



# Disciplinary Policy

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## **1. Scope, Purpose and Principles**

- 1.1 This procedure applies to staff employed in The White Horse Federation.
- 1.2 The purpose of the Federation's disciplinary rules and procedures is to help all employees to achieve and maintain acceptable standards of conduct, attendance and job performance. Examples of conduct that would be considered unacceptable are given at the end of this procedure. The Federation recognises that disciplinary action should not be viewed solely as a means of imposing sanctions but rather as a means of encouraging improvement.
- 1.3 The procedure follows the principles of the ACAS Code of Practice:
- a written statement from the employer setting out the grounds for action and inviting the employee to a meeting;
  - a meeting where certain requirements must be observed;
  - the employer's decision and notification to the employee of the right of appeal; and
  - an appeal process.

## **2. Principles**

- 2.1 It is the duty of each employee to conduct him/herself appropriately and avoid acting negligently in carrying out his/her work.
- 2.2 No employee will be dismissed for a first breach of discipline except in a case of gross misconduct.
- 2.3 All cases of formal disciplinary action under these procedures will be fully investigated and the investigation findings recorded on the employee's personal file for the duration of any disciplinary sanction imposed.
- 2.4 In the event that, following investigation, a case is withdrawn or not upheld all reference to the alleged disciplinary offence will be expunged from the employee's personal file.
- 2.5 No disciplinary action beyond informal counselling will be taken against an accredited trade union official until the circumstances of the case have been discussed with a senior trade union representative.
- 2.6 At an early stage in the formal procedure employees will be advised in writing of the nature of the complaint against them; of the right to be accompanied by a trade union representative or a work-based colleague of the employee's choosing and will be given the opportunity to prepare for a formal meeting within this procedure and at such a meeting will be given the opportunity to state their case before any decision is made.
- 2.7 Employees will have the right to appeal against any disciplinary sanctions.
- 2.8 In operating this policy, line managers will apply the Federation's commitment to equality by treating all employees fairly and without discrimination on the grounds of colour, race, ethnic or national origins, sexual orientation, age, marital status, disability, trade union association or religious beliefs.
- 2.9 In adopting this procedure Governors will determine in advance how they will delegate authority for issuing warnings and making initial dismissal decisions in the case of disciplinary cases, having regard to the size of the Federation and the Principal's ability to remain independent. (In compliance with the Federation Staffing (England) Regulations 2009)

### **3. Child Protection Allegations**

Allegations about the safeguarding and protection of children must be handled in accordance with statutory guidance and the procedures of the Local Safeguarding Children Board (LSCB). The role of the Local Authority Designated Officer (LADO/SOFA) is crucial in handling all allegations of these allegations and the LADO/SOFA has a statutory duty to ensure that allegations about safeguarding are handled properly and expeditiously.

A strategy meeting, normally arranged within 2 working days of the allegation, will determine whether the allegation should be investigated by the police or by some other agency or by the Federation under its disciplinary procedure

If the matter is handed back to the Federation, whether at the first strategy meeting or at some later stage, the Federation must take account of the recommendations of the strategy meeting and must liaise with the LADO/SOFA and the HR Consultancy team regarding the next steps.

Further advice can be found in the Guidance for Headteachers Dealing with Child Protection Allegations against Federation based staff and the DfE guidance Dealing with Allegations of Abuse against Teachers and Other Staff, available at Federations online.

### **4. Informal counselling**

4.1 Informal counselling may be a more appropriate response to minor offences rather than formal disciplinary action. If appropriate, counselling will take the form of a discussion with the object of determining and agreeing the improvement required. A note of the conversation will be sent to the employee and a copy kept on file for 3 months. Where this informal approach fails to bring about the desired improvement, the formal procedure will then be followed.

### **5. Mediation**

An independent third party or an accredited mediator can sometimes help to resolve disciplinary issues. Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement. Mediation can be used as either an alternative to formal disciplinary proceedings or to rebuild relationships after a formal dispute has been resolved.

### **6. Investigations**

6.1 No action will be taken by the Federation before a proper investigation has been undertaken.

The investigation will normally be conducted by Principal, Vice Principal, Assistant Principal or HR Business Partner unless the HR Director and the Principal jointly decide this is inappropriate. As part of the investigation the employee will be given full details of their alleged misconduct and be given the opportunity to explain their actions. Witnesses will be interviewed and statements taken/provided.

If an allegation is made against the Principal, the HR Director will nominate a suitable person to undertake the investigation.

