The Silver Birch Academy

Staff Discipline and Conduct Policy

Adopted by: Whittingham LGB

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Introduction

School Governing Bodies with fully delegated budgets are required to establish disciplinary procedures that should be made known to all employees. To assist in this, the following model procedure is recommended for consideration and adoption by Governing Bodies to promote a systematic, consistent and positive approach to disciplinary matters. The procedure relates only to employees for whom the Governing Body has responsibility in respect of discipline and has been agreed with the recognised trade unions.

The model procedure takes account of previous good local practice, schools Articles of Governance, National Conditions of Service, ACAS advice, common law and relevant legislation, including the Education Reform Act 1988, the Employment Rights Act 1996 and the Education (School Government) Regulations.

The procedures are intended to ensure, amongst other things, that no employee is subject to disciplinary action without:

a) management having attempted to resolve matters informally where appropriate;
b) having first been given details of the alleged complaint(s);
c) being given the opportunity to respond to that complaint and state his/her case before decisions are reached;
d) being afforded the opportunity of being accompanied by a trade union representative or another person (but not a legal representative) to speak on his/her behalf;
e) Being afforded the right of appeal against proposed disciplinary action.

Scope of Procedures

The procedures are to be used in all cases of wilful misconduct or negligence where disciplinary action is to be considered.

In the following cases the use of this procedure would be inappropriate:

a) the end of a predetermined, limited or fixed term contract for which an employee has been specifically engaged;
b) redundancy;
c) failure to complete satisfactorily a period of probation;
d) capability;
e) ill-health;
f) Where continuation of the employment would contravene a duty or restriction imposed by, or under any enactment in force for the time being (e.g. expiry of a work permit).
**Child Protection**

For allegations of physical/sexual abuse by a school employee relating to a pupil, this procedure should be used in conjunction with the procedure for dealing with teachers or other school employees facing an allegation of physical/sexual abuse.

The LEA Child Protection Officer must be informed of any possible alleged cases of physical/sexual abuse.

**Expectations in Respect of Employees**

It is the responsibility of management to maintain discipline. All employees are expected to observe the normally understood and accepted rules affecting work procedures, safety standards, performance, conduct and related matters, whether written or not, and which may be issued from time to time.

If an employee's misconduct is suspected to result from mental or physical illness, medical evidence may be produced and taken into account and appropriate advice taken, e.g. from Occupational Health Service or Human Resources.

In cases of possible alcohol or drug misuse, reference should be made to the guidelines issued by the Council for dealing with employees suffering from alcohol and drug misuse before any disciplinary action is instigated.

**Employee Representation**

An employee who is subject to disciplinary action must be informed that, at any stage during the disciplinary procedure, he/she may be accompanied by a trade union representative or another person (but not a paid legal representative).

Discussions with an employee should only take place on his/her own at the stage when investigations are being conducted. At this stage, employees should be advised of their right either to respond or to decline to respond. If, during the course of any interview with an unrepresented employee, it becomes evident that disciplinary action may be considered, he/she should be advised to seek advice from his/her trade union or another representative (see 5.1) and a further interview should be arranged in accordance with paragraph 8.1 - 8.5 of this document.

When an employee nominates a representative, from the date of notification copies of all relevant correspondence should be sent simultaneously to that person.

**General Provisions**

The following general provisions should apply:

For action beyond a formal oral warning:
a) The Human Resource Adviser to the School or his/her representative should be given the opportunity to be present at the disciplinary proceedings in an advisory capacity;
b) Head teachers are strongly advised to contact the School Human Resource Adviser where the possibility of action beyond an oral warning arises.

In the event of a recognised trade union or safety representative being the subject of formal disciplinary action:

a) the School Human Resource Adviser or his/her representative should be advised of the position, so that prior discussion can take place with an appropriate senior official of the union involved;
b) From the outset, it should be established that the action being taken is not an attack on the functions of a trade union.

This disciplinary procedure is not an all embracing document:

a) where allegations against teachers or other school employees concerning physical/sexual abuse of children exist, they will be dealt with initially under Child Protection Procedures;
b) Other situations may occur where an allegation by one employee against another purporting misconduct may more readily be considered under the Model Grievance Procedure. However, evidence presented may, on occasions, lead to subsequent disciplinary proceedings.

