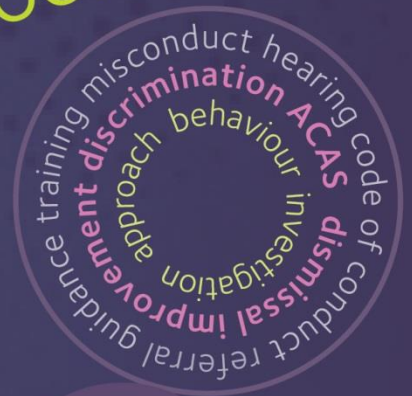




# **Disciplinary** procedure

Model policy for schools



12/2016

**December 2016**

The policy was adopted by the governing body of Duncombe School in 2016

It is due for review in December 2019 by the Personnel Committee

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## 1. Purpose

- 1.1 The procedure is designed to provide a fair and consistent basis for dealing with conduct or behaviour which is either unsatisfactory or fails to meet the required standards. Its main aim is to bring about permanent change in conduct.
- 1.2 It aims to encourage employees to achieve and maintain acceptable standards of conduct and to ensure that employees know what standards are expected of them.

## 2. Application of the procedure

- 2.1. The procedure applies to all staff employed at the school except:
  - those under a probationary period
  - external contractors and employees of external contractors
  - staff centrally employed by LBI.
- 2.2 It does not apply to situations where the Sickness Absence procedure may be appropriate. Similarly where there is concern about an employee's competence or poor performance, the Capability procedure should be used.
- 2.3 Reference to 'Schools HR' is to Islington Schools' HR. If the school uses a different HR provider, that provider's support will be utilised.

## 3. Key principles

- 3.1 The procedure is designed to ensure that high standards of conduct are maintained within school and recognises that the majority of staff members understand the requirements placed upon them and take responsibility for acting in a way which is consistent with these expectations. In addressing circumstances where a staff member falls short of the standard required, the school will seek to ensure that each case is considered on its own merits, in an objective, fair and non-discriminatory manner through the application of the procedure and the following principles:
  - Every employee should have a clear understanding of the standards required of them as a member of school staff and have been provided with a copy of the school's code of conduct;
  - Minor, non-recurring breaches relating to conduct or behaviour will be dealt with promptly without recourse to the formal procedure;
  - Disciplinary issues will be handled without unreasonable delay to meetings or the communication of decisions and with due regard for confidentiality during the process;
  - Allegations of misconduct will be investigated to a level appropriate to the circumstances in order to establish the relevant facts;
  - Employees will be informed of the actions or behaviours which are causing concern and will be given an opportunity to put their case in response to any investigation before decisions are taken;
  - Employees will be informed of their right to be accompanied by a trade union representative or work place colleague at any formal meetings and of their right to appeal against any formal decision made;
  - Reasonable adjustments to the procedure will be made when required to accommodate the needs of an employee with a disability;
  - No employee will be dismissed for a first breach of discipline except in cases of gross misconduct when the sanction may be dismissal without notice or payment in lieu of notice;
  - Employees will be made aware of the existence of the procedure and be informed where they can locate a copy;

- All parties involved in any disciplinary matter must be reminded of their obligation to maintain confidentiality.
- 3.2 It is not possible to develop any set of disciplinary rules that can cover all circumstances that may arise. Appendix A is illustrative and provides a definition of misconduct and gross misconduct, giving examples. The examples are not intended to be exhaustive.
- 3.3 The form of disciplinary action will vary taking into account: the seriousness and nature of the offence; the employee's previous record; any mitigating circumstances; and in some instances, the nature of the job. It will also be important to ensure that the complaint is not one which would apply generally to employees in the event that poor management or work practices are widespread.
- 3.4 Formal action will not be taken against an employee who is an accredited trade union representative until either the Branch Secretary or a full-time official of the union concerned has been informed.

## 4. The Disciplinary Procedure

### 4.1. Informal

- 4.1.1 The expectation is that many potential problems and difficulties can and should be resolved informally.
- 4.1.2 A preliminary investigation should be carried out to establish the facts promptly in order to determine whether or not there appears to be a case to answer.

