

# **Disciplinary Procedure relating to Misconduct for all employees**



Approved by: The Duston Education Trust

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## Disciplinary Procedure Relating to Misconduct for all Employees

### 1. Terms of Reference

1.1. For all employees employed by the Governing Body of The Duston School

1.2. Definitions

“Principal” also refers to any other title used to identify the Principal where appropriate.

“Employee” refers to any employee, teaching and support, employed to work at the School.

“Senior Manager” refers to Leadership Group delegated by the Principal to deal with a disciplinary matter under this procedure. The senior manager may only make a decision to issue up to and including a final written warning.

“Investigating Officer” refers to a senior manager or an external person appointed by the Principal.

“Companion” refers to a person chosen by the employee to accompany them, who shall be a trade union representative or a workplace colleague.

“Governors Disciplinary Committee” may be convened to deal with a case where the Principal considers that they must act in the role of the senior manager. In this event, substitute ‘Principal’ with ‘Governors Disciplinary Committee’ throughout the procedure.

“Governors Appeal Committee” may be convened to hear an appeal against a written warning or dismissal. Where possible the number of governors on the committee will be equal to, or greater than, the decision-maker/s of the case being appealed.

## 2. Introduction

- 2.1. This Disciplinary Procedure is designed to help and encourage all employees to achieve and maintain standards of conduct. The aim is to ensure consistent and fair treatment for all in the organisation.
- 2.2. Examples of the type of conduct that is considered to be misconduct or gross misconduct, which could lead to action under this Disciplinary Procedure, are set out in the Disciplinary Rules which apply to all employees and should be read in conjunction with this procedure.
- 2.3. This procedure is non-contractual and for guidance only. This procedure applies to all employees. It does not apply to agency workers or contractors.
- 2.4. This procedure may be implemented at any stage, as set out below, taking into account the alleged misconduct of an employee. Employees will not normally be dismissed for a first act of misconduct unless it is decided that it amounts to gross misconduct or the probationary period is not complete.
- 2.5. In cases against the Principal, the Chair of Governors or a Committee of Governors has the power to discipline or dismiss the Principal in accordance with the procedure set out below.

## 3. Equality and Diversity

- 3.1. The procedure will be operated in accordance with the School's Equality and Diversity Policy. The School is committed to developing, maintaining and supporting a culture of equality and diversity in employment. The impact of the procedure will be monitored in accordance with the Equality Act 2010.

## Part A – Informal Procedure

### 4. Informal Action

- 4.1. Managers should seek to resolve minor misconduct informally and as soon as it occurs. Management advice may be given to the employee by a senior manager or a line manager. Action will be taken under the formal procedure set out in Part B below if the matter is not resolved or, there is repeated minor misconduct or, where informal action is not appropriate (for example, because of the seriousness of the allegation).
- 4.2. There is no appeal against management advice given, which will not be placed on the employee's disciplinary record but should be confirmed in a written memorandum.
- 4.3. The written memorandum will set out the misconduct, the improvement that is required and, if appropriate, how this will be reviewed and during what timeframe. The employee may make a written comment on the memorandum if they have any objection to the informal action taken. A copy of the memorandum or a note of any informal discussions may be placed on the employee's personnel file.

## Part B – Formal Procedure

### 5. Disciplinary Hearing

- 5.1. If following an appropriate investigation by the Investigating Officer, the senior manager considers on the facts that formal disciplinary action for misconduct is necessary, they will write to the employee to inform them as soon as practicably possible, at least 10 working days in advance, setting out:
- a) The date, time and place of the disciplinary hearing
  - b) The allegation/s and their possible consequences
  - c) The employee's right to be accompanied by their companion
  - d) The titles of enclosed copies of any documents to be used as evidence
  - e) The names of any witnesses to be called by the senior manager
  - f) Their right to call witnesses on their behalf
  - g) The name and position of any HR adviser who will accompany the senior manager at the hearing
  - h) The name and position of any note taker
- (At the employee's request, an extra copy of this notice, together with any enclosures, should be provided for their companion)
- 5.2. The employee must advise the senior manager of the following at least three working days in advance of the hearing:
- a) The name and designation of their companion
  - b) Provide any written documentation to be considered
  - c) The names of any witnesses at that they wish to call
  - d) Any special requirements (e.g. disability, language requirements)
- 5.3. At the disciplinary hearing, before the senior manager and their HR Adviser, the employee (and their companion) will be given a reasonable opportunity to state their case, to question the Investigating Officer where possible and any witnesses and, to call any witnesses and raise points about any information provided by witnesses.
- 5.4. Following the hearing, the senior manager will consider the matter and confirm the decision in writing to the employee and their companion as soon as possible and usually within five working days of the hearing, to include:
- a) The sanction (if any) and the period this will remain current
  - b) Their reasons for the decision
  - c) The change in behaviour required (if relevant) and the likely consequences of further misconduct
  - d) Right of appeal

