.
- Severe Warning.
- Final Warning.

(i) Formal (Recorded Verbal Warning

Where appropriate eg where a member of staff has not heeded previous informal warning, or where the offence is such that it would warrant a formal verbal warning, the designated person will interview the member of staff with his/her representative. If, in his/her opinion, such action is justified, the designated person shall issue a formal verbal warning to the employee that his/her conduct/capability is not acceptable and that a further offence, within a specified period (which shall not exceed four working months) will lead to further disciplinary action against him/her.

The issue of such a warning shall be notified in writing to the employee and a copy of the letter shall be retained on the employee's personal file. At the interview and the subsequent notification to him/her, the designated person shall inform the employee that he/she has a right of appeal to the Governing Body and that if he/she wishes to exercise that right, he/she must do so in writing to the Developmental Director of Children's Services within 10 working days of the notification of the decision in writing. The letter to the Developmental Director of Children's Services within 10 working days of the notification of the decision in writing. The letter to the Developmental Director of Children's Services should set out the grounds for the appeal.

(ii) Formal (Written) Warning

Where appropriate e.g. where an employee has not heeded previous verbal warnings or where the offence is such that it would warrant a formal (written) warning, the designated person may refer the matter to the Head Teacher.

Where appropriate, the Head Teacher after such investigation as he/she sees fit, may interview the employee with his/her representative, and if in his/her opinion the allegations are substantiated, issue a formal (written)

warning to the employee that his/her conduct/capability is not acceptable and that a further offence within a specified period (which shall not exceed eight working months) will need to further disciplinary action against him/her.

The issue of this warning shall be notified in writing to the employee by the Head Teacher and a copy of the letter shall be retained on the employee's personal file. At the interview, and the subsequent letter to him/her the Head Teacher shall inform the employee that he/she has a right of appeal to the Governing Body and that if he/she wishes to exercise that right, he/she must do so in writing to the Developmental Director of Children's Services within 10 working days of the notification of the decision in writing and set out the grounds for the appeal.

(iii) Severe Warning

Where appropriate e.g. where an employee has not heeded a previous formal written warning, or that the alleged offence is such that it would warrant a severe warning, the Head Teacher after such investigations as he/she thinks fit, shall interview the employee with his/her representative, and if in his opinion the allegations are substantiated, the Head Teacher shall issue a severe warning to the employee that his/her conduct/capability is not acceptable and that a further offence within a specified period (which shall not exceed 12 working months) would lead to further disciplinary action being taken against him/her.

The issue of the severe warning shall be notified in writing to the employee by the Head Teacher and a copy of the letter shall be retained on the employee's personal file. At the interview and in the subsequent letter to him/her, the Head Teacher and a copy of the letter shall be retained on the employee's personal file. At the interview and in the subsequent letter to him/her, the Head Teacher shall inform the employee that he/she has a right of appeal to the Governing Body and that if he/she wishes to exercise that right, he/she must do so in writing to the Developmental Director of Children's Services within 10 working days of the notification of the decision in writing and set out the grounds for the appeal.

(iv) Final Warning

Where appropriate e.g. where an employee has not heeded a previous severe warning, or that where the alleged offence is such to warrant a final warning, the Head Teacher, after investigations as he/she sees fit, shall interview the employee with his/her representative, and if in his/her opinion the Head Teacher considers that the employee has a case to answer and that if substantiated the allegations would warrant a final warning, the matter shall be referred to the appropriate Committee of the Governing Body.

1. The procedure for the meeting of that Committee to consider the case is detailed in Section 4.
2. If, in the Committee's opinion, the allegations are substantiated, the Committee shall issue a final warning to the employee that his/her conduct/capability is not acceptable and that a further offence within a specified period (which shall not exceed 24 working months) will lead to the implementation of the procedure for dismissal.
3. The issue of the final warning shall be notified in writing to the employee by the Clerk to the Governors and a copy shall be retained on the employee's personal file. At the interview and in the subsequent letter to him/her, the employee shall be informed that he/she has the right of appeal to the Appeals Committee of the Governing Body (see Section 6 and 8 below) and that if he/she wishes to exercise that right he/she must do so in writing to the Developmental Director of Children's Services within 10 working days of the written notification of the decision and set out the grounds for the appeal.

(g) Dismissal

- (i) Where an employee has not heeded the final warning or where it is alleged that he/she has committed an act of gross misconduct he/she shall be interviewed by the Head Teacher and informed of the allegations against him/her. In the case of alleged gross misconduct, the employee shall be suspended forthwith from duty. In other cases where the Head Teacher feels that the school's interest would best be served thereby, he/she may suspend the employee from duty. The Head Teacher shall notify the Chair of the Governing Body of any such suspension.

