



## **NEU Disciplinary Model Policy**

### **1. Introduction**

This policy is designed to help and encourage all employees to achieve and maintain appropriate standards of behaviour and conduct. It provides a method of dealing with apparent shortcomings in conduct, and its main purpose is to encourage an employee whose conduct is unsatisfactory to improve.

This policy will be applied consistently and fairly to all employees, based on the circumstances of their case. No-one will be treated less favourably on the grounds of their gender, disability, age, race, creed, colour, religion, nationality, ethnic or national origin, trade union membership or activity, sexual orientation, gender reassignment, medical condition or marital status. Furthermore, the employer recognises its responsibility to ensure the implementation of the rules of natural justice as part of this policy: ie the employee should know the nature of the accusation against them; the employee should have an opportunity to state their case; management should act in good faith.

The policy is written in line with the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice.

Informal guidance does not form part of the formal disciplinary policy.

All proceedings under this policy shall be held in private and shall be confidential.

### **2. Scope of the policy**

This policy does not apply where there are matters of:

- minor misconduct that should be settled informally by means of counselling or informal reprimand in order to improve conduct
- grievance which is dealt with under the grievance policy
- competence or capability which is dealt with under the capability policy, unless it is clear that the employee is capable of reaching the required standard and has actively not done so
- ill health which is dealt with under sickness absence procedures unless there is good reason to believe that the absence or ill health are not genuine
- bullying, harassment, discrimination and/or victimisation which are dealt with in the first instance under dignity at work policies.

### **3. Responsibilities**

The employer recognises it has a statutory obligation to adopt formal policies and establish workplace procedures for dealing with staff conduct and discipline. The employer recognises that disciplinary rules and procedures promote good employment relations and is committed to dealing with matters in a fair and consistent way.

The head teacher has overall responsibility for promoting and maintaining standards of work conduct.

There may be certain circumstances where the delegation of responsibility outlined above will not apply. For example, the head teacher has been directly involved in disciplinary procedures leading to dismissal, has instigated a proposal to dismiss, or is a witness of particular conduct giving grounds for the dismissal in question.

Where it is not appropriate for the head teacher to perform this function, a staff discipline committee of the governing body will be convened. The staff discipline/dismissal committee deals with cases of gross misconduct and head teachers are delegated the responsibility to deal with all other cases.

Where a staff discipline/dismissal committee is required, the governing body should nominate three of its members who are not staff members to form the committee.

Another three members will be required to form an appeals committee.

Head teachers should seek professional advice at all stages of the policy.

Disciplinary matters should normally be conducted within the timescales laid down in the policy.

All efforts should be made by employees to attend meetings that constitute part of this policy. When there are valid reasons to reschedule meetings, these should be rearranged within five working days where possible.

#### 4. Representation

Employees have a statutory right to be accompanied at formal disciplinary meetings/hearings by their trade union representative or a workplace colleague. This employer will extend this right and allow for employees to be accompanied at all informal meetings as part of the disciplinary procedure.

The employee is responsible for arranging his/her representation, including notifying the representative of the hearing date in good time and sending copies of all relevant documentation. Where the employee's trade union representative is not available at the time proposed for the meeting/hearing, the employee may propose an alternative date and time.

Management should try to agree a mutually convenient date for the meeting with the employee and their union representative in order to ensure that meetings do not have to be delayed or rescheduled.

The trade union representative may address a hearing/meeting to put the case for the employee and/or sum up the case, respond on behalf of the employee to any views expressed at the meeting/hearing and may confer with the employee. They may not, however, answer questions on their behalf.

The school/academy will need to consider whether any additional support for the employee is required, for example to make reasonable adjustments where there is a physical disability or other special need.

#### 5. Disciplinary action and trade union representatives

In the case where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary policy will be followed. In accordance with the ACAS Code of Conduct, the head teacher will discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

#### 6. Suspension

Suspension is a neutral act and is not disciplinary action. The head teacher may suspend an employee from duty on full pay at a formal meeting called for the purpose. The employee will be given an opportunity, wherever possible, for a colleague or trade union representative to be present. Suspension will result from any suspicion or allegation of gross misconduct, and will be on full pay and from all performance of duties. A written record confirming the suspension will be provided to the employee within three working days of the suspension. Unless the employee has specific written permission from the head teacher, the employee may not be present on any part of the school/academy site during the time of the suspension. A suspended employee should be assigned a contact officer who should be a senior member of staff not involved with the case. The contact officer will review the

suspension at regular intervals (every two weeks where appropriate) and advise the employee of progress with the case.