## 6. Formal Disciplinary Action

### 6.1. First Written Warning

The senior manager may give the employee a first written warning, which will include a statement that any further complaint of misconduct occurring within the next twelve months that is found justified after a disciplinary hearing, will lead to a final warning unless there are mitigating circumstances.

### 6.2. Final Written Warning

6.2.1. If a further complaint is made about the employee's conduct before the first written warning has expired, the same procedure (as in 5 above) will be followed.

6.2.2. The senior manager may give the employee a final written warning, which will include a statement that any further complaint of misconduct occurring within the next 12 months that is found justified after a disciplinary hearing, will lead to dismissal unless there are mitigating circumstances.

### 6.3. Dismissal

6.3.1. If a further complaint is received before the final written warning has expired, the complaint will be referred to a hearing before the Principal following the same procedure as in paragraph 5 above. The Principal may be accompanied by an HR Adviser

6.3.2. If the Principal decides the complaint is justified, they may decide to dismiss the employee. The Principal will state the decision, the reasons and inform the employee of their right to appeal to a Governors Appeal Committee. They will confirm the decision and right of appeal in writing to the employee (and their companion) as soon as possible and normally within five working days of the hearing. The Principal will record the outcome of their considerations and the names of persons present at the hearing.

## 7. Gross Misconduct

7.1. If the complaint is considered so serious that it may amount to gross misconduct, justifying dismissal without previous warning and without notice (see Disciplinary Rules), the employee may be informed by the Principal or the Chair of Governors that they are suspended on full pay pending further investigation of the complaint.

7.2. If, following an investigation, the Investigating Officer considers that the facts of the case amount to a prima facie case of gross misconduct, the matter will be referred to the Principal.

7.3. Following the same procedure as in paragraph five above, if on the conclusion of the disciplinary hearing the Principal considers the complaint constitutes gross

misconduct, they may decide to dismiss the employee without notice or pay in lieu of notice.

- 7.4. Where a suspension has taken place that suspension may only be lifted by the Governing Body, normally the Chair of Governors acting on behalf of the Governing Body.

## 8. Right of Appeal

- 8.1. The employee has a right of appeal against a decision to issue a warning or to dismiss.
- 8.2. Appeals against formal written warnings or dismissal should be made in writing to the Clerk to the Governors, stating the grounds for appeal in full, within 5 working days of the date of the written decision.
- 8.3. An appeal against a written warning (see paragraph 5.1 and 5.2) will be heard by the Governors Appeal Committee. The panel may have an HR Adviser present. The Committee may confirm the written warning, reduce a final written warning to a first written warning, or cancel the written warning.
- 8.4. An appeal against dismissal (see paragraph 5.3) will be to the Governors Appeal Committee, none of whom shall have any previous involvement in the case. The Governors Appeal Committee may have an HR adviser present

All appeal hearings will be held as soon as possible and, in normal circumstances, within 10 working days after receipt of the appeal. The Clerk to Governors will usually undertake administrative arrangements for any required hearing or meeting. The outcome will be confirmed in writing as soon as possible and usually within five working days of the hearing. There will be no further right of appeal.

## 9. Variation in Disciplinary Action

- 9.1. If appropriate, the senior manager may decide to take informal action (as in Part A above) instead of giving a first written warning.
- 9.2. The senior manager may decide the misconduct is so serious that it justifies a final written warning, without any previous written warning having been given.
- 9.3. Rather than dismiss, the Principal may decide to issue no sanction or a lesser sanction.
- 9.4. In determining an appropriate sanction, consideration may be given to a change to role/duties which may impact on remuneration.
- 9.5. Where the Governors Appeal Committee overturns a decision to dismiss or to issue a written warning, they may substitute a lesser sanction. There is no right of appeal against such a decision of the Governors Appeal Committee.
- 9.6. In the event that the Governors Appeal Committee decides not to uphold the decision to dismiss, the employee will be reinstated without loss of pay.

## 10. Trade Union Representatives

- 10.1. Where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

## 11. Confidentiality

- 11.1. All employees subject to disciplinary investigations or proceedings must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.