



# Some Other Substantial Reason Policy

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## 1.0 Introduction

- 1.1 The following procedures have been adopted by the Governing Body of \_\_\_\_\_ School to enable it to discharge its functions under the School Staffing (England) Regulations 2009 (the “Regulations”) in relation to the potential dismissal of employees other than for reasons of conduct, capability, expiry of a temporary or fixed-term contract, or redundancy. They apply to everyone employed to work at the school in accordance with those regulations, i.e. excluding staff employed by an agency or a contractor (including the authority acting as a contractor). Decisions taken under this procedure will be taken fairly on the balance of probability rather than, as would be the case in a criminal court, beyond reasonable doubt.
- 1.2 The circumstances in which these procedures may be used include failure to meet the conditions specified in a conditional offer of employment, failure to comply with relevant statutory regulations, irretrievable breakdown in work relationships and a reputational risk to the school. This list is not exhaustive.
- 1.3 No decision shall be made under this procedure unless it has been followed in full. The governing body recognises that failure to observe this procedure could cause an employment tribunal to decide that a dismissal was unfair. It also provides that any part of this procedure, other than a statutory requirement, may be varied in a particular case by mutual, explicit agreement between the employee and the person(s) acting on behalf of the governing body.
- 1.4 If an employee makes a complaint relating to this procedure the separate grievance procedure which the governing body has established in accordance with paragraph 7 of the School Staffing (England) Regulations will not apply and the complaint will be dealt with through this procedure.
- 1.5 In this procedure:-
  - the ‘local education authority’, ‘local authority’ or the ‘authority’ means Birmingham City Council acting in its capacity as a local education authority (or such title as may be subsequently enacted);
  - ‘employee’ means a person employed to work at the school or in provision made by the governing body under the Education Acts, other than a person employed by a contractor, including by the authority acting as contractor;
  - reference to a ‘headteacher’ includes a ‘principal’ in an academy as appropriate; and
  - reference to a committee of the governing body includes an ‘academy trust’
  - The employee’s “chosen companion” is defined in employment law as a trade union representative or a co-worker at the same workplace chosen by the employee
  - the “Regulations” mean the School Staffing (England) Regulations 2009.

## 2.0 Investigation

- 2.1 There is a requirement for an immediate, short, preliminary investigation of all allegations, in order to establish that there are reasonable grounds for a full investigation. In the first instance the employee against whom allegations are made should be informed that these allegations are being considered under this procedure and invited to comment. Suspension if applicable should be considered as a last resort and without prejudice.

- 2.2 The governing body requires all allegations to be investigated promptly to establish whether or not there is a case to answer.

The commissioning officer should commission an independent investigator or a member of the senior leadership team with no previous involvement in the case and who, where possible, has completed suitable, approved training, and who will follow the authority's guidelines on investigations.

Where possible the headteacher should commission another senior leader in the school to act as investigator, but where no suitable person can be identified the headteacher may undertake the investigation, provided that the headteacher does not then hear the case.

Where such allegations are reported to the chair of governors the chair should immediately seek advice from School and Governor Support. If the allegations concern the headteacher, the chair of governors should seek advice from School and Governor Support. When the allegations do not concern the headteacher the matter should normally be referred back to the headteacher for investigation as above.

The employee against whom the allegation is made must be informed as soon as practicable that an investigation into the allegations is being made, the reason for it and when it is to start. The employee must be interviewed during the course of investigation and, prior to the interview, must be informed of the details of the allegations and of their right to be accompanied by a chosen companion. Where there are considered to be exceptional circumstances preventing the interview taking place, advice should be sought from your chosen Employee Relations Team.

- 2.3 When the investigation is complete the commissioning officer shall consider the results (including any adjustments that may have been made during discussions as provided in the investigation guidelines) and decide whether the facts
- do not warrant further action; or
  - amount to a situation which can be resolved by other means; or
  - warrant a hearing in accordance with these procedures.
- 2.4 In extreme cases where there are any findings in an investigation under another procedure which may constitute the need to invoke SOSR instead, the headteacher will

inform the employee and use the findings of the current investigation report and proceed under the SOSR hearing process.

