

RIVERSIDE SCHOOL



Procedure for Managing Staff Change

APPROVED BY GOVERNORS

RESPONSIBLE PERSON – HEADTEACHER

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1. INTRODUCTION

- 1.1 Governing Boards are responsible for establishing the school's staffing complement having regard to the ongoing needs of the school and the resources available. Governing Bodies will be accountable under employment law for any changes they may make which might affect employees' contracts of employment. Such changes are various and may be achieved by mutual agreement with the individuals concerned where, for example, a minor adjustment to contractual hours or duties is all that is required.
- 1.2 Sometimes, however, the changes proposed may be such that the Governing board has to contemplate the dismissal of a member of staff on the grounds of "redundancy". The following paragraphs include details of an employer's (and therefore Governing board's) responsibilities under employment law when handling redundancies and the formal procedure to be followed in these circumstances.

2. GLOSSARY OF TERMS

- 2.1 The following definitions will apply throughout this procedure:

Supervisor - anyone who has been delegated supervisory responsibilities who can be defined as the employee's immediate supervisor/manager.

Senior Manager - Headteacher, or any manager with specific delegated power. Where the person subject to the procedure is the Headteacher, the Senior Manager should be the Chair of Governors.

Committees and Appeal Committees - Committees established by the Governing board to deal with matters in accordance with the provisions of the Education (School Government) (England) Regulations 1999. The Governing board may establish the Committees it thinks necessary to deal with a particular function. The 1999 Regulations provide for Governing Bodies to establish a Staff Dismissal Committee and a Staff Dismissal Appeal Committee. The Personnel Committee and the Staff Dismissal Committee may be the same body. Appeals against dismissal must be heard by Staff Dismissal Appeal Committee and should only consist of Governors who have taken no part in the original decision against which the appeal is made.

All such committees should comprise 3 Governors unless in exceptional circumstances.

Director of Education and Care Services - Includes any Officer or Adviser with specific delegated powers.

- Support Staff - Where there is reference in the procedures to support staff this should be understood to include staff covered by the Bromley localised pay arrangements.
- Unions and Professional Associations - Where there is reference in the procedures to unions this should be understood to include reference to the professional associations also.
- The unions/associations recognised by the Council/LA can be found in the Personnel Handbook.
- Early Retirement - A teacher aged 55 or over, who has completed the normal qualifying period, may apply through the Governing board to the LA for premature retirement. A policy setting out the criteria for considering such requests is set out in the Personnel Handbook.
- Voluntary Redundancy - Termination of employment by dismissal in response to an invitation from a governing board. Teachers and support staff may apply when a redundancy situation is announced. The final date of service is to be arranged by mutual agreement and for teachers is normally the end of the school term, although this may be varied by agreement.
- Redundancy - Termination of employment by dismissal of the employee on the grounds that the requirements of the school for the individual to carry out work of a particular kind has ceased or diminished or is expected to do so.
- Days - Calendar days.

3. LEGAL DEFINITION OF REDUNDANCY

3.1 Termination of Employment

3.1.1 In order for an employee to be dismissed on grounds of redundancy his/her dismissal must be wholly or mainly attributable to the fact that:

- (a) his or her employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed; or
- (b) the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he or she was so employed, have ceased or diminished or are expected to cease or diminish.

3.1.2 This will, for example, include:

- (i) a reduction in the total number of full-time equivalent posts on the teaching or support staff complement;
- (ii) changes to the curriculum which result in a required reduction of teachers in a particular subject area (even if an increase in staffing in a completely different subject area would mean that the total number of teachers at the school remained unchanged).

3.1.3 The non-renewal of a fixed term contract in the circumstances of 3.1.1 (a) or (b) above will also give rise to a redundancy situation.

4. RIGHTS OF REPRESENTATION

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

4.2 Employers also have the right to be represented at all formal stages of this procedure. The Executive Director of Education and Care Services has the right to attend in an advisory capacity at all stages of the procedure when a dismissal is being considered.

4.3 Any other appropriate professional adviser may attend at any stage of the procedure to give advice or assist in the operation of this procedure, as required at the request of the Headteacher/Senior Manager or any Governors' Committee.

4.4 Reference in this procedure to the Headteacher/Senior Manager, employee and Executive Director of Education and Care Services shall include their personal representative as appropriate.

