

Huntspill Community Federation



STAFF DISCIPLINARY PROCEDURE



Lead Person: Derek Nevell
Committee: Business
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The Governing Body of The Huntspill Federation will adopt, & adhere to, the LA guidance contained in Volume 1 Section 16 of the Guidance for Schools, Disciplinary and Appeals Procedure.

Service Group: HR
Contact Details: HR Office, Children and Young People Somerset County Council,
Tel: 01823 355351

Part 1: Community & Voluntary Controlled Schools

Part 2: Foundation & Voluntary Aided Schools

Part 3: Non-Maintained Schools/Academies

Part 1: Community and Voluntary Controlled Schools

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PURPOSE

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance*. Somerset County Council and the Governing Body require that whilst attending work, whether or not on Council premises, employees should conduct themselves in a safe and proper manner, abiding by the standards of conduct, rules and regulations set out in the Council's Standing Orders and the appropriate conditions of service, copies of which are available from the Headteacher. This procedure sets out the action which may be taken when these rules are breached.

*performance would usually be dealt with through capability routes.

EXCEPTIONS

An employee may be dismissed in the following circumstances without recourse to the Disciplinary Procedure:

1. redundancy, provided the appropriate procedure has been followed;
2. expiry of the agreed probationary period if applicable;
3. failure to satisfactorily complete NQT Induction
4. on the expiry of a fixed term contract of employment;
5. lack of professional competence; (where the appropriate Capability Procedure has been followed);
6. dismissal due to long-term ill health, provided the appropriate procedure has been followed;
7. unsatisfactory attendance due to ill-health; (Absence Management Policy);
8. dismissal for some other substantial reason.

PRINCIPLES

The Council and the Governing Body will take all necessary measures to ensure that the rules and regulations which are in force are communicated to all employees, eg via inductions, employee handbooks, notice boards, etc. It is the responsibility of individual employees to ensure that they are aware of and understand these rules and regulations. Details are available from the Headteacher.

The day-to-day supervision of staff is part of the normal management process and is outside the formal procedure for dealing with breaches of discipline. There is likely to be less recourse to the formal procedure if deficiencies in an employee's conduct are brought to their attention at the earliest possible stage by their immediate supervisor. In principle, it is intended that day-to-day managerial approaches are adopted wherever possible.

The procedure is designed to establish the facts quickly and to deal consistently and fairly with disciplinary issues. No disciplinary action will be taken until the matter has been investigated fully and a formal disciplinary hearing held.

When allegations or concerns first come to light it is appropriate to hold a meeting with the member of staff as soon as reasonably practicable which covers the following:

1. informs them of the allegation
2. invite an immediate response (to help management form a view as to whether further investigation is needed)
3. advise the employee to seek advice/support from their Trade Union and that they will be able to attend any further investigatory interviews

4. inform the member of staff that they will be kept informed about decisions to proceed with further investigations or if the matter is concluded.

The employee should be given as much notice as possible of the hearing to allow them to prepare their response (we would normally suggest a minimum of 10 working days). If less than 5 days notice is to be given then the hearing can only proceed if agreed by both parties. The invite letter should inform the employee precisely what the complaint is made against. This letter should be sent by recorded delivery if personal service is not practicable. Any supporting papers should be circulated as far in advance of the disciplinary hearing as possible. Where appropriate, copies will be provided to the employee's companion. The employee will be given the opportunity to state their case at the disciplinary hearing. Please note that if new evidence or facts emerge during the hearing, it may be necessary to adjourn the hearing to further investigate and then reconvene the hearing when these enquires have been completed.

The employee will have the right in law to be accompanied by a companion at all stages of the disciplinary procedure, good practice would also allow an employee to be accompanied during any investigation interviews, and this request must not be refused if it has no undue impact on the investigation progressing in a timely fashion. A companion may be a fellow employee, an official employed by a trade union or a work based trade union representative.

An employee has the right to appeal against any formal disciplinary warning imposed.

An employee will be required to acknowledge receipt of a warning letter and confirm that its implications are understood.

The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

Repeated acts of misconduct where the warnings are current, whether of a similar or dissimilar nature, will result in the cumulative application of this procedure.