If after such investigations as the Head Teacher sees fit, the Head Teacher considers that the employee does not have a case to answer he/she shall consult the Chair of the Governing Body who shall end the suspension and the employee shall return to his/her normal duties. If after such investigations the Head Teacher considers that the employee does have a case to answer, the matter shall be referred to the appropriate Committee of the Governing Body.

The procedure for the Disciplinary Committee to consider a referral is detailed in Section 4.

If the Committee finds that the allegations are substantiated it shall have the power to inform the employee that, subject to any appeal that he/she may wish to make, a notification will be issued to the Developmental Director of Children's Services to dismiss the employee. In the case of gross misconduct, the employee shall be informed that he/her dismissal would be effective without notice and that the date of dismissal would be on the date that the decision is notified to him/her by the Developmental Director of Children's

Services. In other cases, the employee shall be dismissed with the notice prescribed in his/her Contract of Employment and such notice shall be effective from the date upon which the decision is communicated to him/her by the Developmental Director of Children's Services.

Alternatively the Committee may find the employee blameless or may choose to impose any lesser penalty as provided for in the procedure.

The decision of the Committee shall be notified in writing to the employee and the Developmental Director of Children's Services by the Clerk of the Governors and a copy shall be retained on the employee's personal file. At the hearing and in the subsequent letter to the employee, the employee shall be informed that he/she wishes to exercise the right he/she must do so in writing to the Developmental Director of Children's Services within 10 working days of the written notification of the decision and must set out the grounds for the appeal.

- (ii) If the Committee has made a determination that the employee be dismissed and no appeal is made by the employee, the Developmental Director of Children's Services shall dismiss the employee within 14 days or the expiry of the period that the employee had to make his/her appeal. The notification shall be made in writing and a copy will be retained on the employee's personal file.

4. PROCEDURE FOR DISCIPLINARY SUB-COMMITTEE

- (a) If a Head Teacher, having investigated the allegations against an employee feels that the employee has a case to answer and that, if substantiated allegations would warrant a final warning or dismissal, the matter shall be referred to a meeting of the Disciplinary Committee of the Governing Body. The Developmental Director of Children's Services is to be represented at this meeting.
- (b) The employee and his/her representative shall be given not less than 10 working days notice of the date, time and place of the meeting of the Disciplinary Committee and the Committee shall hear the case in accordance with the following procedure:-
 - (i) The Head Teacher shall put the case in the presence of the employee and his/her representative and may call witnesses.
 - (ii) The employee (or his/her representative) shall have the opportunity to ask questions of the witnesses called by the Head Teacher on the evidence given to them.
 - (iii) The members of the Committee shall have the opportunity to ask questions of the Head Teacher and his/her witnesses.

- (iv) The employee (or his/her representative) shall put his/her case in the presence of the Head Teacher and may call such witnesses as he/she wishes.
 - (v) The Head Teacher shall have the opportunity to ask questions of the employee (or representative) and his/her witnesses.
 - (vi) The Committee shall have the opportunity to ask questions of the employee (or representative) and his/her witnesses.
 - (vii) The Head Teacher and the employee (or his/her representative) shall have the opportunity to sum up their case if they so wish.
 - (viii) The Head Teacher, the employee and his/her representative and the witnesses shall withdraw.
 - (ix) The Committee with the Clerk to the Governors and the Developmental Director of Children's Services (or representatives) shall deliberate in private, only recalling the Head Teacher and the employee (and his/her representative) to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.
 - (x) The Committee shall announce the decision to the Head Teacher and the employee (and his/her representative) personally.
- (c) If in the Committee's opinion, the allegations are sustained, the Committee shall issue a final written warning or inform the employee that he/she be dismissed (in accordance with Section 3(h)(g) or impose any lesser penalty provided for in this procedure. In the case of gross misconduct the employee shall be dismissed without notice and the effective date of his/her dismissal shall be the date upon which the decision is communicated to him/her by the Developmental Director of Children's Services. In the cases of dismissal with notice, the employee shall be dismissed with the notice prescribed by the employee's contract of employment and the notice shall be effective from the date upon which the decision is communicated to him/her by the Developmental Director of Children's Services. The Committee may decide that a payment in lieu of notice be paid to the employee and that his/her dismissal be effective from the date upon which the decision is communicated to him/her by the Developmental Director of Children's Services.

5. RELEGATION

The provisions within this procedure relating to relegation apply only to those employees whose terms and conditions of employment are wholly or principally negotiated by the National Joint Council for Local Authority Services for Administrative, Professional, Technical and Clerical Staff and Manual Workers.

It is not considered that relegation to a post at a lower grade is in itself a disciplinary penalty, but it may be considered appropriate in the case of alleged incompetence.