Informal Stage

Many potential disciplinary matters will be resolved outside the scope of these procedures through informal guidance, advice and counselling.

Employees should be advised of their right of union representation at this informal stage.

In these circumstances an employee will be given every opportunity to seek what help may be needed. If the discussions fail to resolve the problem, it will be made clear to the employee that the next step could be recourse to the formal procedure.

Investigation

Where there is a possibility of the disciplinary procedure being applied an investigation should be undertaken by a deputy head teacher or assistant head teacher.

Alleged instances of ill-discipline involving misconduct, shall be reported in the first instance to the appropriate supervising officer (who must involve the Director of Finance or appropriate representative immediately where a financial irregularity is suspected). The supervising officer (i.e. the head teacher, deputy head teacher or assistant head teacher) together with any other officers whom he/she may feel may be able to assist, shall as soon as possible and without unreasonable delay, investigate the facts of the matter, including the employee’s version of events. The purpose of the investigation is to accumulate sufficient information to determine whether or not the matter needs to be pursued more formally, i.e. to establish whether or not there is a disciplinary case to answer.
The employee has the right to be accompanied by a representative at the investigation stage but absence of a chosen representative shall not unreasonably impede investigations proceeding. The decision to proceed with any investigation without a representative’s attendance will rest with the investigation officer, who should consult with the School Human Resources Adviser as appropriate.

The investigating officer, having investigated all the facts (and in liaison with the HR Adviser, if appropriate), on the basis of the findings, will decide whether or not there is a case to answer and whether a formal disciplinary hearing should be convened. The recommendations should include whether or not the case is considered misconduct or gross misconduct.

If it is decided that no disciplinary action is appropriate, the employee should be notified in writing.

**Criminal Charges**

When an allegation of a criminal nature is made against an employee, the matter should normally be referred immediately to the Police for investigation.

If the alleged offence concerns finance or other assets of the School or Council, referral should be in consultation with the Director of Finance.

The Police should be given every assistance with their enquiries.

**Serious and Gross Misconduct**

In serious cases there may be need to issue either a final warning (see par. 14.3) or to formulate proposals for dismissal without recourse to the preliminary stages of the procedure.

In cases of alleged gross misconduct, it may be necessary for an employee to be suspended while a thorough investigation is conducted (par. 11.1-11.9 refer). The head teacher will need to decide, bearing in mind the nature of the allegation, whether it will be in the interests of the employee and of the school that he/she be suspended.

Where the sub-committee finds that gross misconduct has been proven, the employee may be summarily dismissed.

A statement concerning gross misconduct is attached as Appendix 2.

**Suspension**

Suspension should be considered where there are reasonable grounds to believe that:

- **a)** an alleged breach of the rules amounts to gross misconduct; OR

- **b)** The employee's presence in the workplace may hinder an investigation.

The head teacher may suspend staff. However, suspension may only be ended by liaising with
an appropriate Governor. Strictly Education advise that the head teacher should suspend in consultation with the School Human Resource Adviser and the Chair of Governors.

The suspension of a head teacher should be undertaken by the Chair of the Trustee Board in consultation with the School Human Resource Adviser or his/her representative.

Suspension is a neutral act; it is not a form of disciplinary action and will be on full pay and/or allowances, where appropriate, but not non-contractual overtime. Suspension should be for as brief a period as possible and it will normally take place pending investigation and disciplinary action where appropriate.

The employee should be offered the opportunity to be represented at all stages. However, suspension should not be delayed because of the unavailability of a particular representative.

Within four calendar days, the employee shall be sent, by recorded delivery or by hand, a formal letter of suspension from the head teacher, which shall include:

a) the reason for the suspension - confirming that it is a neutral act, not a disciplinary sanction;
b) the date and time from which the suspension took effect;
c) the duration of the suspension;
d) the rules of suspension, e.g. the employee should not return to the place of work without prior permission from the head teacher (but such action must not prejudice the preparation of the employee's case);
e) Notification that a mentor will be appointed as a contact for the employee at the school.

A suspension should be reviewed after 20 (TWENTY) days if it has not already been reconsidered and regularly thereafter if it is decided to continue with the suspension. If during the course of the investigation it appears that suspension is no longer appropriate, it should be rescinded immediately.

During an investigation it may be necessary to suspend an employee not previously suspended, because of evidence becoming available to believe that the reasons outlined above apply.

