

Disciplinary Policy

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The Governing Body are required to ensure that when applying this procedure, they must refer to and work in conjunction with the BCC Ongoing Statutory Duties document. **Schools are required to comply with the statutory obligations as outlined in the document, some of which enable the Council to fulfil its requirements as the employer.**

Non-compliance may lead the Council to pass liability for any costs relating to employment issues that arise, to the school. Such matters of non-compliance will be referred to the Strategic Director of Children and Families to determine appropriate action.

CONTENTS

1.0 Introduction	3
2.0 Informal Discussions	5
3.0 Investigation	5
4.0 Suspension.....	7
5.0 Misconduct and Gross Misconduct.....	8
6.0 Procedures for Hearing Cases of Alleged Misconduct and Gross Misconduct	9
7.0 Disciplinary Sanctions.....	10
8.0 Appeals	11
9.0 Alleged Misconduct on the Part of the Head Teacher	12
10.0 Alleged Misconduct on the Part of Trade Unions Officers	13

1.0 Introduction

- 1.1 The following procedures have been adopted by the Governing Body of _____ School in accordance with the requirements of paragraph 7 of the School Staffing (England) Regulations 2009 (the “Regulations”) for the governing body to establish procedures for the regulation of the conduct and discipline of staff at the school. They apply to everyone employed to work at the school in accordance with those regulations, i.e. excluding staff employed by agency worker and a contractor (including the authority acting as a contractor). Decisions taken under these procedures 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 In this procedure:-
- the ‘Local Authority’ or the ‘Authority’ means Birmingham City Council acting in its capacity as a Local Education Authority;
 - Any reference to a ‘school’, includes community, community special, voluntary controlled, LA maintained nursery school and LA pupil referral unit.
 - ‘Employee’ means any person who is employed by the school under a contract of employment.
 - 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.
- 1.3 No disciplinary warning shall be given unless the procedures have been followed in full. The governing body recognises that failure to observe these procedures could cause an employment tribunal to decide that a dismissal was unfair. However, it also provides that any part of these procedures, 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 a disciplinary issue 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 the disciplinary procedures.

- 1.5 The governing body will delegate, in accordance with the School Governance Regulations, the function of hearing disciplinary cases to the head teacher and an appropriate committee respectively (according to the division of powers set out in these procedures) and the hearing of appeals to its appeal committee. It will ensure that no-one is a member of both committees, and that the latter includes at least three people and at least as many as the committee responsible for the hearing. In order to allow for the possibility that a member of either committee may have prior knowledge of or interest in the alleged misconduct, it will provide for each committee to have a reserve member or reserve members. The head teacher or staff governor shall not be a member of either committee. The governing body accepts the advisability of appointing both a chair and a vice-chair of the committee responsible for disciplinary hearings when it appoints that committee and gives it delegated powers each year. The governing body will include in its delegations a requirement for the head teacher and both committees to report their actions to the governing body, having due regard to the confidentiality of their proceedings and the Data Protection Act.
- 1.6 The governing body will require its clerk or an appropriate substitute to attend and make a full record of any disciplinary or appeal hearing held by a committee under these procedures. It will expect the head teacher to arrange for a full written record to be made of any hearing conducted by them under these procedures. The minutes of any hearing will be available, unless there are exceptional circumstances within 10 working days upon request of the employee.
- 1.7 Under the Employment Relations Act 1996 as amended an employee has the right to be accompanied at a disciplinary or grievance hearing if they reasonably request to be accompanied at the hearing. The employer must permit the employee to be accompanied by one companion who is chosen by the employee and is either employed by a trade union as an official within the meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 or is an official of a trade union whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or is another of the employer's workers.

Under these procedures such a companion or representative may be present at each stage of the disciplinary procedures, other than suspension, where provision is made simply for the employee to choose a witness available at short notice. Where an employee chooses to be accompanied or otherwise assisted by a representative in accordance with the legislation, the head teacher, or the clerk to the governing body as the case may be, will seek to arrange hearings, etc, in consultation with the chosen companion.

