



Procedure for all Employees in Schools

Disciplinary Procedure

Introduction

1. This model procedure has been drawn up following consultation with all the recognised Trade Unions and Associations. It meets the requirements of relevant legislation and the ACAS Guidance.
2. Both Oxfordshire County Council and employee representatives recognise that it is essential for discipline to be maintained in order to ensure the well-being and safety of employees and the smooth running of schools. Disciplinary rules and procedures are necessary to promote fairness in the treatment of individuals and order in the conduct of industrial relations.
3. Effective support, supervision and counselling of employees should reduce the need to use the disciplinary procedure. Where appropriate, shortcomings should be brought to the employee's attention as soon as possible in an effort to resolve the situation informally, before this procedure is set in motion. Guidance notes on informal interviews are attached.
4. This procedure is designed to ensure that, when it is necessary to use the disciplinary procedure, it is applied fairly and as quickly but as carefully as possible, and that the employee is given every opportunity to improve.

Responsibilities of the Governors

5. Responsibility for employee discipline rests with the governing body and they should:
 - a) draw up a Disciplinary Procedure in consultation with the County Council, or formally adopt this model one, and publicise it to their employees.
 - b) decide whether to delegate any part of the disciplinary procedure. All disciplinary decisions, up to and including dismissal, can be delegated to:
 - the headteacher or
 - one or more governors or
 - one or more governors with the headteacher.

Where disciplinary matters relating to staff other than the headteacher are delegated to governors, the headteacher may attend and offer advice in all proceedings and this advice must be considered.

Where the disciplinary action relates to the headteacher, the governing body may delegate any decision, including whether or not to dismiss her/him to one or more governors.

It is open to the governing body to decide to delegate part of the procedure; for example, to delegate the power to issue a verbal or first written warning to the headteacher but to require that any matter which might call for more serious disciplinary action should be referred to a committee of the governing body.

(Note: Although governing bodies have the power to delegate dismissal decisions, as shown above, they are strongly recommended not to delegate such decisions to one person acting alone. The Director for Children, Young People & Families must be involved at all stages where dismissal could result).

- c) Appoint a sub-committee of governors to deal with any disciplinary matter which has not been delegated to the headteacher. This sub-committee will, in appropriate cases, exercise the powers of the Staff Dismissal Committee (as required in the School Standards & Framework Act 1998).
 - d) As and when necessary, appoint a staff dismissal appeal committee no smaller than the committee which made the original decision. It is recommended that this should consist of at least three governors, none of whom should have been involved in the case in any way before the appeal hearing. The headteacher should not be a member of this panel.
 - e) Decide whether or not to allow a further appeal to the County Council. If this right of appeal is to be granted, the following paragraph should be inserted in the procedure in place of paragraph 37. "There is a further right of appeal to a panel of County Councillors, whose decision is binding on all parties."
6. In cases of dismissal, the governors must give the Director for Children, Young People & Families written reasons for dismissal.
7. In all disciplinary matters, records should be removed from an employee's personal file once they are "spent" (see paragraph 35 of the model procedure). They should then be retained separately, but confidentially, within the school, ready to be reported to the Directorate for Children, Young People & Families when required.

8. If a dismissal case goes to an Employment Tribunal, governors will be the respondents. They will need to attend in order to justify their decisions. Any costs arising will be met by the County Council unless there is "good reason" to recharge them to the school's budget. "Good reason" includes a deliberate disregard of the Director for Children, Young People & Families general or specific advice.
9. Governors should ensure that any individual who is the subject of disciplinary investigations or action is given sufficient and appropriate support throughout the process and kept fully informed about progress.

Responsibilities of the County Council

10. The school must involve the Director for Children, Young People & Families at all stages where dismissal may result. It is essential therefore to involve at an early stage of any disciplinary process the Schools H.R. Team staff who are her/his delegated representative throughout the disciplinary process. They will make every effort to advise and assist the governors in the use of this procedure.
11. If a governing body determines that an individual employee should no longer work at the school, the Director will consider whether or not to try to redeploy the employee. If this is not possible or appropriate s/he will put the dismissal in writing to the employee. This action must be taken within fourteen days of receiving written notification from the governors.
12. The County Council is responsible for meeting the costs arising from dismissals except as set out in paragraph 8 above.

