City of Westminster

DISCIPLINARY POLICY

Westminster Schools

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WCC

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Disciplinary – Westminster Schools

Purpose and Scope

The aim of this policy is to help managers set and maintain high standards of conduct at work. The Disciplinary Procedure provides a framework for dealing with instances where employees are alleged not to have met the required standards of conduct.

This policy and procedure applies to all employees and workers at WCC schools.

Key Principles

At all stages within the Council's disciplinary procedure, the following will be adhered to:

- All employees will be treated fairly and consistently, with any required reasonable adjustments being addressed accordingly.
- Disciplinary matters should be dealt with quickly and without unreasonable delay.
- All employees have the right to be accompanied at any formal meeting by a trade union representative or work colleague. Representatives may not act in a legal capacity.
- It is the responsibility of the employees to arrange their own representation.
- Confidentiality and privacy will be adhered to at all times.
- All authorised officers must have received instruction on the operation of the disciplinary procedures. This may be done via HR Westminster as any investigation starts and on an ongoing basis. Refer down to table of authorised officer.
- Every effort should be made to attend meetings or interviews. Failure to attend such meetings, without good reason, may lead to the process continuing in their absence.
- The employee must be informed of the nature of the issue(s) or case against them.

- The employee will be given the opportunity to state their case before any decision is taken at a disciplinary hearing.
- Sanctions imposed following a disciplinary hearing will be determined according to the nature and seriousness of the alleged misconduct and based on a balance of probabilities.
- Where misconduct is established and the sanction is a warning then subsequent misconduct may result in further action that may ultimately result in dismissal.
- Employees have a right of appeal against any formal disciplinary action.
- A summary note will be taken at any formal meeting. Any notes will be passed to employee and time will be given for the employee to annotate them if they feel that the notes do not accurately reflect the meeting if they wish. If the employee does not annotate the notes or respond with any comments then they will be deemed to be accurate when the deadline passes.
- The school does not allow the recording of any formal meeting, unless identified as a reasonable adjustment and requested accordingly.
- All meetings/hearings/appeals under this policy may take place in an agile way. If it is to take place virtually then please refer to Guidance Note - Virtual Meetings.
- Investigating Officers should be given appropriate time to investigate matters or have the ability to manage their own time/diaries to allow all investigations to be concluded without unreasonable delay.
- Any proposed action against a trade union representative must be initially discussed with the school's HR Business Partner and notified, in writing, to the Union Branch Secretary.
- The Local Authority Designated Officer (LADO) must be contacted within one working day of any allegations relating to safeguarding.
- Where an employee raises a grievance after the disciplinary process has commenced the AO (adjudicating officer) in conjunction with the school's HR Business Partner will decide whether it is appropriate to temporarily suspend the disciplinary process. Where the grievance and the disciplinary cases are related it may be appropriate to deal with both issues concurrently.
- The disciplinary policy is part of the contract of employment and a collective agreement between the school and the recognised trade

unions. Any proposed changes will be subject to joint negotiation and agreement.

Standards of Conduct

It is expected that managers will address conduct and behaviour issues as early as possible and in general through the day-to-day management process. The following examples of gross misconduct and misconduct are intended to help employees understand the standards required by the school.

Gross Misconduct

The following examples are not exhaustive but indicative of conduct that the school considers may warrant disciplinary action up to and including summary dismissal[1] in the case of gross misconduct.

Examples of Gross Misconduct:

1. Theft, dishonesty, falsification of documents or fraud.
2. Physical violence / intimidation/ aggressive behaviour or bullying.
3. Sexual misconduct at work.
4. Deliberate/ wilful negligent, damage to property, assets, cash, investments of the school.
5. Causing loss, damage or injury through serious negligence.
6. Serious misuse of any school property or name.
7. Serious misuse or breach of the school's codes and policies.
8. Deliberately accessing internet sites containing pornographic, inappropriate, offensive or obscene material.
9. Serious insubordination.
10. Unlawful discrimination or harassment.
11. Bringing the school into serious disrepute.
12. Being under the influence of alcohol, illegal substances or any other substance likely to impair judgment, in the workplace or whilst on school business.
13. A serious breach of health and safety rules.
14. Gross negligence in the performance of duties or responsibilities.
15. A breach of trust and confidence.
16. Any other misconduct of a similar gravity

[1]Summary Dismissal – is dismissal for gross misconduct, which takes immediate effect, and there is no notice period or pay in lieu of notice given because of the dismissal.

