

RIVERSIDE SCHOOL



DISCIPLINARY PROCEDURE FOR STAFF POLICY

APPROVED BY GOVERNORS ON – 23rd FEBRUARY 2010

DUE FOR REVIEW - FEBRUARY 2012

RESPONSIBLE PERSON – HEADTEACHER

SIGNED BY CHAIR OF GOVERNORS _____

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Appendix 1: General Definitions of Misconduct Warranting Formal Disciplinary Action

(The procedure for conducting Formal Stage and Appeal Hearings is attached to this procedure.)

1. PURPOSE AND SCOPE

1.1 This procedure is designed to help and encourage all staff to achieve and maintain good standards of conduct, attendance and job performance.

It is designed to cover where allegations concerning:

- (i) an employee's work misconduct
- (ii) unsatisfactory attendance (other than for reasons of illness, maternity or injury) and/or
- (iii) poor performance

which arise from the employee's wilful neglect of his/her duties.

1.2 It does not cover the normal day-to-day supervision where a supervisor may have to counsel, train or otherwise discuss with an employee instances of poor performance, nor does it cover ill health or other capability issues which are dealt with under separate procedures.

1.3 As part of normal supervision, a supervisor may have to give an oral caution to an employee: this does not form part of the formal disciplinary procedure. The supervisor *must* make clear to the employee when the formal procedure is being used.

1.4 The procedure applies to:-

- (a) all teachers employed under the School Teachers' Pay and Conditions Act 1991 and any successor Act, and the Conditions of Service for School Teachers in England and Wales;
- (b) all employees covered by the Scheme of Conditions of Service of the National Joint Council for Local Government Services. (The Green Book).

1.5 With the exception of:-

- (i) staff under a probationary or statutory induction period;
- (ii) staff employed on a casual day-to-day basis.

For (i) above please refer to LBB Circular 52/00: The Induction Period for Newly Qualified Teachers which provides details of the induction arrangements for NQTs and the procedure to follow in cases where unsatisfactory progress is being made. This is also accessible under Section 2 of the Personnel Handbook.

2. RIGHTS OF REPRESENTATION

2.1 Employees have the right to be accompanied at all formal stages of the disciplinary procedure. They may be accompanied by a trade union representative or a work colleague or friend of their choice.

2.2 Senior Managers also have the right to be accompanied at all stages of the disciplinary procedure and the Director of Children and Young People's Services or his/her representative has a right to attend all stages of the procedure to give advice as to the law and procedure when a dismissal is being considered.

2.3 The Director of Children and Young People's Services may also attend any other stage of the disciplinary procedure to give advice as to the law and procedure as required at the invitation of the Senior Manager or Governing Body/Committee.

2.4 It is also appropriate for the Chairman of Governors or Head Teacher to request that the LA either conducts or assists in the conduct of the investigation and operation of this procedure as well as the presentation of any case.

2.5 If the employee is a trade union official no formal disciplinary action should be taken until the appropriate branch secretary or full-time official has been informed.

3. DEFINITIONS AND AUTHORITY TO INITIATE DISCIPLINARY ACTION

3.1 The following definitions will apply throughout this procedure:

In accordance with the provisions of the School Staffing (England) Regulations 2003 the governing body may delegate its power to dismiss any member of staff to the Head Teacher, an individual governor or a group of governors with or without the Head Teacher.

The Head Teacher is normally expected to lead in all initial staff dismissal decisions. The Head Teacher may involve other governors in dismissal processes but the final decision should be the Head Teachers.

A Staff Disciplinary Committee should be established, together with a Staff Dismissal Committee to consider disciplinary matters which could lead to dismissal. The two committees may be the same but should comprise a minimum of 3 governors

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| Supervisor | - anyone who has been delegated supervisory responsibilities for the operation of this procedure. Only in secondary schools may this authority be delegated by the Head Teacher to those below Deputy Head Teacher. |
| Senior Manager | - Head Teacher, or any manager with specific delegated power. Where the person subject to discipline is the Head Teacher, the Senior Manager should be the Chairman of Governors. |
| Committees and Appeal Committees | - Appeals against dismissal should be heard by governors and a Staff Disciplinary Appeal Committee should be established together with a Staff Dismissal Appeal Committee to consider appeals which relate to proposed dismissal. One Committee may serve both requirements, but care should be taken to ensure that no governors are on the appeal panel who had any involvement in the earlier stages of the disciplinary process. <u>The Committees should comprise a minimum of 3 governors unless there are not enough governors available. In this circumstance the appeal may be heard by two governors provided there are no fewer governors present than there were on the panel who made the original decision.</u> |
| Director of Children and Young People's Services | - includes any Officer or Adviser with specific delegated power. |
| Days | - working days or consecutive days if it is necessary and appropriate to progress matters outside term time. |

3.2 Reference throughout this procedure to the Supervisor, Senior Manager, Director of Education and Libraries and employee shall include their personal representatives as appropriate. In certain circumstances (eg a small school) the Supervisor and the Senior Manager may be the same person.