Guidance Notes on Informal Interviews of Employees

13. Counselling through an informal, recorded interview may often be a more satisfactory method of resolving problems than via the formal disciplinary procedure.
14. It should take the form of a two-way discussion with the objective of encouraging and helping the employee to improve.
15. It should always be held in private and the employee should be allowed to put forward an explanation for any alleged misconduct or shortcomings and bring a "friend" to the discussion, if they wish.
16. An informal interview should not be allowed to turn into a formal disciplinary interview. If it becomes evident that the matter should be dealt with under the Disciplinary Procedure, the counselling interview should be adjourned and it should be made clear that the matter will be pursued under the formal procedure.

17. It is important to ensure that the employee understands fully the outcome of the interview, including any improvement required, how performance or conduct will be reviewed, and over what period.
18. The interviewer should therefore keep a record of the conversation for sight of the interviewer and interviewee only. A copy of this should be supplied to the interviewee.
19. Any disagreement by the interviewee as to the accuracy of the record should be noted.
20. The record of the interview should be kept separate from the personal file and destroyed after a maximum of six months if no further action has been taken.
21. If the matter is agreed to be of minor importance, no record needs to be kept at all.
22. If the matter proceeds to the formal Disciplinary Procedure, the outcomes of the informal recorded interview may be used as evidence of progress.

Oxfordshire County Council Model Disciplinary Procedure for School Employees

This procedure should be printed out and given to any employee who is subject to the Disciplinary Procedure

Rights of the Employee

1. At all stages of the disciplinary procedure the employee has the right to be accompanied by a trade union representative, lawyer or a friend who will normally be a work colleague
2. The employee has the right to be given, in advance, details of all the matters to be discussed, to see any written evidence and to receive a copy of the disciplinary procedure.
3. If disciplinary penalties are imposed, the employee has a right of appeal against them in accordance with this procedure (see paragraph 36-41 below).
4. Except where an employee is told that the warning is final and that any further indiscipline may lead to dismissal, breaches of discipline will be disregarded for the purposes of this procedure after satisfactory completion of the review period.

Duties of the Employee.

5. Employees are required to co-operate with investigations and proceedings under this procedure.

Use of the Procedure

Issues of Professional Capability

6. Issues of capability and efficiency will be dealt with under the Professional Capability Procedure.

Misconduct.

7. Misconduct covers any failure to comply with accepted standards of work or behaviour, such as:

- unauthorised absence
- persistently poor timekeeping
- refusal or failure to obey lawful and proper instructions
- breach of health and safety requirements
- harassment and offences against human dignity or equality, eg sexual, racial or religious harassment
- inappropriate behaviour towards children, young people or other service users

This is not an exhaustive list and in some circumstances these examples could be serious enough to be regarded as gross misconduct. Gross misconduct is misconduct serious enough to destroy the employment contract and make any further working relationship and trust impossible.

8 The consequence of gross misconduct is normally a summary dismissal, ie dismissal without notice or pay in lieu of notice. If this is the outcome, all papers relating to the case will be sent to the Department for Children, School and Families (who may refer it to the General Teaching Council) or the General Teaching Council, as appropriate. Examples include:

- actions, omissions or negligence which endanger others
- theft in the course of employment
- abuse of children, young persons or vulnerable adults
- fraud or deliberate falsification of claims and/or records

Acts Against Children, Young People or Vulnerable Adults

9 Where there is an allegation which involves physical or sexual abuse of children, young people or vulnerable adults the appropriate protection procedures will be considered first and action taken accordingly.

10. Where there is no doubt following a CRB disclosure that an employee has, at any time, been convicted of an offence against children, young people or vulnerable adults which is regarded as gross misconduct so that his/her continued employment is unacceptable, he/she will normally be summarily dismissed without further process. This decision will be taken in accordance with the school's delegated responsibilities under this procedure after appropriate professional advice and discussions with the employee concerned. The provisions under Paragraph 29 will apply. Full documentation will be kept and the employee will have the right of appeal.