In such circumstances it would first be appropriate to issue the employee with an appropriate warning under this procedure. Such action shall be taken in accordance with Paragraph 3(g) of this procedure and the employee be informed that if he/she fails to attain the required standard within a reasonable period (which shall be specified) further action may be taken against him/her which may include relegation to a post at a lower grade.

Where the employee fails to attain the required standard within the specified period the Head Teacher shall, after such investigations as he/she thinks fit, interview the employee with his/her representative. If in the Head Teacher's opinion it is established that the employee has failed to attain the required standard, the Head Teacher may, at his/her discretion, relegate the employee to a post at a lower grade.

Where the employee is relegated, the relegation shall be notified in writing in accordance with Paragraph 3(a)(iii) above and a copy of the letter shall be retained on the employee's personal file. At the interview and in the subsequent letter to him/her, the employee shall be informed that he/she has a right of appeal to the Governing Body and that if he/she wishes to exercise that right he/she must do so in writing to the Developmental Director of Children's Services within 10 working days of the interview and set out the grounds for the appeal.

6. APPEALS

(a) General

- (i) The procedure provides a right of appeal against formal disciplinary action against an employee and defines the manner in which the right of appeal is to be exercised. Upon written notification that an employee wishes to exercise his right of appeal, the Developmental Director of Children's Services shall acknowledge receipt of this notification. In normal circumstances the appeal shall be heard not later than 30 working days after receipt of the written notification of appeal.
- (ii) The employee should state when appealing the grounds on which the appeal is being made, i.e. whether the employee is appealing against the allegations being substantiated or against the severity of the disciplinary action taken against him/her.
- (iii) No person involved in making the decision against which the appeal is made shall be involved in deciding the appeal.
- (iv) The procedure for the Governing Body to hear the appeal is given in Paragraph 8.

7. RECORDS

- (a) In order that comprehensive records are maintained, copies of all notes/minutes and correspondence arising out of the operation of this procedure shall be retained on the employee's personal file.

If an employee is found blameless of any allegations, this shall be recorded and kept with all papers relating to the matter.

- (b) In considering action under this procedure the appropriate designated person or Committee shall take no account of previous disciplinary action unless the offence for which action is being considered has taken place during the specified period attached to the previous disciplinary action.
- (c) Where an employee is subject to disciplinary action or appeals against disciplinary action being taken, he/she may if he/she so requests, have sight of or copies of any relevant documents contained in his/her personal file. Such a request shall be made in writing to the Developmental Director of Children's Services. The employee shall be allowed sight of the documents within three working days of the request.
- (d) Notes and minutes of all proceedings to be kept together with the outcome of all decisions.

8. PROCEDURE FOR THE APPEALS COMMITTEE

- (a) If the Head Teacher issues an employee with a Formal (Recorded) Verbal Warning, a Formal Written Warning or a Severe Warning or the Disciplinary Committee issues an employee with a Final Warning or dismisses an employee and the employee appeals against the decision, the matter shall be dealt with by the Appeals Committee of the Governing Body. The Developmental Director of Children's Services shall be represented at the meeting of the Committee.
- (b) The employee and his/her representative shall be given not less than five working days' notice of the date, time and place of the meeting of the Committee at which the appeal is to be heard. The Committee shall hear the case in accordance with the following procedure:
 - (i) The Head Teacher shall put the case in the presence of the appellant and his/her representative and may call witnesses.
 - (ii) The appellant (or his/her representative) shall have the opportunity to ask questions of the Head Teacher and the witnesses called by the Head Teacher on the evidence given by them.
 - (iii) The Committee shall have the opportunity to ask questions of the witnesses of the Head Teacher and his/her witnesses.

- (iv) The appellant (or his/her representative) shall put his case in the presence of the Head Teacher and may call such witnesses as he wishes.
 - (v) The Head Teacher shall have the opportunity to ask questions of the appellant (or representative) and his/her witnesses.
 - (vi) The Committee shall have the opportunity to ask questions of the appellant (or representative) and his/her witnesses.
 - (vii) The Head Teacher and the appellant (or his/her representative) shall have the opportunity to sum their cases if they so wish.
 - (viii) The Head Teacher and the appellant and his/her representative and the witnesses shall withdraw.

 - (ix) The Committee and the Clerk to the Governors and the Developmental Director of Children's Services shall deliberate in private only recalling the Head Teacher and the appellant (and his/her representative) to clear points of uncertainty on evidence already given. If recall is necessary both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.
 - (x) The Committee shall announce the decision to the Head Teacher and the appellant (and his/her representative) personally.
- (c) The decision of the Committee shall be notified in writing to the appellant by the Clerk to the Governors and a copy of the letter shall be retained on the appropriate employee's personal file. There shall be no further right of appeal under this procedure. However, nothing in this procedure shall be construed to limit an employee's rights under the Employment Protection (Consolidation) Act, 1978 or any other enactment.