

LONDON BOROUGH OF HAVERING

HES HR

**MODEL
DISCIPLINARY POLICY**

FOR ALL SCHOOLS

HES HR Model Disciplinary Policy

1.0 Purpose and Scope

- 1.1 The School expects high standards of professional and personal conduct. Where such standards are not maintained, the School will ensure that it is appropriately challenged. This policy is to be used where either these interventions have failed to produce the required improvement or where it is sufficiently serious to require immediate formal action.
- 1.2 This policy is based upon principles of natural justice seeking to treat all employees consistently whilst also taking into account the individual circumstances of each case.
- 1.3 This policy applies to all employees employed by the School. It does not apply to agency staff, consultants and external secondees working for the School.
- 1.4 Where a complaint involves an allegation of any form of abuse of a child, before conducting any disciplinary investigation, the complaint should be referred to the Local Authority Designated Officer (LADO) to determine whether the allegation should first be addressed under the relevant Havering Guidelines for Managing Allegations in relation to Child Protection and Safeguarding.
- 1.5 This policy is compliant with the ACAS Code of Practice.
- 1.6 The Policy does not form part of the terms of an employee's contract with the School.
- 1.7 The purpose of this policy is to set out what is required and the options available to the School in dealing with disciplinary issues. For comprehensive guidance on how to effectively implement this policy the School should refer to the Disciplinary Management Toolkit.

2.0 Principles

- 2.1 No disciplinary action will be taken against an employee without prior investigation and consideration of the facts.
- 2.2 The employee will be formally advised of the nature of the allegations against them and will be given the opportunity to state their case and present any mitigating circumstances at a formal disciplinary hearing before any decision is reached.
- 2.3 Employees will not normally be dismissed for a first breach of discipline, except in the case of gross misconduct.
- 2.4 Formal disciplinary action will not be taken against an accredited trade union representative until a full-time official of the trade union has been informed.
- 2.5 Any meeting arranged with an employee can only be held outside their contractual/directed hours with their agreement.

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- 2.6 Where an employee raises a grievance during a disciplinary process the School will consider if it is appropriate to temporarily suspend the disciplinary process in order to deal with the grievance. After the grievance has been investigated, the School will make a final decision as to whether or not to continue to follow the Disciplinary policy. In most cases, it is expected that the grievance and disciplinary cases will be dealt with concurrently.
- 2.7 At all stages of the policy, where specified personnel are designated to handle different stages, the School reserves the right to reasonably substitute alternative personnel in cases of non-availability or where otherwise considered appropriate.
- 2.8 The employee will have the right to be accompanied at all formal disciplinary hearings and any appeal hearings by a trade union representative or a work place colleague of their choice. It is the employee's responsibility to make such arrangements and to supply copies of all relevant information and documentation. Wherever possible, if the representative is a workplace colleague they will be granted paid time off work to accompany the employee when necessary to do so.
- 2.9 If the employee's chosen representative is not able to attend a formal hearing or appeal hearing the School will seek to arrange an alternative date within one working week of the original date with the representative. If it is not possible to arrange a date within this period, a later date will then be set at which both the Panel Members and chosen representative can attend, unless it would be unreasonable to do so. In the circumstances where the employee will not be able to have their first choice present, they would need to either accept any representative who is available to accompany them to the meeting, as provided by their trade union, or find another workplace colleague.
- 2.10 Although there is no statutory right to representation at investigation meetings, representation however will be allowed providing it does not result in undue delay to the process.
- 2.11 Where an employee intends for a witness to be called at a disciplinary hearing, they must be relevant to the case and arrangements for their attendance at the hearing will be the responsibility of the employee.
- 2.12 The Governing Body will need to determine its involvement in the implementation of this Policy including the identification of Governors to be involved in any specific case. The Governing Body must also have regard to their own delegated powers in respect of this Policy.
- 2.13 Due to the time constraints of the academic year and, where appropriate, governor availability, the School reserves the right to stipulate the date for re-arranged hearings.
- 2.14 At all disciplinary meetings, hearings and appeals, there may also be an HR Representative and note taker present.
- 2.15 Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure will be followed. Depending on the circumstances, however, and after obtaining the employee's consent, it is advisable to discuss the matter at an early stage with an official employed by the union. As this will normally involve contact with the Regional Union Office this will be dealt with by Human Resources.

