



HR Services

THE BUSINESS OF EDUCATION

Disciplinary Policy

Date of Issue: September 2020

Changes since last version:

Updated to reflect Keeping Children Safe in Education September 2020.

Inclusion of 4th bullet point to the harm test which covers where an individual has behaved or may have behaved in a way that indicates they may not be suitable to work with children. Where a member of staff or volunteer is involved in an incident outside of school which did not involve children but could have an impact on their suitability to work with children. For example, a member of staff is involved in domestic violence at home but no children were involved, schools need to consider what triggered these actions and could a child in the school trigger the same reaction, therefore being put at risk

Added further guidance as to how schools should ensure allegations against agency workers are handled

Additional examples of gross misconduct added in relation to behaviours that indicate employees may not be suitable to work with children.

The Professional Associations/Trade Unions have been consulted on this policy, and HfL recommends it for adoption.

It is recommended that this cover page should be removed on adoption.

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Lakeside
School
Learning for life

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Contents

1. Introduction.....	3	Deleted: 2
2. Disciplinary rules	3	Deleted: 2
2.1. Examples of misconduct	3	Deleted: 2
2.2. Examples of gross misconduct	4	Deleted: 3
3. Principles.....	4	Deleted: 3
4. Informal process and management advice	5	Deleted: 4
5. Allegations about safeguarding children (Child Protection)	5	Deleted: 4
6. Financial irregularity (for maintained schools).....	6	Deleted: 5
7. Disciplinary action involving a professional association/trade union representative or relating to trade union activities	6	Deleted: 5
8. Overlapping disciplinary and grievance issues	7	Deleted: 5
9. Suspension.....	7	Deleted: 5
10. Investigation.....	7	Deleted: 6
11. Pre-agreement.....	8	Deleted: 6
12. Definition and separation of roles	8	Deleted: 7
12.1. The Commissioning Manager.....	8	Deleted: 7
12.2. The Investigating Officer.....	8	Deleted: 7
13. Invite to formal hearing	8	Deleted: 7
14. Right to be accompanied	9	Deleted: 7
15. Disciplinary panel.....	9	Deleted: 7
16. Advice and support at a Hearing	9	Deleted: 8
17. Formal hearing.....	9	Deleted: 8
18. Hearing outcome	10	Deleted: 9
19. Disciplinary action.....	10	Deleted: 9
19.1. First written warning	10	Deleted: 9
19.2. Final written warning.....	10	Deleted: 9
19.3. Dismissal (including summary dismissal for gross misconduct).....	11	Deleted: 9
20. Right to appeal.....	11	Deleted: 10

1. Introduction

The aims of this Disciplinary Policy are to:

- set out the standards of conduct expected of all staff
- ensure consistent and fair treatment for all
- ensure that any disciplinary matter is dealt with fairly and in a timely manner

The policy and procedure applies to all employees except for non-teaching employees within their probationary period who are regulated by the school's probationary policy. It does not apply to agency workers, consultants, self-employed contractors or volunteers unless the allegation relates to safeguarding in which case, the school have a statutory duty to take appropriate action (see Section 5).

This policy and procedure does not form part of any employee's contract of employment and it may be amended at any time

Where appropriate, actions taken by employees outside working hours may also fall within the scope of this policy.

2. Disciplinary rules

The normally accepted rules of behaviour, which apply in society as a whole, apply equally in the work situation. Any breach of an employee's contract of employment, any conduct, which the school considers unsatisfactory or prejudicial to its interests, or any failure to meet the required standards of work, may render an employee liable to disciplinary action.

The lists below are not exhaustive and only serve as a guide to matters that the school may deem (depending upon the nature, circumstances and severity of the incident) to be a breach of general discipline or gross misconduct.

It is accepted that to differentiate between general and serious breaches of discipline is difficult, therefore each case must be treated on its own merits. Since the examples are only guidelines, discretion will have to be exercised by the school in categorising breaches of discipline having regard to all the circumstances under which the breach of discipline occurred.