#### 7. Definitions of misconduct and gross misconduct

Misconduct is where an employee breaks specific rules about behaviour or conduct. It is where conduct falls below expected standards and is usually wilful. There may be occasions when negligent conduct amounts to misconduct. Breaches of reasonable conduct at work can take many forms. Consideration will always be given to the particular circumstances.

Gross misconduct is misconduct which is so serious it may destroy the employment contract between the employer and the employee, and make further working relationships and trust impossible. Some gross misconduct breaches of discipline may be regarded as serious enough to warrant summary dismissal without reference to any prior warnings.

#### 8. Informal stage

Where possible, potential disciplinary issues should be resolved informally by drawing the employee's attention to the perceived unsatisfactory conduct, discussing the situation and the standards of conduct that are required, and agreeing an appropriate way forward, including any improvement required.

Informal action may often be a more satisfactory way of dealing with a breach of rules than a disciplinary meeting if it takes the form of a discussion with the objective of encouraging and helping the employee. Informal discussion must not turn into a disciplinary meeting and warnings will not be given and recorded.

Consideration should be given to any difficulties that an employee may be facing and a genuine attempt should be made to help the employee to overcome them. Where considered appropriate, managers should seek professional medical opinion and advice when managing staff who may be suffering from mental illness, alcohol or substance abuse.

#### 9. Investigation

No formal disciplinary action will be taken without a prompt and appropriate investigation into the circumstances.

The head teacher will nominate an investigating officer who is a senior member of staff and who should normally have received relevant training. Where the allegations are against the head teacher, the chair of the governing body will discuss the case with the school/academy and an independent investigating officer will be nominated. The investigating officer will write to the employee at the earliest opportunity and give the following information:

- details of the allegation/s
- copies of appropriate and available information
- a copy of this disciplinary policy
- time and date of any investigation meeting, with five working days' notice (see section 4)
- confirmation of their right to representation by a trade union representative at all meetings.

The investigating officer will promptly carry out a full, thorough, comprehensive and unbiased investigation into the allegations in as timely a manner as the circumstances will allow. Care will be taken to ensure that, where appropriate, evidence is also sought from employees who may be supportive of the employee's case. This will involve the gathering of all relevant evidence from the relevant parties and an investigation meeting with the employee.

The investigation report should be completed as soon as possible and within 15 working days for allegations of misconduct and other cases where the fact finding is relatively straightforward. For allegations of gross misconduct and more complex

cases, the investigation process should take no longer than 20 working days. In very complex cases or exceptional circumstances, a reasonable timescale will be agreed by mutual consent.

The investigation may require employees and witnesses to be interviewed to establish the facts. Employees should be given notice of at least five working days in advance of any investigation meetings/interviews. Witnesses should be advised to seek advice as appropriate. Minutes of these meetings will be taken and agreed with the employee as a true record.

The role of the investigating officer is to gather evidence and produce a report that will recommend whether:

- no further action is required
- management guidance is appropriate
- training is required
- the case should be referred to a hearing
- whether the matter is potentially one of gross misconduct.

If other areas of concern arise during the process that require further investigation, the investigating officer will adjourn the meeting/investigation in order to undertake this.

If there is no case to answer, the matter will be closed, the employee informed in writing and all documentation removed from the employee's file. If the matter does not warrant a disciplinary hearing, the head teacher may arrange counselling or take informal action. If on completion of the investigation the investigating officer is satisfied that the alleged misconduct warrants a hearing, s/he will inform the employee and a disciplinary hearing will be arranged.

In the case of the head teacher, the investigating officer will submit a report to the employer with a copy to the chair of governors. The employer and the chair of governors will decide if any further action is required and whether there needs to be a formal hearing convened with the governing body. The employer will be represented on the panel.

Persons directly involved in the investigative process may present a case or appear as a witness, but may not give advice to, nor sit on, the subsequent disciplinary hearing panel.

#### 10. Disciplinary hearing (see appendix for the procedure of the hearing)

The employee will be notified in writing (by registered post and email) of the following:

- the date, time and venue of the hearing – with at least ten working days' notice from receipt of the letter. If the employee or their chosen trade union representative is unable to attend this hearing for a valid reason, a new date will be set within five working days (see section 4)
- the names of intended disciplinary panel members
- the specific nature of the allegation/s
- the right to produce written statements and to call witnesses
- the right to representation
- the names of any management witnesses
- all supporting documents to be used as evidence by management
- the possible/likely outcome of the hearing if the allegations are considered proven, ie warnings, dismissal etc
- a copy of the disciplinary policy.

The employee should be notified that if they wish to call witnesses or to provide relevant paperwork, this should be provided to the head teacher/chair of the panel as appropriate, at least two working days prior to the hearing.