This should last no more than two working days. Based on its outcome, the following decision can be made:

- no further action will be taken;
  - informal action as outlined in 4.1.3;
  - decision made under 4.1.4;
  - a Stage 1: investigation will be initiated (4.2).
- 4.1.3 Where no action or informal action is taken, the Headteacher (or line manager) may issue guidance, advice, instruction or prohibition as appropriate to ensure that problems are discussed at an early stage with the objective of encouraging and helping employees to improve and to forewarn them that if advice, guidance, instruction or prohibition is not observed formal disciplinary action may follow.
- 4.1.4 Under exceptional circumstances, or where matters have been investigated under other agreed procedures, the school may proceed directly to Stage 2: Hearing (paragraph 4.3). Such circumstances may include, but is not exclusive to, the evidence available, the nature of the allegation and if the employee has admitted to the allegation. Advice must be sought from Schools Human Resources before any such decision or action is taken.

### 4.2. Stage 1: Investigation

- 4.2.1 Consideration should be given to the most appropriate person to conduct the investigation. As a general rule, it will be carried out by the Headteacher or a senior member of staff nominated by the Headteacher (or a person appointed by the governing body in the case of allegations against the Headteacher). Sometimes an independent investigator may be used, especially if the complaint is very serious and/or complex.
- 4.2.2 Some allegations will require referral to one or more outside agencies for advice before an internal investigation can be carried out: for example, those involving child protection, financial irregularities or other potential criminal activities.

- 4.2.3 Except where the police or LADO have advised otherwise, the employee should be informed of the nature of the allegations against him/her and provided with full details of these, that an investigation is underway (and by whom), and be provided with a copy of the procedure.
- 4.2.4 An investigation meeting with the employee will be held, giving **5 working days' notice**. The employee should be advised that they may be accompanied by a trade union representative or work colleague.
- 4.2.5 The employee can request an alternative date for the meeting if their union representative is unable to meet on the date proposed and an alternative date should be offered within 5 days of the original meeting. If the employee and/or their representative do not attend the rescheduled meeting, then it may be held in their absence.
- 4.2.6 Generally, the investigation will include the following elements:
- Ascertaining the relevant information about what occurred and when, interviewing witnesses and obtaining written statements (signed and dated);
  - Gathering any other documentary records which may be relevant to the case;
  - Interviewing the employee, giving him/her advance warning, as much detail as possible about the allegations and time to prepare.
- 4.2.7 As soon as the formal investigation is complete the employee will be informed of the outcome, in writing, in line with the time scales agreed at the investigation meeting. The outcome could be one of the following:
- No further action
  - Informal action, including support, guidance and training
  - Refer the matter to a disciplinary hearing to consider the matter further
  - Review of a relevant school procedure or policy (if appropriate)

### **Suspension (where appropriate)**

- 4.2.8 There may be instances where suspension is necessary while the investigation into the alleged misconduct is carried out. Suspension is not an assumption of guilt and is not considered a disciplinary sanction. Circumstances where suspension may be appropriate are:
- In cases of potential gross misconduct
  - Where relationships have broken down
  - Where there are identifiable risks to the employee, other parties or property
  - Where there are reasonable grounds for concern that the investigation may be compromised by the employee's on-going presence (e.g. through accessing evidence or influencing witnesses)
- 4.2.9 Suspension, should only be imposed after careful deliberation, including consideration of any alternatives to suspension, Schools' HR advice should be sought as appropriate. The responsibility for imposing and lifting a suspension will be the Headteachers' or, in the case of the Headteacher, the Chair of Governors.
- 4.2.10 A decision to suspend, once taken, must be communicated at the earliest opportunity to the employee, wherever possible through a face-to-face meeting. The conditions of the suspension should be communicated in writing within 5 working days.
- 4.2.11 Where suspension lasts longer than 4 weeks it should be reviewed thereafter at regular intervals and the employee kept informed about progress.
- 4.2.12 Where the decision to suspend is made, the staff member must return all school property (e.g. ID badge, laptop, data key, etc.) to the school and remove any personal belonging from the

premises. In exceptional cases, the school must keep the employees personal belongings locked in a safe place for the duration of the suspension. Remote access to the school IT and email system should also be stopped for the period of suspension.