3.3 The following table details the maximum disciplinary action which can be imposed at various levels of authority, and the various stages of the formal disciplinary procedure applicable to these levels:

Level of Authority	Authorised to
Investigating Officer	<ul style="list-style-type: none"> - carry out investigation prior to formal disciplinary action - produce a report recommending to the Senior Manager that the matter proceed to a disciplinary hearing.
Senior Manager	<ul style="list-style-type: none"> - conduct formal disciplinary hearings - issue formal oral and written warnings - dismiss (in consultation with the Director of Children and Young People's Services)^{1*} - withhold an incremental rise - refer a case to the Governors' Disciplinary or Dismissal Committee for consideration - suspend (in consultation with the Chairman of Governors)
Staff Disciplinary Committee	<ul style="list-style-type: none"> - conduct formal disciplinary hearings - suspend or order a Head Teacher to end a suspension - issue formal oral and/or written warnings - consider appeals against formal oral and written warnings issued by a Senior Manager. - consider appeals against any penalty issued by a Senior Manager other than dismissal - hear appeals against a Senior Manager's decision not to remove a warning from the personal file
Staff Dismissal Committee	<ul style="list-style-type: none"> - conduct formal disciplinary hearings where dismissal is under consideration and issue formal or final written warnings if appropriate (where authority has not been delegated to Head Teacher) or where the Head Teacher has been involved in the investigation. - dismiss (in consultation with the Director of Children and Young People's Services)
Staff Disciplinary Appeal Committee	<ul style="list-style-type: none"> - hear appeals against formal oral or written warnings issued by a Committee or Senior Manager - order a Committee or Head Teacher to end a suspension - hear appeals against a Committee's decision not to remove a warning from the personal file - hear appeals against any penalty issued by a Senior Manager - hear appeals against a Senior Manager's decision not to remove a warning from the personal file
Staff Dismissal Appeal Committee	<ul style="list-style-type: none"> - hear appeals against a Staff Dismissal Committee's decision to dismiss. - hear appeals against the Head Teacher's decision to dismiss

3.4 To ensure fairness throughout the procedure, different people must participate in the Disciplinary/Dismissal Committee and the Disciplinary/Dismissal Appeal Committee hearings. However, where the case concerns a continuing or related matter, the same Committee can hear the case on subsequent occasions.

3.5 In the event that the school's delegated budget is suspended then any decision to dismiss will require the consent of the Director of Children and Young People Services (or his representative). In all other cases the Staff Dismissal Committee and the Dismissal Appeal Committee should have regard to the LEA's financial interest in dismissals, including the advisability of consulting with Bromley Human Resources in such circumstances.

¹ where authority has been delegated by the Governing Body

4. SUSPENSION

Both the governing body and the Head Teacher can suspend any staff employed or engaged at a school but only the governing body can lift a suspension. A decision may be made to suspend an employee on full pay when an allegation of misconduct is made. However, such a suspension is not a disciplinary action in itself but a means of providing a breathing space; nor does it imply guilt. The aim is to enable further investigation of the facts to be carried out. It should be used to protect the interests of all concerned including the employee during the investigation. An employee should only automatically be suspended if the alleged offence would constitute gross misconduct.