The school/academy will make provision for any reasonable adjustments to accommodate the needs of a person with disabilities at the meeting. The

school/academy must be informed of requirements at least two working days before the hearing.

If the employee's chosen representative is not able to attend, an employee may offer a reasonable alternative time within five working days of the original date, unless mutually agreed otherwise.

The head teacher will hear the case. If they have been directly involved in procedures leading to the disciplinary action, have instigated a proposal to dismiss, or are a witness of particular conduct giving grounds for the disciplinary action in question (or where the head teacher is being considered for disciplinary action), the initial decision is delegated to a panel of at least three governors. In the case of the head teacher being considered for disciplinary action, a member of the employer body must be on the panel.

If the employee fails to attend the hearing, the case will be heard in their absence, unless acceptable reasons have been presented in advance and it is therefore agreed to postpone the hearing to a later date.

It is for the head teacher/chair of the panel to decide whether late evidence from either side is acceptable. The views of both parties should be sought when considering the late admission of evidence, and the head teacher/chair should consider the fairness and reasonableness when making their decision. If the late evidence accepted is in written form, it would be usual to allow a brief adjournment for reading the document/s.

The head teacher/chair must ensure that the employee receives a fair and impartial hearing, is encouraged to be represented or accompanied, is allowed to present his/her case or have it presented, and is allowed to bring witnesses and to question the management case presenter and any management witnesses.

#### 11. Procedure for a hearing (see appendix for the procedure of the hearing)

Minutes should be taken by the clerk to the governing body or another suitable person arranged by the school/academy. Copies of all minutes should be circulated to all parties as soon after the hearing as possible.

Once the head teacher/panel have heard the case and are satisfied that all relevant evidence has been provided, they will consider all the facts of the case, whether these constitute unacceptable conduct and what the level of sanction should be, if any. All parties, other than the note taker and the assigned human resources (HR) officer advising the head teacher/panel, shall withdraw taking all personal belongings when the consideration of evidence is undertaken.

If the panel decides there has been no unacceptable conduct, they will call the employee back to inform them that there is no case to answer and that all record of the process will be removed from the file.

If the panel consider that unacceptable conduct has taken place, they will call the employee and their representative back into the room to let them know and to ask if there is any mitigation.

Before deciding what disciplinary sanction to impose, if any, the head teacher/panel should also consider whether the employee has been subject to any previous disciplinary action and whether any warnings are still current.

The decision of the hearing will be announced at the close of the hearing whenever possible. This may be varied by mutual agreement, especially if the decision-making process is likely to take some time. The head teacher or chair of the panel will confirm the decision in writing within two working days of the hearing.

#### 12. Disciplinary sanctions

The possible actions arising from a disciplinary hearing are:

- No further action to be taken.
- Recorded oral warning – this will remain on the employee's record for 3-6 months dependent on the nature and severity of the breach.

- Written warning – this will set out the nature of the misconduct/reasons for the warning, and any improvements and the change in behaviour required. The employee will be notified that the warning constitutes part of the formal disciplinary process and the consequences of any further misconduct could be a further written warning and ultimately dismissal. It will remain on the employee's record for six months.

- Final written warning – this will be given where misconduct is serious but is not considered serious enough to justify dismissal. A final written warning may also be issued where there is a failure to improve following previous written warning/s. It will remain on the employee's record for 12-18 months dependent on the nature and severity of the breach.

Where a final written warning is issued during the term of a first written warning, the duration of the final written warning will supersede that of the first written warning. Upon expiry, the warning will be removed from an employee's personnel file except for warnings relating to the safety and welfare of children or young people.

The written notification will include the following information:

- the exact nature of the misconduct proven
- the basis of their decision
- the period of time given for improvement, if appropriate, and the standard of improvement expected
- the disciplinary sanction being applied and, where appropriate, how long this will last
- notification of the likely consequences of further proven misconduct
- information about the employee's right of appeal, including how they should make it and to whom.

### 13. Appeals

An employee can appeal against any formal disciplinary action. The appeal must be made in writing to the chair of governors within 15 working days of receipt of the decision letter.

Appeals against the fairness and reasonableness of any disciplinary action may be considered by the appeals panel in relation to one or more of the following grounds:

- The procedure – the grounds of appeal should detail how any procedural irregularities prejudiced the disciplinary decision.
- The facts – the grounds of appeal should detail how the facts do not support the decision or were misinterpreted or disregarded. They should also detail any new evidence to be considered.
- The decision – the grounds of the appeal should state how the act(s) of misconduct did not justify the level of disciplinary action taken or the act was one of misconduct rather than gross misconduct.

