



Nottingham Nursery School & Training Centre

Disciplinary Procedure

September 2022

1. Introduction

- 1.1 The regulation of staff discipline is under the control of the governing body. The governing body must establish procedures for the regulation of staff conduct and discipline (School Staffing (England) Regulations 2009 – Regulation 7 Conduct and Discipline of Staff) and must take appropriate steps for making them known to staff.
- 1.2 The governing body has overall responsibility for all staff dismissals in school, however it may delegate these responsibilities to the head teacher, an individual governor, or a group of governors with or without the head teacher (School Staffing (England) Regulations 2009 – Regulation 4 – Delegation of Authority).
- 1.3 Head teachers will normally be granted delegated responsibility for staff dismissals.
- 1.4 In certain circumstances the governors should apply alternative arrangements, for example where:
 - a) the head teacher is unwilling to perform these functions and whose previous history of service at the school did not include any such responsibilities;
 - b) the head teacher is subject to suspension, disciplinary procedures (including capability), or disciplinary sanction;
 - c) the LA has made representations to the chair of the governing body on grounds of serious concerns about the performance of the head teacher;
 - d) the head teacher has failed to abide by financial limits agreed by the governing body for any school purpose;
 - e) the governing body of a faith school has agreed staffing policies which provide for governor involvement in the interests of preserving the school's religious character;
 - f) where the head teacher has been directly involved in the 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.
- 1.5 Governing bodies should have their decision minuted as to whether or not the first decision on dismissal will be taken by the head teacher or the Staff Dismissals Committee.
- 1.6 The governing body should review delegated arrangements for dismissals annually, or otherwise as deemed necessary which might include occasions where the head teacher is on long-term sick leave, secondment or some other absence. The governing body should consider whether it is appropriate to pass delegated responsibility to the person appointed

to act in the head teacher's place. The head should have an opportunity to make representations on any decisions to discontinue or continue delegated responsibility.

- 1.7 In cases where there are concerns regarding the conduct of the head teacher, the Chair of the Governing Body should contact the School's HR advisor for advice. An appropriate investigating officer should be appointed.
- 1.8 It should be noted that this procedure complies with the ACAS Code of Practice issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 which came into force on 6 April 2009. Employment tribunals will take the Code into account when considering relevant cases and are able to adjust any awards made by up to 25 per cent for unreasonable failure to comply with any provision of the Code
- 1.9 It is recommended that governing bodies and head teachers make reference to the ACAS Code and accompanying Guide entitled 'Discipline & Grievances at work – the ACAS Guide' when handling disciplinary and grievance situations, as it provides good practice advice for dealing with discipline and grievances in the workplace.
- 1.10 At all formal meetings staff have a legal entitlement to be accompanied by a trade union representative or a work colleague. If the chosen companion is not available at the time proposed and a reasonable alternative is proposed which falls within 5 working days of the day proposed for the interview, the school must rearrange the event to the time proposed.
- 1.11 If the employee is unable to attend a meeting s/he should notify the head/chair of panel and give the reason for non-attendance. Where the employee fails to attend because of circumstances outside his/her control, the head/chair should invite him/her to another meeting, which should take place without unreasonable delay. Where there is no valid reason for non-attendance the head/chair may inform the employee that the meeting will continue in his/her absence.
- 1.13 These model procedures do not relieve the governing body of its responsibility for the control of staff conduct and discipline.
- 1.14 Where a grievance is raised as a result of formal disciplinary procedures the School's HR adviser should be consulted.
- 1.15 Governing bodies that do not adopt the model procedures are required to consult with trade union representatives and provide the School's HR advisor with a copy of their own procedure having considered the statutory requirements detailed above.**

2. INVESTIGATING ALLEGED MISCONDUCT

- 2.1 Any allegations of misconduct involving the physical or sexual abuse of a pupil must be dealt with in line with the Disciplinary Procedure – Staff Facing Allegations of Abuse (see People Management Handbook for Schools).
- 2.2 When allegations of misconduct are made, a person should be appointed to investigate the allegations (the investigating officer) - this should be a senior member of the school staff. As a general rule, the investigating officer will present the case at any subsequent

disciplinary hearing. Investigation guidelines are available in the People Management Handbook for Schools and from the school's HR advisor.

- 2.3 Any allegation of misconduct should be dealt with as a matter of urgency and no disciplinary action taken until the case has been properly investigated. The alleged perpetrator should be interviewed as soon as possible, once the allegations are clear (see Model Letter 1- Invite to Investigatory Meeting).
- 2.4 Where, after full investigation and consideration, it is decided that no formal action is necessary, further support and development may still be necessary to address issues identified during the investigation process. Advice may be sought from the school's HR advisor.
- 2.4 Where disciplinary action is being taken against an employee who is a trade union official, no disciplinary action should be taken following the investigation until the circumstances of the case have been discussed with a senior trade union representative or a full time officer of the trade union concerned.