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3.0 Types of Misconduct

- 3.1 Conduct falling short of the required standards will be categorised as either Gross Misconduct or Misconduct dependent on the degree of seriousness, the specific circumstances of the case and past precedent.

3.2 Gross Misconduct

- 3.2.1 Is used to describe an act or actions which are severe enough to fundamentally damage trust and confidence in the employee enough to destroy the working relationship between the employee and employer and may result in dismissal.

3.3 Misconduct

- 3.3.1 Is used to describe an act or actions which whilst falling short of the standards expected a warning would nevertheless be seen as sufficient to draw the employee's attention to the need to improve.

- 3.4 Whilst it is not possible to define every instance which would constitute as conduct falling short of the required standards, the examples below list what would result in formal disciplinary action being taken:

- Breach of trust and confidence.
- Breach of health and safety rules.
- Breach of safeguarding.
- Breach of data protection regulations.
- Acts of gross incompetence or negligence.
- Bringing the organisation into serious disrepute.
- Bullying.
- Causing loss, damage or injury through serious negligence
- Criminal offences which are incompatible with the employee's position and duties.
- Deliberate and serious damage to property.
- Deliberately accessing internet sites containing pornographic, offensive or obscene material.
- Harassment.
- Malicious damage.
- Physical violence.
- Incapability at work brought on by alcohol or illegal drugs.
- Insubordination.
- Misuse of an organisation's property or name.
- Theft or fraud.
- Unlawful discrimination.
- Unauthorised absence.

- 3.5 The above list is not intended to be exhaustive and may be added to in reference to the School's Code of Conduct and other policies and procedures which set standards that employees are required to achieve.

4.0 Prior to Formal Disciplinary Action

4.1 Informal Management of Minor Issues

4.1.1 Minor issues of misconduct should be dealt with in the first instance by holding an informal meeting with the employee to make them aware of how and why conduct has fallen short of the expected standard and what is required in the future.

4.1.2 There is no requirement to give the employee notice for this meeting and there is also no right for the employee to be accompanied at an informal meeting.

4.1.3 The meeting should be a two-way discussion aimed at resolving any shortcomings in conduct and to encourage any improvement.

4.1.4 If during the meeting:

- more serious concerns come to light
- It is felt that further investigation is required
- The employee is not in agreement with what is being discussed

the meeting will come to an end and the employee will be informed that the matter will be dealt with under the formal stages of this policy.

4.1.5 The meeting should be concluded and a letter of expectation should be issued, detailing what has been discussed.

4.1.6 The letter of expectation is informal and unless there is a continuing pattern of behaviour, this expires after 12 months from the date of issue. It can be referred to within this timeframe as part of the formal disciplinary process.

4.2 Formal Action

4.2.1 If informal management has not resolved the issue or if the allegation(s) is considered too serious to be dealt with informally, the employee should be notified that the formal disciplinary policy will be used.

4.2.2 There may be some occasions where an employee's lack of capability could also be described as lack of competence. This Disciplinary Policy and the School's Capability Policy may be used concurrently whilst the School endeavors to ascertain if the employee's lack of capability is due to Misconduct, (for example, where the employee is capable of reaching the required standard but has taken active steps not to do so), or lack of competence.

4.2.3 There may be occasions where an employee's conduct could relate to their health. This Disciplinary Policy may be used concurrently with the School's Sickness Absence Policy. In particular, if an employee is absent from School on sick leave following this Disciplinary Policy being invoked, the School may use its Sickness Absence Policy if it is appropriate in the specific circumstances. The process of managing unsatisfactory behaviour using this Disciplinary Policy will not necessarily cease where the employee is absent on the grounds of illness.

5.0 Formal Disciplinary Action

5.1 Disciplinary Investigation

5.1.1 An allegation of misconduct or gross misconduct will be investigated as soon as practicably possible to establish the facts.