An employee will not be dismissed for a first breach of discipline except in the case of gross misconduct when dismissal may be immediate and without notice or payment in lieu of notice.

In the course of a disciplinary investigation or hearing an employee might raise a grievance that is related to the case. Depending on the nature of the grievance the disciplinary process may be suspended for a short while whilst the grievance is dealt with. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

If an employee fails to attend the disciplinary hearing without good cause, a decision may be taken in their absence. If there are medical reasons for non-attendance, the employee is required to produce a doctor's statement (the cost of which would be refunded by the School) and may be referred to occupational health. In normal circumstances an employee is expected to attend a disciplinary hearing or investigation meeting even when they may be regarded as being unfit to attend for their normal work. If an employee produces a medical certificate from their GP attesting that they are unfit for work due to a reason unconnected with the disciplinary hearing or matter under investigation then a postponement may be considered by the employer as reasonable in those circumstances. However, if the reason for the absence as attested by the employee's GP is stress related to or arising from the disciplinary hearing or matter under investigation then this will not be regarded as a legitimate reason for postponing the matter. If the cause of the stress is the potential disciplinary matter under consideration it follows that the conclusion of the matter will resolve the issues causing the stress and the absence arising from it. If the matter is of such gravity that it must be dealt with immediately then the hearing will proceed in the employee's absence. Any decision to proceed with a subsequently re-arranged hearing at which the employee again fails to attend will take into account the reason for the non-attendance, medical advice from the County's Occupational Health Physician (if appropriate), the seriousness of the matter being considered and whether or not the employee has a companion to respond on their behalf. Where the grievance relates to the employer's decision to impose a disciplinary sanction, the grievance procedure **does not** apply and the grounds for the employee's grievance may be dealt with as part of the appeal against the sanction.

Where the grievance is raised at the outset of the investigation or notification of the hearing and the grievance relates to the case eg the suitability or impartiality of the manager conducting the investigation or the hearing or the refusal of the manager conducting the investigation to include witnesses proposed by the employee then the disciplinary process may be suspended for a short while to enable the grievance to be considered as a separate process.

Where the grievance is raised during the disciplinary hearing, or after the disciplinary hearing but before any appeal, then the grievance will be dealt with as part of the disciplinary or the appeal hearing. In effect, the grievance becomes part of the employee's response to the case being presented at the disciplinary hearing or becomes one of the grounds for the appeal.

SANCTIONS

Minor issues of conduct will be dealt with informally, normally by the employee's immediate supervisor, either via day to day management or the informal support and guidance strategy set out in Volume 1, Section 16, Appendix F. Where the matter is more serious or the behaviour or actions continue, the following procedures and sanctions will apply:-

Stage 1 - Verbal Warning: If conduct is found not to meet acceptable standards then the employee will normally be given a formal Recorded VERBAL WARNING. They will be advised of the reason for the warning, the length of time that it will remain current and of the right to appeal. A letter confirming the verbal warning will be issued and a copy placed in the employee's file. It will remain current for a minimum of three months and a maximum of twelve months, after which it becomes spent.

Stage 2 - Written Warning: If the misconduct is serious i.e. impact on employer's business is/could be serious, or if further misconduct occurs whilst a verbal warning is current, the employee will be

given a WRITTEN WARNING letter. They will be advised of the reason for the warning, the length of time that it will remain current, the improvement required and of the right to appeal. A copy of this written warning will be placed in the employee's file. The warning will remain current for a minimum of six months and a maximum of twelve months, after which it becomes spent.

Stage 3 - Final Written Warning: If the misconduct is more serious than that considered appropriate for a written warning or if further misconduct occurs whilst a written warning is current, the employee will be given a FINAL WRITTEN WARNING letter. They will be advised of the reason for the warning, the length of time that it will remain current, that dismissal will result if there is a further act of misconduct/poor performance and of the right to appeal. A copy of the final written warning will be placed in the employee's file.

The warning will remain current for a minimum of twelve months and a maximum of eighteen months (in exceptional cases the period may be longer, for example, a lengthy pattern of misconduct where previous warnings have failed to secure the required improvement and it is felt that a longer period of time is necessary for the employee to establish a pattern of sustained good conduct), after which it becomes spent.

