

Bicester Studio School

Disciplinary Procedure

Introduction

This procedure is based on the ACAS Code of Practice and Advisory Handbook on Discipline at Work. It applies to and is designed to help and encourage all employees within the school.

Aim

Nothing in this procedure removes the right of a Principal or the line manager to give an employee an informal reprimand outside the disciplinary procedure when the employee is believed to have committed a minor infringement of Bicester Studio School's (BTS) standards of conduct.

It is the responsibility of managers to draw an employee's attention to any way in which his/her conduct falls below the required standard. Action which can lead to disciplinary proceedings and any resultant type of formal warnings given will depend on the nature, circumstances and degree of seriousness of each case.

In operating this procedure the school will apply its commitment to equality of opportunity by treating its employees fairly and without discrimination on the grounds of colour, race, nationality, ethnic or national origins, sex, marital status, disability, age, sexual orientation, trade union membership and activity, political or religious belief and unrelated criminal convictions.

At every stage in the formal procedure starting with the investigation, the employee will be advised of the nature and provided with details of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.

No disciplinary action will be taken against an employee until the case has been fully investigated. An investigation will include an interview with the employee whom the complaint is against.

At all stages the employee will have the right to be accompanied by a trade union representative or a work colleague. This is particularly critical at any disciplinary hearing, investigation, suspension and appeal hearing. Every effort will be made to allow the employee to be accompanied. It is likely that the only exceptional cases where this is not practical would be, for example, the immediate suspension for alleged gross misconduct.

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice.

A governor should not take part in consideration of a matter in which he/she or a relative living with him/her have a pecuniary interest and, in the case of a teacher governor, a direct pecuniary interest. In particular, an employee must withdraw where the governing body is discussing the dismissal or suspension of another person employed at the school, if a vacant post might arise as a result, for which he/she or a relative living with him/her could be a candidate.

Initiating the investigation

Where conduct which might warrant disciplinary action is alleged, the matter will be investigated immediately by an appropriate manager. This may be the line manager of the employee involved. The employee will be informed of the situation and the procedure to be followed and will be provided with a copy of the disciplinary procedure. At this stage the employee must be advised of the right to be accompanied by a trade union representative or work colleague.

Where an employee is unable to attend an investigatory meeting (or formal hearing) under the procedure due to bail restrictions, or custodial sentence or can offer no good reason for non-attendance, then the Principal/Governors and the representatives of the employee will meet to discuss how this matter can be progressed.

Conducting the Investigation

The designated member of staff conducting the investigation will explore thoroughly the facts of the matter, including interviewing witnesses where appropriate and obtaining the employee's version of events. This would normally be by interview. The employee must be informed orally that an investigation is to be carried out under the disciplinary procedure and that this will be kept confidential. The employee must be made aware of the nature and available details of the allegations. The employee will be advised that any information gained when questioning can be presented at any subsequent disciplinary hearing.

The designated school employee conducting the investigation may call upon witnesses to supply information in the form of a written statement which will assist in the investigation. Where other employees are to be questioned, it will be explained that they may be asked to attend a disciplinary hearing and act as a witness. Written statements may be obtained from juveniles but, in such instances, the investigator should be given consideration to informing the parents/guardians and giving them the opportunity to be present. This will be dependent on the nature of the allegations against the employee. (Statements must be signed by the witness as a true record.)

The investigatory interview with the employee against whom allegations have been made may take place over more than a single session and the result will be in written form. A written record of this interview will be made by the designated member of staff

conducting the investigation and will be signed as a true record by the employee if there is agreement that this represents a true record of the interview. If there are any points of disagreement these will be noted in writing and kept with the record of the investigation.

After the investigation the investigator will consider if there is a case to answer. If there is no evidence to substantiate the need for further proceedings, the employee will be informed in writing of this and, if under suspension, will return to work. No reference to the matter in question will be kept on the employee's personal file.

If, on analysis of the material gained during the investigation, the investigator believes the matter can be resolved by means of counselling he/she should conduct a counselling interview with the employee and a note of counselling agreed by the employee should be kept for reference purposes on the personal file, with a copy to the employee, until expunged by agreement. Counselling does not constitute disciplinary action and this should clearly be stated on the written document.

If, on completion of the investigation, the investigator considers that there is a case to answer which may require more than counselling, he/she will arrange a formal meeting with a member of the Senior Team, the Principal or the disciplinary committee of the Board of Governors as appropriate.