6.2 Witnesses must be told the following before any investigatory interview: The nature and purpose of the investigation;

That whilst there is no statutory right to representation at an investigatory interview, an employee may, if they wish, arrange to be accompanied by a trade union representative or work colleague during an investigatory interview but this must not cause undue delay to the conduct of the investigation;

That a factual statement will be taken and may be used at any subsequent disciplinary hearing; That a witness may be called to give evidence at any subsequent disciplinary hearing;

That the employee accused of misconduct may be given a copy of the statement at some point in the future and will be present at any hearing;

That if the statement is used in any report submitted to the disciplinary hearing that the original statements will also be made available.

### 6.3 Note on interviews with pupils who are possible witnesses in a disciplinary investigation:

If it is necessary to interview pupils as part of an investigation their parents/carers must be advised and consent must be obtained. A parent/carer may accompany a child during the interview but must not significantly contribute to the interview.

Wherever possible the employee's representative will have the opportunity to be present at an interview with a pupil to avoid the necessity of interviewing the pupil more than once, as long as this is not prejudicial to the disclosures likely to be made by the pupil. If it is established that the presence of another adult may intimidate or inhibit the pupil the employee's representative will be provided with a transcript of the interview.

Wherever possible a factual record of the interview will be agreed to avoid the pupil being called as a witness at any subsequent disciplinary hearing.

## 7. Suspension

### Introduction

The suspension of an employee is widely regarded as a neutral act, but it is not. It can have such a serious impact on an employee that it should not be carried out without very careful consideration of the circumstances and the possible alternatives. Although not a neutral act, suspension is not a disciplinary sanction.

Typically suspensions are considered in circumstances where an investigation needs to be carried out into allegations of relatively serious misconduct.

A suspension will normally be appropriate if:

- the allegations may be credible and if proved might amount to gross misconduct
- where there is cause to suspect a child or children at the school is at risk of harm
- the employee would have the opportunity to coerce witnesses or interfere with evidence
- the suspension would reduce the stress of any of the parties involved
- The Secretary of State has made an interim prohibition order pending the findings of an NCTL investigation

Alternatives to suspension include:

- allocation of alternative duties
- changing the place of work
- allowing the employee to work from home.

The alternatives will often be less stressful for the employee but it is only through a suspension that an employee can be required not to attend their place of work.

An employee can only be suspended by the Principal after agreement with the HR Director.

If appropriate the Federation may suspend the employee from work on full pay for a specified period during which time such an investigation will be undertaken.

## **The suspension meeting**

If suspension is being considered the employee should be invited to attend a meeting with the Principal, senior manager or HR Business Partner. In certain circumstances the employee may be asked to not attend the school pending the meeting. The meeting need not be held on school premises if to do so would be inappropriate. Where possible the employee may be accompanied by a trade union representative however this would depend on their availability and how quickly the meeting needs to be held.

The employee will be given brief details of the circumstances (e.g. that the Principal has received serious allegations about the conduct of the employee which will need to be investigated) and that the Principal is considering the need to suspend the employee. The employee should then be given the opportunity to respond and to present any reasons why a suspension is not appropriate and/or to suggest alternatives. The Principal will consider any such representations and then take a decision, which will be explained orally and subsequently confirmed in writing, normally within 24 hours.

The explanation will include:

- a brief statement of why the suspension is considered to be necessary;
- the stages that will follow the suspension
- that the employee will continue to receive their normal pay throughout the period of the suspension;
- how/when the suspension may be ended;
- an instruction that they are not to enter the workplace while suspended;
- any restrictions on contact with other employees, pupils, parents or governors;
- a requirement that they maintain strict confidentiality about the suspension and any associated process;
- the name of a person who they may contact to enquire of progress with any investigation/process;
- the name of a person who has been appointed to maintain pastoral contact with them about school developments;
- contact details for any local stress counselling service that may be available.

A suspension should be a temporary measure, and the decision must be kept under review.

## **Making an announcement to the school community following a suspension**

The long-term absence of most members of staff will not pass unnoticed by staff, pupils or parents. Any announcement should not provide any information that might prejudice the employee's ability to resume their duties. Generally an announcement explaining that a member of staff will be absent for personal reasons and setting out the arrangements to cover for the absence will generate fewest questions. The announcement should also name a senior member of staff who may be approached if there are any questions. Including the announcement in a routine publication (e.g. pupil newsletter or staff bulletin) will also minimise its prominence.

## **Lifting a suspension**

A suspension will be lifted if:

- the results of the investigation indicate that there is no case to answer or that a formal disciplinary hearing is not necessary;
- a disciplinary process has been completed which did not result in the dismissal of the employee. The suspension can be lifted only by the CEO.