- 2.5 All information collected during investigations shall remain confidential to the person(s) directly involved.

### 3.0 Suspension

- 3.1 The governing body recognises that suspension is a neutral act, without loss of emoluments. Suspension is normally only considered under this procedure in cases when statutory regulations require the employee to be removed from the school or relevant activity or for the safety and welfare of pupils or employees. Advice should be taken from the Employee Relations Team as to whether any other action, such as a temporary direction to undertake other duties, might be more appropriate than suspension to the particular circumstances of the case.
- 3.2 Suspension should normally take place in a meeting called in accordance with these procedures, but in the absence of the employee other arrangements should be made (advice is available from the Employee Relations Team). The governing body, by adopting this procedure, accepts the desirability of each party having a witness to a suspension whilst recognising that suspension, if appropriate, may be required immediately and that the choice of witness will therefore be limited. The witness will not be expected to fulfil the role of a representative; the employee will be entitled to a representative in later stages of the procedure.
- 3.3 When the headteacher becomes aware of circumstances which might lead to suspension, they (having taken advice as necessary) will arrange a meeting, explaining that there is a serious matter to discuss. The employee is entitled under this procedure to choose a witness able to attend at short notice, because it might be necessary to suspend the employee, and that the employee will have the right not to say anything in response to what the headteacher will disclose, although refusal to respond will probably make suspension inevitable.
- 3.4 Unless a meeting is impractical (due to the employee's absence on sick leave or other good reason) the employee will be informed in a meeting of the decision to suspend, and written confirmation of the decision shall be given to the employee at the meeting or sent immediately after the suspension is notified. The headteacher will outline the circumstances and invite the employee to comment. Depending on the response, the headteacher may or may not adjourn the meeting before deciding whether or not to suspend the employee. The headteacher should then tell the employee of their decision and, when the decision is to suspend, should arrange for the employee to leave the premises.
- 3.5 The headteacher should keep the case under review throughout the period of suspension and maintain contact (through an agreed named person if not through the headteacher) between the school and the employee, who must be kept informed of progress. The first contact should be made at appropriate intervals thereafter as duty of care and maintaining the employee's wellbeing.

The headteacher should offer pastoral support during the process. For additional support employees should be advised to contact their union or professional association or other appropriate organisation, as required.

When a headteacher is suspended, a nominated governor should be responsible, with advice from your chosen Employee Relations Team or Schools and Governor Support, for keeping the case under review, maintaining contact with the headteacher and expediting proceedings as set out in this paragraph.

- 3.6 The employee must not return to school until the governing body's decision to end the suspension is communicated to the employee in writing. During the suspension period regular suspension reviews should take place between the commissioning officer and the employee.

## 4.0 Hearings

- 4.1 When, following investigation, it has been determined that the facts warrant a hearing under this procedure, a hearing shall be arranged as set out below. Where power to hear cases under this procedure has been delegated to the headteacher (see 1.5 above), then the headteacher (or deputy headteacher acting as headteacher for the time being) will hear all cases under this procedure, unless the headteacher (or deputy headteacher as the case may be) has had prior involvement with the case or considers that the case should be heard by the committee with delegated authority to hear cases referred to it under this procedure. Otherwise the case shall be heard by the committee.
- 4.2 The local authority (through the Employee Relations Team) must be informed immediately of any investigation which, if it leads to a hearing, might lead the governing body of a community, community special, voluntary controlled or maintained nursery school to determine that the employee should cease to work at the school. The governing body of such a school recognises that, under the provisions of the Regulations, the local authority is obliged to dismiss an employee in respect of whom such a determination has been made and who works solely at the school, and that the local authority therefore has a right to be represented at any proceedings leading to such a determination.
- 4.3 The clerk to the governing body should invite the employee to a some other substantial hearing, giving 10 working days' notice.