3. SUSPENSION OF AN EMPLOYEE

- 3.1 At any stage prior to, during or following the investigation, the employee may be suspended. The suspension should only occur if one or more of the following applies:
 - a) it is necessary to allow a proper investigation to take place;
 - b) the continued presence of the employee at work may be prejudicial to a fair disciplinary hearing;
 - c) the allegations are serious enough to warrant consideration of dismissal.
- 3.2 It must be explained to the employee that suspension in itself is not a disciplinary sanction and does not indicate or presume the outcome of any disciplinary hearing. In suspending the employee account should be taken of the emotional impact of the suspension process. Advice should always be sought from the School's HR advisor. It may be appropriate to consider temporary redeployment to another school or workplace, if appropriate and practical, as an alternative to suspension.
- 3.3 Any suspension of an employee shall be with full pay.
- 3.4 The reason for the suspension shall be made clear to the employee in writing as soon as possible, including details of the allegations. This shall normally be the next working day. Since suspension is not a disciplinary sanction, an employee has no right of appeal against the decision (see [Model Letter 2 - Notification of Suspension](#)).
- 3.5 Only the head teacher or governing body can suspend an employee. Advice should be sought from the school's HR advisor. Where this decision has been delegated to the head teacher the chair of the governing body should be kept informed, similarly where the governing body should keep the head teacher informed of any decision that it takes to suspend an employee. In the case of a suspension of a head teacher, the school's HR adviser will undertake the necessary arrangements with the chair of the governing body.

3.6 Suspension should be regularly reviewed and kept to as short a period as possible. The employee should be kept informed of progress and of their continuing suspension (see Model Letter 2 – Outcome of Suspension Review).

4. COUNSELLING

4.1 After establishing the facts, the investigating officer or head teacher may consider that there is insufficient evidence to support a move to the formal procedure and that it is sufficient to talk the matter over with the employee concerned. Counselling should not be documented on the employee's personal file.

4.2 Counselling should be seen as constructive and helpful to the employee as well as a means of rectifying unacceptable conduct. In deciding whether to counsel the member of staff or take more formal disciplinary action, investigating officers should take note of personal difficulties or circumstances outside of the control of the employee, which may have been a contributing factor to the misconduct.

5. FORMAL DISCIPLINARY PROCEDURE

5.1 Following the investigation, the investigating officer will present the evidence gathered in report. The investigating officer must remain impartial and present only the facts of the case. It is not their role to provide an opinion or advice on action that they consider to be appropriate.

5.2 The deciding officer (usually the head teacher) or appropriate individual or committee of governors, will review the facts and decide either whether there is no case to answer or, if they consider there are sufficient grounds, to move to a disciplinary hearing.

5.3 Where the deciding officer/committee do not consider there is a case for the employee to answer, this should be confirmed in writing to the employee

5.4 In cases where governors have responsibility for the disciplinary decision, the Staff Dismissal Committee should comprise at least three governors. The absolute requirement under the School Staffing (England) Regulations 2009 is for one or more governors to make a decision. The recommendation is that three governors should be on the committee, unless there are not enough governors who have not been formally involved in any process leading to formal action. In this case two governors may hold a hearing.

5.5 The School's HR advisor will provide advice at the disciplinary hearing.

5.6 Where the conduct of a head teacher is under consideration and some form of warning is felt to be appropriate, the chair of the governing body or a governor nominated by them will hear the case, advised by the school's HR advisor.

5.7 The date of the disciplinary hearing should be given in writing to the employee as soon as possible, and at least 10 days before the due date. The letter must state the reasons why

dismissal or disciplinary action is being contemplated ([Model Letter 3 - Notification of Hearing](#)). The hearing should take place on a mutually convenient day and time. This is to ensure that the hearing does not have to be delayed or postponed at the last minute. Where the trade union representative or work colleague cannot attend on the proposed date the hearing should be rearranged at a suitable time for all. Failure to arrange a mutually convenient date may result in the employee presenting a complaint to an employment tribunal.

- 5.8 The employee should be given the opportunity to send any written submission or additional evidence to the head teacher/Staff Dismissal Committee prior to the hearing. A copy of any submission should also be made available to the investigating officer. The investigating officer should always submit their report and evidence in writing to the head teacher/Staff Dismissal Committee, with a copy to the employee. The evidence must be sent at least 10 days before the date of the hearing (with [Model Letter 3 - Notification of Hearing](#)).
- 5.9 The date of the hearing should always be notified to the School's HR advisor who will ensure that an appropriate officer is available to attend and advise the head teacher/Staff Dismissal Committee on any procedural aspects or matters of employment law.