The decision to lift a suspension should be confirmed in writing, including the date on which the employee is expected to return to work and details of any arrangements to facilitate that return, such as a 'return to work' meeting. In planning a return to work after a suspension, managers should consider any needs of the member of staff after a period of absence, especially where the allegations have proved to be false or malicious. The employee may require both emotional and professional support to help re-establish their professional confidence and credibility and to help them re-integrate into their role.

Suspension should be confirmed in writing explaining the reasons for the suspension. During the period of suspension, the employee will not be entitled to access to the Federation's premises, except with the prior consent of the Principal and subject to such conditions as the Federation may impose.

## 8. Disciplinary hearing

- 8.1 If, under these procedures, the Federation decides after an investigation has been concluded to hold a disciplinary hearing in relation to the matter complained of, the employee will, in accordance with the statutory discipline and dismissal procedure, be given details of the complaint against them at least five working days before any disciplinary hearing takes place.
- 8.2 The WHF will in adopting this procedure have determined the arrangements for dealing with disciplinary matters in line with the Federation Staffing Regulations 2009.

Investigations will usually be conducted by a senior member of staff; Principal, Vice Principal, Assistant Principal or HR Business Partner.

Where an investigation indicates that the allegation is likely to have occurred and if proven would constitute misconduct, the hearing will be conducted by a panel of at least 3 from Governors, CEO, COO, Functional Directors or WHF Principal (i.e. one not involved in the investigation).

- 8.3 Offences under the Federation's disciplinary procedures fall into two main categories:

- (a) Misconduct – Misconduct is defined as wrongful, improper or unacceptable conduct
- (b) Gross misconduct – Gross misconduct is generally defined as misconduct serious enough to destroy the employment contract between the employer and the employee and to make any further working relationship and trust impossible. A fundamental breakdown of trust and confidence has occurred.

Examples of what constitutes misconduct and gross misconduct are given in appendix 1.

- 8.4 In accordance with the statutory discipline and dismissal procedure, disciplinary hearings will be convened in writing giving at least five working days notice, giving details of the complaint against the employee. Documents to be referred to during the hearing should be made available to all parties at least five working days in advance. These timescales may be varied with the agreement of all parties.

Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available in the absence of the employee.

- 8.5 At any disciplinary hearing the employee or their representative will, in accordance with the statutory discipline and dismissal procedure, be given an opportunity to state their case.
- 8.6 Following the disciplinary hearing a decision will be taken as to whether the complaint against the employee is upheld. In accordance with the statutory discipline and dismissal procedure, this decision will be confirmed in writing.
- 8.7 The following sanctions may be applied as a result of a disciplinary hearing concluding that the complaint against the employee has been upheld:

- (a) Stage I - Oral warning

If conduct or performance is unsatisfactory, the employee will be given a formal oral warning which will be recorded and will remain on the employee's file for a period of 3 months but, subject to satisfactory conduct will not be automatically built upon for future incidents following the expiry of that period.

- (b) Stage II - First written warning

If the offence is of a more serious nature or if, following an oral warning, the employee's conduct is still unsatisfactory, a first written warning will be given to the employee, which will state the reason for the warning and will require an improvement in the employee's conduct, failing which further disciplinary action will be taken. The written warning will remain on the employee's file for a period of 12 months but, subject to satisfactory conduct and performance, will not be referred to in any subsequent disciplinary case following the expiry of that period.

- (c) Stage III - Final written warning

If the offence is considered serious enough to warrant consideration of dismissal if there is a repetition but does not amount to gross misconduct, or if following a first written warning the employee's conduct is still unsatisfactory, a final written warning will be given which will state the reason for the warning and will require an improvement in the employee's conduct, failing which further disciplinary action will result which could ultimately lead to dismissal. This warning will normally remain on the employee's file for a period of 12 months but may, depending upon the nature of the offence, remain on the employee's file for up to 3 years. Subject to subsequent satisfactory conduct, a final written warning will not be referred to in any subsequent disciplinary case following the expiry of that period.

(d) Stage IV - Dismissal

If, following a final written warning there is no satisfactory improvement in the employee's conduct within the specified time period, the employee may be dismissed. At this stage the Local Education Authority will be informed of the case and given an opportunity to advise at the hearing.

The Federation reserves the right to offer to make a payment in lieu of notice on the termination of the employee's contract, other than in cases of gross misconduct.

These warnings are normally issued in sequence, however in cases of serious or gross misconduct or where there is a pattern of persistent misconduct, the sequence of warnings outlined above may not be followed. The procedure may be instigated at any stage felt appropriate by the Federation.