Other staff should be told briefly that the member of staff has been suspended pending investigation.

**Governing Body Sub-Committees**

It is necessary for Governing Bodies to establish sub-committees to consider:

a) disciplinary warnings for head teachers;
b) any cases that may lead to dismissal;
c) Appeals against warnings and dismissal.

Arrangements concerning the delegation and scope of Governing Body disciplinary powers are set out in Appendix 1.

Where the possibility of the dismissal of the head teacher arises, arrangements for the hearing should be determined by the Chair of the Governing Body, on behalf of the Governing Body, in consultation with the The School Human Resource Adviser.
**Hearings**

The following outlines the procedure that should be used in case of formal disciplinary hearings. This will apply where either the head teacher is the Hearing Officer or for a sub-committee of Governors:

**a)** Prior to the hearing, the Investigation Officer should:
   - i. prepare a written report on the facts of the case and previous disciplinary action, which is relevant and not out of time;
   - ii. obtain relevant written evidence which may include his/her own report, written statements from complainants, reports of pupil interviews and such other written statements as may be required for compilation of case papers.

**b)** At least 10 (TEN) working days before the date of the hearing, the employee and his/her representative (if known) shall be:
   - i. notified in writing of the date, time and place of the hearing and receive a copy of the disciplinary procedure;
   - ii. notified in writing of the purpose of the hearing and of his/her right to be represented by a trade union representative or another person, but not a legal representative. The employee is entitled to offer an alternative date, within 5 (FIVE) working days of the original date, if his/her representative is not available at the proposed time;
   - iii. notified in writing of his/her right to call witnesses and to submit written statements for circulation to the Hearing Officer or the Disciplinary Sub-Committee prior to the date of the hearing;
   - iv. supplied with copies of all written evidence circulated to the Hearing Officer or members of the sub-committee;

**c)** 10 (Five) working days before the date of the hearing, the employee shall:
   - i. advise the Investigation Officer whether he/she intends to be present at the hearing and be accompanied, and, if so, by whom;
   - ii. advise the Investigating Officer how many witnesses he/she is intending to call;
   - iii. supply the Investigating Officer with copies of any written statements or documents to be distributed to the Hearing Officer or sub-committee members prior to the date of the hearing;

The Hearing Officer or Governors Panel should, after following the procedure outlined below, decide:

**a)** to take no further disciplinary action; **OR**
**b)** to reprimand the employee and to determine upon a form of disciplinary action, other than dismissal. This to be subject to appeal rights: **OR**
**c)** In the case of a Disciplinary sub-committee of Governors - ask the Authority to terminate the appointment of the employee concerned; or in the case of voluntary aided schools - to take such action themselves; This is to be subject to appeal rights.

**Procedure for Appeal:**

Appeals against decisions by a headteacher of a sub-committee of Governors, should specify the grounds for appeal and be submitted in writing within 10 (TEN) working days from the date of the written decision, which should set out details of these appeal rights. Unless both parties agree to a variation, the Appeal Hearing shall be held within 20 (TWENTY) working days of receipt of the notice of appeal.
A headteacher or Governing Body has no power to transfer an employee to a post in another school or to an unattached post.

The conduct of all hearings should be in accordance with a defined procedure, a model of which is set out in Appendix 3.

**Disciplinary Warnings/Sanctions**

**Formal Oral Warning:**

a) If it is established that the employee has breached disciplinary expectations, a formal oral warning will normally be given by the headteacher.

b) The decision should be confirmed in writing and the employee should be advised that any recurrence of misconduct may lead to further disciplinary action.

c) Copies of the formal oral warning should be sent to the Chair of the Governing Body and the Head of Human Resources. A formal oral warning will remain on file for a period of six months.

**Formal Written Warning:**

a) If there are further allegations of misconduct, or if the alleged misconduct is considered sufficiently serious and if the offence is established, the employee should be formally warned in writing and informed that the recurrence of misconduct may lead to further disciplinary action. A formal Written Warning will remain on file for a period of between twelve months and twenty four months.

b) Copies of the formal written warning should be sent to the Chair of the Governing Body and the Head of Human Resources.

c) In some situations a second formal written warning may be issued, if the misconduct is of a radically different nature from a previous offence.