Misconduct

Misconduct is defined as behaviour that, in the view of the school would not normally destroy the relationship of trust between employer and employee; however, the behaviour is serious enough to warrant action short of dismissal. The following examples are not exhaustive but indicative of behaviour that may amount to misconduct:

Examples of misconduct:

1. Failing to comply with the school's Code of Conduct.
2. Negligence in the performance of duties and responsibilities.
3. Insubordination e.g., when an employee refuses to recognise or follow the reasonable request of a school Leader.
4. Excessive absenteeism and unauthorised absence from the workplace.
5. Failure to comply with the school's Policies and Procedures.
6. Negligence in maintaining the security of school property, including information.
7. Being an accessory to a disciplinary offence e.g., when an employee connives at or is knowingly an accessory to a disciplinary offence.
8. Falsehood e.g., when an employee knowingly or through neglect makes any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for the purposes of the school.
9. Any act of misconduct of a similar gravity.

Further examples of expected conduct, both within and outside of work, can be seen outlined within the Code of Conduct.

Disciplinary Procedure

When an allegation is made against an employee the employee's line manager will promptly and without delay make a preliminary gathering of facts. If following this preliminary exercise, the alleged misconduct is considered only a minor misconduct, then it must be dealt with under the informal stage of the procedure. Any alleged misconduct considered a potential breach of the disciplinary policy must be dealt with under the formal stage of the procedure.

Informal Procedure

Cases of minor misconduct should be dealt with by the employee's line manager or immediate supervisor, informally and without delay. The manager should meet with the employee in private and encourage them to conduct themselves in accordance with the required standards.

The purpose of these discussions is to ensure that the employee understands the nature of the concerns, expectations of improvements in conduct and where appropriate timescales and the support available.

Following a satisfactory outcome to the use of the informal procedure, the matter will be considered resolved and no note retained on the personnel file. However, should a concern in regard to the employee's conduct remain or further information becomes available which makes the matter sufficiently serious the formal procedure should be invoked.

For concerns relating to a safeguarding nature then a note will be retained on the personnel file. Only a summary of the concerns raised, action taken and outcome will be recorded. It must be clearly noted that no formal action has been taken and the employee must sign the note to indicate that they are aware that such a record is being made.

Formal Procedure

The formal procedure will be applied when an employee does not respond appropriately or adequately to informal action or the manager considers that the allegation is of a serious enough nature that it cannot be dealt with informally.

Suspension

In exceptional circumstances, a period of suspension, on full pay, may be helpful or necessary, during the investigation. Suspension is a neutral act and does not imply guilt. Suspension should only be imposed following the completion of a risk assessment (please refer to the suspension risk assessment). Careful consideration should be made as to whether it is appropriate to remove the employee from the workplace in order to facilitate an investigation, if there is not sufficient information then it is suggested a short fact-finding exercise takes place in order to determine if suspension is indeed appropriate.

The decision to suspend will be confirmed to the employee in writing and they will be kept informed of the outcome of the continual review process by the adjudicating officer. Any decision to suspend in relation to a safeguarding matter will be made with the advice of the LADO.

Whilst an employee is on suspension, they should not attempt to contact colleagues connected to the case or work colleagues with the exception of their Trade Union representative, work colleague (who is to accompany them to any subsequent meeting) or their line manager / investigating officer.

Other than not attending work and not undertaking the duties of their role, all the employees other contractual obligations remain in force during the period of suspension. Therefore, the employee is to make him/herself available to attend interviews and hearings at the request of management.

Only a manager with the correct level of authority (see table below) may suspend an employee after discussing this with the school HR Business Partner. Within schools this will normally be the Chair of Governors, however there may be circumstances where this will be the Headteacher, but this will need to be approved by the Chair of Governors. Likewise, within schools the Chair of Governors can lift a suspension, however there may be circumstances where this will be the Headteacher but again this will need to be approved by the Chair of Governors.

Where the outcome of any investigation results in the lifting of suspension, this must be confirmed in writing and implemented as soon as possible.

Guidelines for suspending an employee can be found in Management Guides – Suspending an employee.

Child Safeguarding

Where an allegation is received that may be covered by the remit of legislation dealing with the protection of children, consideration should be given to the suspension of any member of staff under investigation in accordance with Department for Education guidance in "**Safeguarding Children and Safer Recruitment in Education**". The LADO must be informed as soon as the allegation is received by the Headteacher.

Where there is a potential child protection issue, the Headteacher should consult with the Governing Body about the course of action that should be taken and discuss this with HR. The LADO should be informed of all allegations where an employee has:

- Behaved in a way that has harmed a child or may have harmed a child.
- Possibly committed a criminal offence against or related to a child.
- Behaved towards a child or children in a way that indicates they are unsuitable to work with children.

The LADO will consult police and social care colleagues as appropriate. They should also be informed of any allegations that are made directly to the police or to children's social care.

Investigation

Further guidelines detailing how to carry out an investigation can be found in Management Guides – Carrying out an Investigation.

