



Pheasey Park Farm Primary School

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Disciplinary Policy and Procedure

1. Introduction

This procedure applies to all school based staff employed by Walsall MBC Education Service and adopted by this school.

It is important that suitable rules and procedures are in place within schools 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.

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 School's delivery of high quality education.

This Disciplinary Procedure is separate and distinct from Competence and Sickness Absence Management Procedures. This procedure should be used where staff have wilfully 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.

The procedure will be initiated by the Head Teacher. If the Head Teacher 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 of the Managing Director, Education Walsall. These distinctions should be borne in mind and references to Head Teacher in this procedure should be adjusted accordingly.

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.

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.

Any employee who is subject to this procedure should be advised that they are entitled to be accompanied by a fellow employee or trade union/professional association representative.

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.

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.

2. Disciplinary Rules

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.

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.

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 the School's standing orders, financial regulations or the employees' code of conduct
- misuse of the School's property or name, or bringing the school into disrepute
- serious abuse of the School's 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

3. Suspension

An employee can be suspended on the authority of either the Governing Body or the Head Teacher. Each must inform the other, and a representative of the Managing Director, Education Walsall if they take such action. 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 may interfere with the impartiality of the investigation.

Suspension will be on full pay and must be confirmed to the employee in writing, (see example letter at Appendix A) along with confirmation that it is a neutral act and does not

constitute a disciplinary penalty. The appropriateness of the continued suspension should be reviewed every 20 working days by the Governing Body who are solely empowered to end the suspension.

While suspended, an employee must not attend school premises without prior permission from the Head Teacher or Governing Body, usually the Chair. If appropriate, supervised access for the employee, and/or their representative will be allowed.

4. Disciplinary Procedure

4.1 Investigation

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.

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.

Investigation interviews should be carried out as soon as possible, ideally by someone other than the Head Teacher 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 representative with them
- The procedure and issues discussed are confidential
- Their statement may be used at any future disciplinary hearing
- They may be required to attend any hearing as a witness, if appropriate

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.

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.

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.

4.2 Informal Advice

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.

If the misconduct is minor and has not previously been identified to the employee as a problem, the Head Teacher (or their designated representative with the knowledge of the

Head Teacher) may decide to give advice or instructions to the employee for the purpose of improving their future conduct.

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.

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4.3. Formal Hearing

This will be carried out where the Head Teacher, following investigation, concludes that the misconduct warrants formal action. The Head Teacher will write to the employee arranging to meet with them (see example letter at Appendix B), 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 Head Teacher intends to call
- Advise the employee that they may call witnesses, subject to the Head Teacher being given details of any witnesses at least two working days prior to the date of the meeting.

The Head Teacher 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 is attached at Appendix D. At the end of the hearing, the Head Teacher may require an adjournment to consider their decision and/or seek further advice. The employee will be advised of the decision at the end of the hearing, and this decision will be confirmed in writing at the earliest opportunity.

The decision will be one of the following:

- a) No further formal action i.e. the Head Teacher considers that the alleged offence is unfounded
- b) Formal Recorded Verbal Warning
- c) Formal Written Warning
- d) Formal Final Written Warning

All warnings will be confirmed in writing (see example letter at Appendix E) 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
- A reminder of any active warning already on file

4.4 Formal Recorded Verbal Warning

Where the Head Teacher 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.

4.5 Formal Written Warning

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.

4.6 Formal Final Written Warning

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.

5. Dismissal Procedure

In cases of alleged gross misconduct, or where further misconduct has occurred following a formal final written warning, the Head Teacher shall consider referral to the Staff Dismissal Committee. If it is the view of the Head Teacher advised by a representative of the Managing Director of Education Walsall 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 Head Teacher with effect from September 2003. However in order to demonstrate a fair and objective procedure, schools are strongly advised to refer potential dismissals to a sub committee of the Governing Body, i.e. the Staff Dismissal Committee. This is particularly important in smaller schools where the Head Teacher is likely to have already been involved in identifying/investigating the alleged misconduct.

Referral to the Staff Dismissal Committee shall be initiated by the Head Teacher, advised by a representative of the Managing Director of Education Walsall, and the Head Teacher shall notify the employee in advance in writing, giving the reasons. The employee shall be entitled to put their case to the Staff Dismissal Committee, the composition of which shall comply with the appropriate Regulations in relation to school government. An example letter for calling the employee is attached at Appendix C. The suggested format attached at Appendix D may be followed by the Committee.

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, or
 - Issue a warning, or
 - withhold incremental progression, or

- 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 and is to be summarily dismissed/dismissed with notice or pay in lieu of notice.

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.

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 Managing Director of Education Walsall or their representative. Notification of the decision only shall be conveyed to the Governing Body.

If the employee is under suspension and is not dismissed, the suspension will be lifted with effect from the day following the hearing, or as soon as possible afterwards.