2.1. Examples of misconduct

The following non-exhaustive list provides examples of matters that will usually be regarded as misconduct:

- minor breaches of policies
- poor timekeeping
- work not of the required standard (where capability is not in question)
- disruptive behaviour
- time wasting
- refusal to follow instructions
- inappropriate or offensive behaviour for example foul or abusive language
- minor damage to, or unauthorised use of, school property/facilities
- negligence in the performance of duties

2.2. Examples of gross misconduct

Gross misconduct is a more serious act of behaviour that irreparably undermines the implied duty of mutual trust and confidence with the school or prejudices its reputation or business. The following non-exhaustive list provides examples of matters that will usually be regarded as gross misconduct:

- theft or fraud
- falsification of any school records
- violent or threatening behaviour
- serious damage or misuse of school property/premises
- wilful or persistent refusal to carry out a management instruction or any act of serious insubordination
- criminal offences or conduct, including those committed outside the workplace, which impact on the employee's ability or suitability to do his or her job
- serious failure to follow child protection procedures
- behaviour that has harmed or may have harmed a child
- behaviour that indicates an employee may not be suitable to work with children including such behaviour outside of the workplace which may or may not involve children
- gross negligence
- dishonesty involving anything that relates to life in a school
- covertly recording hearings, meetings or colleagues
- harassment, bullying or discrimination against any other person
- unauthorised absence from the workplace
- serious breach of trust and confidence
- serious breach of health and safety procedures or regulations
- smoking on school premises
- being under the influence of alcohol or drugs on school premises or at a school event
- failure to maintain appropriate professional boundaries with any pupil
- behaviour prejudicial to the good name or interests of the school or which may bring the school into disrepute
- breach of confidentiality or failure to ensure that confidential information is kept secure
- inappropriate use of the school's information technology including email or internet abuse or and accessing sites containing pornographic, offensive or obscene material
- inappropriate use of social media

3. Principles

Any disciplinary matter will be dealt with fairly and without unreasonable delay.

Employees will be given the opportunity to respond before any formal sanction is taken by the school in respect of which they will have a right of appeal.

All employees must treat information communicated to them in connection with a disciplinary matter as confidential. A breach of confidentiality will be taken seriously and may lead to disciplinary action under this policy and procedure.

4. Informal process and management advice

It may be appropriate for minor conduct issues to be dealt with informally through management **discussion** rather than a formal process.

Where improvement is required, informal management **advice** clarifying the expectations of the school may be issued.

Expectations of the employee will be set out in writing and a copy will be given to the employee and placed on their personnel file. This informal management advice does not constitute a formal warning but may be referred to as part of any further disciplinary proceedings within reasonable timescales.

Formal steps will be taken under this policy if the matter is not resolved informally or an informal approach is not appropriate.

5. Allegations about safeguarding children (Child Protection)

Schools should appoint a designated safeguarding lead (DSL), also known as 'designated senior person' (DSP) from the school's senior leadership team who has appropriate authority and is given the time for training and resources in order to provide support and advice to other staff on child protection matters. There should always be cover for this role should the DSL be away for any reason.

Schools should ensure they are familiar with their Designated Officer (DO), also known as 'Local Authority Designated Officer' (LADO) from the Local Authority who handles child protection/safeguarding allegations. The DO has a statutory duty to ensure that allegations about safeguarding are handled properly and expeditiously.

The 'harm test' may be met if an employee agency worker or volunteer has:

- behaved in a way that has, or may have, harmed a child
- possibly committed a criminal offence against or related to a child or
- behaved towards a child in a way that indicates that he/she is unsuitable to work with children should be dealt with in accordance with HSCB procedures
- behaved, or may have behaved, in a way that indicates they may not be suitable to work with children.

This includes where an employee, agency worker or volunteer is involved in an incident outside of school which did not involve children but could have an impact on their suitability to work with children. For example, if a member of staff is involved in domestic violence at home and no children were involved, the school would need to consider what triggered these actions and whether a child in the school could trigger the same reaction, and therefore be put at risk

In some circumstances, the school will have to consider an allegation against an individual not directly employed by them, where its disciplinary procedures do not fully apply, for example, supply teachers provided by an employment agency or volunteers.