**Final Written Warning:**

a) Any further case of alleged misconduct or a first occurrence of alleged misconduct that is considered sufficiently serious, may warrant consideration of a final warning. A final written warning will remain on file for a period of between twelve months and twenty four months.

b) If the offence is established, the employee should be given a final written warning, a copy of which should be forwarded to the Chair of the Governing Body and the School Human Resource Adviser. The employee should be advised

That a recurrence of misconduct may lead to his/her case being referred to a disciplinary sub-committee of the school's Governing Body, where the question of his/her continued employment will be considered.

All warnings should state the nature of the offence committed, the reason for the disciplinary action, and should indicate where an improvement in conduct is expected. The right of appeal should be described.
Disciplinary Warnings to a Head Teacher

The issue of formal disciplinary warnings to a headteacher will be the function of a sub-committee of the Governing Body. The decision of the sub-committee should be notified to the headteacher in writing. The Local Authority Human Resource Adviser and School Human Resource Adviser should be provided with a copy of the decision. Any appeal against such a warning should be consistent with the principles of paragraph 17 below.

Dismissal or Other Disciplinary Sanctions

Other disciplinary sanctions including dismissals are set out in Appendix 1.

Appeals

An appeal against any formal warning, including a final warning issued by the headteacher, will be to an Appeal Sub-Committee approved by the Governing Body and which has delegated authority in accordance with Appendix 1, paragraph 2. Any appeal against a formal warning should be lodged, in writing, within 10 working days, stating the grounds for the appeal. The decision of the sub-committee shall be final and will be notified to the employee in writing. A copy will be sent to the School Human Resource Adviser.

The purpose of the Appeal is to consider the evidence presented by the appellant together with the management response and to decide whether in light of these the decision is fair.

Any warning on file is time limited in accordance with paragraphs 14.1 - 14.3.

Report to Secretary of State

Where a teacher is dismissed on grounds of misconduct, or dismissal would have been considered but for resignation, there is a requirement that the facts of the case be reported to the Secretary of State for Education and Employment. (Part Three Section 11 of the Education (Teachers) Regulations 1989.)

Employment Tribunal

The operation of these procedures is without prejudice to the right of an employee to make a claim to an employment tribunal, at which the Governing Body may be named as a respondent.

Governors are reminded that the Borough remains the employer of staff (except in aided schools or an Academy) and has, therefore, statutory responsibilities in managing employment law matters related to conditions of service and the contractual rights of employees. In order to determine whether or not governors have acted fairly and reasonably (especially where dismissals and subsequent claims of unfair dismissal and discrimination are concerned), the appropriate officers
will need to be kept informed of the progress of proceedings and invited to attend any hearings where dismissal is a potential outcome. Similarly, where governors choose to defend or settle claims of public or employer liability the Authority’s officers will need to be satisfied that any payment in damages is reasonable.
Appendix 1

Governing Body Arrangements Under Delegation and Scope of Disciplinary Powers

In the pursuance of disciplinary hearings where the possibility of dismissal arises, and for the hearing of appeals against disciplinary action involving formal warning, dismissal and other disciplinary decisions, it is necessary for the Governing Body to have established a Disciplinary Sub-Committee and an Appeals Sub-Committee.

A Disciplinary Sub-Committee and an Appeals Sub-Committee must comprise not fewer than three members of the Governing Body. A Disciplinary Sub-Committee can delegate disciplinary powers to the headteacher.

Governing Bodies should ensure that no-one who takes part in an initial disciplinary decision also hears the appeal. Furthermore, the Governing Body remains responsible for any decisions taken under delegated authority. Formal minutes of a meeting must be taken and decisions of a sub-committee must be reported to the Governing Body at the next meeting following the exhaustion of the local disciplinary appeals procedure.

A Disciplinary Sub-Committee of the Governing Body has delegated authority to decide whether or not to take disciplinary action. Disciplinary action could include:

   a) a recorded warning;
   b) work/attendance monitoring for a specified period;
   c) final warning;
   d) any combination of these actions, (a) to (c);
   e) dismissal with appropriate notice.
   f) dismissal without notice for cases of gross misconduct.

Once such actions have been taken and any appeal rights have been exhausted (or not exercised), no additional sanctions shall be applied retrospectively in respect of the same offence.