These procedures are designed to decide fairly on the balance of probability whether misconduct has occurred, rather than to establish the facts beyond reasonable doubt as in a criminal case, so they do not provide for any employee to have legal representation.

2.0 Informal Discussions

- 2.1 Where the head teachers may from time to time discuss aspects of conduct with a member of staff on a one to one basis, where appropriate. Such discussions will take place informally and should not be constrained by, or come within, the scope of this procedure, nor shall counselling and advice given in this informal way count as warnings within the scope of this procedure. The status of the discussion should be made known to that member of staff.
- 2.2 Should information emerge during the course of informal discussions which could subsequently require the matter to be dealt with under the formal disciplinary procedure, the employee should be advised immediately. The head teacher should arrange for the matter to be investigated separately under Section 3 (below).
- 2.3 If the head teacher feels that it is necessary to record informal discussions with an employee about aspects of conduct, a written record of the conversation should be made and a copy of it should be given to the employee concerned, in the same way as notes can be made of discussions about other aspects of an employee's work such as development of teaching programmes.

Informal discussions should not be recorded on the employee's personal file but any record of the conversation should be filed separately in confidence. This record is referred to as a Letter of Concern and may have previously been referred to as an aide memoir. However, this will not be recorded as a formal sanction but will remain in confidence and only be kept for as long necessary in line with the guide to data privacy from Information Commissioners Office (ICO).

3.0 Investigation

- 3.1 There is a requirement for an immediate, short, preliminary investigation of all allegations of misconduct, 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 the disciplinary procedure and invited to comment. In exceptional circumstances, such as where external bodies are involved, the head teacher may be unable to disclose the details of the allegations to the employee. In cases of alleged gross misconduct, suspension should be considered as a last resort and without prejudice.
- 3.2 The governing body requires all allegations of misconduct 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 alleged misconduct and who, where possible, has completed suitable, approved training, and who will follow the authority's guidelines on investigations.

Where possible the head teacher should commission another senior leader in the school to act as investigator, but where no suitable person can be identified the head

teacher may undertake the investigation, provided that the head teacher 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 head teacher, the chair of governors should seek advice from School and Governor Support. When the allegations do not concern the head teacher, the matter should normally be referred back to the head teacher for investigation as above.

- 3.3 Where it appears that an employee's conduct has been, or is being, affected adversely by ill health, action under these procedures may be suspended pending medical advice. The head teacher/governing body will seek advice from the authority on the action to be taken in such cases.
- 3.4 Advice and guidance contained in DFE's Keeping Children Safe in Education (KCSiE) and the Schools Safeguarding policy and associated guidance for schools must be followed when a member of staff is suspected or accused of child abuse.
- 3.5 The advice contained in the associated guidance for schools should also be followed when interviewing a child in respect of any allegations being investigated.
- 3.6 The authority's advice on financial misconduct must also be followed (seek advice from School and Governor Support).
- 3.7 The employee against whom the allegation is made must be informed as soon as practicable that an investigation into their conduct 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.
- 3.8 Other than in child protection cases, if there are witnesses to the allegations, signed and dated statements should be obtained at the earliest opportunity.
- 3.9 Where an employee is on sick leave, advice should be sought from your chosen Employee Relations Team. Normally the process of investigation can proceed as far as interviewing witnesses is concerned.
- 3.10 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 informal discussions in accordance with Section 2 above; or
 - warrant a hearing in accordance with these procedures.
- 3.11 All information collected during investigations shall remain confidential to the person(s) directly involved.

