

GOWERTON SCHOOL



STAFF DISCIPLINARY POLICY

Reviewed 13.12.17



Article 4

The government has a responsibility to make sure your rights are protected. They must help your family to protect your rights and create an environment where you can grow and reach your potential.

INTRODUCTION

1. Introduction

The following procedure is provided for Governing Bodies and Headteachers as an example of good practice in dealing with formal disciplinary matters. It is offered in good faith, but with the strong recommendation that advice is sought from Senior Management of the Education Department at the earliest moment and thence throughout the progression of a specific case.

If the Governing Body chooses to adopt this procedure, details should be issued to all staff so that they are fully aware of their rights and obligations. Governing Bodies are reminded that they, or their representative, will be required to attend any industrial tribunal which may arise as a result of disciplinary action taken against a member of staff.

Policy Statement

The School's policy with regard to discipline is to maintain high standards of conduct among staff and to ensure that all employees are treated fairly and consistently in all disciplinary matters.

2. The Procedure

2.1 The procedure is designed to ensure that all employees are treated fairly and are given full rights of representation at various stages.

2.2 The procedure allows for:-

- a) a full investigation to be carried out before any disciplinary measures are considered;
- b) a proper hearing, where an employee knows exactly what is the accusation against him/her and is given the opportunity to offer as full an explanation as possible;
- c) the right of appeal;
- d) any disciplinary measures, other than dismissal, to be expunged from the record after a suitable period of time (see Appendix B);
- e) whilst the procedures are designed to guide, assist and avoid disputes, it should be remembered that a disciplinary hearing is not a court of law and should be conducted as informally as circumstances permit.

2.3 It is recognised that infringements of discipline vary in seriousness and the application of disciplinary rules is meant to be corrective rather than punitive.

- 2.4 Nothing in this procedure is intended to remove the right of a manager to give an employee counselling, support, an informal reprimand or warning, when the employee is believed to have committed a minor infringement of the established standards of conduct. It may be appropriate for the manager to make a note of any meeting which may influence or justify future action should the employee's conduct give cause for concern.
- 2.5 Depending on the nature or severity of the offence, it may not always be appropriate to give a verbal warning, followed by a second warning and then by a final warning. In such cases, it may be necessary to proceed immediately to second and final warning stage, even though the employee has no previous disciplinary record.
- 2.6 Where it is necessary to warn an employee about poor work performance or a bad sickness record, a separate procedure should be used in which the emphasis is placed more firmly on counselling. There is a Capability Procedure for matters regarding performance, and an Absence Procedure for health and other matters.
- 2.7 Where any form of disciplinary action is contemplated against any trade union representative or shop steward, the matter must be discussed with a senior trade union representative or full-time official of the Union concerned before any action is taken. The purpose of this is not to discriminate in favour of trade union representatives, but rather to ensure that any disciplinary action is not seen to be an attack upon the Union's functions.
- 2.8 All employees have the right of appeal against dismissal and formal disciplinary warnings to a body other than the one which decided the issue in the first instance. In advising the employee of its decision, the disciplinary panel will also advise the employee of his rights of appeal.

3. The Investigation Stage

- 3.1 It is most important that any alleged offence is properly investigated before any disciplinary action is taken and that wherever practicable, the person who is to take the disciplinary action is not the same person who carried out the investigation.
- 3.2 Therefore, when the employee is believed to have committed an offence against discipline, comparable to the examples contained in **Appendix 'A'**, the Headteacher will arrange for a senior member of his/her staff to investigate the matter immediately, taking into account the statements of any witnesses, and to report back. If this is not possible where, for instance, a Deputy Head in a primary school is the subject of investigation, the Headteacher will request the Director of Education or his/her representative to investigate the matter and report back to the Headteacher for decision.
- 3.3 The Headteacher will then need to decide whether, on the preliminary evidence, the matter could be:-
 - i) one where there is no case to answer. In this circumstance the individual involved should receive a letter to this effect which should be placed on file
 - ii) a minor infringement of established codes of practice - See 2.4 above, or

- iii) of a more serious nature - (See Paras 4, 5 and 6)
- iv) gross misconduct - an offence considered comparable to the examples contained in **Appendix 'A'**. The employee may then be suspended immediately pending further action as referred to in Para. 7.
- v) should an allegation be made against the Headteacher or any instance where it is deemed inappropriate for a representative of school staff to investigate, please refer to Paragraph 9.