Whilst headteachers may have delegated authority in connection with 4(a) to (d) above, only the Governing Body or a Sub-Committee of the Governors with delegated authority (unless delegated to the headteacher) has the power to dismiss employees who form part of the school’s staffing complement. In exceptional circumstances the Head Teacher may delegate functions for which he/she is responsible to his/her Deputy. Where a Head Teacher or Deputy Head Teacher has acted under such delegated authority, the employee shall have the same right of appeal as set out in paragraph 2 of this Appendix.

Where the possibility of dismissal arises, the attendance of the School Human Resource Adviser/ A representative from the LA Human Resource department or his/her representative) at a Governing Body Disciplinary Sub-Committee meeting is a statutory requirement.
Any action or decision of a Disciplinary Sub-Committee of the Governing Body must be reported to the next full meeting of the Governing Body, once the matter has been completed.

These arrangements are consistent with the Education (School Government) Regulations.
Appendix 2

Statement Concerning Gross Misconduct

Gross misconduct has been defined as conduct of such a nature that the Governing Body is justified in no longer tolerating the continued presence at the place of work of the employee concerned.

Examples of offences which in extreme cases have led to the dismissal of local authority employees, and which, if committed by an employee, could be regarded as gross misconduct, include:

- Gross negligence in failing to attend to carry out the agreed duties of the post.
- Deliberate and continued refusal to carry out a reasonably, lawful and safe instruction or the normal agreed defined duties of the post.
- Sexual offences.
- Sexual misconduct at work.
- Serious instances of racial harassment or victimisation.
- Fighting, threatening physical violence or physical assault.
- Stealing or other offences of dishonesty.
- Falsification of qualifications which are a stated requirement of employment or which result in financial gain.
- Falsification (knowingly) of information as to incapacity under the self-certification of sickness procedures.
- Malicious damage to property.
- Deliberate falsification of timesheets or expense claims for pecuniary advantage.
- Failure to disclose, if asked, criminal convictions not exempt under the terms of the Rehabilitation of Offenders Act 1975.
- Falsification of registration of pupils or students for pecuniary gain.
- Being unfit to perform duties associated with the post as a result of taking alcohol or drugs other than in accordance with medical advice.
- Wilful unauthorised disclosure of information classified as confidential by staff who, in due course of their duties, have access to such information which, by its release, could be harmful to the Authority, other staff or pupils.
- Undertaking private work when required to be at work.
- Breaches of safety regulations endangering other people, including deliberate damage to, neglect of, or misappropriation of safety equipment.

This list is neither exclusive nor exhaustive, and there may be other offences of a similar gravity which would constitute gross misconduct.
Appendix 3

Model Outline of Hearing Procedure

(Subject to agreement by the parties in each individual case)

Preliminaries

a) Introductions, identification of representative(s), of the clerk and of the representative(s) of
the Director School Support Services. Where witnesses are called they will only be present
for the period of questioning.

Case of the Head Teacher: (or, where appropriate, their representative)

a) Presentation of case, calling and questioning of witnesses, where appropriate, and identification
of documents.

b) Questions from employee (and representative, if present).

c) Questions from the Sub-Committee.

d) Questions from the Director of School Support Services or his/her representative (if appropriate).

e) Further questions from Head Teacher arising from answers given.

f) Further questions from employee and representative arising from answers given.

The Employee’s Case:

a) Presentation of case, calling and questioning of witnesses, where appropriate, and identification
of documents.

b) Questions from the Head Teacher.

c) Questions from the Sub-Committee.

d) Questions from the Director School Support Services or his/her representative (if appropriate).

e) Further questions from the employee or his/her representative arising from answers given.

f) Further questions from Head Teacher arising from answers already given by witness(es).

After suitable adjournment, (if requested by either party,) both parties shall:

a) sum up, if they wish, the Head Teacher to be followed by the employee (or his/her representative);

b) Withdraw during consideration of the case by the Sub-Committee.

Any witness or representative may be recalled to clear up points of uncertainty, but only in the
presence of a representative of both parties.

The representative of the Director of School Support Services may remain, if required by the
Governing Body, to give advice.

The Sub-Committee shall determine its decision which shall be conveyed in writing to both parties
as soon as practicable, normally within 10 working days.

The conduct of hearings is a matter for the Governing Body Sub-Committee. Variations to the
hearing procedure may also be made by agreement, where circumstances warrant this.