5. STAGES IN THE FORMAL DISCIPLINARY PROCEDURE

5.1 Investigation Prior to Taking Formal Disciplinary Action

5.1.1 When a concern arises which may warrants an investigation and may require formal disciplinary action:-

- (a) The Head Teacher should appoint an Investigating Officer
- (b) The employee should be notified in writing of the allegations and the decision to instigate a disciplinary investigation as soon as possible.
- (c) The Head Teacher/governing body should consider whether it is advisable to suspend the employee during the investigation.
- (d) The person investigating the matter (The Investigating Officer) must establish the facts promptly and normally within **10 working or 14 consecutive days**. The Investigating Officer (providing that person is not involved in the matter to be investigated) will usually arrange a disciplinary investigation interview with the employee to give them an opportunity to respond to the allegations. They will also take into account the statements of any available witnesses and the individual concerned, as soon as possible after the alleged incident.
- (e) When the facts are established, the Investigating Officer will arrange for a formal interview with the employee to discuss whether further action is required under the formal disciplinary procedure. The employee will also be given copies of all relevant documents in advance of this interview.
- (f) If it is decided to take formal disciplinary action the employee must be instructed to attend a disciplinary hearing.
- (g) If it is decided not to take the matter further or to deal with it informally (e.g. through the provision of professional or specialist advice or support), all relevant parties must be informed of this.

5.1.2 During the course of a disciplinary investigation, an employee might raise a grievance against the actions of the manager handling the case or against other senior managers. Normally this will be dealt with as part of consideration of the facts of the case. However, the manager investigating the case will seek advice from an appropriate professional adviser and, depending on the circumstances, it may be appropriate to suspend the disciplinary procedure for a short period until the grievance can be considered.

5.2 Preparing for the Disciplinary Hearing

5.2.1 The employee will need to be written to confirming the outcome of the investigation with a duplicate copy for his/her representative. If it is decided to proceed with formal disciplinary action the letter must be received no less than 5 working or 7 consecutive days before the hearing and must:

- (i) instruct the employee to attend a formal hearing;
- (ii) contain a written statement of the allegations against the employee (confirming the seriousness with which they are regarded and whether they would constitute

misconduct/gross misconduct if proven);

(NB: If gross misconduct is alleged, the employee must be warned that if the allegation is found to be true, it may lead to his/her dismissal).

- (iii) contain copies of any relevant documents to be submitted to the hearing;
- (iv) advise the employee that the hearing forms part of the formal disciplinary procedure (including a copy of the procedure if this has not already been provided);
- (v) advise the employee of his/her rights of representation;
- (vi) request details of any documents to be submitted and witnesses to be called by the employee.

5.2.2 It is good practice to agree a mutually convenient date for the disciplinary hearing with the employee and their representative. This is to ensure that the hearing does not have to be delayed or postponed at the last minute. Where the chosen representative cannot attend the date proposed, the employee can offer an alternative date and time so long as it is reasonable and falls before the period of seven days beginning with the first day after the day proposed by management.

5.2.3 The employee must have regard to the availability of the managers involved in the case. The location and timing of any alternative hearing should be convenient to both the employee and management.

5.2.4 A duplicate copy of the letter and all documentation must be included for his/her representative.

5.2.5 The Director of Children and Young People's Services representative has a right to attend in cases where dismissal could result if the allegations are found to be proven. Any advice given in this respect must be considered before any decision is made. A clerk able to take a detailed and accurate note of the proceedings must be available at all formal meetings.

5.2.6 The Senior Manager will decide at the hearing whether the case for disciplinary action has been established after considering all the evidence presented by both sides.

The Investigating Officer cannot also hear the case.

The procedure to be followed at all formal hearings is included with this document.

5.3 Disciplinary Penalties

5.3.1 Examples of the possible penalties are:

Level of Performance	Possible Disciplinary Penalty
Work performance or conduct below required standards	An oral warning may be given which should be recorded on file
Work performance or conduct which is persistently or seriously below standard	(a) A written warning may be given (b) Withholding of an increment
Misconduct of serious nature; failure to work to required standards after previous warning(s)	Final written warning, transfer or relegation to another post, (in consultation with the LEA) dismissal with notice
Gross misconduct	Summary dismissal without notice

The Staff Disciplinary/Dismissal Committee must decide upon the appropriate penalty in each individual case based on all the facts that are presented and any extenuating circumstances that are considered relevant.

5.3.2 Examples of conduct which would be regarded as gross misconduct are included in Appendix 1. **Only in cases of gross misconduct can an employee be dismissed for a first breach of discipline.**

5.3.3 It must be noted that if an employee resigns before a disciplinary process is completed or is dismissed as a result of formal disciplinary action, the Senior Manager must inform him/her of the statutory duty of employers to report the case to the Department for Education and Skills Teachers' Misconduct Unit

5.4 Disciplinary Letters

5.4.1 The decision on the outcome of the disciplinary hearing will be given to the employee at the end of the hearing whenever possible and in any case in writing, within **5 working or 7 consecutive days** of the hearing. At the same time as the employee is informed of the outcome of the hearing, he/she will be advised of their right of appeal.