Whilst the school is not the employer of agency workers or volunteers, we must ensure allegations are dealt with properly. In no circumstances will the school decide to cease to use an agency worker/volunteer due to safeguarding concerns, without finding out the facts and liaising with the Local Authority Designated officer (LADO) to determine a suitable outcome. The school will discuss with the agency whether it is appropriate to suspend the worker, or redeploy them to another part of the school, whilst an investigation is carried out.

Where the harm test is or may be met, allegations concerning the safety and welfare of children must be investigated and heard even if the employee has resigned. The employee should be given a full opportunity to answer the allegation and make representations about it.

No internal disciplinary investigation/procedures should be initiated in relation to child protection whilst the matter is being investigated by the police/Child Protection/Social Services, without authorisation being given to do so.

It may be difficult to reach a conclusion and it may not be possible to apply any disciplinary sanctions if a person leaves employment before the process is complete. However, the disciplinary process should still be completed. If the decision is that the member of staff would have been dismissed or a sanction imposed had they still been in employment, there is a legal duty to make a referral to the DBS and/or Teacher Regulation Agency (if the employee is a Teacher).

6. Financial irregularity (for maintained schools)

If a case in a school maintained by the local authority involves alleged financial irregularity, corruption or fraud, the Local Authority Internal Audit Department must be contacted at the earliest possible opportunity and, unless otherwise impracticable, before any investigation commences.

Internal Audit will determine whether the matter should be referred to the police. No internal disciplinary investigation/procedures should be initiated in relation to fraud whilst the matter is being investigated by the police/Internal Audit/Education Skills and Funding Agency (ESFA) without authorisation being given to do so.

The ESFA must be notified of any fraud, theft or irregularity which singly or cumulatively exceeds £5K. Any unusual or systemic fraud must be reported regardless of value. The ESFA may decide to conduct their own investigation which may take precedence over the schools and this should be checked at an early stage.

7. Disciplinary action involving a professional association/trade union representative or relating to trade union activities

If the employee is an accredited trade union representative recognised by the school/Local Authority for collective bargaining purposes, no action will be taken under this policy, save for of suspending the employee in a case of suspected gross misconduct, until the matter has been discussed (with the employee's consent) with a full time official of the relevant union.

If consent is withheld the school may continue to apply its policy.

8. Overlapping disciplinary and grievance issues

If an employee raises a grievance after disciplinary proceedings have started against them the school will consider suspending the disciplinary proceedings for a short period to consider the implications of the grievance (if any) on the disciplinary process. If the grievance and disciplinary issues are unrelated they can be heard separately but if connected they may be dealt with concurrently.

9. Suspension

There may be instances where suspension with pay is necessary whilst investigations are carried out.

Suspension does not imply that any decision about the veracity of the allegations has been made. The decision to suspend may be made by the Headteacher or the governing body after serious consideration of the case. Suspension is not automatic and depending on the circumstances it may be possible that alternative arrangements are made such as a change to work location or reorganisation of duties.

Where possible, a meeting will be held with the employee at which the allegations and reasons for considering suspension will be discussed. The school will consider reasonable requests from an employee to be accompanied by a trade union official or work colleague where this does not unreasonably delay the process.

The school will consider reasonable alternatives to suspension where they exist. If suspension is deemed necessary then this does not imply that a decision about the veracity of the allegations has been made and the period of suspension will not be considered as disciplinary action.

Where the allegation concerns the safeguarding of children, a risk assessment must be discussed with the DSL. Once this assessment has been made, a decision about suspension can be taken.

Suspension will be reviewed periodically to consider whether circumstances surrounding the suspension have changed.

During suspension a named contact will be assigned to keep in touch with the employee

Where the employee is remanded in custody the school will consider whether it is appropriate for the period of suspension to be unpaid.

10. Investigation

No disciplinary action or sanction will be applied until the allegations have been investigated.

The purpose of the investigation is to establish a fair and balanced view of the facts. Dependant on the case this may involve interviewing the employee and any witnesses or reviewing relevant documents and other information.