6. THE HEARING

- 6.1 The hearing will be conducted according to [Appendix 1 - Procedure for Hearings/Appeals](#).
- 6.2 Any witnesses involved in the process will be reminded of the need for confidentiality and be told not to discuss the case in any way outside the hearing.
- 6.3 It is recommended that deciding officers/committees make notes of hearings and retain these as evidence of their decisions in case of future challenge.
- 6.4 In the case of the decision to dismiss, the head teacher/Staff Dismissal Committee must provide written confirmation their decision to the LA.
- 6.5 Community, Voluntary Controlled, Community Special and Maintained Nursery Schools – If the member of staff is employed by the LA, it must, within a period of 10 working days following confirmation of notice of the decision to dismiss, either withdraw that person from the school or issue notification of termination of the employment contract. If a subsequent appeal reverses the dismissal decision the withdrawal or termination notice must be rescinded. In cases where the LA is entitled to terminate the contract without notice because of the conduct of the member of staff in question, any such termination may be rescinded if an appeal is upheld.
- 6.6 Foundation, Voluntary Aided and Foundation Special Schools – In the case of the staff employed by the governing body, notification of termination of the contract should be issued by the governing body/chair of committee following the initial dismissal decision, and may be rescinded if a subsequent appeal is upheld. In cases where the governing body is entitled to terminate the contract without notice because of the conduct of the member of staff in question, any such termination may be rescinded if an appeal is upheld. In the case of staff employed by the LA the arrangements set out above should apply.

6.7 The procedure outlined above will also be followed to hear any appeals against the decision of the head teacher/committee, save that there will be no further rights of appeal against the decision other than to an employment tribunal where employers have qualifying rights. The appeal will be heard by the Staff Dismissal Appeals Committee.

6.8 In terms of a disciplinary response to the conduct of the employee, the following options are open to the head teacher/Staff Dismissal Committee:

6.8.1 Written warning

In the case of more serious offences or where there is an accumulation of minor offences, the employee should be given a written warning. A copy of the written warning and any evidence presented to the head teacher should be kept in a sealed envelope on the employee's personal file.

6.8.2 Final warning

Further misconduct may warrant further written warnings or a final written warning, which will contain a statement that any further incidents may lead to dismissal. There may be occasions when misconduct is regarded as being insufficiently serious to justify consideration of dismissal but sufficiently serious to warrant only one written warning which, in effect, is both a first and final warning. Again, a copy of the warning and any evidence presented to the head teacher should be kept in a sealed envelope on the employee's personal file.

6.8.3 Dismissal

Other than cases of gross misconduct, an employee shall not be dismissed for a first breach of discipline. Where potential gross misconduct is being investigated, the school's HR advisor must be notified at the earliest possible stage and advice sought. The school's HR advisor will review the investigation report and details of the case before the disciplinary hearing is convened so that appropriate advice may be given.

Gross misconduct is misconduct of such a nature that the school is unable to tolerate the continued presence at work of an employee who acts in such a way that any future working relationship and/or trust is impossible. Where gross misconduct is found, employees will be dismissed without notice unless there are acceptable mitigating circumstances. [Appendix 2](#) outlines examples of possible gross misconduct.

6.9 To ensure the decision of the head teacher/Staff Dismissal Committee is reasonable in all the circumstances of the case, account should be taken of:

- a) the employee's previous disciplinary record, particularly any live warnings;
- b) the employee's general record, position, age and length of service;
- c) the penalty imposed in similar cases in the past;
- d) any mitigating circumstances that might make it appropriate to lessen the severity of the penalty.

- 6.10 In addition, before any decision to dismiss is finally determined and communicated to the Corporate Director of Children & Families, the head teacher/Staff Dismissal Committee must address the following questions:
- a) has there been as much investigation as is reasonable in the circumstances?
 - b) does the head teacher/Staff Dismissal Committee genuinely believe that the employee has committed the misconduct?
 - c) has the head teacher/Staff Dismissal Committee reasonable grounds on which to sustain that belief?
 - d) is the misconduct sufficiently serious to justify the disciplinary decision being contemplated i.e. is it the reasonable response of a reasonable employer?
- 6.11 Any decision of the head teacher/Staff Dismissal Committee must be confirmed to the employee in writing within three working days ([Model Letter 4, 5 or 6](#)). Details of any disciplinary action retained on the employee's personal file will be reviewed after twelve months with a view to determining whether the warning is 'spent'. The employee should be informed, in writing, of any decision to regard a warning as 'spent'. Guidance on the process of reviewing warnings is attached at [Appendix 3 - Review of Disciplinary Warnings](#).
- 6.12 Details of those employees disciplined for or having faced allegations involving sex, violence or drug offences will be sent to the LA's Children and Families HR Team, where they will be kept in a secure file.

