



Canterbury Nursery Staff  
Policy for School Staff

# Disciplinary Policy and Procedure

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Canterbury Nursery School has adopted the PACT HR recommended model procedure as agreed by Trade Unions.

Approved by the governing body on: \_\_\_\_\_ 17.10.18

To be reviewed on: \_\_\_\_\_ 17.10.21

Signed on behalf of the governing body: \_\_\_\_\_

NB. This guidance will be retained for a period of 7 years from replacement.

Version 7 / Dated: December 2017

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# Disciplinary Policy Statement

This policy applies to both members of teaching and support staff in school.

The main purpose is to encourage an employee whose standard of work or conduct is unsatisfactory to improve. The procedure serves to ensure that this is done in a fair and consistent manner. Clear guidelines are set out for Teachers in the Teachers Standards (England) and the School's Code of Conduct on what constitutes acceptable standards of performance and behaviour.

## Preamble

- 1.1 This disciplinary procedure should be read in conjunction with the Managing Investigations document. This document includes detailed information on how to conduct investigations. Further advice is also available from your HR Business Partner.
- 1.2 The disciplinary procedure is strictly confidential and all aspects including all documentation and records shall be treated as such.
- 1.3 In minor cases of alleged misconduct the manager should initially seek to resolve the matter informally by discussion with the employee. (please see the 'Informal Discussion' section below))
- 1.4 The disciplinary procedure is to be used where an employee's work or conduct is alleged to be unsatisfactory.
- 1.5 Please check with your HR Business Partner whether a concern should be dealt with under the school's disciplinary or capability procedures
- 1.6 Each step and action under the procedure must be taken without unreasonable delay.
- 1.7 The timing and location of meetings must be reasonable.

## Informal Discussion

- 1.8 The need for formal disciplinary action will be reduced if managers demonstrate high standards of conduct themselves and make it clear that the same high standards are expected from their staff. Managers are responsible for ensuring that their staff are aware of the requirements of their roles and of the expectations of the school around relationships with colleagues.
- 1.9 Early intervention, offering guidance and instruction, can often prove very effective in improving minor conduct issues and avoiding the need for more formal procedures being invoked. The member of staff should fully understand a manager's concerns, what improvements are required of them and the possible consequences if these improvements are not achieved.
- 1.10 No disciplinary action will be taken against an employee until the case has been fully investigated.

## General Principles

## Trade Union Representatives and Officers

- 2.1 Although normal disciplinary standards will apply to their conduct and performance as employees, no disciplinary action or suspension will be taken until the circumstances of the case have been discussed with an appropriate Trade Union Representative. In the case of suspension this may not be practical and should not prevent Management taking action.

## Offences committed outside working hours

- 2.2 Criminal acts resulting in cautions or convictions for offences committed outside working hours may result in disciplinary proceedings being taken against the employee, up to and including summary dismissal. The school will consider whether or not the employee's conduct, caution or convictions merit action because of employment implications. For example where the management of the school consider the act or conviction in question affects the suitability of the employee for the position in which they are employed, the reputation of the school or undermines the trust and confidence that the school has in the employee

## Suspension

- 3.1 In exceptional circumstances consideration may be given to removing a member of staff from their place of work (i.e. suspension) at the outset of the investigation or at any stage during the course of the investigation. Please contact your Human Resources Business Partner if you are considering suspension.

- 3.2 The Headteacher / Chair of Governors should take appropriate advice before making any decision to suspend. The provisions for suspension of school-based staff are set out in Schedules 16 and 17 of the School Standards and Framework Act 1998. Decisions on suspensions are taken by the Headteacher or the governing body (action by the Chair in relation to the Headteacher must be notified to the full governing body).

- 3.3 Staff against whom an allegation is made should not automatically be suspended.

Where the allegation is that a criminal offence may have been committed or a child is at risk of significant harm, immediate suspension is more likely to be appropriate. Where the allegation is of a child protection/safeguarding nature the LADO procedure should be followed.

- 3.4 Suspension may be considered at any stage. Suspension is a neutral act, not a disciplinary sanction and the employee will receive normal pay. Where possible an alternative should be found to suspension. This could include alternative duties/locations or removal from contact with pupils.