### 4.3. Stage 2: Hearing

- 4.3.1 The Headteacher will chair the hearing if he/she has not been involved as part of the investigation. In all other cases (including where the dismissal of the Headteacher is under consideration), the meeting will be held by a panel of governors.
- 4.3.2 The employee will be given **10 working days' notice** of the hearing, unless a shorter period is mutually agreed. As well as full details of the hearing date and time, the notification will also include:
- a copy of the investigation report and depending on the sensitivities of the information, copies of other written evidence or statements;
  - The possible consequences for the employee in terms of the procedure;
  - Confirmation of the right to be accompanied by a trade union representative or work colleague and to call witnesses and present evidence (the employee may be asked to provide, at least 5 working days in advance, copies of any written evidence and the names of his/her representative and any witnesses);
  - A copy of the Disciplinary Procedure (where this has not already been given).
- 4.3.3 The employee can request an alternative date for the hearing if their union representative is unable to meet on the date proposed and an alternative date should be offered within 5 days of the original hearing. If the employee and/or their representative do not attend the rescheduled hearing, then it may be held in their absence.
- 4.3.4 All hearings will have a school appointed note taker present and a representative from Schools Human Resources Representative will also be present to advise the Headteacher (or Governors Panel).
- 4.3.5 The Headteacher (or Governors Panel) will consider the evidence presented at the hearing and other representations from the employee, before reaching a decision (see appendix B).
- 4.3.6 In all cases, the employee will be the informed of the outcome of the hearing in writing **within 5 working days** of the hearing. The employee must also be informed of their right to raise an appeal within **5 working days** of notification of the outcome of the hearing.
- 4.3.7 Where the decision to dismiss has been taken, the Headteacher or governing body panel will issue notice of dismissal (for foundation or voluntary aided schools) or notify the local authority of its decision (for community and voluntary controlled schools). The local authority must issue notice of dismissal within 10 working days of notification from the Headteacher or governing body panel of the decision.
- 4.3.8 The period of notice (if one is to be given) will be the statutory minimum or contractual notice (for teachers, notice will be given in accordance with the Burgundy Book), whichever is the longer.

### 4.4. Stage 3: Appeal

- 4.4.1 An employee may appeal against any formal warning given or on a decision to dismiss. Appeals should be made within **5 working days** of the receipt of the warning or dismissal letter. The employee must set out the grounds for the appeal in writing to the clerk to governors.
- 4.4.2 The employee will be given **10 working days'** notice of the time and venue of the appeal hearing, together with all documents to be considered by the appeal panel; this will include, but is not limited to, all documents available at the original hearing, notes and outcome of the

original hearing and the employees grounds of appeal). The appeal panel will consist of 3 governors who have not previously been involved in the case.

- 4.4.3 The employee can request an alternative date for the appeal hearing if their union representative is unable to meet on the date proposed and an alternative date should be offered within 5 days of the original meeting. If the employee and/or their representative do not attend the rescheduled appeal hearing, then it may be held in their absence.
- 4.4.4 All appeal hearings will have a school appointed note taker present and a representative from Schools Human Resources Representative will also be present to advise the appeal panel.
- 4.4.5 An appeal will not normally involve a re-hearing of earlier evidence but the request for an appeal should specify the grounds for the appeal and, in particular, whether these refer to the reasonableness of the decision or to procedural matters
- 4.4.6 The decision of an appeal panel will be final.

### **Other points to note**

## **5. Overlapping of Disciplinary and Grievance Procedures**

- 5.1 An employee may raise a grievance after disciplinary proceedings have started against him/her. The person managing the Disciplinary Procedure should consider the implications of the grievance on the disciplinary. If the grievance has been raised before the appeal stage of the Disciplinary Procedure and the matters of grievance are linked to those of the disciplinary, then the grievance should be considered within the Disciplinary Procedure. If the grievance concerns matters that are unrelated to the disciplinary, then a separate process under the Grievance Procedure will need to start. In almost all cases where a grievance is raised after disciplinary proceedings have started, the grievance should be considered after the completion of the disciplinary.

## **6. Sickness Absence**

- 6.1 If sickness absence appears to be triggered by the start of the Disciplinary Procedure, this will be dealt with in accordance with the School's Sickness Absence Procedure.

## **7. Referrals to statutory bodies**

- 7.1 There are statutory duties on employers to refer individual cases to national bodies in the event of a dismissal or resignation when dismissal may have been a likely outcome. Advice should be sought from Schools HR.