Where a formal investigation is required, the employee's direct line manager will act as the investigating officer, or an investigator from the

school's pool of trained investigators will be used or an appropriate investigating officer will be nominated. The investigating officer should be more senior than the person being investigated. The school which the employee sits in is responsible for nominating an investigating officer after discussion with the school's HR Business Partner. For the purposes of schools, the investigating officer may on occasion be the Headteacher or member of the school SLT and in exceptional circumstances may refer to the Chair of Governors.

For schools if the Headteacher has acted as the investigating officer then they will not be permitted to act as adjudicating officer for that case. For further details on the roles within a disciplinary case, please refer to the managements guide – carrying out an investigation.

Where allegations against an employee have been made because of audit enquiries or investigations, the investigating officer must carry out the investigation in conjunction with the auditor.

Where allegations of a criminal nature are made against an employee, the disciplinary proceedings will proceed, as far as possible, even if the employee is also being prosecuted.

The investigation will take place to establish the facts relating to the allegations prior to any disciplinary action being considered. The purpose of the investigation is to:

- **Establish the nature of the allegations**
- **Allow the employee to respond to the allegations**
- **Gather evidence to enable a decision to be made on whether or not there is a disciplinary case to answer.**
- **Consider if the matter should proceed to a disciplinary hearing.**

The length of the investigation will depend on the nature and number of allegations being investigated. However, the investigation should be concluded without unreasonable delay (as a guide 1 month) allowing sufficient time to interview all relevant parties and witnesses and evaluate all available evidence.

It is acknowledged that complex investigations or those that are more logistically difficult for example where key witnesses may not be available may take longer to conclude than other investigations. As such the employee should be given a realistic timeframe as soon as possible and there should be continued communication if this changes. The overriding objective is that investigations should be concluded without unreasonable delay.

The investigating officer will consider all the relevant facts of the case and make a recommendation to the adjudicating officer as to whether there is a case to answer and if the matter should be heard at a disciplinary hearing. It is not the responsibility of the investigating officer to recommend what level of sanction or action is appropriate. The findings and recommendations will be presented to the adjudicating officer as part of the investigation report. Refer to management guides to see a template investigation report

Fair Blame Disciplinary Meeting

As an alternative to a full disciplinary hearing please refer to the fair blame disciplinary meeting guidance. A fair blame disciplinary meeting is only appropriate where an employee has taken full responsibility for their actions and accepted the allegations. This is not appropriate where matters remain in dispute. Where this is the case then it is advisable to move to a full hearing.

- Upon receipt of the investigating officer's report, the adjudicating officer must decide on what action, if any, should be taken. The two courses of action are:

- *There is no case to answer. In such circumstances, the employee concerned must be told immediately and all records of the investigation discarded. Unless relating to a safeguarding concern where a summary record will be retained on the employee's personnel file*

- *That there is a case to answer and that a disciplinary hearing is to be convened.*

- If an employee becomes sick during the investigation/disciplinary process then the Employee Health process will apply. An Occupational Health referral should be completed to support the employee and as part of that a question should be asked about employee fitness to participate in the disciplinary process/attend a hearing as appropriate.

- If the employee leaves before the procedure is completed the investigating officer must inform the employee that the disciplinary procedure may continue up until their last day of service, with the aim of concluding the case. In exceptional circumstances, it may be necessary for the case to be continued through to conclusion beyond the employees last day of service, especially where concerns are of a safeguarding nature for children. Should this be the case the ex-employee will be offered all the rights s/he would have been entitled to if still employed and the outcome of the investigation / hearing will be disclosed on any employment reference request received.

Disciplinary Hearing

Further guidelines detailing how to carry out a disciplinary hearing can be found in the management guides – disciplinary hearing.

The employee must be given at least 10 working days' notice in writing (unless a shorter period is mutually agreed) of the date and time of the disciplinary hearing. The letter, written by the adjudicating officer, will notify the employee of the allegations made against them and an indication as to whether the alleged conduct is considered as a gross misconduct case whereby a dismissal could be an outcome.

The employee has the right to be accompanied by a Trade Union representative or work colleague and they may call witnesses. Any witnesses being called by the employee must be confirmed to the adjudicating officer no later than 3 working days prior to the disciplinary hearing along with any papers they wish to submit. A full copy of the investigation report must be provided to the employee at least 10 working days prior to the disciplinary hearing, including confirmation of any witnesses being called by management.

The purpose of the hearing is to provide the opportunity for the employee to respond to the allegations made. The stages of the disciplinary hearing that must be followed are set out in the Management Guide – 'Holding a disciplinary hearing'. In all cases of gross misconduct or where the case may result in dismissal, a representative from Schools HR must be present.

Any cases relating to safeguarding may require an independent safeguarding expert from the school or Council to attend in order to advise the panel.