- 3.5 Suspension should not be undertaken without good reason, as an over-hasty or ill-judged decision immediately to suspend a member of staff can have a substantial detrimental effect upon the member of staff's career. Suspension is not only a traumatic experience for the individual involved, but also for their family, for other children at the school, their parents and for other staff. All concerned will wish to be reassured that the responsible agencies will act in a careful, measured way when allegations are brought to their attention.

Circumstances in which a decision to suspend a member of staff are likely to be taken include:

- Where a child or children is/are at risk;

- where the allegations are so serious that dismissal for gross misconduct is possible;
  - where a suspension is necessary to allow the conduct of the investigation to proceed unimpeded.
- 3.6 In all cases where suspension is being considered, the Headteacher or Chair of Governors should advise the individual to seek assistance from his or her trade union.

## A meeting to Consider Suspension of a Member of Staff

- 3.7 Where suspension is being considered, a meeting should be arranged. Normally, the meeting should be undertaken outside pupil contact time. The Headteacher (or, in cases where the allegation is against the Headteacher, the Chair of Governors) should consult with and seek advice from their HR Business Partner. There are three possible outcomes outlined below:
1. Not to suspend
  2. Action short of suspension
  3. Suspend

Consideration needs to be given to disclosure of any criminal proceedings.

- 3.8 When called to a meeting where suspension is a possible outcome, the member of staff should be advised to seek the advice of their trade union. A person who is not a member of a trade union may be accompanied to the meeting by a work colleague, that will not or has not been involved in any part of the proposed disciplinary process. Where the member of staff is accompanied, they should be offered the opportunity of a brief meeting with the representative or work colleague before the meeting

Attempts will be made to identify if the individual concerned is a member of a trade union and contact them on their behalf if possible. However the meeting can go ahead without trade union representation present.

- 3.9 The member of staff should be informed at the outset of the meeting that an allegation or series of allegations have been made and the nature of them. At the conclusion of the meeting, suspension might occur. It should be made clear, however, that the meeting is not a formal disciplinary hearing but is for the purpose of raising a serious matter which may lead to suspension and further investigation.
- 3.10 The member of staff should be given as much information, including reasons for any proposed suspension, as is consistent with not interfering with an investigation into the allegation. This meeting is not concerned with examination of the evidence but is an opportunity for the member of staff to make representations concerning any possible suspension. The member of staff should be given an opportunity to make such representations after the information has been given. A brief adjournment should be offered to the member of staff prior to response being provided.
- 3.11 If, as a result of the meeting, it is considered by a Headteacher /Chair of Governors that suspension is necessary along with a full investigation of the allegation(s), the member of staff should be advised that they are suspended from duty. Written confirmation of the suspension should be dispatched within one working day, giving reasons for this.
- 3.12 In accordance with the relevant ACAS Code of Practice, where the person is a trade union or safety representative, the meeting should not be arranged without prior

discussion with the relevant branch secretary or trade union representative. From the outset it should be established that the action being taken is not an attempt to undermine the function of a trade union.

## Where no action is taken to suspend

- 3.13 The Headteacher/Chair of Governors (in cases where the allegation is against the Headteacher) should explain to the member of staff the circumstances which led to consideration of suspension and further explain any follow up action which it is proposed to take. The member of staff may be accompanied by a trade union representative or work colleague. According to the circumstances of the case, appropriate assistance or advice may be offered. The Headteacher/Chair of Governors should seek to establish what support, if any, is required and where appropriate and acceptable to the member of staff should seek advice from their HR Business Partner. According to circumstances, appropriate counselling services should be considered.
- 3.14 If a member of staff has not been suspended but there are child protection or serious concerns about aspects of their conduct, a full investigation should be undertaken before making a decision about further action under disciplinary procedures. Please contact your HR Business Partner for further advice on undertaking an investigation.

## After a Decision to Suspend Pending Investigation

- 3.15 Where a member of staff has been suspended, the Chair of Governors and Strategic Director of Children's Services (or their representative) should be informed of the suspension formally, in writing (in the case of a maintained school). In all cases a report should be made to the governing body that a member of the school staff has been suspended pending investigation. It is advisable to provide no more than the minimum information necessary to the governing body, as more than this would prejudice governor's impartiality in any subsequent disciplinary hearing or appeal in disciplinary proceedings. Where the Headteacher has been suspended, the implications for the management of the school will need to be considered including the arrangements for an Acting Headteacher.