5. AUTHORITY TO INITIATE STAFF CHANGES

5.1 In accordance with the provisions of the school staffing (England) Regulations 2003, the Governing board may delegate its power to dismiss any member of staff to the Headteacher, an individual Governor or group of Governors with or without the Headteacher.

5.2 The Headteacher is normally expected to lead in all initial staff dismissal decisions. The Headteacher may involve other Governors in dismissal processes but where responsibility for staff dismissal has been delegated to the Headteacher, the final decision on whether to terminate an individual's employment rests with the Headteacher.

5.3 The Executive Director of Education and Care Services and the Headteacher are entitled to attend or be represented at all proceedings of the Governing board (or its Committees) at which dismissal(s) on the grounds of redundancy or

otherwise is being considered. The Governing board/Headteacher has a duty to consider any advice offered before determining that any member of staff should be dismissed.

- 5.4 In the event that the school's delegated budget is suspended, then any decision to dismiss will require the consent of the Executive Director of Education and Care Services. In other cases, the Headteacher the Staff Dismissal Committee and Staff Dismissal Appeal Committee should have regard to the LA's financial interest in dismissals, including the advisability of consulting with Bromley Human Resources in such circumstances.

6. GOVERNING BOARD ENDORSEMENT OF PROPOSALS

- 6.1 It is the responsibility of Governing Bodies economically, effectively and efficiently to manage the budgets allocated to them. This would involve, as part of a regular ongoing review process, a careful and thorough examination of the staffing needs of the school.
- 6.2 The Headteacher is required to submit a report to the full Governing board which contains outline information on any proposal for changes to existing staffing structures. Once the Governing board has endorsed the need to initiate formal procedures a second and more detailed report can then be submitted to the Personnel Committee with the delegated authority to consult on the proposals with all staff potentially affected and their representatives. This second report will form the basis on which formal consultation will take place.

7. CONSULTATION PROCESS

7.1 Consultation Requirements

- 7.1.1 The obligation to consult is not just limited to redundancy dismissals, but also applies in circumstances where there is a reorganisation which involves proposed changes to the contract of employment necessitating the termination of one contract and the offer of a new one for a reason not related to the individual(s) concerned. This would apply, for example, where agreement to a necessary change in hours, rate of pay, days to be worked, etc., cannot be achieved and the need for a formal procedure therefore arises. In this case the Governing board must follow the same consultation process as for a redundancy situation. Where it is proposed to dismiss staff by reason of redundancy it is important to follow statutory consultation requirements.
- 7.1.2 When redundancy packages are being considered, the Governing board/Headteacher must consult with the LA at the earliest possible date prior to any dismissal decision being taken. The reason for this relates to the Governors' need to ensure that the discretionary costs of dismissal will be met by the LA which therefore has a financial interest in the matter. The Executive Director of Education and Care Services is, therefore, entitled to attend to give advice at all stages of this procedure when the dismissal of a staff member is under consideration.

7.2 Responsibility for Consultation

- (a) Where the employee(s) is contracted solely to work at the school, it is the Governing board/Headteacher who will be proposing to dismiss on the grounds of redundancy and will, therefore, undertake the necessary consultation process.
- (b) Where the employee's contract does not limit his/her place of employment to the school (including those specifying that the employee could be required to work elsewhere within the Authority, although allocated to one establishment for the time being), the responsibility for consultation will be the joint responsibility of the LA and the Governing board. In such instances the Governing board will need to ask the LA to investigate whether or not an employee for whom the school no longer has a requirement can be re-deployed elsewhere within the LA under the terms of the contract.

7.3 Information which must be supplied to Employees and their Representatives

7.3.1 As part of formal consultation the following information will be given to employees and the relevant recognised trade unions:

- (a) the reason(s) for the proposed redundancies;
- (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant;
- (c) the total number of employees of any such description employed by the employer at the establishment in question;
- (d) the proposed method of selecting the employees who may be dismissed;
- (e) the proposed method of carrying out the dismissals including the period over which the dismissals are to take effect; and
- (f) the proposed method of calculating the amount of any redundancy payments to be made.