Unless otherwise impracticable, different individuals will carry out the investigation and disciplinary hearing.

An investigation may consist of the gathering of evidence or an investigation interview with the employee or witnesses as the case requires.

Investigation interviews are solely for the purpose of fact-finding and the employee will be informed at the outset that the meeting is an investigation interview.

There is no statutory right for an employee to be accompanied at a formal investigatory meeting however the school will extend this right to employees who do wish to be accompanied.

The employee will be informed as soon as possible as to the conclusion of the investigation and its outcome.

If the allegation is without foundation, no further formal action will be taken and the employee will be informed of this in writing.

11. Pre-agreement

It is perfectly acceptable for an agreement to be arrived at prior to the hearing between both parties in circumstances where the facts are not in dispute and both parties agree on the sanction.

A formal meeting should be held to discuss the key findings of the investigation and issue the pre-agreed sanction.

An employee will be given the right of appeal against any pre-agreed sanction.

This approach will **not** apply where the allegation concerns the safeguarding and protection of children, where the harm threshold has or may have been met or where allegations relate to criminal activity or fraud.

It is not appropriate to dismiss an employee by means of pre-agreement.

There will be a right to revert to the procedure outlined within this disciplinary at any point prior to the formal pre-agreement meeting taking place.

12. Definition and separation of roles

Where possible the school will seek to establish clear separation of roles in any disciplinary process. These will usually be defined as a Commissioning Manager, Investigating Officer and separate hearing panel(s).

12.1. The Commissioning Manager

The Commissioning Manager, normally the Line Manager, Headteacher or the Chair of Governors, will appoint an Investigating Officer to carry out any formal investigation and review the investigation before proceeding to a hearing.

12.2. The Investigating Officer

The Investigating Officer will normally be an appropriate member of the school's staff or an appropriate external third party.

13. Invite to formal hearing

If the Commissioning Manager decides that there is a disciplinary case to answer the school will invite the employee to a formal disciplinary hearing.

The employee will receive at least five working days' notice of the hearing in writing.

Notification will include details of the allegations, possible consequences and sufficient information to enable the employee to answer the case at the formal hearing. This will include any evidence the employer proposes to use in the formal hearing.

All attendees at the hearing should receive any evidence to be presented, including a copy of the letter inviting the employee to the hearing, in reasonable time before the hearing.

14. Right to be accompanied

The employee has the right to be accompanied and supported at a formal hearing by a trade union representative or work colleague.

The employee should provide the name of their representative within two working days of the hearing. Where the chosen companion is unavailable on the day scheduled for the hearing, the employee may request that the hearing be rescheduled to an alternative time that is reasonable and within five working days of the scheduled date.

If the representative remains unavailable, the employee may be asked to choose another representative.

During the hearing the companion may address the hearing to put the employee's case and confer with the employee however they may not answer questions on the employee's behalf or address the hearing if the employee indicates they do not wish this.

15. Disciplinary panel

Where dismissal is a possible outcome, the case will normally be heard by a panel of three governors. It may be necessary to co-opt governors from other schools where it is not possible to form a panel from the school's own governing body.

Where dismissal is not a possible outcome the hearing may be conducted by the Commissioning Manager or other appropriate person with authority to give a disciplinary sanction.

Those hearing the case must be impartial and must not have any prior knowledge of the case.

16. Advice and support at a Hearing

At any hearing where dismissal is to be considered, the local authority must be invited to send an adviser. This is normally a member of the authority's HR service or an HR provider who is recognised by the authority.

A note taker may be present at the hearing. They will make a record of the hearing, but not of the confidential deliberations of the panel. The employee will receive a copy of these notes with the formal outcome letter unless otherwise impracticable.

The school must send all of the papers for the hearing to the HR adviser no later than the date on which they are sent to the employee.

17. Formal hearing

The employee (and their companion) must make every effort to attend the hearing. If the employee fails to attend the hearing without good reason, or is persistently unavailable, the school may make a decision based on the evidence available.