Where a Committee has determined that an employee should cease to work at the school, the employee should be notified of their right of appeal and simultaneously written notification should be sent to the Managing Director of Education Walsall. The dismissal will then be actioned on behalf of the LEA within 14 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.

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 Staff Dismissal Committee.

The Head Teacher and a representative of the Managing Director of Education Walsall 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.

6. Rights of Appeal

An employee may appeal against any formal disciplinary action by giving notice in writing within five working days to the Chair of the Appeal Committee, setting out the grounds for their appeal. A copy shall be forwarded immediately to the Managing Director of Education Walsall or their representative and a meeting of the Appeal Committee shall be convened at the earliest opportunity but within 15 working days. All concerned shall be advised in advance of the date, time and venue. The composition of the Appeal Committee shall comply with appropriate Regulations in relation to school government.

The appeal hearing will not normally be a full rehearing of the case as originally presented. In reviewing the case, the Appeal Committee will be required to consider the grounds of appeal and determine whether the decision to dismiss was reasonable.

The Appeal Committee may confirm, quash, reduce or increase the disciplinary action decided upon by the Staff Dismissal Committee. All records should be revised accordingly to reflect the decision of the Appeal Committee.

7. Arrangements for Meetings of the Staff Dismissal/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 as soon as possible, but within 15 working days. 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
- Be accompanied by an observer who shall not speak or take any part in the meeting
- Receive prior notice of the date, time and venue of the meeting
- Before a meeting of the Staff Dismissal 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/LEA procedures.

Note that when an employee is dismissed on the grounds of misconduct or resigns in circumstances which would have led to their dismissal or consideration of their dismissal on those grounds, this must be reported to the DfES as soon as possible, in accordance with DfES circular 11/95, or any subsequent amendments. The individual should be advised that the case is being reported to the DfES.

Appendix A

Date

Private and Confidential

Dear

Precautionary Suspension from Work

I refer to our discussion today when I advised you that an investigation is being carried out regarding the following allegation(s):

(Give details of allegation)

On the basis of the information available so far, this is an extremely serious matter which is regarded as gross misconduct in accordance with the Disciplinary Policy and Procedure. I therefore confirm that you are suspended from work on normal pay with immediate effect.

During the period of your suspension, you must not visit the school or make contact with your work colleagues, unless you have obtained prior permission from me to do so.

You may be required to attend an investigation interview in order to discuss these allegations and you will be advised of this in due course. I will write to you again to confirm the outcome of the investigation, once it has been completed.

Please note that this is a precautionary suspension and is a neutral act which should not be regarded as a disciplinary penalty.

Yours sincerely

Head Teacher

Or Chair of Governors if addressed to Head Teacher

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Appendix B

Date

Private and Confidential

Dear

Formal Disciplinary Hearing

I am writing to advise you that a Formal Disciplinary Hearing has been arranged which will be held on (confirm date, time and venue).

At this hearing, the following allegation of misconduct will be considered in accordance with the Disciplinary Policy and Procedure (copy enclosed for your information):

(set out allegation(s))

A copy of the investigation report to be presented at the hearing is enclosed for your information, and any additional written evidence that you intend to present should be forwarded to me at least two working days before the date of the hearing. Written information submitted later than this will not be considered.

*You should be aware that the following are due to be called as witnesses during the hearing:

(give names of any witnesses)

Please advise me no later than two working days before the hearing whether you intend to call any witnesses so that arrangements can be made for their release from duty if necessary.

You are entitled to be accompanied by a trade union/professional association representative or fellow employee. At the hearing, you will be given the opportunity to state your case and challenge any evidence presented, before any decision is made.

Yours sincerely

Head Teacher
Or Chair of Governors if addressed to Head Teacher
Enc

*delete as applicable to the particular case

Appendix C

Date

Private and Confidential

Dear

Formal Disciplinary Hearing – Allegation of Gross Misconduct

I am writing to advise you that a Formal Disciplinary Hearing has been arranged which will be held on (confirm date, time and venue).

At this hearing, the following allegation of gross misconduct will be considered in accordance with the Disciplinary Policy and Procedure (copy enclosed for your information):

(set out allegation(s))

A copy of the investigation report to be presented at the hearing is enclosed for your information, and any additional written evidence that you intend to present should be forwarded to me at least five working days before the date of the hearing. Written information submitted later than this will not be considered.

*You should be aware that the following are due to be called as witnesses during the hearing:

(give names of any witnesses)

You should be aware that if the allegation(s)* are proven to be gross misconduct your post at the School may be at risk.

Please advise me no later than five working days before the hearing whether you intend to call any witnesses so that arrangements can be made for their release from duty if necessary.

You are entitled to be accompanied by a trade union/professional association representative or fellow employee. At the hearing, you will be given the opportunity to state your case and challenge any evidence presented, before any decision is made.