Stage 4 - Dismissal: If, during the currency of a final warning, further misconduct which would warrant a formal warning occurs, dismissal with notice/pay in lieu of notice will, other than in exceptional circumstances, result.

Regulations made under Sections 35 and 36 of the Education Act 2002 provide for the delegation by the Governing Body of an initial staff dismissal determination to the Headteacher. Where the Headteacher is not exercising delegated responsibilities for or the Headteacher is being considered for dismissal, the initial dismissal decision should be delegated to a Governors Staff Dismissal Committee of at least three governors, unless there are not enough governors who have not been involved in any previous action or decision connected to the dismissal. In this case the decision should be delegated to a panel of two governors. Wherever such a determination is being contemplated following investigation, the County Solicitor, the Chair of Governors and the Local Authority must be informed.

Following determination, either by the Headteacher or a committee of governors as described above, that a member of staff should cease to be employed by the School, dismissal will be by the Local Authority.

If a disciplinary hearing determines that the employee should cease to work at the School, the Headteacher or Chair of the Governors Staff Dismissal Committee, will confirm the decision in writing, stating the grounds for the determination to dismiss and right of appeal. A copy of this letter must be sent to the Learning & Achievement Operations Director or their nominated representative. The Learning & Achievement Operations Director or their nominated representative has the right to attend, in an advisory capacity, any disciplinary hearing which could result in the determination to dismiss.

The Learning & Achievement Operations Director must give effect to that determination within 14 days by writing to the employee stating the reasons for dismissal and the date of termination. In accordance with Sections 35 and 36 of the Education Act 2002 the employee can be dismissed prior to the period allowed for the employee to lodge an appeal and for that appeal to be heard. The termination may be rescinded if an appeal is upheld.

It is for the headteacher/governors dismissal committee, advised by the nominated representative of the Local Authority, to determine whether there are such exceptional circumstances and each situation will be considered on its own merits.

Examples of such circumstances could be:

- distressing, unforeseen family or external circumstances affecting the employee.
- *where the employee has a serious or terminal illness and the headteacher or governors committee determine not to exercise a decision that would lead to dismissal.*

Where there has been a misconduct which has resulted in dismissal or a member of staff has resigned where dismissal was an option and there is a child protection element, the employer is required to make a referral to the Independent Safeguarding Authority. In cases where there is no child protection element, but misconduct has resulted in dismissal, or the employee has resigned when dismissal was an option, in the case of teachers the employer is required to seek advice from a Local Authority HR Officer.

Disciplinary Warnings – Record Keeping: Whilst warnings issued under the sections above will be disregarded for future disciplinary purposes once spent, a record relating to any child protection/safeguarding allegations will be retained.*

For those warnings not related to child protection/safeguarding the warning letter itself should be removed, however any accompanying management guidance about the expectations for future standards of conduct and performance should be retained*

To ensure compliance with these record keeping requirements any management guidance should be on a separate document to the note of the actual disciplinary sanction.

The DfE Guidance: Dealing with Allegations of Abuse against Teachers and Other Staff (2011) sets out how records of such allegations must be kept. It says "The record should be retained at least until the person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer."

Any such retained documentation should be kept under confidential cover and accessed only by persons specifically authorised to do so by the Head Teacher or Governing Body.

GROSS MISCONDUCT

This is misconduct of such gravity as to warrant summary dismissal. If the Headteacher is exercising their right of delegated responsibility for dealing with staffing matters as defined by the School Staffing Regulations, an investigation will normally be delegated to the Deputy Headteacher or other appropriate senior member of staff in consultation with the relevant Council Officers. If, as a result of a full investigation and disciplinary hearing, the Headteacher or Governors' Staff Dismissal Committee has reason to believe gross misconduct has occurred, they will normally determine that the person should cease to work at the School without the need for notice.

The Learning & Achievement Operations Director or their nominated representative has the right to attend, in an advisory capacity, any disciplinary hearing which could result in the determination to dismiss.

The decision to dismiss will be actioned by the Learning & Achievement Operations Director irrespective of the employee's decision to exercise their right of appeal. If the appeal is subsequently successful, reinstatement will be directed.