11. Where the CRB disclosure does not contain a conviction, but does contain other relevant information, a risk assessment will be carried out and a hearing will be convened where necessary to consider the case under the normal procedure below. The employee may be suspended in accordance with Paragraphs 30-33, where appropriate, while this process is carried out.

The Disciplinary Procedure in Operation

12. All stages of the procedure should be carried out as quickly but as carefully as possible especially in the case of alleged gross misconduct.

13 Where the headteacher is the subject of the disciplinary procedure, all action at every stage will be taken by governors. No action will be initiated without the knowledge of the Chair of Governors. The Director for Children, Young People & Families will be involved from the outset.

Investigation

14 Where the allegation is one which could involve physical or sexual abuse of children, the Child Protection Procedures will be considered first, and action taken accordingly (see Oxfordshire County Council "Safeguarding Pupils Policy September 2004). See Paragraphs 9-11 above.

15 Where the allegation does not involve abuse of children or where it is decided that the Child Protection Procedures are not appropriate, a full and thorough investigation will be made as quickly as possible and without unreasonable delay.. This investigation is likely to be conducted in the first instance by a senior member of staff or by the headteacher. However, for serious allegations or allegations involving the headteacher, a governor or a Children, Young People & Families HR Manager will investigate. Witness statements and other evidence will be collected where appropriate and practicable.

16 A decision will then be made by the investigator as to whether, on the basis of the evidence, a disciplinary hearing is necessary.

17 The names of any witnesses to be called by either side will be notified to all parties in advance of the hearing. All written evidence to be used by either side at the disciplinary hearing will be made available to the other side before the hearing, in time for a proper response to be prepared. If any new evidence appears at the hearing, an adjournment must be offered. All relevant papers must be given to the panel or individual hearing the case.

Disciplinary Hearing

18 Before any disciplinary action is taken, the employee in question will be called to a formal hearing before governors or the headteacher, in accordance with the policy adopted in advance by the governing body.

19 At least five working days notice will be given unless agreed otherwise by mutual consent. When invited to the hearing the employee will be informed in writing that, once the date has been agreed for the hearing, if he/she does not attend the hearing and has not given prior notice of non-attendance, then the hearing will normally go ahead in his/her absence.

20. Where a reasonable cause for non-attendance is given, a letter will be sent by recorded delivery to the employee setting another date and making it clear that, if s/he does not attend without a reasonable cause, the hearing will take place in her/his absence.

21. Sickness covered by a doctor's certificate will normally result in an adjournment until the employee is fit enough to attend. Occupational Health can advise about the fitness of the employee to attend a hearing and to understand the case against them. Where the sickness absence continues for a period of one month or more management will consider whether to hold the disciplinary

hearing in the employee's absence. If this is decided upon the employee may send a representative to make his/her case at the hearing.

22. The written notice will also include:

- The allegations to be discussed at the hearing
- The date, time and place
- The procedure to be followed
- A reminder of the right to be represented or accompanied (see Paragraph 1)
- Copies of any written evidence already available

23. It will make clear that the hearing is a disciplinary hearing, that disciplinary penalties could be imposed at the end of it and that there will be a right of appeal against any penalties.

The headteacher or the Staff Disciplinary Committee hearing the case will conduct it in accordance with Annex 1 below. A written record will be kept and made available to all sides, if the employee requests it

Powers of the Disciplinary Committee

24 the headteacher or the Disciplinary Committee may decide to dismiss the complaint or may decide that disciplinary action in the form of a penalty is necessary.

25 Disciplinary penalties will normally progress from recorded verbal warning to first written warning, to final written warning and then to more severe penalties (see paragraph 28 below). However, there could be occasions when this progression will not be followed. For example, a first written warning may be appropriate without going through the verbal warning stage or dismissal may be necessary for a first but very serious breach of discipline. Breaches of conduct which have resulted in disciplinary action and which are not yet "spent" may lead to progression through the penalties even if they are not of a similar nature.