7. APPEALS

- 7.1 An employee has a right to appeal against any decision and must be informed in writing that they have 10 working days from receipt of the letter confirming the decision in which to appeal and to whom they should appeal.
- 7.2 The employee should be given notice in writing at least 5 working days in advance of the time and place of the hearing ([Model Letter 7 - Invitation To Appeal Hearing](#)).
- 7.3 An appeal will be heard by the Staff Dismissal Appeals Committee, the members of which should have played no part in the disciplinary hearing itself. In cases where the Staff Dismissal Committee heard the initial hearing the appeal must be heard by at least the same number of governors as comprised the original disciplinary panel.
- 7.4 The procedure for hearing an appeal will be the same as that for the disciplinary hearing itself. There is no further right of appeal other than to an Employment Tribunal.
- 7.5 The decision of the Staff Dismissal Appeals Committee will be communicated, in writing, within 3 working days of the appeal hearing ([Model Letter 8 - Notification of Outcome of Appeal](#)).

8. DISMISSALS BY THE LOCAL AUTHORITY

- 8.1 Staff dismissals are normally a matter for the school, but the LA may dismiss staff in its employment directly in the following circumstances:
- a) where the school's delegated budget has been suspended;
 - b) where the Secretary of State or the Teaching Agency have prohibited further employment of any member of staff because of previous conduct or capability;
 - c) where an unqualified teacher has failed to secure qualified teacher status within the time limits set out in the regulations;
- 8.2 The circumstances above will remove the governing body's (and the head teacher's) responsibilities for the dismissal process including dismissal hearings and appeals.

9. EMPLOYMENT TRIBUNALS

- 9.1 The Employment Act 2002 and ACAS Code of Practice 2009 strongly encourages employees to pursue internal procedures prior to applying to an employment tribunal.
- 9.2 As stated in the preface to this disciplinary code, employment legislation was amended by the Education Act 2002 to provide for a governing body to be the respondent in relation to an application to an employment tribunal alleging unfair dismissal although, in law, the LA remains the employer (other than in Voluntary Aided Schools).
- 9.3 The LA will be primarily responsible for the payment of any compensation order by an employment tribunal in respect of a finding of unfair dismissal, although where it is reasonable to do so, the LA is empowered to deduct such compensation from the school budget. In reaching a decision the LA will take into consideration whether it has provided advice and whether this was followed by the School.
- 9.4 In cases where the governing body and authority are in agreement over the matter of dismissal then, subject to availability of resources it should be possible for the authority to represent the head teacher/governing body at any tribunal hearing. Head teachers and governors will also need to give very careful consideration to the nature of the evidence before an employment tribunal. Under present arrangements it is invariably possible for the employer's evidence to be given by an officer of the authority. To some degree this will continue in the future. However, evidence may also have to be given by the head teacher and members of the governing body. That is more than likely to be the head teacher and the Chair of the Staff Dismissal Appeals Committee.
- 9.5 The law relating to dismissals has been complicated in recent years by the emergence of a large body of case law. There are many pitfalls, but provided a fair procedure is adopted and followed it should be readily possible for a governing body to defend a decision to dismiss provided it relates to a ground for dismissal recognised by law.
- 9.6 The first that a school may know of a referral to an employment tribunal will often be the receipt of a document from the employment tribunal numbered ET1. This document is the originating application, which will set out the applicant's grounds of application to an

employment tribunal, and the respondent has 14 days in which to fill in form ET3, the notice of appearance.

- 9.7 Because of the peculiar legal relationship between the Local Authority and governing bodies, former employees may not always know who is the proper respondent in any application. Given the time scales, even though an extension of time will often be granted by a tribunal, **it is important that as soon as an ET1 is received by a school, a copy should be passed to the City Council's Legal Services and to the school's HR advisor.** Legal Services will advise on whether or not the City Council need to be involved in producing the notice of appearance. By the same token, when an ET1 is received by the HR advisor or Legal Services, a copy will be made available as soon as possible to the head teacher with appropriate comments. It is vitally important that this mutual procedure be followed strictly, since in the event of default an application may obtain judgement without either the school or the authority having the opportunity of defending the matter.
- 9.8 Whilst it is to be hoped that disciplinary issues coming before the head teacher and governing body will be the exception rather than the rule, there is nevertheless a clear need for training of both governors and staff in this complex area. The school's HR advisor should be contacted for advice on training both for head teachers and governors.