Suspending an Employee

If the matter to be investigated is thought to involve gross misconduct, it may be necessary to suspend the employee from work, e.g. where it is inappropriate for the employee to remain at the normal place of work, because the alleged misconduct relates to physical assault, sexual misconduct, malicious damage to property, drunkenness, gross abuse of orders and action which leads, or could lead, to major injury to another person, or theft including fraud, or where it is necessary to remove the employee from the premises when his/her presence may inhibit proper investigations. Similarly, if during the course of an investigation, the investigator is of the view that a gross breach of discipline may have occurred, the employee may then be suspended. Suspension will be a neutral, not disciplinary, measure pending the outcome of the matter.

The decision to suspend an employee will be taken by the Principal or the Board of Governors. Where suspension is being considered, a meeting should be arranged (normally outside student contact time). If the police are involved in a criminal investigation, any meeting arranged to consider suspension should not be conducted without prior consultation with the officer in charge of the case. Suspension will be with full pay. This will be the normal remuneration applicable immediately prior to suspension, e.g. including contractual overtime payments, management allowances, overtime, standby or shift allowances etc and will continue until the completion of the investigation and a decision is made at a resultant hearing.

Suspension will be for as short a period as possible and will be kept under review. It will usually last until an investigation has been concluded or any resulting disciplinary

hearing has been held. The employee will be informed immediately of their suspension in person unless exceptional circumstances do not permit this but, in any event, employees must receive confirmation in writing including the reason(s) for suspension.

Employees who fall sick during periods of suspension will be advised by the Principal that they are required to follow the normal sickness absence procedures and may be required to be examined by the school's Occupational Health Physician.

Suspension may only be ended by the Board of Governors through an appropriate mechanism which the Board of Governors may agree to delegate to the chairperson of the Board of Governors, a discipline committee or Principal.

Gross Misconduct

Gross misconduct is regarded as misconduct which if proven of such a nature that it, in view of the employee's duties, makes it unreasonable for that person to continue to be employed to perform those duties.

Cases of Alleged Criminal Activity

If the case involves suspected criminal offences at work, which may lead to police proceedings, providing the allegations have been fully investigated and the normal procedures followed and, if there is evidence to show, on the balance of probability, the employee committed the misconduct, there is no obligation to wait until the outcome of any criminal case is known before taking disciplinary action.

The school will treat seriously any employee who is charged with a criminal offence, although being charged with or convicted of a criminal offence away from work should not automatically lead to dismissal. It would depend on the offence, its seriousness and the effect on the employee's ability to continue in the job, or on the school's credibility with the public, pupils and parents. Because employment law is based on different principles from criminal law, the school can take disciplinary action before the outcome of a criminal case, but will seek personal advice before embarking upon such action.

If an employee refuses to take part in the disciplinary procedure, the school will write to the employee explaining that disciplinary action may have to be taken against them in their absence, based on the information available. It is in the interest of all parties involved in any allegation of unsatisfactory conduct to co-operate as fully as they can, to ensure the process is completed as quickly and fairly as possible.

It will not be possible for an employee to raise a grievance relating to a disciplinary matter, once the disciplinary procedure has been invoked. Where an employee raises a concern about the conduct of the Designated Manager, however, then the disciplinary procedure may be suspended for this concern to be considered.

Notifying the Employee of a Disciplinary Hearing

The investigator is responsible for arranging the disciplinary hearing which will be with a Vice Principal, the Principal or a disciplinary panel of governors and notifying the employee of this in writing, given at least seven calendar days' notice of such a meeting. The employee should be notified of the right to be accompanied by a trade union representative or work colleague.

Where the employee is to be represented by a recognised trade union, the date of the disciplinary hearing should be a mutually convenient one; however, if non-Executive governors are involved the timing is likely to be based primarily around their other commitments. In accordance with ACAS advice, the employee can request a delay of up to five days. It is the employee's responsibility to inform the trade union representative and witnesses of the date, time and place when they are requested to give evidence.

The employee should be given details of the complaint/allegations and should be informed that either party can produce witnesses and/or written witness statements and relevant supporting documents at the disciplinary hearing, should they so wish. This is subject to the requirement to exchange this information at least seven calendar days before the disciplinary hearing.