In certain circumstances it may be prudent for the Headteacher to request that certain work related equipment be returned to the school.

- 3.16 Senior teachers in the school who need to know of the reason for the suspension should be informed as far as is necessary. The Headteacher/Acting Headteacher should also make a decision on whether other staff need to be informed of the suspension. Any appropriate communication to explain the member of staff's absence from school will need to be discussed with your HR Business Partner.
- 3.17 In appropriate cases the Headteacher/Acting Headteacher should discuss with the Chair of Governors the extent to which it is necessary to make a statement to parents of children in the school, having considered the need to avoid unwelcome publicity. If this situation occurs, then advice and guidance should be sought from your HR Business Partner.
- 3.18 In rare circumstances, e.g. child protection investigations, it may be necessary for the Headteacher (Acting Headteacher in consultation with the Chair of Governors) to provide immediate reassurance to parents and children in the school and there may be a need for information to continue to be provided during the course of an investigation to parents, children and other colleagues. If this situation occurs, then advice and guidance should be sought from your HR Business Partner.

- 3.19 The Headteacher/Acting Headteacher in consultation with the Chair of Governors should consider, and keep under review, decisions as to who is informed of the suspension and investigation and to what extent confidentiality can or should be maintained, according to the circumstances of a particular case. In a situation where a matter becomes common knowledge or the subject of general gossip, it may be desirable to provide an accurate statement for public information. Advice should be taken from the relevant BMDC department and the school's HR Business Partner.
- 3.20 Every effort should be made to avoid lengthy periods of suspension. The decision to suspend and the conditions of suspension will be reviewed initially after a period of 1 month and subsequently on a monthly basis either as part of a face to face meeting or by written correspondence. The suspended employee will be informed in writing of the outcome of each review. Any representations received from the employee or the employee's trade union representative will be considered at each review.

## Support for Staff during the Period of Suspension

- 3.21 The suspended member of staff will be given the name of a contact within the PACT HR Team. The main role of the contact person is to provide procedural information and no detail will be provided about the actual case/investigation. Social contact with colleagues and friends at the school should not be precluded except where it is likely to be prejudicial to child protection enquiries, criminal or disciplinary investigations or processes.
- 3.22 Although it is the aim that all investigations should be conducted as speedily as possible consistent with establishing the full facts, arrangements should be made (by negotiation) for the individual, or his or her representative, to be contacted regularly with information on progress and developments in the case. These arrangements should not preclude them, or their representative, contacting those conducting the investigation at any time.
- 3.23 According to the needs and wishes of the member of staff to be kept informed, a colleague contact should also be in a position to provide information about developments within the school in general. Usually this will be a member of the school's SLT who is not involved in any disciplinary investigation.
- 3.24 In some cases, it may be appropriate to ask whether welfare counselling or the support through the Employee Health and Wellbeing Service, would be helpful, or to respond to a request for such further support.

## Support for others concerned

- 3.25 If a child or children have made allegation/s they and their parents will need support. Consideration should be given to the form such support should take. Consideration should also be given to what support may be needed for others at the school, both staff and pupils, according to the circumstances of the allegations. In some cases, therapeutic counselling from expert sources may be necessary. Advice on this can be obtained via the ACPC/Social Services.

## Pay during suspension

- 3.26 The member of staff is entitled to normal pay during any period of suspension. Normal pay means the pay which the member of staff would have received during their normal working week. The appropriate regular payments listed below shall also be included, providing that they would have been paid to the member of staff during the normal week leading up to their period of suspension

The payments to be included, **if regular**, are for:-

- Shift work
  - Night work
  - Split duty
  - Weekends
  - Unsocial hours
  - Scheduled standby duty
  - Contractual overtime.
  - Essential car user lump sum allowance
- 3.27 If the employee takes annual leave or is sick at any time during the suspension, then pay for such leave or sickness will be calculated in accordance with the normal provision of the School's annual leave or sickness scheme. Any other payments, e.g. the allowances detailed above, will be paid in accordance with that scheme's rules for any leave or sickness absence.
- 3.28 Where the employee is on a period of sickness absence but would have been considered for suspension were they not then once this has been communicated they would be advised they are bound by the terms of suspension.
- 3.29 When any period of sickness as described above comes to an end, then the employee, remains suspended and again becomes entitled to normal pay.