5.4.2 The employee will also be advised as to a specified period of time after which he/she may request the warning on his/her personal file be disregarded for the purpose of future disciplinary proceedings. The specified period will depend upon the nature of the offence and the type of disciplinary action imposed, but will not normally exceed one year. Removal will be subject to satisfactory conduct during the specified period. Where, exceptionally, the misconduct is so serious that it cannot realistically be disregarded for future disciplinary purposes this should be made explicitly clear, together with a statement that any recurrence will lead to dismissal.

5.4.3 The employee will be informed in writing of the outcome of the hearing, i.e.:-

- (i) the nature of the disciplinary offence;
- (ii) a brief summary of the findings as to the facts presented at the disciplinary hearing;
- (iii) the nature of the disciplinary penalty imposed or alternative course of action decided upon;
- (iv) the level of conduct/standards required in the future;
- (v) where appropriate, the time scale within which the conduct performance will be monitored and improvement assessed and who will be responsible for carrying this out;
- (vi) arrangements for guidance, supervision or training, where appropriate;
- (vii) what will happen if conduct fails to meet the required standards;
- (viii) the opportunity to ask for clarification of the disciplinary action ;
- (ix) the specified period of time after which he/she may request that a disciplinary warning be disregarded and to whom;
- (x) the employee's right of appeal and how this should be presented.

5.4.4 A copy of this letter must be sent to the employee and his/her representative and a copy retained on the personal file. As indicated in the letter an employee may request the Staff Disciplinary/Dismissal Committee or Senior Manager, a year after the event and each subsequent year, that any warning on the file be disregarded for the purpose of future disciplinary proceedings. Such a request shall be fully considered and not unreasonably refused and the Committee or Senior Manager will respond in writing to this request normally within **5 working or 7 consecutive days**, giving reasons if this request is refused.

6. APPEALS

6. An employee who has been formally disciplined has a right of appeal against the decision as well as a right to appeal against a decision not to disregard a warning on his/her personal file in accordance with the provisions contained within this procedure.
- 6.2 The appeal will be heard by a Staff Disciplinary/Dismissal Appeal Committee as appropriate but there will be no further right of appeal beyond the appeal stage. In the case of an appeal against dismissal the Staff I Dismissal Appeal Committee must be convened. The appeal hearing provides an opportunity for a rehearing of the case to determine whether the original decision was reasonable in the circumstances.

APPEAL AGAINST	RIGHT OF APPEAL
Formal oral or written warning given by Senior Manager Formal written warnings, suspension or other disciplinary action initiated by the Committee	Staff Disciplinary Appeal Committee
Dismissal	Staff Dismissal Appeal Committee

- 6.2 A request for an appeal must be made to the Senior Manager within **10 working or 14 consecutive days** of the receipt of the letter detailing the outcome of a disciplinary hearing. The procedure for the conduct of an appeal hearing is enclosed with this document.

7. DISMISSAL

- 7.1 A Staff Dismissal Committee or Head Teacher (where in receipt of delegated powers) is authorised to determine the dismissal of an employee (in consultation with the Director of Education and Libraries). The Staff Disciplinary Committee and the Staff Dismissal Committee may be the same body.
- 7.2 The decision to dismiss will be confirmed in writing to the employee, his/her representative and the Director of Education and Libraries. The letter will also contain the reasons for the dismissal and the right of appeal to the Staff Dismissal Appeal Committee within **10 working or 14 consecutive days** of receipt of the letter.
- 7.3 Within **5 working or 7 consecutive days** of the date of written notification of the decision to dismiss by the Staff Dismissal Committee, the Director of Education and Libraries will terminate the employee's contract of employment at the school with or without notice according to the circumstances.
- 7.4 Where the Staff Dismissal Appeal Committee decide to uphold the decision of the Staff Dismissal Committee or Senior Manager to dismiss, there will be no further internal right of appeal. This decision will be confirmed in writing to the employee, his/her representative and the Director of Education and Libraries within **5 working or 7 consecutive days**.
- 7.5 If the appeal to the Staff Dismissal Appeal Committee overturns the decision of the Staff Dismissal Committee to dismiss, the termination notice may be rescinded.