Where the employee accepts that they are blameworthy of the allegations or if the employee is found to be blameworthy after hearing all the evidence, the adjudicating officer / Chair is responsible for deciding what disciplinary action will be taken. This decision must take full account of the employee's disciplinary record together with any mitigating circumstances.

The types of action that may be taken at the disciplinary hearing and the time limits applied are set out in the attached document Disciplinary Action and Time limits guide.

The adjudicating officer / chair must confirm the decision of the disciplinary hearing to the employee in writing within 5 working days of the disciplinary hearing, unless previously mutually agreed. The letter must state that the employee has a right of appeal and that a record of the hearing will be provided. Where the employee is found not blameworthy all details of the alleged misconduct will be discarded, unless relating to a safeguarding concern where a summary record will be retained on the employee's personnel file.

If the employee is unable to attend the hearing, they will need to give notice and the reasons why they are unable to attend. In exceptional circumstances the hearing will be rearranged but must take place within 5 working days. Where an employee fails to attend the disciplinary hearing more than once and without good reason then the meeting may be held in the employee's absence. Any outcomes decided upon in the absence of the employee will be confirmed in writing.

Levels of Authority

The adjudicating officer, who will chair the disciplinary hearing will be identified, by the assistance of the school HR Business Partner, and will be a different/ senior person to the person carrying out the investigation. The adjudicating officer must have the authority to determine disciplinary action, for details on the levels of authority please refer to the below table.

Type of Action	Authorised Officer
Suspension	Chair of Governors / Headteacher
Dismissal with notice/ Summary Dismissal	SLT Member
Redeployment including Demotion for specified or unspecified period	SLT Member
Final Written Warning	SLT Member
Written Warning	SLT Member
Financial deduction and / or special arrangements to record starting and finishing times – for time keeping offences only – for a specified or unspecified time.	SLT Member
Management advisory note [1]	SLT Member
Appeal for sanction less than dismissal	SLT member /Chair of Governor.
Appeal for dismissal	Governors' Dismissal Appeal Committee [2]

[1] This is to be used when there is minor misconduct only. A management note will be issued, and this note will remain active for 6 months. It should be noted, however that as it is not a formal warning it should not be referred to in references or similar.

[2] The Governors' Dismissal Appeal Committee must comprise of three Governors.

In community schools, the Local Authority is ultimately the employer for these education establishments and any decision to dismiss an employee must be confirmed by the Local Authority before it is effective.

Appeal

The right to appeal against the outcome of this procedure will be confirmed to the employee in writing with the notification of any disciplinary action.

Any employee who wishes to appeal must do so in writing no later than 10 working days of the date of the written confirmation of the decision. This should include sufficient details for the reason for appeal so that a management response can be prepared and shared prior to the appeal with all parties.

Appeals against disciplinary action other than dismissal must be addressed to the Headteacher, except where they have previously been involved in which case it must be addressed to the Chair of Governors, within 10 working days of receipt of the outcome letter. The school will aim to hear the appeal within one month of receiving the appeal unless agreed otherwise. The appeals hearing will be chaired by a manager senior to the adjudicating officer / Governors and they will have the responsibility for determining whether to uphold the appeal. The appeal cannot be heard by anyone who has been previously directly involved in the disciplinary action.

Appeals against dismissal with notice or summary dismissal will be submitted to the Chair of Governors within 10 working days of receipt of the outcome letter and will be heard by the Governor Appeals Committee within one month or as soon as practicable (i.e., subject to the availability of Members)

The order of proceedings at the appeals hearing and staff appeals committee are detailed in Management Guides – 'Stages of the Appeal Hearing'.

The relevant Governor will write to the employee to confirm the date of the appeal 10 working days before the Governor Appeals Committee (Dismissals). If the appellant wishes to call any witnesses and / or submit documentation the Chair of Governors must be notified in writing and provided with the documentation at least 7 working days prior to the Governor Appeals Committee (Dismissals).

Any cases relating to safeguarding require an independent safeguarding expert from the school to attend in order to advise the panel.

The appeal is the final internal stage of the school's disciplinary procedure and the Members hearing the appeal can confirm, reject, or lessen the level of the disciplinary action. They are not authorised to impose a more severe disciplinary action than that already imposed. Where there are not enough Governors available, Governors from another school will make up the panel. There should be no fewer than the number that made the initial decision.

At both the appeals hearing and Governor Appeals Committee (Dismissals), there will only be consideration of the grounds of the appeal and the evidence in support or rebuttal of those grounds. The hearing or committee shall not normally reconsider the case in its entirety.

Where the appeal is upheld and the disciplinary action is overturned all reference to the action will be removed from the employee's personal file and confirmed to the employee in writing, unless the disciplinary action is relating to safeguarding matters then the record will remain on file indefinitely.

The Governor Appeals Committee (Dismissals) comprises three members of the school Governing Body but will be quorate with two members of the school Governing Body.

Ends….