



Lower Darwen Primary School

We are proud of our school.

Schools' Disciplinary Policy and Procedure

This policy is adopted from the Blackburn with Darwen's School Disciplinary Policy and procedure

1. Aim of this Policy and Procedure

This policy and procedure is designed to help and encourage all employees to achieve and maintain appropriate and acceptable standards of conduct and to ensure a fair and consistent approach in managing conduct issues in line with best practice and the ACAS Code of Practice.

This policy assumes that the Governing Bodies of Foundation, Voluntary Aided and Foundation Special Schools, have agreed in writing that the LA can attend meetings, interviews and hearings in an advisory role. In the absence of such an agreement the Secretary of State can make the determination. For Community, Voluntary Controlled, Community Special and Maintained Nursery Schools, the LA has an automatic right to attend in order to provide advice.

2.Scope

The procedure extends to all school based employees and is incorporated into the contract of employment.

3.Exclusions

These procedures do not apply to matters more appropriately dealt with under separate procedures. Such matters include:

- attendance and capability issues dealt with in accordance with the School's Attendance Management, Performance Management (Appraisal) and Competency policies and procedures
- cases of harassment and bullying when the School's Bullying and Harassment at Work policy applies in the first instance
- issues of conduct arising during the probationary period

Additionally, where there is a potential disciplinary case against a Trade Union representative, no action under this procedure, other than precautionary suspension when gross misconduct is alleged, will be taken until the full time official of the Trade Union has been informed of the case.

4.Principles

Wherever possible and appropriate, first occurrences of minor breaches of discipline / standards should be dealt with informally, either through the normal course of management counselling and supervision or the informal procedure set out in Paragraph 5.1.

HR advice should be sought where possible before making a decision to suspend or any disciplinary action is taken against an employee, as the involvement of HR helps to ensure that decisions taken are consistent.

No disciplinary action will be taken against an employee until the case has been sufficiently investigated and a disciplinary hearing has taken place. The employee will be advised in writing of the nature of the complaint against them and the arrangements for the hearing including their rights to representation. Where a potential outcome of the disciplinary process

is dismissal, the employee must be clearly advised that if the allegations are proven that this may result in their dismissal.

The employee will be given the opportunity to set out their case, ask relevant questions and respond to allegations before any decision is made.

Under this policy and procedure, no employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty can be dismissal without notice.

An employee will have the right to appeal against any disciplinary penalty imposed.

The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action; i.e. the disciplinary sanctions are not necessarily sequential.

Being suspended or interviewed as part of the investigatory process is not to be regarded as prejudging the matter. Nor is it to be considered a disciplinary measure.

The employee will have the right to be accompanied by a trade union representative or work colleague at all stages of the procedure. In those cases serious enough to warrant immediate precautionary action at step 1, all reasonable efforts should be made to arrange trade union representation or a companion, however, if no one is available the suspension meeting should take place with a witness present.

HR advisors may be present at any of the formal stages of the procedure.

Please refer to the School's Delegated Responsibility Decision Sheet for information on who may suspend, carry out investigations, present a management case or hear a particular case or appeal. Please note that no one who has been involved in the investigation leading to a disciplinary or appeal hearing will act in any way as designated officer/panel at a hearing.

The intimidation or victimisation of persons prior to or following any complaint/allegation will not be tolerated and is a disciplinary offence in itself.

All matters will be dealt with confidentially and within the requirements of the Data Protection Act 1998. This is a responsibility of all parties involved.

Any complaints/allegations found to be malicious or vexatious will be treated as a disciplinary matter.

The timescales within the procedures will be adhered to wherever possible and there is an obligation on all parties to allow for matters to be dealt with without delay. However, where there are good reasons, e.g. the need for further investigation or the lack of availability of witnesses or companions, each party may request that the other agrees to an extension of the permitted timescale.

The School will monitor disciplinary data at least annually to ensure the policy is operating fairly, consistently and effectively.

5.Procedure

5.1 Informal Procedure

Unless the matter causing concern is sufficiently serious to justify formal action, the management representative should, in the first instance, deal with the issue through informal discussions. This is with a view to agreeing on the actions required to resolve the situation without recourse to the formal procedure. The informal discussions may take place on more than one occasion and are not regarded as forming part of the formal disciplinary procedure. A file note should be made of the discussions including details of any agreed actions and the management representative should put in writing to the employee details of the corrective action, the timescale over which improvements are expected and the possible consequences of the employee failing to meet the corrective action.