## **8. Inability of employee to attend meetings or hearings**

- 8.1 If an employee is unable or chooses not to attend a formal meeting or hearing he/she may choose to provide written permission to the effect that his/her representative may act on full authority and he/she will accept any decision that their representative has been party to. He/she may also choose to provide a written response.
- 8.2 Alternatively, if he/she cannot attend for a genuine reason, and is not willing for his/her representative to act on their behalf, it may be reasonable to arrange another meeting/hearing/ appeal hearing. However, if the employee fails to attend for a second time, without a genuine reason, then it may be held in their absence and a decision made based on the facts and evidence available in the employee's absence.



## Appendix A: Definitions of misconduct and gross misconduct

High standards of professional conduct are particularly important in schools and educational establishments and the image and ethos of a school have a vital effect on the success of its activities. The duty of care towards children and students imposes particular demands on staff in schools and educational establishments to conduct themselves in a proper manner observing the health, safety and welfare of others at all times. It is therefore important that all employees observe the standards of conduct that pupils, parents and the public are reasonably entitled to expect.

Any member of school staff who breaches the schools professional standards as set out in the Code of Conduct will be liable to disciplinary action. The nature of action taken in any case will depend on:

- the seriousness and nature of the breach;
- the employee's previous record;
- mitigating circumstances;
- in some cases, the nature of the post.

Some breaches will be treated as gross misconduct and in such cases dismissal (possibly without notice) may be the appropriate form of disciplinary action.

**Misconduct** is normally deemed to be minor and not to result in dismissal. The following areas are regarded as examples of misconduct (this list is not exhaustive):

- Failure or refusal to follow / comply with reasonable management instructions.
- Continued unauthorised absence, failure to follow attendance and time keeping requirements.
- Continued failure to follow school procedures.
- Wilful failure to sustain satisfactory standards of work without justifiable reason.
- Breach of the School's Data Protection policies.

**Gross misconduct** means one or more acts or omissions that fundamentally repudiate the contract of employment. It may justify summary dismissal unless there are extenuating circumstances. Gross misconduct can include acts committed outside working hours (as long as it has a direct and fundamental impact on the suitability of an employee to work in the school), as well as those committed at work. It may include but is not limited to:

- unauthorised removal or misuse of school or Council property.
- dishonesty or falsification of expenses/pay claims.
- theft and/or fraud.
- physical assault, including corporal punishment and child abuse.
- sexual offences, including improper relationships with children.
- improperly using one's position for personal gain.
- drunkenness or drug abuse at work.
- endangering the health and safety of staff or pupils.
- unlawful discrimination or harassment.
- bullying and harassment
- breach of confidentiality
- breaches of the schools ICT policy

This list is neither exclusive nor exhaustive. Ignorance of the Code of Conduct will not be accepted as a mitigating circumstance.

## Appendix B: Disciplinary decisions and sanctions

The Headteacher (or Governors Panel) at the hearing will consider all the evidence before it and determine whether, on the balance of probabilities, the alleged conduct occurred. If it finds that misconduct was committed, it will consider the seriousness and the impact of the misconduct, and any mitigating factors, in reaching a decision about what, if any, sanctions should be applied.

Where an employee is found to have committed misconduct the following actions may be taken:

- First written warning

A note of the first written warning will be kept on the employee's personal file. The warning will normally be disregarded for disciplinary purposes after 12 months, however this will depend on the nature of the misconduct.

Set out the improvement that is required and state that failure to improve behaviour or conduct, or a further allegation of misconduct, if proven, may lead to dismissal;

- Final written warning

A final written warning will be issued where there is a failure to improve or change behaviour in the timescale set or whilst there is a live first written warning or where the offence is very serious but does not warrant dismissal. It may also be issued where an allegation of gross misconduct is upheld, but there are significant mitigating factors which the hearing and appeal panel considers sufficient to reduce the sanction to a warning.

A copy of the final written warning will be kept on the personal file. This will normally be disregarded for disciplinary purposes after 1 - 2 years, dependent on the circumstances.

- Dismissal (with or without notice)

Dismissal will be the outcome where the misconduct occurred during the period of a previous final written warning, in which case the employee will be dismissed with notice; or the misconduct is so serious that it is appropriate to dismiss even where it was a first offence (gross misconduct), when the employee will be dismissed without notice or pay in lieu of notice.

The decision to dismiss with or without notice (only in cases of gross misconduct) should be made dependent on the nature and seriousness of the misconduct.

The employee must be made aware of the date on which the employment contract will end, and if appropriate, the period of notice.