It is not possible to provide an exhaustive list of the types of offences which are to be regarded as gross misconduct. However, the following provides examples of the offences which, depending on the circumstances of the particular case, could be considered by the Governing Body or Headteacher as gross misconduct.

- An inappropriate relationship, or an attempt to establish an inappropriate relationship, with a pupil, whether of a sexual nature or otherwise.
- Behaviour towards a child or children in a way that demonstrates they are unsuitable to work with children. (DfES Guidance: Safeguarding Children and Safer Recruitment in Education - 1 January 2007).
- Theft or unauthorised possession of items belonging to other employees, the Council or clients.
- Physical assault, violence, abusive or threatening behaviour, in the course of an employee's duties whether or not on School/Council property.
- Unlawful discrimination.
- Falsification and irregular practice in respect of cash, records or returns.
- Fraud, or attempt to defraud.
- Deliberate misuse of Data Protection information.
- Unauthorised access to information held on computer including internet sites containing offensive or obscene material.
- Deliberately accessing information held on a computer, including internet sites containing offensive or obscene material, which damages or has potential to damage public confidence in the service provided.
- Serious insubordination.
- Gross negligence or a deliberate act or acts which causes unacceptable risk, loss or damage to Council property, injury, or damages the public reputation of the School/Council.
- A criminal conviction or caution, whether or not the offence is related to or committed in connection with employment, which may affect the employee's suitability or availability for continued employment in their current role.
- A sustained serious/significant breach in professional standards/codes of practice which bring in to question your suitability for the role.

SUSPENSION DURING AN INVESTIGATION

An employee may be suspended which must be on full pay. This is not a disciplinary step, but a means to enable an unhindered investigation to establish the facts, and may occur at any time during the investigation. Suspension must be confirmed in writing within 3 calendar days.

The Governing Body has the power to suspend the Headteacher. This power should be delegated to a committee or panel of the Governing Body eg the Personnel Committee or to a member of the Governing Body eg the Chair. Other members of staff may be suspended by the nominated committee, Governing Body member or the Headteacher (or the Deputy Headteacher in the absence of the Headteacher).

Suspension is not a disciplinary sanction but nonetheless will be viewed by the individual as a very serious step which has the potential to "cast a shadow" on an employee's reputation, it therefore needs to be considered very carefully before being taken and should only happen once a preliminary review of the facts has taken place. It should not be undertaken without good reason and without first consulting the school's HR Adviser and considering the alternatives to suspension outlined below. Circumstances in which suspension could properly occur include:

- (a) Where this would allow a more objective examination of the allegation and the employee's presence could interfere with the investigation;
- (b) Where the member of staff is the subject of a police investigation and the alleged offence is considered relevant to their professional duties;
- (c) Where there is a reasonable ground to believe that it would seriously affect the interests of the School and/or the employee if they were to remain at work; or
- (d) Where a child/or children is/are at risk.

This list is not to be regarded as exhaustive.

EQUAL OPPORTUNITIES

All employees should be fully aware of the Council's and the Governing Body's commitment to equal opportunities and that the following acts are both **unlawful** and would constitute misconduct liable to disciplinary action that may include summary dismissal.

1. Discriminating unlawfully in the course of their employment against fellow employees or job applicants in job, transfer or promotion applications.
2. Inducing, or attempting to induce, employees or managers to practise unlawful discrimination.
3. Verbal or physical, harassment or behaviour of a nature which is known, or should be known, to be offensive to the victim.
4. Victimising individuals who have made allegations or complaints of discrimination or harassment or provided information about such discrimination or harassment.

TRADE UNION/ASSOCIATION, LAY REPRESENTATIVES

In all respects trade union/association representatives will adhere to the rules of conduct applicable to all other employees. No formal disciplinary action may be taken until the circumstances of the case have been investigated and discussed, after obtaining the employee's agreement, with the appropriate full-time Trade Union official. The LA should be informed immediately when such an allegation is made or concern raised.

A trade union/association representative may be suspended on full pay without discussion with the full-time Trade Union Official if they are not readily available. Notification should, however, be made as soon as possible.