5.1.1 Pre-Agreement

It is an acceptable part of the disciplinary procedure for an agreement to be reached and take place prior to the hearing between both parties. This can only apply where the relevant facts are not in dispute and both sides are in agreement about the outcome of the procedure.

In these circumstances, the statutory three step disciplinary procedure – letter, meeting, appeal – must still be followed, but the matter can be progressed more quickly. Where agreement is not reached, normal procedure is resumed.

This approach will **NOT** apply to allegations of gross misconduct or where dismissal is a possible outcome.

5.1 Formal Procedure

5.1.1 Step 1 – Commencement of the Formal Procedure

The employee will be informed of the following:

- the allegations made against them and the basis of the allegations
- that the formal disciplinary procedure is to be used and that step 2 of the procedure is to commence
- any suspension from work and the conditions of suspension
- their right to be accompanied / represented at all stages of the procedure

This will be confirmed in writing and the employee will also be supplied with a copy of the Disciplinary Policy and Procedure.

5.1.2 Suspension

An employee would normally be suspended from duty after some preliminary investigation has taken place i.e. specific facts gathered and if the allegations are potentially gross misconduct, or if the employee's continued presence in the workplace could hinder the conduct of the investigation. The employee should not be left to work alone whilst the preliminary investigation takes place. The employee is entitled to be accompanied during the suspension meeting, where practicable.

In cases concerned with allegations of safeguarding children, any decisions not to suspend an employee following an allegation of abuse must be fully documented and endorsed separately by an independent senior officer from within the school. This should be done in consultation with the relevant Safeguarding Manager. This information must then also be made available to the Safeguarding Manager, the registering authority or the authorities and the police where relevant.

The management representative will review the continued need for the employee's suspension at appropriate intervals, dependant upon the circumstances of the case.

Cases involving suspension should always be expedited as quickly as possible.

5.1.3 Step 2 – Investigation

The line manager or a nominated manager will promptly investigate the alleged disciplinary matter.

Where an employee is called to attend an investigatory interview, the employee will be informed at the outset of the interview that this is an investigatory interview and not a disciplinary hearing.

The employee will be given 5 working days' notice of the interview other than where a shorter period has been mutually agreed. The notice will be in writing and will inform the employee of:

- the purpose of the interview and that it will be held under the School's disciplinary procedure

- the nature of the alleged misconduct
- their right to be accompanied / represented
- the arrangements for the interview

On conclusion of the investigation, the management representative will determine if there is a disciplinary case to answer or if there is no case to answer. Where there is no disciplinary case to answer, the employee will be notified of this decision in writing and the disciplinary procedure will end here. Where there is a disciplinary case to answer, the employee will be notified of this decision in writing and a disciplinary hearing will take place.

5.1.4 Step 3 – Disciplinary Hearing

The employee will be given 10 working days' advance notice of the hearing. The notice will be in writing and will inform the employee of:

- the purpose of the hearing and that it will be held under the School's disciplinary procedure
- the nature of the alleged misconduct
- their rights to be accompanied / represented and to call witnesses
- the arrangements for the hearing
- the witnesses to be called
- the date for the exchange of documents, where applicable
- the potential that, if proven, the outcome could result in their dismissal

Postponement of Hearing

Where the employee cannot attend on the date proposed and provides a good reason for failing to attend, the hearing will be adjourned to another day by mutual agreement and normally within 5 working days of the original date of the hearing. The new arrangements will be confirmed in writing to the employee.

Hearings in Absentia

Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, the rearranged hearing will usually take place in the employee's absence. The employee's companion (work colleague or Trade Union representative) may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

Exchange of Documents and Information

The employee will be provided with all relevant written information that management intends to rely upon during the hearing (including witness statements) not less than 10 working days in advance of the hearing, unless otherwise agreed by both parties.

Similarly, the employee will provide management with all relevant written information that he / she intends to rely upon during the hearing and the names of witnesses to be called not less than 5 working days in advance of the hearing unless agreed otherwise.

Late Submission of Documents

Only in exceptional circumstances and at the discretion of the designated officer/panel hearing the case will new documents be accepted at the hearing and relevant time allowed to either party to consider such information where required. Such documents will only be accepted where they are deemed to have direct relevance to the case and could not have been submitted earlier.

Outcome

At the conclusion of the disciplinary hearing, the designated officer/panel hearing the case will determine one of the following:

- that the employee has given an adequate explanation and / or there is no real evidence to support the allegations. In this case no further action is necessary.
- that the evidence supports the allegations and / or the employee has not given an adequate explanation. In this case disciplinary action against the employee may be necessary.