## The Investigation Process

- 4.1 Prior to conducting any investigation, advice and guidance should be sought from the Managing Investigations Document and from your HR Business Partner.
- 4.2 Employees will be advised of the allegations against them.

### Right to be accompanied and role of the companion

- 4.3 Members of staff have the right to be accompanied at any meetings or interviews (not normal management meetings that would occur in the conducting of an employee's normal role in school) by a companion. When school notifies an employee of an impending disciplinary meeting the employee should be advised of their right to be accompanied by a companion. The companion may be either a trade union representative or a work colleague. To exercise this right, workers need to make a reasonable request. Unfortunately, there is no specific definition of "reasonable", therefore it will depend on the merits of the individual case. In line with the ACAS Code of Practice the companion should be allowed to address the meeting to put and sum up the member of staff's case, respond on their behalf to any views expressed at the meeting and confer with the member of staff.

The companion does not, however, have the right to answer questions on the member of staff's behalf, address the meeting if the member of staff does not wish it or prevent the school from explaining the management case.

It is the responsibility of the member of staff concerned to arrange their own accompaniment and to inform the relevant person conducting the meeting who this will be. The employer reserves the right to request the choice of companion to be reasonable.

### Sickness absence during the investigatory/disciplinary process

- 4.4 It is not necessary to suspend the disciplinary or investigatory process simply because the member of staff is absent due to illness. The school may seek advice from the



Employee Health and Wellbeing Service, in order to ascertain whether or not the member of staff is fit to engage in the process. If the member of staff is declared 'fit' to attend meetings but not well enough to attend work, the school may, at its discretion, consider a number of measures, such as;

- Offering an alternative venue for the meetings/hearing;
- Allowing the member of staff to make written representation;
- Allowing extra time during the procedure for the member of staff to participate effectively.

4.5 Where the member of staff is not 'fit' to engage in the investigation process, the investigation can still continue. At such time as the member of staff is required to attend an investigation interview, further advice will be sought from the Employee Health and Wellbeing Service.

## Postponement of meetings/interviews

4.6 In these circumstances, it is the responsibility of the employee to propose an alternative date for a meeting; this should wherever possible be within 5 working days of the original date proposed.

## Disciplinary Hearings

5.1 If the need for a disciplinary hearing has been determined following an investigation, the member of staff will be notified, in writing of this decision no later than 10 working days prior to such a hearing taking place, along with all management information that will be referred to as part of the hearing.

## Right to be accompanied /represented

5.2 Members of staff have the right to be accompanied at a disciplinary hearing by either (up to) two trade union representatives or one work colleague. It is the responsibility of the member of staff to arrange their own accompaniment and to inform the relevant person/governing body panel conducting the meeting that they are to be accompanied and by whom.

5.3 At any disciplinary hearing or appeal hearing the member of staff will have the right to:

- Produce written statements and bring witnesses (All written statements shall be circulated to all parties at least 3 days in advance of the hearing);
- Ask questions of any witnesses present.
- Present his/her case (or be represented by up to two trade union representatives or one work colleague) prior to the decision being made whether or not to issue the warning or to dismiss.

5.4 The member of staff will be given sufficient information about the allegations to enable them to answer the case at the hearing together with all documentary evidence to be presented by the management side during the hearing. The hearing will be conducted either by the Headteacher or a panel of Governors selected from the Governing Body of the school.

## Postponement of hearings

- 5.5 In accordance with Section 10(4) of the Employment Relations Act 1999 a member of staff may seek a postponement of a hearing and propose an alternative time if their chosen trade union representative or work colleague is not available to attend. The alternative time must wherever possible and taking account the availability of the governors required to form the panel, be within 5 working days of the original date. In some circumstances it may not be possible to re-arrange the hearing within the requisite 5 working days. If the employees' chosen person is not available on the re-scheduled date, then they should select another person to accompany them who will be available at the given time. Arrangements for re-arranged hearing dates, will wherever possible be arranged in conjunction with the member of staff's trade union representative, however this may not always be possible.