APPEALS

Formal Verbal Warnings/Written Warnings: An employee who wishes to appeal against a formal verbal warning or a written or final written warning should inform the **Clerk to the Governing Body** in writing within 10 working days of receipt of the disciplinary letter, stating the grounds for the appeal. The appeal should normally be heard by the Appeals Committee of the Governing Body comprising at least three* governors who have not been involved in any previous action or decision connected with the matter within 15 working days of the appeal being lodged.

The employee will have the right to be accompanied at all stages of the appeals process.

The decision of the Appeals Committee of the Governing Body will be final. At the appeal, the disciplinary penalty i.e. level of warning and/or duration imposed will be reviewed but it cannot be increased.

* Where three such Governors are not available then the appeal may be heard by no less than two. If the initial disciplinary decision was heard by a committee of Governors then the Appeals Committee **must** comprise at least the same number of governors who made the original decision.

Dismissal: An employee who wishes to appeal against the Headteacher's or Governors' determination that the employee should cease to work at the School should inform the Clerk to the Governors in writing within 10 working days of receipt of the disciplinary letter, stating the grounds for the appeal. The appeal would be heard by the **Appeals Committee of the Governing Body** normally within 15 working days of the appeal being lodged. The Learning & Achievement Operations Director or their nominated representative will be informed of the meeting and will attend in an advisory capacity.

The decision of the Appeals Committee of the Governing Body will be final. At the appeal a lesser disciplinary penalty may be imposed on review of the dismissal.

If, as a result of an appeal, reinstatement is directed, any loss of normal earnings before the hearing of the appeal will be reimbursed.

If the decision to dismiss is confirmed by the Appeals Committee the Learning & Achievement Operations Director will be informed. The employee will be informed, in writing that the dismissal notice already issued will stand.

WITNESSES

If an employee is invited to a disciplinary hearing they have the right to request that relevant witnesses to the alleged offence are called. It is the employees responsibility to invite these witnesses. The investigating officer is responsible for calling any witnesses they feel are relevant to the allegations.

Witnesses should only be invited to a hearing, by either side, who have relevant information to the disciplinary matter in hand. Where there is dispute about the relevance of a witness (i.e. they have not witnessed the events under investigation, or a significant number of witnesses are being called to provide the same information, in the case of character witnesses) the Chair of the panel will make the final decision about whether to hear from any individual.

When an employee wishes to invite witnesses the letter used should ensure that individuals are not placed under any undue pressure. No discussions should take place regarding the case that could prejudice their evidence, and this should not be used to re-interview witnesses

When the disciplinary involves one person making allegations against another then natural justice requires that person to be seen by the panel and questioned by the person they are accusing or their representative. This may not be appropriate when the accusation is part of a severe bullying/harassment allegation or when it involves pupils of the school.

In the majority of circumstances it would be inappropriate for the Chair of a panel to decide not to hear from any witness the respondent feels has relevant information about the case. If the chair of

the panel does decide not to hear from a witness the reason for the decision should be clearly outlined to the employee and their companion in advance of the hearing to allow witness statements to be produced if necessary. Where a witness is stood down just before the hearing and there is no opportunity available for a witness statement to be produced then a revised date for a hearing should be considered where appropriate.

On occasions allegations will be made by pupils or they may have witnessed key events. In these circumstances we would not expect a pupil to be present at a disciplinary hearing. It may, however, be appropriate for the employees representative to be present at interviews held with any children so that they can confirm leading questions have not been asked or allow the employee or their representatives to highlight questions they would like put to the pupils. In these circumstances a balance will always have to be struck between the rights of the accused member of staff and that of the pupil. At the very least a record of all the questions asked of the child/young person should be recorded and made available along with the responses to ensure transparency in relation to the evidence gathered.

When allegations relate to severe bullying/harassment where appropriate a similar approach can be used with staff, to minimise the distress of staff giving evidence. In all circumstances the panel should balance the rights of all individuals and be clear about the reason why they have proceeded in the way they have.

The above principles can also be used to allow an employees representative to observe the interviews held with other witnesses. This may negate the need for witness to be called to the actual hearing, but should not delay the process. The role of the representative is purely one of observer and they should make no comment during the meeting if their attendance is agreed.