Wherever possible the appeal should be heard within 20 working days of the lodging of the appeal, and the employee should have at least ten working days' notice of the appeal hearing.

The appeals panel should be formed from the governing body with a quorum of three.

No member of the disciplinary hearing panel shall be a member of the appeal panel. All documentation presented to the hearing, together with the decision of the head teacher/chair of the panel, as well as any subsequent correspondence, must be made available to the appeal hearing panel. Any new evidence should be copied to all parties at least five working days before the appeal hearing.

Dismissal and notice periods are effective from the initial dismissal decision. Should the appeal be successful, reinstatement will also be from the original date with no break in employment continuity.

### 14. Appeal hearing (see appendix for the procedure of an appeal hearing)

The appeal panel will deliberate in private, paying particular attention to any new evidence that has been introduced by the employee as well as hearing representations from both management and the employee or representative, in order to determine whether the decision of the hearing was fair and reasonable in view of the evidence available. The appeal panel cannot increase the disciplinary sanction. The decision of the appeal panel is final and binding on all parties. Minutes of the appeal hearing will be taken by the clerk to governors or another suitable person, as arranged by the school/academy. Copies of the notes will be circulated to all parties within two working days of the hearing.

#### 15. Grievance

Sometimes an employee may raise a grievance during the course of a disciplinary case. Where this happens, and depending on the circumstances, it may be appropriate to suspend the disciplinary policy for a short period until the grievance can be considered. The school may need to consider bringing in another manager to continue to hear the disciplinary case.

#### 16. Alleged criminal offences

The case of an employee charged with, or convicted of, a criminal offence should not normally in itself be a reason for disciplinary action. Consideration must be given to what affect the charge or conviction has on the employee's suitability to do the job and their relationship with the school/academy and work colleagues. The disciplinary policy will only be instigated where there are reasonable grounds for believing that the nature of the activities is sufficiently serious to have an adverse effect on the ability of, or confidence in, the employee to carry out his/her duties properly. Where an employee is alleged to have committed a criminal offence and police investigations are underway, disciplinary proceedings must be handled carefully and in accordance with police instructions so as not to interfere in the police investigation.

#### 17. Record keeping

Managers and panels must keep written records of meetings and discussions relating to the disciplinary process. Copies of all final meeting records must be given to employees. Written confirmation of the outcome of any meetings will be sent to the employee for their information and a copy kept on the employee's personnel file. Upon expiry, any warning will be removed from the employee's personnel file except for warnings relating to the safety and welfare of children or young people.

#### 18. Equality monitoring

To ensure that we are meeting our public sector equality duty, we will monitor annually the impact of this policy by reference to the protected characteristics of staff (age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex and sexual orientation). The results will be shared (anonymised where appropriate) with the recognised trade unions.

Revised October 2019

## Appendix

### Procedure for a disciplinary hearing and a disciplinary appeal hearing

#### Preliminaries

Introductions, identification of panel members, employee, representative, HR support, note taker.

Where witnesses are called, they are only present for the period of questioning.

#### Management case

The management representative presents management case and calls witnesses for the management case.

Employee/representative have the opportunity to question the management representative and witnesses.

Head teacher/panel have the opportunity to question the management representative and witnesses.

Further questions if necessary from the employee/representative.

Further questions if necessary from head teacher/panel.

#### Employee's case

Employee/representative presents his/her case and calls witnesses for the employee's case.

The management representative has the opportunity to ask questions of the employee/representative and witnesses.

Head teacher/panel have the opportunity to ask questions of the employee/representative and witnesses.

Further questions if necessary from management representative.

Further questions if necessary from head teacher/panel.

#### Summing up

The management representative has the opportunity to sum up his/her case (no new evidence to be submitted at this point).

The employee/representative has the opportunity to sum up his/her case (no new evidence to be submitted at this point).

#### Adjournment and deliberation of whether misconduct has taken place

The management representative and employee/representative to withdraw.

Head teacher/panel to consider the facts presented to them and determine whether misconduct has taken place.

Management representative and employee/representative to be recalled and the determination of the head teacher/panel on whether misconduct has occurred to be conveyed verbally. Where appropriate, the employee/representative should be called for any mitigation they would like to present, to be followed by further adjournment for the head teacher/panel to consider any mitigation provided and to determine what (if any) disciplinary sanction to apply.

Management representative and employee/representative to be recalled and determination of the head teacher/panel to be conveyed verbally.

The hearing may also be adjourned at the deliberation stage in order to allow for further investigation if the head teacher/panel feels that there are points that require clarification. An opportunity may be given to re-examine the evidence/witnesses.

Decision of panel to be confirmed in writing within five working days of the date of the hearing.