## Sickness

- 5.6 It may, on occasion be necessary to proceed with a disciplinary hearing without the presence of the member of staff, due to their sickness, or refusal to attend, despite reasonable adjustments being made to both the procedure and venue. In such circumstances, the member of staff and /or their representative will remain free to attend the hearing. The outcome will be communicated in writing to the member of staff including their right of appeal.

## Procedure at the Hearing/Appeal

- 5.7 At the beginning of the hearing/appeal, the Chair/Human Resources Representative will introduce all parties present and shall explain the procedure to the parties, as follows;
- The hearing/appeal may be digitally recorded to ensure a clear and accurate account of the meeting is obtained. All present will be asked to consent to this. The member of staff will have been made aware of this as part of the invite letter to the hearing and asked if they consent to this. The meeting minutes along with the digitally recorded version remain the property of the school. A hard copy of the meeting minutes can be made available upon written request from the Chair of Governors as can the digital recording.
  - The management representative will put the management case and may call witnesses.
  - The member of staff or their trade union representative will have the opportunity to ask questions of the management representative and any witnesses they have called.
  - The member of staff or their trade representative will put their case and may call witnesses.
  - The management representative will have the opportunity to ask questions of the employee and any witnesses they have called
  - The Chair (and through them the other governors) may ask questions of any party. If new evidence is brought to the hearing, both parties will be given an opportunity to comment and, if necessary to adjourn.
  - The management representative will have the opportunity to sum up their case.
  - The employee or their trade union representative will have the opportunity to sum up their case.
  - The Chair shall ask both parties to leave while the decision is made; only recalling the two parties to clear points of uncertainty on evidence already given. If this is

necessary, both parties will return even if only one of the parties is concerned with the point giving rise to the doubt.

- The Chair shall recall the two sides to;
  - (i) Give the decision and explain the reasons for the decision and confirm this decision will be put in writing to them as soon as possible, or
  - (ii) Inform the member of staff that the decision will be made known to them later both verbally and in writing as soon as possible after the hearing, or
  - (iii) Inform the employee that the decision will be given in writing as soon as possible.

## Levels of Disciplinary Sanction

- 5.8 The four levels of formal disciplinary sanctions are designed to reflect the varying levels of seriousness of the case. The levels give a proper sequence for persistent cases. A disciplinary sanction will be issued at whatever level appears appropriate to the circumstances, it is therefore not always necessary to commence any disciplinary sanction at the first warning stage.
- 5.9 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty may be dismissal without notice and without pay in lieu of notice. Except for gross misconduct, a member of staff dismissed by reason of disciplinary action shall be given notice based on their terms and conditions of employment.
- 5.10 For guidance, examples of gross misconduct are (please note this list is not exhaustive);
- Stealing from the school, colleagues or visitors to the school.
  - Falsification of educational qualifications where such qualifications are a stated requirement of the post.
  - Fraudulently claiming sick pay or other payment from the school.
  - Fighting with or physically assaulting a work colleague.
  - Damage to or misuse of school property.
  - Inappropriate behaviour towards or relationships with students in school.
  - The taking of unauthorised absence.
  - Inappropriate use of social media such as Facebook or Twitter or behaviour that is in contravention of the school's Social Media Policy.
- 5.11 The following decisions may be issued by a governing body panel or Headteacher at a disciplinary hearing;
- The decision to issue no formal sanction.
  - Level 1 **warning** may be given where the case is of sufficient importance or seriousness to bring to the attention of the employee formally. The time limit for this sanction shall be **6 months** (excluding the summer break from the date of the decision).

- Level 2 **warning**, may be given where the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient importance or seriousness to bring to the attention of the member of staff formally. The time limit shall be **9 months** (excluding the Summer Break) from the date of the decision.
- Level 3 **warning**, may be given where the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient importance or seriousness to bring to the attention of the member of staff formally. This level of sanction may also be issued where a determination of gross misconduct may not warrant dismissal for example due to mitigating circumstances. The time limit for this sanction shall be **12 months** (excluding the Summer Break) from the date of the decision.

