



LAURUS
—
TRUST

Employee Discipline Policy

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MODEL DISCIPLINARY PROCEDURE

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MODEL DISCIPLINARY PROCEDURE**1. PRINCIPLES**

- (i) The following model disciplinary procedure has been produced in accordance with appropriate provisions of the Trade Union and Labour Relations (Consolidation) Act 1992, the Employment Rights Act 1996, the ACAS Code of Practice (Disciplinary Procedures) 2000, and after consultation with the Trade Unions and Associations representing Headteachers, teachers and support staff employed by The Laurus Trust. It is recognized by the Governing Body that discipline is necessary for the efficient operation of the school, and for the health and safety at work of employees. In order to provide a fair, consistent and effective procedure for dealing with disciplinary matters, the following procedure will be applied in all instances where formal disciplinary action is regarded by management as appropriate, other than where an informal reprimand is given for some relatively minor act of misconduct. Advice will be sought from Stockport HR as appropriate.
- (ii) As indicated in (i) above, discipline is essential for the conduct of the school and for the well being of employees and pupils. The general direction of the conduct of the school is the responsibility of the Governors in consultation with the Headteacher and in accordance with the School Governance and Staffing Regulations, 2003. Subject to the provisions of the Regulations the Headteacher is responsible for the internal organisation, management and discipline of the school including the exercise of supervision over staff.
- (iii) The Governing Body and the Headteacher are responsible for applying this procedure in a fair and equitable way.
- (iv) Taking action under the Discipline Procedure is difficult and often unpleasant. To ensure that the process goes as smoothly as possible the appropriate advice should be sought at all stages of the process.

2. APPLICATION

The procedure applies to all staff and, taking into account the appropriate sections, to Headteachers. It does not apply:

- (i) on termination of fixed-term and other temporary contracts of employment (matters of misconduct will normally be dealt with under this procedure);
- (ii) in the event of redundancy or early retirement which will be dealt with under separate arrangements;
- (iii) to issues of capability, sickness absence which will be dealt with under separate procedures;

It is not intended that anything in this procedure will inhibit the day to day management of staff which may require informal discussions and advice about conduct and performance without recourse to the formal procedures.

3. **OFFENCES**

This model procedure should be read in conjunction with the disciplinary rules issued by the Trust which are attached at Annex A. Offences are, in general, divided as follows:

- (i) minor offences for which the normal disciplinary action would be a recorded oral warning;
- (ii) more serious offences, or repeated minor offences, for which a written warning, which may be a final warning depending on the circumstances, would be appropriate;
- (iii) very serious offences which may constitute gross misconduct and which may merit summary dismissal, or repeated less serious offences taken together, for which dismissal, or other disciplinary action would be appropriate. Other disciplinary action will be determined with regard to the seriousness of the offence.

4. **RECEIPT OF COMPLAINTS**

Where an employee's conduct or omission is such that it may warrant disciplinary action, the matter should be brought to the attention of the Headteacher. If the matter is initially reported to the Trust Directors or to a Governor of the School, the information should be passed on to the Headteacher. The Headteacher will delegate the matter for investigation to the Deputy Headteacher, or equivalent, or another appropriate member of the senior management team.

Any individual who is the subject of such a complaint will be advised in writing, as soon as is reasonably practicable, of the detail of all the complaints against him/her. If the allegation is against the Headteacher then the Chair of Governors should inform the Trust Directors.

If the complaint has any potential Child Protection issues, advice must be sought immediately from the Local Designated Officer or the Senior Safeguarding Officer within the appropriate Local Authority. Child Protection issues will always take precedence initially over disciplinary action.

5. **DISCIPLINARY ACTION**

The following procedure will apply to all staff with the exception of the Headteacher (see paragraph 6).

- (i) Powers delegated to Headteacher

The Headteacher shall arrange for the School's Deputy Headteacher or equivalent, or another appropriate member of the senior management team (known as the investigating officer), to undertake an investigation (and be the presenting officer in any subsequent hearing) into the matters which raise the question of disciplinary action against an employee. The investigating officer can recommend to the Headteacher, if satisfied on the basis of the evidence found, that no further action need be taken, or that an informal oral reprimand will be sufficient. Otherwise he/she shall call the employee to a hearing to consider the matter. In certain circumstances, and depending upon the nature of the allegation, it may be appropriate to suspend the employee at this stage (please see paragraph 7 below). The employee will be given at least seven days written notice of the hearing and the nature of the complaint and advised of his/her right to representation.