Those in Attendance at the Disciplinary Hearing

The Vice Principal, Principal or the disciplinary panel as appropriate must consider the seriousness of the complaint/allegations. The Vice Principal, Principal or the disciplinary panel will take appropriate advice.

If a senior member of staff has been designated to carry out the investigation he/she will not take part in deciding any disciplinary action but will be called to present the supporting facts and material.

Failure by the Employee to Attend the Disciplinary Hearing

If for good cause, for example sickness, the employee is unable to attend the hearing; it may be rearranged to another date taking into account the reason. Sickness absence must be supported by a medical certificate.

Witness

If the investigator or the employee proposes to call witnesses to give evidence at the interview, their identity will be disclosed to the other side in advance, unless exceptional circumstances prevent this, e.g. where anonymity is to be preserved. It is not considered appropriate to call juveniles as witnesses to the hearing, although their statements may be read and transcripts of interviews may be used provided they are signed by the juveniles as a true record.

The other side will receive advance copies of written statements to which reference will be made at the hearing. It is preferable that the authors' of statements attend the disciplinary interview as a witness, although in certain circumstances, e.g. in the case of juveniles, those in the care of the Authority or where anonymity is to be preserved, it is acknowledged that this should not be a requirement.

Hearsay evidence will not be considered at any stage.

Procedure to be followed at the Disciplinary Hearing

The investigator makes an opening address outlining the case.

The investigator calls witnesses, if any, so that taking each one in turn:

- he/she questions each witness;
- the member of staff or his/her representative has the opportunity to put questions to each witness;
- the investigator may clarify any issues by further questions to the witness;
- the Principal or members of the Board of Governors as appropriate have had the opportunity to question each witness;
- each witness withdraws after giving evidence;
- the member of staff or his/her representative has the opportunity to put questions to the presenter of the case;
- the Senior Manager, Principal or members of the Board of Governors as appropriate have the opportunity to question the presenter of the case.

Presentation of the Employee's Case

The school employees or his/her representative makes an opening address outlining his/her case.

The school employee or his/her representative calls his/her witnesses, if any, so that taking each one in turn:

- he/she questions each witness;
- the investigator has the opportunity to put questions to each witness;
- the member of staff or his/her representative has the opportunity to clarify any issues by further questions to the witness;
- the Principal or members of the Board of Governors as appropriate have the opportunity to question each witness;
- each witness withdraws after giving evidence;
- the investigator has the opportunity to put questions to the employee;
- the Senior Leader, Principal or members of the Board of Governors as appropriate have the opportunity to question the employee.

Summing up and Withdrawal

The investigator and the member of staff, or his/her representative, have the opportunity to sum up their case if they so wish, the member of staff to have the last word.

The Senior Manager, Principal or Chair of the Disciplinary Committee set out any further action they wish to take, and set out when the decision will be made.

If either side has relied on witness statements from students or adults who have not appeared in person at the Disciplinary Hearing the Chair of the Disciplinary Panel will ensure that the weight given to the statements takes into account that the witness(es) were not present and their statements not challenged.

The Decision

The decision will be made in writing to the employee in line with the timescale determined at the end of the hearing. This will normally be within five working days of the hearing.

Determining Disciplinary Action

Case Unfounded

If it is considered that the case against the employee is unfounded, the employee will be informed of this at the hearing and the decision will be confirmed in writing immediately. All reference to the matter in question will be removed from the employee's personal file.

Disciplinary Measures

If it is considered that on the balance probabilities the alleged misconduct is substantiated, the appropriate disciplinary action will be determined, having regard to all the circumstances.

The measures available are:

a. Formal Oral Warning

A copy of a formal oral warning will remain live on file for a maximum of six months. The warning will be disregarded for disciplinary purposes after the six month period. All relating correspondence will be removed from the employee's file.

b. Written Warning

- for a serious offence; or

- where there has been a failure to improve conduct; or
- for a further offence of a similar nature for which a formal oral warning has been given which remains live.

A copy of a written warning will remain live on file for one year. A formal review will be held by this time to assess whether satisfactory standards of conduct have been maintained during the period. Reasons shall be given in writing if the warning is not to be expunged, if appropriate. Once the warning has expired it will be disregarded in all future cases of misconduct.

(c) Final Written Warning

- for a very serious offence which would not amount to gross misconduct but would justify a final written warning;
- for a very serious offence which would justify summary dismissal for gross misconduct, but a lesser penalty is appropriate in the circumstances; or
- where there has been a failure to improve conduct; or
- for a further and different offence after a written warning has been given and remains live.