7.3.2 In order to consider possible alternatives to compulsory redundancy, the process of consultation will begin. As soon as a potential redundancy situation is identified, the Senior Manager should call a meeting of staff potentially and actually affected by the proposal to which the relevant recognised trade unions and staff associations will also be invited. In certain circumstances it may be appropriate to seek the views of staff as to the appropriateness of this arrangement and their preferred method of consultation. The information detailed above will be circulated in writing to staff and their representatives either during or in advance of this formal consultation meeting.

7.4 Redundancy Selection Criteria

7.4.1 Where the circumstances which have brought about the need for the redundancy proposals apply equally to two or more employees at the same school who hold like posts, selection criteria will need to be applied to determine which employee is to be dismissed on the grounds of redundancy. The application of selection criteria is not relevant where there is only one employee doing the type of work or if all the employees doing that work (or working in that place) are to be declared redundant.

7.4.2 These procedures will be operated by the Resources Committee which will have been delegated powers to consult on and implement the redundancy proposals.

7.4.3 The Resources Committee shall select employees as potentially redundant by use of criteria which shall be:

- (i) established after consultation with the staff concerned and the relevant employee representatives;
- (ii) explicit and made-known to staff as a whole;
- (iii) objective and fair and not depending solely upon the opinion of the person making the selection;
- (iv) non-discriminatory;
- (v) in accordance with the school's improvement plan;

Failure to use selection criteria in accordance with the above criteria may lead to unfair dismissal or constructive dismissal.

7.4.4 If the selection criteria are contrary to some previous criteria agreed by the school, the Resources Committee must endeavour to reach agreement during the formal consultation period with the recognised unions/employee representatives as to the criteria to be adopted.

7.5 Identifying Alternatives to Compulsory Redundancy

The resources Committee will consider the following possible options as alternatives to redundancy during the formal consultation period. This is by no means an exhaustive list and alternative courses of action may become evident during the consultation process:

- Retraining of existing staff
- Agreement to job share applications or proposals for alternative working methods
- Inviting applications for early retirement (subject to prior agreement of the LA, as appropriate)

- Inviting applications for voluntary redundancy
- Possible alternative employment options for staff affected. In the case of staff whose contracts of employment may require them to work elsewhere within the LA, this will include a specific request that the LA considers the possibility of alternative employment for the individual(s) affected.

7.6 Identifying Suitable Alternative Employment

7.6.1 An employer is required by law to act reasonably over the question of alternative employment. The LA and Governing board will apply the following principles, both during the consultation process and until the date on which the employee's contract of employment actually ends:-

- (i) to take reasonable steps to find suitable alternative employment for the employee, including consultation with the LA and other maintained schools about employment options;
- (ii) not to assume that an employee will reject an offer of a job at a lower grade/position to that currently held.

7.6.2 Neither the Governing board nor the LA are required to create a new job for an employee who is to be dismissed on the grounds of redundancy. If, however, suitable alternative work is available and it is not offered to the employee who is otherwise redundant, or if reasonable efforts are not made to find alternative work, the dismissal on the grounds of redundancy may be held to be unfair if the employee's representative makes an application to an Employment Tribunal.

8. PROVISIONAL SELECTION FOR REDUNDANCY

8.1 Where, having considered all the alternatives, compulsory redundancy remains the only option, selection for redundancy by either the Staff Dismissal Committee or the Headteacher will be necessary. Such decisions must be made fairly and in accordance with the specified criteria.

8.2 As far in advance of the proposed termination date as possible the Staff Dismissal Committee or Headteacher will make a provisional selection for redundancy. The employee(s) affected will be informed of their provisional selection personally and the details will be confirmed in writing giving the reasons of the selection and inviting the employee(s) to make representations on the proposed dismissal(s) if they so wish. A duplicate copy of this letter will be provided for the employee(s) representative(s).

8.3 An employee may choose to make written representations to the Staff Dismissal Committee/Headteacher or may request a personal hearing with the Staff Dismissal Committee/Headteacher accompanied if he/she so wishes by a trade

union representative or work colleague. The employee will inform the Senior Manager in writing of his/her wishes in this respect within **seven days** of receipt of the letter confirming the provisional selection.