4. Misconduct - First Warning

- 4.1 Following investigation, if the Headteacher believes that misconduct may have occurred and that this is the first time that such an offence has been committed, he/she may proceed to interview the employee.
- 4.2 The employee must be informed by letter of the date, time and location of the disciplinary interview, the nature of the specific charges and his/her right to be accompanied by a trade union representative or fellow employee. The date of the disciplinary interview must be at least 7 days after the date of the letter unless an earlier date is requested and agreed by all parties.
- 4.3 If, after the interview, the Headteacher considers that a first warning is appropriate, he/she shall deliver a First Warning to the employee concerned. He/she shall also send a letter to the employee confirming the terms of the first warning and a copy of this shall be retained on the personal file.
- 4.4 It is stressed that the issue of a first warning should, where appropriate, be accompanied by counselling and reasonable support in an attempt to ensure that the matter is resolved and that further disciplinary action should not be necessary.

5. Misconduct - Second Warning

- 5.1 If the Headteacher believes, after appropriate investigation, that the employee may have persisted with the offence, or may have committed a further offence, within the appropriate time scale (see Appendix B - Cancellation of Warnings), he/she shall interview the employee.
- 5.2 The employee must be informed by letter of the date, time and location of the disciplinary interview, the nature of the specific charges and his right to be accompanied by a trade union representative or fellow employee. The date of the disciplinary interview must be at least 7 days after the date of the letter.
- 5.3 If the Headteacher feels that a further warning is appropriate, he/she shall deliver this to the employee. Again, the terms of the warning should be confirmed in writing, a copy retained on the personal file and counselling and support should continue.

6. Misconduct - Final Warning

- 6.1 If the Headteacher believes, after appropriate investigation, that the employee may have again persisted with the offence, or may have committed a further

offence, within the appropriate time scale (see Appendix B - Cancellation of Warnings), he/she shall interview the employee.

- 6.2 The employee must be informed by letter of the date, time and location of the disciplinary interview, the nature of the specific charges and his/her right to be accompanied by a trade union representative or fellow employee. The date of the disciplinary interview must be at least 7 days after the date of the letter.
- 6.3 If the Headteacher feels that a final warning is appropriate, he/she shall deliver this to the employee. Again, the terms of the warning should be confirmed in writing, a copy retained on the personal file and counselling and support should continue.
- 6.4 The final warning must include details of the specific offences, their repetition and of the previous unexpired warnings already given.
- 6.5 Once a final warning has been issued if the Headteacher believes, after appropriate investigation, that the employee may have again persisted with the offence, or may have committed a further offence, within the appropriate time scale (see Appendix B - Cancellation of Warnings), the matter must be referred to the Governing Body. The procedure then to be followed is that outlined in paragraph 7.5 below and subsequent paragraphs.

7. Gross Misconduct

- 7.1 If on the initial evidence presented following an incident, the Headteacher believes that an offence may have been committed which he/she considers to be Gross Misconduct within the broad outline given in Appendix A he/she may suspend from duty the employee concerned and shall confirm this in writing to him/her with the reasons. It must be understood that contractual pay will normally continue during the period of suspension. The Headteacher shall immediately inform the Chair of the Governing Body and the Director of Education.
- 7.2 The Disciplinary Panel of the Governing Body (see from paragraph 7.5 below) are also empowered to suspend an employee in the same way. They shall immediately inform the Headteacher and the Director of Education.
- 7.3 It should be noted that suspension is not disciplinary action. It is designed only to protect the interests of the employer and the employee where Gross Misconduct is alleged to allow investigations to take place pending a disciplinary hearing.
- 7.4 Only the Governing Body may end a suspension.
- 7.5 Only the Governing Body may make a determination to terminate the employment of a member of staff.
- 7.6 The Governing Body should therefore constitute a Disciplinary Panel of three of their number, and delegate power to it to carry out this function. The Panel will meet and consider what action to take as a result of an alleged case of Gross Misconduct, or where the member of staff persists with a misconduct, or commits further misconduct after receiving a final warning. In cases where the member of staff has been suspended, the meeting should be expedited as soon as possible.

7.7 The Director of Education, or his representative, is entitled to attend and advise any such meetings and must be extended an invitation to attend with the usual notice given to members of the Disciplinary Panel.

7.8 The employee must be informed by letter of the date, time and location of the disciplinary hearing, the nature of the specific charges and his right to be accompanied by a trade union representative or fellow employee. The date of the disciplinary hearing must be at least 7 days after the date of the letter.

7.9 The Headteacher should prepare a statement giving:-

- a) full details of the alleged offence;
- b) statement of any unexpired previous warnings, with reasons and dates and subsequent action taken;
- c) any other relevant documentary evidence.

This report is to be sent under confidential cover in advance of the meeting to the member of staff concerned not less than **7 days** before the meeting. The report will be given to members of the Disciplinary Panel at the start of the hearing. If the employee wishes to introduce documentary evidence, he may also do so at this stage, but it is necessary that the Headteacher be provided with a copy of that documentary evidence at least 24 hours before the start of the hearing.