The hearing will be conducted by the Headteacher. At the hearing the member of staff shall be told that disciplinary action is being considered, the investigating officer will state the nature of the allegations and present the evidence. The employee will have the right to answer those allegations with assistance from a representative if he/she so wishes. The investigating officer and the employee, or his or her representative, will be given the opportunity to address the panel to summarise their respective submissions.

On completion of the proceedings and following an adjournment to consider the evidence and submissions, the Headteacher will announce the decision and the disciplinary action to be taken (see below, a-f). He/ she will give an explanation for that action and will explain the employee's right of appeal under this procedure.

- (a) dismiss the case;
- (b) decide that no further action be taken;
- (c) give an oral warning;
- (d) give a written warning;
- (e) give a final written warning; or
- (f) require that the Governors dismiss the employee

(ii) Powers delegated to a Special Panel of the Governing Body

If the Headteacher is the investigating officer (see Annex D) or if the Headteacher is subject to disciplinary action, the case will be heard by a Special Panel of Governors which shall be composed of not less than 3 members of the Governing Body (who have not previously been involved in the case) of the school. All other advice in paragraph 5 (i) applies.

(iii) Dismissal Decisions

Any decision to dismiss taken by the Headteacher under 5(i) or the Special Panel of the Governing Body under 5(iii) will be effective from the date of the initial dismissal decision. Should any subsequent appeal against dismissal be successful the employee will receive pay as if the original decision had not been made

(iv) Appeal

The employee shall have the right of appeal against any decision to take disciplinary action as follows:-

(a) Powers delegated to Headteacher

In the case of any decision of the Headteacher under sub-paragraph 5 (i)(c) (d), (e) or (f), an appeal shall be made to the Appeals Panel of Governors, which shall be composed of not less than 3 members of the Governing Body who shall have the power to confirm the decision or to impose a lesser penalty including withdrawing any disciplinary action.

(b) Powers delegated to a Special Panel of the Governing Body

In the case of any decisions by the Special Panel of the Governing Body an appeal shall be made to an Appeals Panel of Governors, which shall be composed of not less than 3 members of the Governing Body not involved in the initial hearing, who shall have the power to confirm the decision or to impose a lesser penalty including withdrawing any disciplinary action.

Governors involved in such hearings will need to consider the rules surrounding personal interest when taking part in such hearings

6. DISCIPLINARY ACTION – AGAINST THE HEADTEACHER

Where action is to be taken against the Headteacher, the procedure outlined in paragraph 5(ii) above shall be adopted save that it shall not be necessary to suspend the Headteacher for a minor offence. A member of the Governing Body shall be nominated as the investigating officer.

7. SUSPENSION

In the event of any allegation which might be construed as gross misconduct, the Headteacher or governing body may suspend the employee (in the case of the Headteacher, the Chair of Governors may make such a decision) from work pending the resolution of the matter. In the event of such suspension, steps will be taken to hold the appropriate meetings referred to in this procedure as soon as possible in order that the suspension may be terminated by dismissal or reinstatement or otherwise as may be decided. In certain circumstances it may be appropriate for the Headteacher to exclude an employee temporarily without prejudice, pending a decision whether formally to suspend. Facilities will be provided for the employee to discuss the matter with his/her trades union representative or other person. Payment of full salary will be paid during any period of suspension. Departure from this will only be made when it is expressly decided by the Governing Body that there is a lawful reason to do so. In all cases the Chair of Governors should be informed of any suspension as soon as practicable and the employee should be advised in writing of the reasons for their suspension within seven days.

8. NOTES

In connection with the arrangements set out in the above procedures it is understood that:-

- (i) Where the issues raised are in connection with capability rather than conduct, this procedure shall not be followed until the process outlined in the capability procedure has been completed.
- (ii) The circumstances leading to the disciplinary action being taken shall be recorded in writing and retained on the employee's personal file.