## Appendix C: Hearing Format

The conduct of the hearing will be the responsibility of the Headteacher or one of the members of the Governors' Panel, elected to act as its Chair. The order of proceedings can be adjusted to suit the circumstances if necessary, providing the overall principles, aimed at securing a fair hearing, are adhered to.

The Chair will introduce all those present and outline the purpose of the hearing and any procedural arrangements.

### 1. Management case

Management present their case first. Management can then be questioned on the presentation by:

1. The other side (employee's)
2. Chair
3. Other members of the panel
4. Any adviser to the panel.

Any follow up questions after this round of questioning should be routed through the Chair for their agreement.

**When the management case is completed then it is for the other side to present their case.**

### 2. Employee's case

The employee and/or their representative will present the case. They can then be questioned on the presentation by:

1. The other side (management)
2. Chair
3. Other panel members
4. Any adviser to the panel.

Any follow up questions after this round of questioning should be routed through the chair for their agreement.

### 3. Witnesses (if applicable)

Management and the Employee or their representative should seek permission from the Chair to call in any witness.

The witness should be introduced by the Chair to those present. The chair, management or employee (or representative) will explain to the witness that they will be asked questions as part of the management/employee's case and then questions can be asked from those present in the following order:

1. The other side
2. Chair
3. Other panel members
4. Any adviser to the panel.
5. Re-examination by management/employee's side

Witnesses remain in the room only for the period of questioning. Witnesses should only be released with the consent of both parties.

**The chair should ensure that questions asked are not leading questions and that either side are not making statements when they should be asking questions and vice versa.**

#### 4. Summing up

The chair should agree with both sides how much time is required to prepare a closing statement.

- The manager may make a closing statement
- The employee (or their representative) may make a closing statement.
- No new evidence should be introduced at this stage.

#### 5. Decision

The chair will inform the employee **in writing** of the outcome of the hearing in line with the timescales set out in the school policy.

#### 6. Right of appeal

Inform employee of right of appeal against any formal decision. The appeal must be lodged with the clerk to the governors in line with the timescales set out in the school policy.

The decision of the panel to be confirmed in writing

## Appendix D: Appeal Hearing Format

The conduct of the appeal hearing will be the responsibility of one of the members of the Governors' Appeals Panel, elected to act as its Chair. The order of proceedings can be adjusted to suit the circumstances if necessary, providing the overall principles, aimed at securing a fair hearing, are adhered to.

The Chair will introduce all those present and outline the purpose of the hearing and any procedural arrangements.

### 1. Employee's case

The employee and/or their representative will present the grounds for the appeal. The employee can then be questioned on the presentation by:

1. The other side (management side)
2. Chair
3. Other panel members
4. Any adviser to the panel.

Any follow up questions after this round of questioning should be routed through the chair for their agreement.

**When the employee's grounds for the appeal have been completed then it is for the other side to present their case.**

### 2. Management case

Management (Chair of the hearing panel and/or investigating manager) present their outline explaining why the original decision was correct. Management can then be questioned by:

1. The other side (employee's side)
2. Chair
3. Other members of the panel
4. Any adviser to the panel.

Any follow up questions after this round of questioning should be routed through the chair for their agreement.

### 3. Witnesses (if applicable)

Management and the Employee or their representative should seek permission from the Chair to call in the witness. The witness(s) should be introduced by the Chair to those present.

The Chair, management or employee (or representative) explains to the witness that they will be asked questions as part of the employee's case and then questions can be asked from those present in the following order

1. The other side
2. Chair
3. Other panel members
4. Any adviser to the panel.
5. Re-examination by management / employee's side

Witnesses remain in the room only for the period of questioning. Witnesses should only be released with the consent of both parties.

**The chair should ensure that questions asked are not leading questions and that either side are not making statements when they should be asking questions and vice versa.**

#### **4. Summing up**

The chair should agree with both sides how much time is required to prepare a closing statement.

- The employee (or their representative) may make a closing statement including any mitigating circumstances
- The manager may make a closing statement
- No new evidence should be introduced at this stage.

#### **5. Decision**

The chair will inform the employee in writing the outcome of the hearing in line with the timescales set out in the school policy.

#### **6. Right of appeal**

Inform employee of there is no further right of appeal.

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To obtain more information on the Disciplinary model policy, please contact:

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