The employee may suggest an alternative time and date as long as it is reasonable and is not more than 5 working days after the original date.

At the hearing:

- the commissioning officer will present their findings
- the employee, their trade union representative, the hearing officer/the committee and the technical advisor will be able to question the commissioning officer

- the employee will have the opportunity to put their case to the hearing officer/the committee.

The employee may ask their trade union representative, if they have one, to do this on their behalf.

- the commissioning officer, the hearing officer/the committee, and the technical advisor will be able to question the employee
- the employee, their trade union representative, the hearing officer/the committee, commissioning officer, and technical advisor will be able to question any witnesses, if appropriate
- both parties will summarise their case
- the hearing officer/the committee will release both parties and start deliberations in confidence

The hearing officer/the committee may choose whether to announce the hearings decision in person or receive it subsequently in writing, but this choice shall not prevent the hearing officer/the committee from choosing to adjourn and reconvene before making a decision. The final outcome will be confirmed in writing within 5 working days of the hearing or the adjournment.

If a hearing takes place the possible outcomes could be:

- take no further action in relation to the employee but taking into account any recommendations ;
- determine that the employee should cease to work at the school.

## 5.0 Appeals

An employee who receives a formal sanction or for whom it is determined that they must cease to work at the school may appeal against the determination (as the case may be) by giving written notice of the appeal and of all the grounds on which it is made to the clerk to the governing body within 10 working days of receiving written confirmation of the determination. The grounds for the appeal should be accompanied by any additional evidence to be presented in support of the appeal.

The clerk to the governing body should invite the employee to a some other substantial reason hearing, giving 10 working days' notice.

At the Appeal hearing:

- the employee and trade union representative will present their grounds of appeal

The employee may ask their trade union representative, if they have one, to do this on their behalf.

- the chair of some other substantial reason committee, the appeal committee and technical advisor will be able to question the employee and their trade union representative

- the chair of the some of substantial reason committee will have the opportunity to put their response to the grounds of appeal
- the employee, their trade union representative, the appeal committee and the technical advisor will be able to question the chair of some other substantial reason committee
- the employee, their trade union representative, the appeal committee, the chair of some other substantial reason committee, and technical advisor will be able to question any witnesses, if appropriate
- both parties will summarise their case
- the appeal committee will release both parties and start deliberations in confidence.

If there is an appeal, the appeal committee may:

- dismiss the appeal
- uphold the appeal

The appeal committee may choose whether to announce the decision in person or receive it subsequently in writing, but this choice shall not prevent the committee from choosing to adjourn and reconvene before making a decision. The final outcome will be confirmed in writing within 5 working days of the hearing or the adjournment.

## 6.0 The Headteacher as subject of this procedure

- 6.1 Any requirement to investigate the position of the headteacher shall be referred, through the chair of the governing body, for advice from School and Governor Support and where appropriate inform the Local Authority Director of Education or equivalent. School and Governor Support, in conjunction with Employee Relations team, shall arrange both preliminary and full investigation of the allegation in accordance with section 2 of this procedure. If suspension of the headteacher is appropriate it shall be undertaken in accordance with the provisions of this procedure. If it is found that there is a case to answer, School and Governor Support, in conjunction with Employee Relations team, shall advise the governing body how to proceed in relation to the headteacher as the headteacher acts in relation to any other employee under these procedures, except that the option of referring the matter to the headteacher or deputy does not apply.
- 6.2 The chair of the governing body or commissioning officer may present the case to the committee, calling on the investigator to give evidence. In very exceptional circumstances, it may be appropriate for a School and Governor Support representative to present the case on behalf of the overall employer.



## 7.0 Trade Unions Officer

- 7.1 Normal disciplinary standards of behaviour should apply to trade union officers. However, disciplinary action against a trade union officer can be misconstrued as an attack on the union. Such problems can be avoided by early discussion with a full-time official or senior trade union representative.