- (ii) No action shall be taken against any individual who is a recognised officer or representative of a professional association or trade union, other than temporary suspension, until the circumstances have been discussed with a full time or other official of the individual's trade union.
- (iv) Warnings will be disregarded for disciplinary purposes after the expiry of one year from the date of the issue of the warning unless there is a recurrence of the same or similar offence within the twelve month period.
- (v) If a case is dismissed any record will be expunged.
- (vi) Receipt of a formal written warning should be acknowledged in writing by the employee to avoid doubt that it has been received. Such an acknowledgement will not constitute an appeal or prejudice the outcome of an appeal. If the employee objects to the warning, but does not wish to appeal, this objection may be recorded on the written acknowledgement of the warning which should be retained.
- (vii) Where the employee wishes to appeal against the disciplinary action taken he/she may do so by giving written notice of appeal within 14 days of receipt of the written confirmation of that action.
- (viii) All persons concerned in any formal hearing or appeal at which disciplinary action may be taken shall be given at least seven days' notice in writing of the date, time and purpose of the hearing and the procedure to be adopted.
- (ix) At any hearings or appeals the employee or his/her representative shall have the right to present written and/or oral evidence and have the right to call witnesses and cross-examine. Copies of any documents will be made available to all parties in advance of any hearing.
- (x) An appeal to the Appeals Panel of the Governing Body against dismissal does not affect the right of the employee to appeal to an employment tribunal nor does it affect the time limit for such an appeal.
- (xi) Notice of appeal to an employment tribunal will not prejudice the outcome of an appeal to the Governing Body.

ANNEX A**DISCIPLINARY RULES****1. INTRODUCTION**

The following is in line with Stockport Council's Disciplinary Rules; they are produced as a model for adoption by Governing Bodies. It is recognised that if they are to be fully effective the rules and procedures need to be accepted as reasonable both by those who are covered by them and those who operate them.

The rules required will vary according to particular circumstances such as the type of work, work conditions and size of establishment.

- (i) Disciplinary rules and procedures are necessary for promoting fairness, consistency, and order in the treatment of individuals and in the conduct of industrial relations. Rules set standards of conduct at work; procedure helps to ensure that the standards are adhered to and also provides a fair method of dealing with alleged failures to observe them.
- (ii) The need for disciplinary rules is stressed by the ACAS Code of Practice 'Disciplinary Procedures' issued under the Trade Union and Labour Relations (Consolidation) Act 1992. This document is intended to ensure that every employee knows and understands the Council's/school's disciplinary rules, that he/she is aware of the likely consequences of breaking the rules, and that he/she has an indication of the type of conduct which may warrant disciplinary action, including summary dismissal.
- (iii) The rules are not intended to cover all possible circumstances which may arise. The application of the rules will vary according to the particular circumstances of each case. The omission of a particular kind of conduct from the rules does not mean that disciplinary action is thereby excluded; the rules give examples only. Any breach of normal good conduct will be subject to disciplinary action.

2. CONDUCT - WARNINGS

- (a) Conduct for which the procedure of warnings would normally be followed

includes:

- (i) unsatisfactory time-keeping
- (ii) unsatisfactory attendance
- (iii) unauthorised absence
- (iv) not taking reasonable care with regard to safety of self, other employees, members of the public or those in their charge, including failure to wear safety clothing or equipment, or to follow other safety practices
- (v) unprofessional conduct
- (vi) misuse of school facilities including ICT

Under certain circumstances, (iv), (v), and (vi) could be regarded more seriously.

- (b) Certain breaches of conduct may be regarded as more serious but not to the extent of justifying dismissal for a first offence and for which a first and final written warning would be appropriate.
- (c) Certain conduct, normally referred to as gross misconduct, is so serious that the first occurrence would probably call for summary dismissal. Acts which constitute such misconduct are those resulting in a serious breach of the terms of employment and would include the following:

- (i) theft or fraud.
- (ii) reporting for work whilst under the influence of alcohol or prescribed drugs.
- (iii) deliberate falsifying of records or documents, including employment application, medical
- (iv) records, work records, claim forms, or other school or Council documents.
- (iv) having sexual relationships with, or physically assaulting, children in their charge*.
- (v) sexual misconduct involving either another employee or member of the public
- (vi) physical assault (or actual threat of) or fighting
- (vii) deliberate damage to or abuse of school property
- (viii) serious insubordination
- (ix) serious infringement of health and safety rules
- (x) serious breach of confidence
- (xi) serious negligence which causes, or might cause, unacceptable loss, damage or injury.
- (xii) serious bullying or harassment including sex, race or other discrimination.
- (xiii) unreasonably leaving the place of work without permission.
- (xiv) refusal to carry out a reasonable instruction.