Yours sincerely
Clerk to the Governing Body

Or Chair of the Staff Dismissal Committee*
Enc

*delete as applicable to the particular case

Appendix D

Disciplinary Hearing – Suggested Format

- Chair of hearing introduces those present, clarifies roles, explains purpose of hearing (ensuring employee understands allegations) and outlines procedure to be followed.
- Ensure both parties attend and leave at the same time, including any adjournments, and that any witnesses only remain present for the period required.
- Presenter who has conducted the investigation puts their case in the presence of the Head Teacher. (Where the Head Teacher has investigated the allegations, he/she will put the case directly to the employee concerned).
- The Head Teacher may ask questions of the Presenter, and of any witnesses called by them, on the evidence given. The staff member concerned or his/her representative may then have the same opportunity to ask questions.
- The staff member or his/her representative puts their case in response to the allegations.
- The Head Teacher may ask questions of the staff member, and of any witnesses called by them, on the evidence given. The Presenter may then have the same opportunity to ask questions.
- The Head Teacher asks the Presenter to sum up their case.
- The Head Teacher asks the staff member or his/her representative to sum up their case.
- Having heard all the evidence, the Presenter, staff member and representative will be asked to withdraw so that the Head Teacher, with a human resources advisor if appropriate, can deliberate in private.
- The Presenter or the staff member can be recalled to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return, not withstanding if only one is concerned with the point giving rise to doubt.
- The Head Teacher will announce the decision to both parties in person and confirm the outcome in writing at the earliest opportunity.
- The same format will apply where dismissal is being considered by the Staff Dismissal Committee of the Governing Body. The Head Teacher will be responsible for presenting the case to the panel.
- The same format will also apply to an appeal hearing, however in this case the employee will be invited to present their case first. This should be regarded as an opportunity to present the grounds of their appeal along with any supporting evidence and for the Chair/Chair of Dismissal Committee to respond accordingly. An appeal hearing will be a review of the decision based on the grounds of appeal, and will not normally be a full rehearing of the case.

Appendix E

Date

Private and Confidential

Dear

Formal Recorded Verbal/Written/Final Written Warning*

I am writing to confirm the outcome of the Disciplinary Hearing held on (confirm date, time, venue).

At the Hearing, you were accompanied by (insert name). The hearing was attended by myself as Chair and (insert names and roles of any other attendees).

The reason for the Disciplinary Hearing was to discuss the following allegation(s):
(Insert details of allegation)

You were given the opportunity to respond and you explained that (insert as appropriate).

After careful consideration of all the evidence presented, it was decided that you should be issued with a Formal Recorded Verbal/Written/Final Written Warning* in accordance with the Disciplinary Policy and Procedure.

This warning will be placed on your file, but will be disregarded for disciplinary purposes after a period of 6 months/12 months/2 years* satisfactory conduct. Please note that further breaches may result in further disciplinary action being taken against you *which may result in dismissal (applies when final written warning has been issued).

I trust that such an incident will not occur again and that we can look forward to an improvement in your conduct in the future which will re-establish my confidence in you as a valued employee of this school.

Finally, you are reminded of your right of appeal against this decision. If you wish to appeal, please put this in writing with details of the grounds for your appeal within 5 working days of receipt of this letter to the Chair of the Appeal Committee, c/o the School who will arrange for your appeal to be heard. Please confirm receipt of this letter by signing and returning the enclosed copy letter to me.

Yours sincerely

Chair of disciplinary hearing

I acknowledge receipt of this letter and understand the contents.

Signed..... Dated

Print Name

*delete as applicable to the particular case

Appendix F

Disciplinary Appeal Hearing – Suggested Format

1. Chair of hearing introduces those present, clarifies roles, explains purpose of appeal hearing and outlines procedure to be followed (an appeal hearing will be a review of the decision based on the grounds of appeal, and will not normally be a full rehearing of the case).
2. Ensure both parties attend and leave at the same time, including any adjournments, and that any witnesses only remain present for the period required.
3. The staff member or his/her representative presents the grounds for their appeal.
4. The Appeal Committee may ask questions of the staff member, and of any witnesses called by them, on the evidence given. The Presenter may then have the same opportunity to ask questions.
5. Presenter who has conducted the original Disciplinary Hearing puts their case in response to the appeal. (In the case of a dismissal the Chair of the Staff Dismissal Committee will normally present the case).
6. The Appeal Committee may ask questions of the Presenter, and of any witnesses called by them, on the evidence given. The staff member concerned or his/her representative may then have the same opportunity to ask questions.
7. The Chair asks the staff member or his/her representative to sum up their case.
8. The Chair asks the Presenter to sum up their case.
9. Having heard all the evidence, the Presenter, staff member and representative will be asked to withdraw so that the Appeal Committee, with a human resources advisor if appropriate, can deliberate in private.
10. The Presenter or the staff member can be recalled to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return, not withstanding if only one is concerned with the point giving rise to doubt.
11. The Appeal Committee will announce the decision to both parties in person and confirm the outcome in writing at the earliest opportunity.