4.0 Suspension

- 4.1 The governing body recognises that suspension is not a disciplinary sanction but a neutral act, without loss of emoluments. Suspension is normally only considered in cases which, on preliminary investigation, appear to involve alleged gross misconduct or in which suspension is necessary to protect the integrity of the investigation. Advice should be taken from your chosen 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. In accordance with the BCC Ongoing Statutory Duties, the Local Authority should be notified of the suspension within the set timescale.
- 4.2 An employee who, on preliminary investigation, is suspected of gross misconduct (see 5.2 below) will normally be suspended immediately after that investigation. This should normally take place in a meeting in accordance with these procedures, but in the absence of the employee other arrangements should be made. 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, cannot be unreasonably delayed 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.
- 4.3 When the head teacher becomes aware of alleged misconduct 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 the disciplinary 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 head teacher will disclose, although refusal to respond will probably make suspension inevitable.
- 4.4 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 head teacher will outline the circumstances and invite the employee to comment. In the case of allegations under the child protection procedures the employee will be informed simply that allegations have been made and that no details can be discussed at the meeting. Depending on the response, the head teacher may or may not adjourn the meeting before deciding whether or not to suspend the employee. The head teacher should then tell the employee of their decision and, when the decision is to suspend, should arrange for the employee to leave the premises.
- 4.5 Where the meeting is impractical due to sickness or other good reason, depending on the serious nature of the allegations, the head teacher will invite the employee to a meeting upon their return to work. In exceptional circumstances where there are allegations of a serious nature, such as safeguarding and financial irregularities, the head teacher may consider informing the employee of the serious allegations whilst they are absent from work and that suspension will apply upon their return to work.

- 4.6 The head teacher should keep the case under review throughout the period of suspension and maintain contact (through an agreed named person if not through the head teacher) 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 head teacher 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 head teacher 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 head teacher and expediting proceedings as set out in this paragraph.

- 4.7 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.

5.0 Misconduct and Gross Misconduct

- 5.1 The governing body defines misconduct (which may be gross misconduct in certain cases – see 5.2 below) as including, for example, criminal acts wherever and whenever committed, neglect of duty, child abuse, abuse of authority, disobedience of lawful instruction, insubordination, misuse of an employee's official position for personal gain, unauthorised absence from duty, physical assault, theft, malicious damage, falsification of documents including personal records and expense claim forms, abuse of alcohol or other drugs (except drugs medically prescribed, or unless the abuse is to be treated as a medical rather than a disciplinary matter in line with advice from the authority), unauthorised use or removal of the authority's or school's property and other conduct to the prejudice of efficient education in the school. The governing body recognises that great care must be taken in handling cases of suspected abuse of alcohol or drugs and that the authority's advice should be sought in each case.
- 5.2 The governing body defines gross misconduct as misconduct of such a nature that it cannot reasonably allow the continued presence at the place of work of an employee who commits such an action. It will seek or require the head teacher to seek on its behalf, guidance from the authority on the difference between misconduct and gross misconduct in each case of possible gross misconduct in order to ensure that the disciplinary procedure is followed with proper regard to employment law.
- 5.3 No employee will be dismissed for a first breach of discipline except in cases of gross misconduct.
- 5.4 If gross misconduct allegations are upheld at hearing, this will lead to dismissal without notice, this is known as summary dismissal.
- 5.5 Where power to hear all cases under these procedures has been delegated to the head teacher (see 1.4 above), then the head teacher will hear all cases under these

procedures except for the following, which they will present to the governing body's committee with delegated authority to hear disciplinary cases referred to it

- allegations of misconduct or gross misconduct with which the head teacher has had some prior involvement;
- any other cases of alleged misconduct, where after preliminary investigation the head teacher considers the case warrants such a referral.

5.6 There may be cases in which an employee is simultaneously the subject of allegations of misconduct and allegations of lack of capability. If the allegations are related advice should be sought from your chosen Employee Relations Team on how to proceed; otherwise the allegations should be dealt with separately under the respective procedures.

6.0 Procedures for Hearing Cases of Alleged Misconduct and Gross Misconduct

6.1 If, on receipt of the report of an investigation, the commissioning officer decides, on the basis of the information available, that there is a case to answer and that a hearing is therefore required, the head teacher shall conduct such a hearing or, in the cases specified in 5.5 above, shall refer the case to the appropriate committee of the governing body for a hearing. Prior to arranging any hearing which may result in a determination that the employee should cease to work at the school, the head teacher and/or the Governing body must refer to the BCC Ongoing Statutory Duties document and inform the Local Authority.