For the purposes of future disciplinary action, breaches of discipline will be disregarded after the specified time period of satisfactory conduct. However, the fact that the employee has been subject of disciplinary action will form part of that persons employment record.

**The following disciplinary sanction can only be issued by a governing body disciplinary panel, unless the school's full governing body have delegated this authority (through the appropriate governing body ratification) to the school's Headteacher.**

- Level 4 Dismissal. An employee is likely to be dismissed where the case has already involved a final warning and insufficient improvement has been made or where further misconduct has occurred or where the case is so serious as to constitute gross misconduct or where there is some other substantial reason.

## The Decision Letter

- 5.12 A letter detailing the decision will be given to the member of staff within 10 working days of the date of the disciplinary hearing taking place or sooner where possible and a copy placed on the member of staff's personnel file, if a warning is issued.
- 5.13 Following the outcome of the hearing the decision letter will state:-
- The decision i.e. that there is no case to answer or the appropriate level of disciplinary sanction
  - The reason for the decision.
  - The course of action to be followed by the member of staff.
  - Time scale in which improvement is required, if applicable.
  - Where assistance is required, the assistance which will be made available to the member of staff e.g. training and guidance.
  - The date on which the warning will elapse (see section 5.11).
  - That further disciplinary action will be considered if there is further misconduct or insufficient improvement within the timescale of the warning.
  - The right of appeal against the decision and how to exercise that right. (See Section 5).

- If the warning is a final warning it will also state that if the employee's conduct continues to be unsatisfactory or if there is further misconduct it may lead to dismissal.

## Right of appeal

- 5.14 All members' of staff have the right of appeal
- 5.15 Appeals should be lodged in writing to the Clerk of the Governing Body within 15 working days (excluding the Summer Break) of the date of the outcome letter.
- 5.16 The appeal will be heard by a panel of governors, selected from the full governing body, who have had no previous involvement in the case.
- 5.17 When lodging an appeal, the employee should state;
- a) If the member of staff is appealing against the findings that they have committed the alleged act/s of misconduct, then any appeal hearing would be a full re-hearing of all the evidence in relation to the allegations against the individual concerned as heard at the original hearing. The panel at this appeal re-hearing will have the full range of disciplinary sanctions open to them
  - b) If the member of staff is appealing against the level of disciplinary sanction imposed on them as a consequence of the original disciplinary hearing. In this case, an appeal panel would be asked to review the original decision made. This would not constitute a full re-hearing and any outcome from this review would either see the original sanction reduced or remain the same.
- 5.18 There is no further right of appeal against the decision of the appeals committee.

## What is the Difference between a Review and a Re-hearing at an Appeal?

- 5.19 A review of the original disciplinary panel's decision involves a new panel of governors not previously involved in the original disciplinary hearing and the evidence available at the original hearing. As part of this they may wish to call one or more members of the original disciplinary panel to give evidence.

A full re-hearing also involves a new panel of governors not involved in the case re-hearing the management and staff case and potentially hearing further witness evidence in order to come to a fresh decision.

- 5.20 Where the member of staff appeals following a disciplinary hearing against the level of sanction, the appeal hearing would review the original decision made. This would not require a full re-hearing and any outcome from this review would either see the original sanction reduced or remain the same.

A review hearing panel would review the documentation presented at the original disciplinary hearing including the letter of appeal, the official notes of the hearing and the decision/outcome letter(s). Any additional submissions would not be accepted. Potential witnesses would be the member of staff; the School Management representative and a member of the original Hearing panel (preferably the Chair but in exceptional circumstances to avoid undue delay another member of the panel would be acceptable.) The appeal panel's decision is final.

- 5.21 Where the member of staff is disputing the facts of the case, the appeal hearing would be a full re-hearing of all the evidence in relation to the allegations against the individual concerned. The panel will have the full range of disciplinary sanctions open to them – including issuing a higher sanction than was issued at the original hearing.
- 5.22 In addition to any new evidence the documentation for a re- hearing should contain as a minimum the documentation presented at the original disciplinary hearing; the letter of appeal and the decision/outcome letter(s). However the minutes of the previous hearing will not be used as evidence for the rehearing. In addition to the witnesses at the original hearing additional witnesses may be called.

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