A copy of a final written warning will remain live on file for two years. A formal review will be held by this time to assess whether satisfactory standards of conduct have been maintained during the period. Reasons shall be given in writing if the warning is not to be expunged, if appropriate. Once the warning has expired it will be disregarded in all future cases of misconduct and all related documents will be removed from the employee's file.

c. Dismissal

For failure to improve, or for an act(s) of further misconduct after a final written warning has been given and remains live. For an act(s) of gross misconduct, dismissal will be without notice (summary dismissal).

Confirmation of Disciplinary Action

The employee will be provided with written confirmation of the decision, together with details of their right to appeal, normally within five working days of the conclusion of the hearing.

Variation in Penalties

The following variations in action may be appropriate in certain circumstances:

- after a first written warning, further written warnings, although not normally more than one, may be issued before a final warning;
- it may be decided that the first instance of misconduct is sufficiently serious to justify the issue of a first and final warning;

- at a disciplinary hearing the Senior Manager, Principal or the disciplinary committee may decide to issue a final warning rather than recommend dismissal;
- the governing body, or Principal, when considering an appeal against the decision of a Senior Manager to dismiss, may decide to issue a further or final warning rather than dismiss.

The Appeal Process

The Right of Appeal

An employee may lodge an appeal against any formal disciplinary action at the level of final written warning or above taken against him/her under this procedure in writing within 14 calendar days of the date upon which they receive written confirmation of the disciplinary action.

The appeal will be heard by the Principal, unless the Principal heard the initial hearing. In the latter case the appeal will be taken by an appeals panel of the Board of Governors.

The letter of appeal from the employee should state whether:

- it is against the findings that the allegations have been substantiated and/or against the form of disciplinary action taken;
- the disciplinary procedure has been applied defectively or unfairly;
- new evidence has come to light which was not available at the disciplinary hearing and which may make a difference to the original decision.

Preparation for the Appeal Hearing

All appeals will be heard at the earliest possible date, having regard for the need to provide notice of hearings.

Evidence presented should enable the assessment of whether or not the allegations against the employee were properly considered and whether the disciplinary action was appropriate in all the circumstances.

Notifying the Employee of an Appeal Hearing

The employee will be informed in writing of the place, date and time of the hearing at least seven calendar days before the date of the appeal hearing.

Where the employee is to be represented by a recognised trades union, the date of the appeal hearing should be arranged in conjunction with that representative. Where the appeal involves non-Executive governors the appeal time and date will take account primarily of their availability.

Procedure to be followed at the Appeal Hearing

- a. The member of staff or his/her representative outlines his/her case.
- b. The Principal or Panel ask questions as they see fit to clarify and fully understand the appeal
- c. When the Principal or Panel is satisfied they have the information they need from the meeting they will set out whether they plan to undertake further investigation and set out the timescale for their decision, which will normally be within five working days of the appeal hearing.

Conduct of the Principal

Should the Principal be the subject of disciplinary proceedings, the above procedure should still be followed with the chair of the Board of Governors taking the role of investigator, taking appropriate personnel advice.

The outcome of an investigation into the conduct of the Principal must be referred to a panel of at least two governors with delegated authority to take the decision to dismiss or otherwise determine the outcome of the disciplinary procedure. There will be a right to appeal to an appeals panel of governors as required.

Monitoring and Evaluation

The Board of Governors and Principal will monitor the operation and effectiveness of the school's Disciplinary Procedure.

Date created: May 2016

Date agreed: 23rd May 2016

Date of Review: 31st August 2017

APPENDIX

Guidelines on disciplinary procedures

1) Misconduct likely to result in disciplinary action

The following list provides guidance on behaviour likely to imply misconduct but this is neither exclusive nor exhaustive

The distinction between misconduct and gross misconduct is often a matter of degree and some examples under misconduct may be of such an extreme nature that they amount to gross misconduct. Similarly, some examples under gross misconduct can be less extreme and, therefore, amount to misconduct rather than gross misconduct. The seriousness and nature of, and circumstances surrounding the allegation(s), must be assessed in deciding the level of any disciplinary measure.