DISCIPLINARY RULES

The Governing Body and the Authority regard as misconduct any behaviour by an employee that potentially brings the Education Service or the school into disrepute or to cause a loss of public or professional confidence in an individual or a school.

It is not possible to provide a definitive list of all the disciplinary rules, but the examples provided below are intended to inform employees of the set standards of conduct at work expected of them. This is intended to avoid any confusion regarding the provision of general managerial supervision. Breaches of the disciplinary rules will render employees liable to disciplinary action.

The list provides a guide of the type of behaviour for which dismissal or a warning may be justified. Two categories are identified i.e. Gross Misconduct and Misconduct .

“Gross Misconduct” means an act, or series of actions, that fundamentally repudiates the contract of employment because the Governing Body is justified in no longer tolerating the presence at the school of the employee who commits the offence. It may justify summary dismissal** if the case is proven unless there are extenuating circumstances. Gross Misconduct can include acts committed outside working hours/the school as well as those committed during working time/within the school.

Where “Gross Misconduct” is alleged and Head Teachers or Governing Bodies are minded to embark on disciplinary action, they should always seek the advice of their retained Personnel Provider.

Examples of Gross Misconduct

- (a) serious dishonesty, such as theft of property, deliberate falsification of salary, timesheets or expense claims for pecuniary advantage, falsification of any information given in applying for a post, and failure to disclose criminal convictions;
- (b) acts of fraud and/or financial irregularity;
- (c) improper use of an employee’s position for private gain or the private gain of some other person, including soliciting or accepting bribes;
- (d) deliberate unauthorised disclosure of confidential information relating to the business of the school, its employees, or the public with whom it has dealings;
- (e) serious misuse of the school’s facilities or name, including abuse of the internet, electronic mail and other communication systems which compromises the integrity of the school, places pupils at risk and results in a lack of trust;
- (f) wilfully ignoring responsibilities or refusing to carry out reasonable, lawful and safe instructions, thereby placing other members of staff and/or pupils in danger;
- (g) gross negligence in failing to attend to or to carry out the duties of the post;
- (h) attending for work whilst being unfit to carry out duties and responsibilities of the post as a result of taking and/or being under the influence of alcohol or other drugs (unless this is in accordance with medical advice);
- (i) sexual or racial offences and/or misconduct, abuse, victimisation or harassment at work;
- (j) deliberate unauthorised disclosure of information classified as confidential;

* Dismissal without notice

- (k) theft or misappropriation of, or malicious damage to, property of the school, parents, pupils or other employees at any time;
- (l) unauthorised use of school vehicles, equipment, resources and/or facilities for private purposes without authority.
- (m) acts of violence including physical assault on fellow employees, supervisors or members of the public, including maltreatment of pupils of the school or educational establishment;
- (n) failure to comply with health and safety responsibilities and requirements such as to endanger life or cause injury;
- (o) discrimination against an employee of the school or authority or a pupil or member of the public on the grounds of marital status, sex, colour, race, creed, disability, nationality or ethnic origin. Racial and/or sexual harassment;
- (p) other actions/practices of a similar nature/severity.

Misconduct is less serious than gross misconduct but could lead to dismissal if the unacceptable conduct is repeated.

Examples of Misconduct

- (a) conduct on the part of an employee which is incompatible with the rules, principles and procedures of the school;
- (b) absenteeism including failure to remain at the place of work during school sessions without permission or sufficient cause and failure to comply with sickness reporting and absence regulations;
- (c) frequent failure to attend punctually at the school or other work place;
- (d) abuse of the internet, electronic mail and other communication systems which compromises the integrity of the school, places pupils at risk and results in a lack of trust;
- (e) failure to comply with reasonable instructions and/or requirements in accordance with job description;
- (f) abusive, threatening, unprofessional or offensive behaviour or language, victimisation or harassment;
- (g) minor dishonesty and petty deceptions;
- (h) negligence in failing to attend to or to carry out the duties of the post, failure to observe operational regulations/procedures and the rules of the school/authority;
- (i) wilful neglect of duty, such as failure to adopt safe working practices, negligent use of school property;
- (j) failure to comply with hygiene requirements, accident reporting procedures and the requirement to wear protective clothing in accordance to health and safety legislation and Authority/school requirements;
- (k) other actions/practices of a similar nature/severity.
- (l) other actions/practices of a similar nature/severity.