Warnings issued under this procedure will remain on the employee's file for the life of the warning. If there is no further instance of misconduct the warning will be expunged from the file when it expires. No reference will be made to expunged warnings in subsequent disciplinary proceedings.

Note: In addition to the disciplinary warnings outlined above, in cases of serious or gross misconduct further disciplinary measures may be invoked. These alternative measures include: demotion to a lower grade, or reasonable deductions from salary to cover repayment for loss or damage to Federation property.

If it is established, after investigation and a disciplinary hearing at which the employee's explanation of the matter is heard, that the employee has committed an act of gross misconduct the employee will be summarily dismissed, i.e. without notice and/or any pay in lieu thereof. While the alleged gross misconduct is being investigated the employee may be suspended in accordance with the provision set out above. If the Federation takes the decision to dismiss the employee will be advised of the reason for the dismissal and the date upon which the employee's employment will be terminated. In cases of gross misconduct this will usually be the date that the letter is sent.

## **9. Appeals**

- 9.1 In accordance with the statutory discipline and dismissal procedure, if a disciplinary sanction is imposed the employee will be notified of the right to appeal. If the employee wishes to appeal against any disciplinary decision taken by the Federation, the employee may do so, in the first instance, by lodging an appeal with the Principal or Chair of Governors within ten working days of the disciplinary decision being received. The employee should state the reason for their appeal.
- 9.2 Appeal hearings will be convened in writing giving at least five working days notice. Documents to be referred to during the hearing should be made available to all parties at least five working days in advance. These timescales may be varied with the agreement of all parties.
- 9.3 The hearing will be conducted by a panel of at least 3 from Governors, CEO, COO, Functional Directors or WHF Principal who have had no prior involvement in the case.
- 9.4 The employee will be entitled to attend the appeal hearing to state their case. They may be accompanied by a Federation work colleague or a union representative who may present the employee's case on their behalf. The appeal panel may:

Uphold the appeal and overturn the disciplinary action taken; Reject the appeal and confirm the disciplinary action taken;

Having considered the appeal decide to impose a different disciplinary sanction.

- 9.5 The decision of the appeals panel will be final within the disciplinary procedure.
- 9.6 If following dismissal the employee is re-instated on appeal their salary, pension and NI contributions will be back paid to the date of the original termination.
- 10. Referrals
  - 10.1 Where a teacher has been dismissed for serious misconduct (or may have been dismissed for serious misconduct if the teacher had not resigned) the Federation must refer the circumstances to the National College for Teaching and Leadership.
  - 10.2 If a case includes allegations against a teacher that involves both misconduct and safeguarding (ie the risk of harm, or actual harm, to a child), the National College for Teaching & Leadership will contact the Disclosure and Barring Service (DBS).

## **II. Documentation**

- 11.1 Where disciplinary action relates to child protection issues, the relevant documentation should be retained on the employee's personal file until the employee reaches 65 years or 10 years whichever is the longer, but will not form part of any subsequent disciplinary action if it is time- expired.



# APPENDIX I

## EXAMPLES OF DISCIPLINARY OFFENCES

### 1 MISCONDUCT

Offences that might normally to be regarded as misconduct:

- Poor timekeeping
- Rude or offensive behaviour
- Unauthorised absence from Federation
- Failure to obey a lawful or official instruction including failure to observe an operational requirement of the Federation
- Unauthorised use of equipment on Federation premises

### 2 GROSS MISCONDUCT

Gross misconduct is generally defined as misconduct serious enough to destroy the employment contract between the employer and the employee and to make any further working relationship and trust impossible.

Offences that might normally to be regarded as gross misconduct:

- Unauthorised removal, theft or use of Federation property/assets
- Fighting/physical assault of another person or intimidation
- Abuse, misuse or damage to Federation property
- Incapability through, or being under, the influence of alcohol or illegal drugs
- Wilful act or omission that causes unacceptable risk of loss, damage or injury (gross breach of safe working practices)
- Criminal activity during the course of employment
- Off-duty conduct that has a direct adverse effect on the employment
- Sexual harassment of, or sexual misconduct with, colleagues or pupils
- Discriminatory behaviour on the grounds of sex, age, marital status, creed, race, religion or belief, ethnic origin, sexuality or disability.
- Serious harassment or bullying of colleagues

These lists of offences are not intended in any way to be exhaustive or prescriptive. The second list does, however, illustrate the types of cases where dismissal without notice - SUMMARY DISMISSAL (after full and detailed investigation and consideration of the facts) - can be justified.

Each instance must be assessed on the nature of the conduct and behaviour within the context of the nature of the job, the employee's record and any other relevant circumstances.