The school does not allow the audio recording of disciplinary hearings unless there are pre-agreed exceptional circumstances. Covert recording is considered gross misconduct.

At the hearing the employee will be entitled to:

Deleted: "delete or amend as required - Community or Voluntary Controlled School only."
A Human Resources adviser may attend the disciplinary panel to provide professional support and advice to the panel. This adviser will not be a decision maker in this process.

- a full explanation of the case against them
- set out their case and respond to any allegation
- ask questions, present evidence and call relevant witnesses
- raise points about any information provided by witnesses

Any witness to be called at a hearing must have submitted a written statement of their knowledge of the case at least three working days in advance of the hearing. These statements will be shared with the employee without delay.

The Disciplinary Panel may adjourn the hearing if it is necessary to do so. The employee will be informed of the likely period of any adjournment.

The panel will convey the decision to the employee, in writing, within seven calendar days or as soon as is reasonably practicable. The employee will be notified of their right of appeal under this policy.

18. Hearing outcome

The decision is normally conveyed orally at the disciplinary hearing in the presence of the parties and will be confirmed in writing as soon as reasonably practicable, usually within seven calendar days.

On occasions, particularly after a lengthy hearing, it may be necessary to adjourn and reconvene at another time to consider its decision or close the meeting to consider the evidence and make a decision. In such cases, it may be agreed to communicate the outcome by telephone before confirming the decision in writing.

19. Disciplinary action

Where, following a disciplinary hearing, the panel reasonably believes that the employee has committed a disciplinary offence, the following disciplinary action may be taken:

19.1. First written warning

Where misconduct has occurred and informal discussions have not led to sufficient improvement or are not considered appropriate, a formal written warning may be issued.

A written warning will remain active for a period of twelve months, unless the employee is notified to the contrary, and will be recorded on the employee's personnel file.

After the expiry of the warning period, the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

The employee will need to be at work throughout the relevant warning period. If they should be absent from work for any reason the school reserves the right to extend the period of warning at their discretion.

19.2. Final written warning

If an employee's misconduct is sufficiently serious, or if there are existing live warnings, it may be appropriate to move directly to a final written warning.

A final written warning will normally remain active for a period of twelve months or in exceptional circumstances up to twenty four months.

After the expiry of the warning period the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

The employee will need to be at work throughout the relevant warning period. If they should be absent from work for any reason the school reserves the right to extend the period of warning at their discretion.

19.3. Dismissal (including summary dismissal for gross misconduct)

Where the employee has committed further acts of misconduct during the life of a final written warning the school may elect to dismiss with notice or payment in lieu of notice.

Where the employee has committed an act of gross misconduct, the employee may be summarily dismissed without notice, regardless of whether there are live previous warnings on file.

Where the allegations relate to safeguarding or child protection issues the school will consider whether it is appropriate to make a referral to the DBS.

If a Teacher is summarily dismissed the school will make a referral to the Teaching Regulation Agency.

20. Right to appeal

Employees have the right of appeal against any disciplinary sanction. At the discretion of the school the appeal may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. At an appeal, any disciplinary penalty may be reconsidered but it cannot be increased.

New evidence will only be considered if relevant and there is a good reason why this had not been included as part of the original hearing.

Any employee who wishes to appeal a sanction should do so in writing **within seven calendar days of the receipt** of a decision letter to the person named in the letter. The employee's letter to lodge the appeal should include the grounds for appeal i.e. breach of procedure, severity of disciplinary penalty, against the fact or all of the above reasons.

Wherever possible the appeal will be heard by an appropriate individual, or panel of individuals, who have not been involved in the decision to impose a disciplinary sanction.

To be quorate, the appeal panel must consist of at least the same number of governors as at the previous hearing.

Where an appeal against dismissal is not upheld, the date of termination will be the date on which the employee was originally dismissed. During the appeal stage the employee will remain dismissed from the school. If an employee is reinstated following dismissal, they will be treated as being continuously employed for the whole period, including the period between dismissal and reinstatement.

The decision of the appeal panel will be final and must be reported to the governing body. It will be confirmed in writing as soon as reasonably practicable, usually within five working days.