If the complaint has any potential Child Protection issues, advice must be sought immediately from the Local Designated Officer or the Senior Safeguarding Officer within the appropriate Local Authority. Child Protection issues will always take precedence initially over disciplinary action.

4. TEACHER PERFORMANCE

Matters relating to teacher performance will be dealt with initially in accordance with procedures set out in the capability procedure.

PROCEDURE FOR HANDLING DISCIPLINARY HEARINGS**1. PREAMBLE**

The following procedure is recommended to Governing Bodies in schools when handling disciplinary hearings held before a properly constituted disciplinary or appeals committee of the Governing Body and should be read in accordance with the Governing Body's disciplinary procedure. The procedure is also recommended for hearings held by Headteachers (within the scope of paragraph 5 above).

The employee may attend any hearing and may be accompanied by an appropriate representative who may be a trade union representative together with any witnesses he or she may require. Witnesses should only be present when their evidence is required and written evidence should be submitted only if previously circulated to all parties in accordance with the Governing Body's disciplinary procedure.

For serious offences heard by Headteachers (see paragraph 5 in the main document) hearings should be conducted as outlined below; however, in such instances the Headteacher will act as Chairperson and will have sole responsibility for decision making. In view of this, the role of "management representative" should be the responsibility of the school's Deputy Headteacher or equivalent, or another appropriate member of the school's senior management team.

2. PROCEDURE**(a) Introduction**

The Headteacher or Chairperson will introduce the parties to the hearing and the members of the committee. The procedure will be outlined by the Headteacher or Chairperson.

(b) Management

- (i) The management representative will make an opening address outlining her or his case.
- (ii) Management witnesses will be asked to give evidence and the management representative will be able to ask questions of the witness.
- (iii) The employee or his/her representative will be able to cross examine each witness.
- (iv) The Chairperson and members of the panel can question witnesses as necessary for the purpose of clarification.
- (v) The management representatives will re-examine each witness as necessary.

(c) Employee

- (i) The employee or his/her representative will make an opening address outlining the employee's case.
- (ii) The employee's witnesses will be asked to give evidence and the employee's representative will be able to ask questions of the witness.
- (iii) The management representative will be able to cross examine each witness and the employee, if called to give evidence.
- (iv) The Chairperson and members of the Panel can question witnesses as necessary for the purpose of clarification.
- (v) The employee's representative will re-examine each witness, as necessary.
- (vi) The employee may be called to give evidence in their defence as may be necessary but do not necessarily have to be called to give evidence in their defence.

(d). Summing Up

The management representative and the employee or his/her representative will have the opportunity to sum up their cases if they wish. The employee will be permitted to have the final word.

(e). The Decision

- (i) The management representatives, the employee and his/her representative together with any remaining witnesses shall then withdraw from the meeting.
- (ii) The Governors on the panel together with any representative(s) from Human Resources designated to advise them will deliberate in private. When a decision is reached the management representative, the employee and his/her representative shall be asked to return and the Chairperson will announce the panel's decision. That decision shall be confirmed in writing in accordance with the Governing Body's disciplinary procedure.

3. General Guidance

- (i) There may be circumstances where pupils are involved as witnesses in the disciplinary process but where it may not be appropriate for them to appear at the hearing. In such circumstances a written statement may be produced in accordance with the procedure. The employee or his/her representative shall be given the opportunity to interview the pupil(s), and/or to observe the 'management' interview with such a witness, this being subject to parental agreement. Parents should be given every opportunity to be in attendance at any interview with their child(ren) as should an independent third party if requested by either the school or the employee.
- (ii) The management representative, employee or his/her representative may request an adjournment at any stage and such requests should be considered by the sub-committee.
- (iii) In the event that the panel needs to recall anyone during the decision making process to clarify points of uncertainty on evidence previously given, then both management and the employee and his/her representative will return, notwithstanding that only one is concerned with the point requiring clarification.
- (iv) In the event of any appeal being lodged to an appeal sub-committee of the Governing Body the same procedure shall be followed. The membership of any appeal committee must differ from that at the original hearing.