The designated officer/panel will inform the employee of their decision and of any disciplinary action to be taken, giving an explanation for any sanction, as soon as possible after the conclusion of the hearing. All decisions will be confirmed in writing, together with notification of the employee's right of appeal under this procedure (where applicable) and how to exercise it.

5.1.5 Disciplinary Actions

The following disciplinary actions may be taken.

Stage 1 – First Level Written Warning

Where a minor offence or offences have been committed, a first written warning will normally be given. The warning will state that any further misconduct / failure to improve may lead to more severe disciplinary action.

A record of the warning will be kept but disregarded for disciplinary purposes after 6 months, subject to the employee's satisfactory conduct and the conditions set out in paragraph 6.

Stage 2 - Second Level Written Warning

If the offence is a serious one, or if a further offence or no improvement occurs within 6 months of the first level written warning, a second written warning will normally be given. The warning will state that any further misconduct / failure to improve may lead to more severe disciplinary action.

A record of the warning will be kept but disregarded for disciplinary purposes after 12 months, subject to the employee's satisfactory conduct and the conditions set out in paragraph 6.

Stage 3 - Final Written Warning

If the offence is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal, or a further offence or no improvement occurs within 12 months of the second written warning, a final written warning will normally be given. The warning will state that dismissal or an alternative to dismissal may result where there is any further misconduct or a failure to improve within 18 months of the final written warning being issued.

A record of the warning will be kept but disregarded for disciplinary purposes after 18 months, subject to the employee's satisfactory conduct and the conditions set out in paragraph 6.

Stage 4 - Dismissal and Alternatives to Dismissal

If it is the case that previously a Final Written Warning has been issued and a further offence or no improvement has occurred within the period the Final Written Warning is 'live', dismissal will normally result. Dismissal in these circumstances will be with notice or with payment in lieu of notice. The decision to dismiss will be confirmed in writing as soon as practically possible and within 5 working days of the decision.

Alternatives short of dismissal may be considered and they are:

- disciplinary transfer accompanied by an extension to the period of the Final Written Warning
- demotion accompanied by an extension to the period of the Final Written Warning

These alternatives will be subject to the availability of suitable posts.

Gross Misconduct

Examples of gross misconduct may include:

- theft, fraud, deliberate falsification of records or dishonesty
- falsification of qualifications/references
- acts of violence, obscene or abusive behaviour or enticing others to do so (including fighting or assault on another person or animal)
- acts of bullying, harassment or discrimination
- deliberate or unauthorised use of or damage to Council property or equipment
- serious negligence which may cause unacceptable loss, damage or injury and wilful negligence
- unprofessional conduct and / or failure to disclose the same
- serious non-compliance with Council, financial or other department regulations, including rules on email and internet usage
- serious breach of health and safety rules
- serious acts of insubordination
- unauthorised entry to computer or other records and / or disclosure of confidential information / matters to public sources
- serious incapability at work brought on by alcohol or illegal / non-prescribed drugs. (Also refer to the Council's procedure on "Alcohol and Other Substance Abuse".)
- possession of or sale of illegal substances
- conviction of a criminal offence (committed inside or outside of work) that makes the employee unsuitable or unable to carry out their duties
- serious breach of trust and confidence

Employees against which an allegation of gross misconduct has been made will normally be suspended from work on full contractual pay while the alleged offence is investigated. If, on completion of the investigation and the full disciplinary procedure, the School is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

6. Warnings Involving Safeguarding Issues

Where the misconduct involves a safeguarding issue, warnings will be retained on a separate file and, in the event of further misconduct at any time during the employee's employment in a job role where the employee is required to work with children or vulnerable adults, these warnings will be taken into account in disciplinary proceedings.

7. Appeals

If the employee wishes to appeal against a disciplinary decision they must do so in writing within 10 working days of receiving written notification of the decision. All notices of appeal must be submitted to the Clerk to the Governing Body and must state the ground(s) on which the disciplinary decision should be reviewed.

The Clerk to the Governing Body will write to the employee, inviting the employee to attend an appeal hearing with a Governor Panel. The hearing will be held at a convenient date that is within 15 working days of receipt of the written statement of appeal.

The decision of the Governor Panel hearing the appeal is final and will be confirmed in writing no later than five working days after the hearing.

8. Monitoring and Review

Human Resources will work with the LA, Head teachers and governing bodies to monitor the application of this policy. They may review any aspect of the procedure in light of changing circumstances at any time, in consultation with the trade unions.

Approved and adopted by Lower Darwen Primary School Governing Body
Reviewed: June 2024
Next review date: June 2025