Misconduct

Absenteeism and lateness: e.g.:

- frequent late arrival at work
- failure to comply with requirements to notify absence due to sickness
- unauthorised absence from the workplace

Misuse of property belonging to the school, e.g.:

- Making unauthorised private telephone calls
- Sending personal mail at the school's expense

Rudeness or insubordination

Disrupting the work of other school employees or contractors

Refusal to carry out a lawful request of the Principal or a manager/supervisor

Minor breach of health and safety

Serious Misconduct

Unauthorised copying of copy right or licensed materials, e.g. software

Unreasonable or unacceptable conduct, e.g.:

- Abusive language and behaviour
- Misuse of plant or equipment

Threatened violence against a colleague, pupil, client, contractor or member of the public whilst at work

Breach of the regulations (e.g. financial, contractual, standing orders)

Breach of health and safety rules and regulations

Accepting gifts of hospitality from contractors, clients or members of the public without authorization

Failure to work contracted hours

Deliberately, and without good cause, failing to follow the agreed disciplinary procedure in respect of conduct

Gross Misconduct

The following list illustrates conduct likely to amount to gross misconduct but this list is neither exclusive nor exhaustive

Any act of dishonesty, theft, misappropriation or malicious damage to property of the Academy, its employees, contractors or clients

Falsifying records or expense claims, e.g.:

- time sheets
- bonus sheets
- car or any other expense sheets
- overtime sheets
- sickness claims

Physical violence on pupils, school employees, clients, contractors or members of the public whilst at work (including maltreatment of persons in the care of the Academy)

Sexual misconduct against pupils, employees, clients, contractors or members of the public whilst at work

Being under the influence of alcohol or unprescribed drugs as work which gives rise to disruptive or hazardous behaviour

Wilful and/or malicious direct or indirect unfair discrimination, harassment or victimisation against other employees, customers or job applicants

Malicious damage to property

Serious breach of regulations, e.g. financial, contractual, standing orders

Non compliance with health and safety rules and regulations where it endangers the well being of others

Gross abuse of orders and action which leads, or could lead, to major injury to another person

Accepting or offering improper bribes or gifts, either to gain business or for personal gain

Unauthorised use of school vehicles at any time

Criminal offences committed outside working hours which renders the employee unsuitable for continued employment with the school

Unauthorised access to information held by the school whether held on computer or manual systems

Unauthorised disclosure of information classified as confidential by the school

Falsification or omission of information for personal gain e.g. provision of information on an application for employment form, medical questionnaire, etc

Improper use of position as school employee for personal gain.

Suspension

When called to a meeting where suspension is a possible outcome, the member of staff should be advised to seek the advice and assistance of his or her trade union. A person who is not a member of a trade union may be assisted by a work colleague. He/she, where accompanied, should be offered the opportunity of a brief meeting with the representative or work colleague before the meeting.

The member of staff should be informed at the outset of the meeting of the allegation and that, at the conclusion of the interview, suspension may occur. It should be made clear, however, that the meeting is not a formal disciplinary hearing but is for the purpose of raising a serious matter which may lead to suspension and further investigation.

The member of staff should be given as much information including the reasons for any proposed suspension, as is consistent with not interfering with an investigation about the allegation. The meeting is not concerned with examination of the evidence but is an opportunity for the member of staff to make representations concerning any possible suspension. The member of staff should be given an opportunity to make such representations after the information has been given and the reasons for any proposed suspension made out. A brief adjournment should be offered to the member of staff prior to response.

If, as a result of the meeting, it is considered by the Senior Manager/Principal/Chair of the Board of Governors that suspension is necessary, along with a full investigation of the allegation, the individual should be advised that he or she is suspended from duty. Written confirmation of the suspension should be dispatched within one working day, giving reasons for the suspension.

Disciplinary Panel

Membership

A panel shall consist of at least two members of the Board of Governors. No member shall have a pecuniary interest in any decision which may be taken by the committee. No governor who serves on a disciplinary committee is eligible to serve on an appeals committee in respect of the same case.

Terms of Reference

A disciplinary panel committee shall only consider any allegations of misconduct in relation to the most senior staff or where the investigation has been carried out by the Principal. In all other cases the relevant level of manager (senior leadership team) within the school will undertake these procedures.

The disciplinary panel will consider all sanctions defined in the procedure, if a case of misconduct is found

The disciplinary panel will not be involved in the investigation of allegations.

In reaching decisions the committee shall have regard to:

- all evidence presented
- any relevant personnel advice
- employment law and practice