4. ALLEGATIONS OF PHYSICAL/SEXUAL ABUSE

The following advice is in line with both the CLEA guidelines and the local Child Protection procedures.

- **Prior to the entry into any formal procedure, and before the start of an investigation, Headteachers need to make a judgement about the nature, level and possible implications of the allegation, both for the complainant (pupil) and the employee (teacher). For information an extract from the Child Protection procedures is enclosed as an annex to this document, for information.**

- **In all such cases Headteachers should, in the first instance, contact the Authority's HR Business Team.**

- **The Headteacher will, if appropriate, swiftly refer the case, in strictest confidence, to the Child Protection Officer who will consider whether the matter should be handled:-**
 - (i) entirely within the school's disciplinary procedures;**
 - (ii) within both disciplinary and child protection procedures;**
 - (iii) within disciplinary, child protection and police (criminal investigation) procedures.**

N.B. A decision about the suspension of the employee should be made after consultation with the Local Safeguarding Board.

The procedures described above will also be applied in cases where a member of staff other than a teacher faces an allegation.

**EXTRACT FROM STOCKPORT CHILD PROTECTION COMMITTEE’S
“CHILD PROTECTION HANDBOOK”**

**GUIDANCE ON BEHAVIOUR BY PROFESSIONALS OR FOSTER CARERS
TOWARDS CHILDREN AND YOUNG PEOPLE**

	Physical	Sexual	Emotional
Level 1: Behaviour falling within permitted limits	Physical restraint within permitted limits in circumstances where it is necessary for the protection of the safety of others.	There can be no permissible behaviour which either implicitly or explicitly has sexual connotations.	There will be little behaviour in this category which falls within permitted limits. Children and young people should always be treated with dignity, respect and positive regard. However occasional admonition or criticism may be permissible.
Level 2: Inappropriate or unacceptable behaviour	Verbal abuse and/or threatening words or behaviour. Excessive use of force in control and restraint situations.	Lack of proper privacy. Suggestive remarks, jokes etc. Physical contact which, although not overtly sexual makes the child feel uncomfortable.	Persistent admonition, direct insults, severe criticism, shaming and embarrassing behaviour. The persistent use of scorn or ridicule.
Level 3: Abusive or potentially abusive behaviour	Persistently inappropriate behaviour of the type referred to above. (Corporal punishment or other assaultive behaviour which results in a persisting bruise or laceration would almost certainly constitute prima facia evidence of a criminal offence).	Persistently inappropriate behaviour of the type referred to above. An overtly sexual contact (This latter category would almost certainly constitute a criminal offence).	Gross examples of the above, and including a persistent and sexist behaviours or language.

The threshold of significant harm and the likely invocation of the Child Protection Procedures is between Levels 2 and 3.

DELEGATION TO HEATEACHER OF DISMISSALS

1. The governing body has the overall responsibility for all dismissals in its school, with the exception of dismissals of Headteachers. It may chose to delegate these responsibilities to the head teacher, an individual governor, or a group of governors with or without the head teacher, other than in exceptional circumstances (outlined below).
2. In certain circumstances the governing body may consider applying alternative arrangements. If an alternative arrangement is decided, the head teacher has a right to attend to offer advice. The circumstances are as follows:
 - i. a Headteacher who is unwilling to perform these functions and whose previous history of service at the school did not include any such responsibilities. This gives existing Headteachers the option of preserving current working arrangements. When the Governing Body considers a new appointment for the Headteacher post the normal expectation that the Headteacher undertakes these responsibilities should apply.
 - ii. Where the Headteacher 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. The arrangements for delegating initial dismissal decisions will therefore need to be considered on a case by case basis in light of the circumstances.
 - iii. Where the governing body of the school with a religious character has agreed staff policies which provide for the governor involvement in the interests of preserving the school's religious character.
 - iv. A headteacher subject to suspension, disciplinary procedures (including capability), or disciplinary sanction.
 - v. Where the Headteacher has failed to abide by financial limits agreed by the governing body for any school purpose.
3. Where the Headteacher is exercising delegated responsibility for decisions, this cannot be delegated to another person.
4. Where a Headteacher is on long-term sick, secondment or some other long-term absence, the governing body should consider whether it is appropriate to pass delegated responsibility to the person acting in the Headteacher's place.