6.2 The Local Authority in accordance with the BCC Ongoing Statutory Duties document must be informed immediately of any allegation which, if upheld at the hearing, might lead the governing body 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.

6.3 The clerk to the governing body should invite the employee to a disciplinary 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 Disciplinary hearing:

- the commissioning officer will present their findings

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

The hearing officer/committee may choose whether to announce the hearing decision in person or receive it subsequently in writing, but this choice shall not prevent the hearing officer/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.

7.0 Disciplinary Sanctions

7.1 If the hearing officer/committee finds at the hearing that the allegation of misconduct is substantiated, one of the following should be issued:-

- a recorded warning (6 months)
- a written warning (12 months)
- a final written warning (24 months).

In deciding on the most appropriate sanction, the hearing officer/committee should have regard to the facts of the case, any mitigating factors and any precedents (taking advice from the technical advisor where appropriate), acknowledging that the purpose of a disciplinary procedure is to bring about an improvement in the future conduct of an employee rather than to punish that individual.

7.2 In cases of alleged gross misconduct, the hearing officer (in appropriate cases)/committee also has the option of determining that the employee under the control of a governing body should cease to work in that capacity, in which cases the provisions of the Regulations shall apply.

7.3 All warnings will be recorded in writing and a copy given to the employee.

- 7.4 A notification of a determination to cease to work at a community, community special, voluntary controlled or maintained nursery school shall include a statement that the local authority will be advised of the determination to enable it to issue a notice of dismissal as required by law. It shall state whether the dismissal will be with or without contractual notice. It shall also give details of the right of appeal (see 8 below).
- 7.5 A disciplinary record must be retained permanently on the personal file, where the disciplinary sanction is for misconduct involving issues relating to the safety and welfare of children or young people, as required by the Government's guidance on safeguarding children. It will also apply in the case of a formal sanction for misconduct involving sexual misconduct, assault on a client or employee, or harassment or abuse.
- 7.6 Where any warning is withdrawn by appeal at any stage in the procedure, that warning shall be removed and destroyed and any lesser warning shall be substituted.
- 7.7 In accordance with ACAS guidelines, regardless of the outcome of a case, it is good practice to keep a record of all disciplinary cases to refer to in future cases if required. In line with Data Protection Law, they should be confidential and only kept for as long as necessary. Therefore, it is recommended that the Data Protection Officer for the school familiarise themselves with the guide to data privacy from Information Commissioners Office (ICO).

8.0 Appeals

- 8.1 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 warning or 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 warning. The grounds for the appeal should be accompanied by any additional evidence to be presented in support of the appeal.

Prior to arranging the appeal hearing against the determination to cease from work outcome, the head teacher and/or the Governing body must refer to the BCC Ongoing Statutory Duties document and inform the Local Authority.

- 8.2 The clerk to the governing body should invite the employee to a disciplinary 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 appeal committee of the Governing body will listen to the case

- the chair of disciplinary committee, the appeal committee and technical advisor will be able to question the employee and their trade union representative
- the chair of the disciplinary 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 the disciplinary committee
- the employee, their trade union representative, the appeal committee, the chair of the disciplinary 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.

Following the appeal hearing, the appeal committee may:

- dismiss the appeal
- uphold the appeal

The committee may choose whether to announce the appeal committee's 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.

9.0 Alleged Misconduct on the Part of the Head Teacher

9.1 Any allegation about misconduct on the part of the head teacher 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 their chosen Employee Relations team, shall arrange both preliminary and full investigation of the allegation in accordance with section 3 of this procedure. If suspension of the head teacher 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 their chosen Employee Relations team, shall advise the governing body how to proceed in relation to the head teacher as the head teacher acts in relation to any other employee under these procedures, except that the option of referring the matter to the head teacher or deputy does not apply.

9.2 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.

10.0 Alleged Misconduct on the Part of Trade Unions Officers

- 10.1 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.