- 8.4 Where an employee requests a meeting with the Staff Dismissal Committee/Headteacher this shall be held within **14 days** of receipt by the Senior Manager of the employee's written request. The Executive Director of Education and Care Services will be entitled to attend for the purpose of giving advice. The Senior Manager will attend to give professional advice as appropriate.
- 8.5 The Staff Dismissal Committee/Headteacher will give full consideration to the employee's representations and any made by the Executive Director of Education and Care Services and the Senior Manager before reaching a decision. Should an alternative provisional selection be made as a result of these consultations the procedure referred to in paragraph 7.5 above will again apply.
- 8.6 Having decided that an employee is to be selected for dismissal on the grounds of redundancy in accordance with the procedure outlined above, the Chairman of the Staff Dismissal Committee/Headteacher who made the decision will arrange for the employee to be notified of the decision in writing within **five days** of the decision being made, together with details of his/her right of appeal. A duplicate copy of this letter will be provided for the employee(s) representative.
- 8.7 Within **5 working or 7 consecutive days** of the date of written notification of the decision to dismiss by the Headteacher / Staff Dismissal Committee, the Executive Director of Education and Care Services will give notice to terminate the employee's contract of employment at the school.
- 8.8 If the appeal to the Staff Dismissal Appeals Committee overturns the decision of the Staff Dismissal Committee/Headteacher to dismiss, the termination notice may be rescinded.

9. APPEAL

- 9.1 An employee is entitled to appeal against the Staff Dismissal Committee's/Headteacher's decision to terminate his or her employment on grounds of redundancy. The appeal must be made in writing to the Senior Manager within **14 days** of receipt of written notification of the original decision.
- 9.2 The Chairman of the Staff Dismissal Committee/Headteacher will be called as the main witness by the Senior Manager presenting the case to the Dismissal Appeal Committee. The appeal hearing will take place within **14 days** of receipt by the Senior Manager of written notice of appeal.
- 9.3 The Staff Dismissal Appeal Committee of the Governing board must be established in accordance with the Education (School Government) (England) Regulations 1999 and will consist only of members who have taken no part in the original decision against which an appeal is made.

- 9.4 There is no further internal right of appeal beyond the Staff Dismissal Appeal Committee of the Governing board.

10. TERMINATION OF EMPLOYMENT

- 10.1 In the event that the employee chooses not to appeal, or where the Staff Dismissal Appeal Committee decides to uphold the decision of the Staff Dismissal Committee/Headteacher to dismiss there will be no further internal right of appeal. This decision may be communicated verbally to the employee at the conclusion of the hearing but will in every case be confirmed in writing to the employee, his/her representative and the Executive Director of Education and Care Services within **5 working or 7 consecutive days** . The Senior Manager will arrange for the LA to be notified in writing of the decision, together with details of such termination payments as the Governing board of a school with a delegated budget has decided is appropriate having regard to the provisions of the appropriate maintaining LA schemes in this respect.

11. TIME OFF

Employees who have been given notice of dismissal by reason of redundancy are entitled to reasonable paid time off work for the purposes of seeking alternative employment or making arrangements for training for future employment. For employees with two or more years continuous service there is a statutory right to such paid time off work and, if refused, the employee may make a complaint to an Employment Tribunal within three months from the time when it is claimed that the time off should have been allowed.

12. SUMMARY OF THE PROCEDURE FOR HANDLING REDUNDANCIES

A summary of the procedure which must be followed in order to initiate a redundancy is detailed below. Indicative timescales for terminations are referred to in the Personnel Handbook. :

1. Governing board to endorse proposal to initiate consultations in a potential redundancy situation.
2. Governing board delegates responsibility to an appropriate Personnel Committee.
3. Consultation process begins with detailed consultation document issued to staff and their representatives.
4. Resources Committee considers alternatives to compulsory redundancy.
5. Resources Committee agrees redundancy selection criteria.
6. Staff Dismissal Committee/Headteacher agrees provisional selection for redundancy.

7. Staff Dismissal Committee/Headteacher meets to hear representations against selection for redundancy and makes final decision on selection.
8. LA terminates employment.
9. Appeal Hearing (Staff Dismissal Appeal Committee). If appeal succeeds termination notice will be rescinded.
10. LA and Governing board consider suitable alternative employment in consultation with other LEA maintained schools.
11. Employee(s) allowed reasonable time off.
12. Termination of employment with redundancy payment where eligible.