26 Any warning will specify:

- (i) the reason for the warning, ie the nature of the shortcoming
- (ii) the improvement expected, any support to be offered and the time allowed for improvement (this will normally be not less than one month or more than one year but may be open-ended where the nature of the case warrants it)
- (iii) arrangements for review
- (iv) the implications of a failure to improve or of any further shortcomings
- (v) the right of appeal and the person to whom the appeal should be sent

27 Actions available to the headteacher or governors (as determined by the governing body) are:

- recorded verbal warning
- first written warning
- final written warning
- transfer, demotion, withholding increments (only after discussion with the Children, Young People & Families HR Section)
- dismissal with due notice
- summary dismissal (in cases of gross misconduct only)

28 No decision to dismiss can be taken without considering the advice of the Director for Children, Young People & Families. The Director has the right to attend or be represented at a hearing which could result in dismissal.

Suspension

29 An employee may be suspended on full pay for the purposes of investigation or the protection of individuals. Alternatives to suspension will be considered first; for example, voluntary absence by the employee which has been agreed with the headteacher or chair of governors as appropriate.

30 The period of suspension will be reviewed at least weekly and the employee kept informed about progress on the case.

31 Suspension can be imposed by the governors or the headteacher but they must then immediately inform the County Council (through the Children, Young People & Families HR Section) and the headteacher or governing body, as applicable. The suspension will be confirmed in writing to the employee and the Directorate.

32 Suspension can only be ended by the governing body, who will then inform the Directorate and the headteacher.

Records

33 Employees subject to the disciplinary procedure will have access to all records and correspondence which are relevant to the case. If, at a later date, new evidence emerges which is relevant to the case, appropriate action will be taken. This could include a re-hearing if that is possible.

34 After satisfactory completion of the improvement period (see paragraph 18 (ii) above) the records relating to the case will be removed from the personal file and kept in a separate confidential file held at the school and/or centrally by the Directorate.

Appeals

Employees have the right to appeal against disciplinary action.

35 Notice of an appeal must be given in writing within two weeks of the receipt of notification of the action. The grounds for appeal must be given in advance (though not necessarily within the two week deadline). Examples of the grounds for appeal include:

- faults in procedure
- new evidence which could not have been available at the first hearing
- a perverse decision
- an excessive penalty

Generally speaking it is advisable to re-hear the whole case at the appeal hearing.

36 Appeals will be heard by a committee of governors not previously involved in the detail of the case.

37 The respondent at an appeal hearing will usually be the person who made the case against the employee at the original hearing; but if the grounds for appeal are that the penalty was excessive (see paragraph 36 above) the respondent will be the individual who made the original decision or one of the original committee.

38 The appeal committee will appoint a chair and the case will be conducted as shown at Annex 1.

39 If the appeal results in confirmation of a decision to dismiss, the governing body must inform the Director immediately; notice of dismissal must then be given to the employee by the County Council within 14 days. In appropriate cases, the DCSF and/or the GTC will be informed.

40 The governing body's decision is final except where the governing body have determined that there should be a further right of appeal to the County Council.

Special Cases

Cases involving Headteachers

41 See paragraph 13 above.

Trade Union Officers/Representatives

42 Action against a trade union representative can be subject to legal challenge or could lead to a dispute, if it is seen as an attack on the trade union/association's functions. Therefore no action will be taken against a trade union officer/representative until the circumstances of the case have been

discussed with a full-time officer of the union or senior trade union representative.

Criminal Proceedings

43 Where an employee is the subject of criminal proceedings for an offence which it is considered may make the employee unsuitable for her/his type of work or unacceptable to other employees, it will be appropriate to consider whether or not action under the disciplinary procedure is required

44 It is likely to be appropriate to defer the disciplinary procedure but, in some circumstances, it may be more appropriate to follow the disciplinary procedure without awaiting the outcome of any proceedings. In this case, the normal disciplinary procedure applies and any decision will be based on a reasonable belief following a fair and thorough investigation into the circumstances of the case with the normal interview, hearing and appeal procedure being followed if it is practical to do so.

45 Where an employee is accused of physical or sexual abuse against a child, a separate procedure will be followed (see paragraphs 9-11 and 14 above).

General Note:

46 In the event of the Disciplinary Procedure being impossible to enact, at the request of the governing body, the Director will put in place an alternative procedure which will be discussed with the employee concerned and her/his representative.