7.10 If the member of staff fails to attend or to be represented at the meeting, this shall not invalidate the proceedings, although the Disciplinary Panel may, at their discretion, adjourn the hearing.

7.11 The proceedings of the meeting shall be as follows:-

- i) The Headteacher's statement is to be given to the Panel, together with any documentary evidence which the employee might wish to introduce.
- ii) The Headteacher will outline the alleged offence(s), introducing any witnesses necessary.
- iii) The employee and/or his/her representative will be invited to offer his/her explanation, call witnesses if appropriate, or if the offence(s) are admitted, to speak in mitigation.
- iv) The various parties (i.e. the employee or his representative, the Panel, the Head or their Advisers) will be allowed to ask questions at any convenient point in the proceedings, which should be kept as informal as possible.
- v) Both the employee or his representative and the Headteacher will be allowed to make a concluding statement.

- vi) All those present, except for the Disciplinary Panel and their Adviser(s), shall be instructed to withdraw whilst the Disciplinary Panel considers the matter.
- vii) If they consider there are sufficient grounds, they may make a determination that the employee should cease to work at the school.
- viii) Where they are unable to make a determination, they may defer the matter. In some cases, where criminal proceedings could be taking place, the Disciplinary Panel are not obliged to await the outcome of such proceedings. (See Appendix C).
- ix) After the Disciplinary Panel have completed their deliberation, the parties will be recalled and advised of the conclusions reached. If the allegations are upheld the employee will be notified of his/her rights of appeal and will be sent written confirmation of the Governors determination, the reasons, and of his rights of appeal.
- x) The Local Education Authority shall not dismiss until the outcome of any appeal is known. If the employee has not previously been suspended, Governors may now consider this action. Contractual pay should continue pending the outcome of the Appeal.

8. Appeals

- 8.1 **The employee will have a right of appeal against any stage of disciplinary action but this must be exercised in writing to the Headteacher within 7 days of the date of receipt of the letter confirming the warning or the determination of the disciplinary panel, that the employee should cease work at the school.**
- 8.2 Any appeal against a warning issued by the Headteacher shall be heard by the Disciplinary Panel. Appeals against decision of the Disciplinary Panel will be heard by the Members of the Governing Body who are not involved in the Disciplinary Panel. Appeals should be conducted as quickly as possible and not more than 15 days should normally be allowed from the date of receipt of the appeal before the Appeals meeting of Governors is held. The decision of the appeals body will be binding in terms of the internal process.
- 8.3 At least 7 days' notice of the time and date of the meeting shall be given to the member of staff, Governors and Director of Education.
- 8.4 The Director of Education shall have the right to be present throughout the meeting to advise the Governing Body and is entitled to the same notice of the meeting as members of the Governing Body.

8.5 The Governing Body should operate as follows where an appeal has been lodged:-

- i) The various parties and their representatives should be called in simultaneously before the Appeals Body.
- ii) The Clerk to the Governors should put before the Appeals Body and the various parties, a brief statement of the appellant's personal details (eg. post held, length of service, etc.) together with details of the charges upon which the disciplinary action was based.
- iii) The Headteacher will then present the case, calling any witnesses.
- iv) The Appellant or his representative will have a right to question the Headteacher and any witnesses.
- v) The members of the Governing Body will then have a right to question the Headteacher or any witnesses.
- vi) The appellant or his representative will present his case calling any witnesses.
- vii) The Headteacher and the Governing Body will then be entitled to question the appellant and any witnesses on the case so presented.
- viii) Both parties can then make any closing remarks with the Headteacher going first. No new evidence is to be introduced at this stage.
- ix) All the parties other than the Governing Body and the Director of Education will withdraw while the Governing Body consider the matter.
- x) The Governing Body may, if they wish, recall the parties to clarify any points, but in any such event, must recall both the Headteacher and the Appellant, notwithstanding that only one party is to be questioned.
- xi) After a determination has been reached, the parties should be recalled and the Governing Body's decision announced. This will then be confirmed in writing at the earliest opportunity by the Clerk to the Governors, to the Appellant. The Director of Education must also be notified of the Governing Body's determination and the reasons for it.

- xii) If the decision is to uphold the determination that the employee should cease to work at the school, the Director of Education will formally terminate the employee's contract within 14 days of receipt of the notification.

9. Procedure to be adopted where an allegation is made against a Headteacher.

INVESTIGATION

- 1) In the case of any allegation made against the Headteacher or any instance where it is deemed inappropriate for a representative of the school staff to investigate, the Chair of Governors must inform the Director of Education who would be delegated with the responsibility of arranging an investigation.

HEARING

- 2) The findings of the investigation would then be presented to the Disciplinary Sub-Panel of the full Governing Body regardless of whether the matter is deemed to be misconduct or gross misconduct. This Sub-Committee would have plenary powers to deal with the issue. The procedure to be adopted for such hearings should be as outlined in paragraphs 7.8 through to 7.11 above, but the role of the Headteacher will be assumed by the Director of Education or his/her representative.