5.1.2 The investigating manager should be competent to carry out the role and should not have had a material involvement in the allegation(s) made.

5.1.3 The School will need to identify who the most appropriate person will be to investigate the allegation(s) made taking into account time constraints, workload and ability to fulfil

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the role. In certain circumstances it may be appropriate for an external investigator to be appointed.

5.1.4 At the end of the investigation a report will be produced from which one of the following decisions will be made:

- To take no further action.
- To take informal action.
- To proceed with a formal disciplinary hearing.

5.2 Suspension

5.2.1 Where the matter to be investigated is considered to involve serious or gross misconduct, the employee may be suspended from work on full pay, or temporarily redeployed into another position on their current terms and conditions of employment.

5.2.2 The decision to suspend or make adjustments to the employee's normal working practice can be made at any stage of the disciplinary process and can also be revisited at any point.

5.2.3 Most disciplinary situations will not require suspension. It should only be considered if there is a serious allegation of misconduct and/or:

- there are reasonable grounds to believe that the employee might seek to tamper with or destroy evidence, influence witnesses and/or sway any investigation into the disciplinary allegation;
- working relationships have severely broken down to the point that there is a genuine risk to the school community if the employee remains in the school;
- the employee is the subject of criminal proceedings which may affect whether they can do their job.

5.2.4 Suspension can leave individuals feeling prejudged, demotivated and devalued. It should therefore only be used after very careful consideration. It should always be made very clear that suspension is not an assumption of guilt and is not considered a disciplinary sanction. The individual should be reminded and reassured that a fair procedure will follow in which their point of view will be listened to and fairly considered.

5.2.5 Employees may find it extremely distressing to be told they are being suspended. This may be the case even if the person does not show any obvious signs of distress. It is good practice to encourage a suspended employee to access some immediate support. For example, their union, the employee assistance programme or work colleague.

5.3 Disciplinary Hearing

5.3.1 Where it is decided that a Disciplinary Hearing is to be held, the employee will receive formal notice of the hearing which will provide:

- The disciplinary charge and investigation report
- Details of how and when the disciplinary hearing will be held.
- Names of who will conduct the meeting and anyone else expected to be present
- The employee's right to be accompanied by either a colleague or a trade union official.

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- Copies of all relevant documentation which will be considered at the disciplinary hearing.

5.3.2 The disciplinary panel will not include anyone who was involved in the disciplinary investigation.

5.3.3 At the conclusion of the disciplinary hearing, the panel, will first determine whether or not the disciplinary charge is substantiated. If it is not substantiated, then either there will be no further action or the case will be referred back for either further or reinvestigation.

5.3.4 If a charge is substantiated then one of the following sanctions will be given:

- Written warning – to remain on file for up to 12 months.
- Final written warning – to remain on file for up to 24 months.
- Dismissal – with or without notice.
- Action short of dismissal including redeployment/demotion, or a financial sanction.

5.3.5 The outcome of a disciplinary hearing is confidential, however, after the employee has been notified of the outcome this can be shared with relevant parties on a need to know basis.

6.0 Appeals

6.1 An employee has the right to appeal against any formal disciplinary sanction issued. An appeal must be based on the following grounds:

- (a) substantive – new evidence has come to light
- (b) procedural – the policies and procedures were not followed correctly
- (c) inaccurate – the investigation report misinterprets the information provided
- (d) inconsistent – the decision does not follow logically from the investigation
- (e) incommensurate - the outcome of the decision is inappropriate to the scale of the behavior.

Any appeal must give the specific grounds as to the reasons for the appeal. It is not sufficient to simply state the reasons given in 6.1 without expanding on these points. Appeals must be submitted in writing, by the date stated in the outcome letter.

6.2 The appeal will be heard by a Panel which will not include any members who were involved in the proceedings prior to the appeal.

6.3 The following options will be available from which the Panel can make a decision:

- Uphold the grounds of appeal.
- Reject the grounds for appeal.
- Require a rehearing of the whole or part of the case.

6.4 The Chair of the Appeal Panel will formally notify the employee of the outcome and the reasons for it.

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6.5 The decision of the Appeal Panel is final.