Annex 1

Conduct of a Disciplinary Hearing or Appeal Hearing

1. The Chair introduces those present
2. The Chair invites the person presenting the case against the employee to identify the areas of alleged default and to bring forward any witnesses or witness statements.
3. The Chair invites the employee and her/his representative to ask questions.
4. The sub-committee members, or the Chair if there is no sub-committee, ask questions of the person presenting the case.
5. The Chair invites the employee and/or representative to respond in full to the case presented against them and to bring forward any witnesses or witness statements
6. The Chair invites the person presenting the case against the employee to ask any questions.
7. The Chair invites the members of the panel, if appropriate, to ask questions of either party and asks any questions her/himself. Either party is invited to address to the chair any comment arising from the question or the reply.
8. The Chair invites the person presenting the case to summarise it. No new evidence can be presented at this stage.
9. The Chair invites the employee or her/his representative to summarise their case. No new evidence can be presented at this stage.
10. The Chair asks both parties to withdraw while s/he or the sub-committee gives consideration to the case and come to a conclusion. If the sub-committee needs to clarify any point with one or both of the parties, both parties should be recalled.
11. The Chair will call back both parties either to announce the decision or to advise that a decision will be communicated in writing within three working days.

Annex 2

Frequently Asked Questions

Who will carry out any investigation?

If the allegation is of relatively minor importance the headteacher or senior member of staff who is hearing the case can also carry out the investigation. There may be an advantage in involving as few people as possible. However, where the allegation, if proven, could result in a written warning it is sensible to separate the roles of investigator and decision-maker.

Where the headteacher may be subject to disciplinary proceedings, the governors are advised to ask the Director to nominate an investigator.

How much notice should we give of the hearing?

When setting a date and time, allow enough time for the employee to arrange suitable representation.

Notice of the hearing must also allow sufficient time for written evidence to be circulated beforehand. Notice must be at least five working days unless agreed otherwise by mutual consent. It is wise to be flexible about the date, in order to fit in with any reasonable request by the employee or her/his representative.

How do we make sure that the evidence is handled fairly?

It is important that all parties have the opportunity to challenge any evidence which is being used. That is why all written evidence must be made available beforehand. If new evidence appears at the last moment, an adjournment of the hearing must be considered.

Hearsay evidence (i.e. evidence which relies on quotation from a third party who cannot give evidence in person or by a written statement) should not be used.

Anonymous evidence should not be used. The only exceptions to this would be (a) where the allegations are serious and can be verified through independent investigation or (b) if a potential witness had a real fear, reasonably held, that they would suffer substantial detriment, if they were to sign their statement. The latter case would be very rare and, if the situation arose where this was alleged, the County Solicitor should be asked for advice through the Children, Young People & Families HR Section.

Statements can be obtained from children under 16 only with the agreement of the parent or guardian, who should be given the opportunity to be present when the evidence is being collected. There could be an exception where children are witnesses to an incident and their version of events needs to be obtained as

quickly as possible before memory fades and before they have discussed it with others. In this case, if parents cannot be informed immediately, it may be advisable to ask the children to make their statements in the presence of a second adult whose express responsibility it is to look after their best interests. Their parents will be advised as soon as possible afterwards. Children should not be called to give evidence to a hearing in person.

What if the employee does not turn up to the hearing?

It is advisable to adjourn the hearing and write to the employee setting another date and making it clear that, if s/he does not attend without a reasonable excuse, the hearing will take place in her/his absence.

What if the employee is ill?

See Paragraphs 20-21 of the procedure.

Are there any other policies we should bear in mind?

1. The Model Professional Capability Procedure.

Governors should establish a professional capability procedure. The Children, Young People & Families Directorate of the County Council recommends that governors adopt the model procedure that has been provided. Governors are not normally involved with a capability procedure before the dismissal stage (except where dealing with an appeal against a warning).

2. The County Council has an Alcohol Policy

The procedure applies to employees whose dependence on alcohol or substance misuse affects their conduct or whole performance. This policy provides guidance to deal with cases of employees who are suffering from a dependency on alcohol or drugs and to provide support in such situations. It should be considered as appropriate.