SUSPENSION

- 3) In the case of a potential gross misconduct the responsibility for suspension lies with the Governing Body. The Director of Education must be informed immediately if any such action is taken.

APPEALS

- 4) The Headteacher will have the right of appeal against any formal disciplinary action. This will be to the remainder of the Governing Body (who are not involved in the Disciplinary Panel), and should be exercised in writing to the Chair of Governors within 7 days of receipt of the letter confirming the decision of the disciplinary panel.
- 5) Not more than 15 days should normally be allowed from date of receipt of appeal before the appeals meeting of Governors is held.
- 6) The procedure for the hearing of appeals will be as outlined in paragraph 8.5 above with the role of the Headteacher being assumed by the Director of Education.

10. **Costs of Dismissal**

Governing Bodies and Headteachers are reminded that, if the LEA has good reason, the penalties and costs awarded by an Employment Tribunal may be charged to the establishment's budget. Such good reason may be if the Authority's advice is not accepted or if the above procedure were not followed.

EXAMPLES OF DISCIPLINARY OFFENCES

In giving examples, the lists below are neither exclusive nor exhaustive, but are only an indication of how an offence may be treated. Each case will be determined on the individual facts.

Gross Misconduct - misconduct which is so serious that the Governors would be justified in no longer tolerating the continued presence at work of the employee. It is misconduct which strikes at the root of the trust and confidence which must exist between employer and employee for the contract of employment to be effective and in most cases the result will normally be summary dismissal without notice or payment in lieu of notice. Examples of such offences are:-

- theft of property belonging to the Authority, the School, fellow employees, or pupils;
- malicious damage to property belonging to the Authority, the School, fellow employees' or pupils;
- violent behaviour including physical assault;
- sexual misconduct at work;
- falsification of time/bonus sheets, expense claims or any other documents in order to defraud the Authority;
- serious violation of the Authority's or School's safety rules and standards;
- criminal misconduct outside the workplace which reflects adversely upon the School or the employee's suitability for the post;
- knowingly providing false information or any matter relating to the employee's employment;
- persistent, serious or flagrant discrimination or harassment on the grounds of gender, race, religion, colour, disability, sexuality, etc.

Misconduct - the following is a guide to actions that will be regarded as misconduct. Such breaches of discipline will not normally result in dismissal for a first offence, but may result in dismissal where, for instance, the employee has a previous final 'live' warning on record:

- poor time-keeping or unauthorised absences;
- refusal to carry out a reasonable instruction;

- negligence or abuse causing injury or damage to property;
- neglect or unsatisfactory standards in performance of duties;
- offensive behaviour, insubordination or using abusive language;
- disclosure of confidential information;
- harassment or discrimination on any grounds.

DISCIPLINARY PROCEDURE - ADDITIONAL NOTES

Additional points which should be considered in dealing with disciplinary matters;

- 1) Headteachers and Governing Bodies are strongly advised to seek the support and advice of the Local Education Authority (the appropriate Assistant Director or Education Officer/Personnel Officer) at every stage and as early as possible in all potential disciplinary matters.
- 2) All correspondence with the employee should be "Recorded Delivery".
- 3) All matters relating to the case should be treated in the strictest confidence.
- 4) At all formal meetings with the employee, the Headteacher should ensure that he is accompanied by a reliable witness and should offer the employee T.U. representation.
- 5) Cancellation of Warnings: In deciding what form of penalty shall be imposed, any previous warnings may be taken into account. First Warnings will, however, be expunged from the employee's record after 6 months and Second Warnings after 12 months if no further offence has occurred. Final written warnings will remain on the employee's file, but will not be taken into account in 'totting up' after 2 years provided no further offence has occurred.
- 6) Where an employee is unable to attend a disciplinary or appeal hearing or meeting, this shall not invalidate the proceedings at all.

CRIMINAL OFFENCES

- 1) A criminal offence does not in itself constitute a reason for dismissal unless the offence is one which makes the individual unsuitable in the view of the Governors to continue with the responsibilities of the post.
- 2) The Headteacher will be expected to carry out as much investigation as is reasonable in the circumstances, taking advice from the police if a criminal investigation is in hand. It is for the employee to decide whether or not to co-operate with such an investigation.
- 3) Where it is suspected that a criminal offence has been committed which directly relates to the employee's employment, eg. theft of Council or School funds, fraud etc., then the Governors/Head of Establishment should report the matter to the Police.
- 4) In the event of an employee being subject to criminal proceedings, Headteachers/Governing Bodies must seek advice from Senior Management of the Education Department.

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SIGNED: Momison W. Frew.

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