



## Disciplinary Procedure

<b>Co-ordinator</b>	<b>Executive Headteacher</b>
<b>Date of Completion</b>	<b>January 2021</b>
<b>Date of adoption by Governors</b>	<b>January 2021</b>
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## **1 Introduction**

- 1.1 This Disciplinary Procedure is designed to clarify the rights and responsibilities of management, unions, and employees in respect of disciplinary action. The purpose of the Disciplinary Procedure is to ensure a fair, non-discriminatory, systematic and confidential approach to handling disciplinary matters and to ensure consistency in the application of disciplinary measures and fairness for employees who become subject to them.
- 1.2 The Downs View Disciplinary Procedure (which is in line with the council disciplinary procedure) has been agreed between the School/Council and the appropriate recognised trade unions: NUT, NASUWT, ATL, NAHT, ASCL, The Voice, UNISON and GMB.
- 1.3 It is the responsibility of governing bodies to establish disciplinary and dismissal procedures under the Education Reform Act 1988 and to make them known to their staff. This procedure has been drawn up in line with the ACAS code of practice which is admissible in Employment Tribunals and it is hoped that these procedures are adopted by Brighton & Hove school governing bodies. Should any governing body wish to make any material changes to the procedure they should first consult the Head of Schools' HR to ensure any changes are permissible and for advice on individual school level consultation that may be appropriate.
- 1.4 This procedure applies to maintained schools and may apply to other schools (see Section 2 on Scope below).
- 1.5 This Disciplinary Procedure should be read in conjunction with the [Disciplinary Guidance](#) which gives more detail on arrangements to be made and others sources of guidance.

## **2 Scope**

- 2.1 This Procedure applies to all employees of the school. There are separate procedures for dealing with capability. Voluntary aided schools (who are their own employers) have their own procedures based on diocesan models which would apply.

## **3 Trade Union Representatives**

- 3.1 The term 'Trade Union Representative' throughout this document means either a lay trade union official (i.e. a steward / representative or full-time official) or a full-time official employed by a trade union.

- 3.2 For the purposes of this Procedure, a lay trade union official must have been reasonably certified, in writing to the School/Council, as having experience of, or as having received training in, acting as an employee's companion at disciplinary hearings.
- 3.3 Action under this Procedure (other than suspension on full pay) must not be taken against an accredited Trade Union Representative until a full-time officer of the Trade Union concerned has been informed.

## **4 Representation**

- 4.1 The employee has a statutory right to be accompanied at any formal hearing under the Procedure which could result in:
- issuing of a formal warning to the employee which will be placed on the employee's record
  - taking some other disciplinary action e.g. dismissal
  - confirmation of a formal warning issued or some other action taken.
- 4.2 Before every formal hearing, therefore, the employee must be informed that he/she has a statutory right to be accompanied by either his/her trade union representative or a colleague who works for the school.
- 4.3 The employee does not have a statutory right to be accompanied at any other interview / meeting convened under the Procedure in connection with any disciplinary matter. However, where the employee wishes to be represented/accompanied by either a trade union representative or a colleague who works for the school at such interviews/meetings, such a request will not be unreasonably refused.
- 4.4 Trade union representation will be afforded to an employee, where requested, irrespective of whether or not the union to which the employee belongs is recognised by the School/Council.

## **5 Suspension**

- 5.1 In most cases of alleged gross misconduct it will be inappropriate for the employee concerned to work on after the alleged offence. There will also be other circumstances where it is advisable to suspend the employee. Suspension should not be regarded as prejudging the outcome of any subsequent disciplinary action (please see notes for guidance). Headteachers have the authority to suspend an employee from duty (with full pay) for the duration of the disciplinary investigation. Only the Governing Body has the power to lift the suspension (see Para 19.3.3 2009 Staffing Regulations for full details). Refer to Section 9 of the [Disciplinary Guidance](#) document for more information on the use of suspension from duties.

## **6 Investigating Manager**

- 6.1 The investigation will normally be conducted by the line manager. There may be occasions when the headteacher may wish to appoint someone other than the line manager as the investigating manager. The investigating manager is responsible for undertaking a thorough and independent investigation. If the investigating manager decides there is a case to answer then he/she will present the case to a disciplinary panel (see below).

## **7 Disciplinary Panel**

- 7.1 The disciplinary panel will be composed of a hearing manager who will be advised by a Human Resources representative. The hearing manager will be a senior manager nominated for this purpose by the governing body (and will usually be the headteacher). The hearing manager will have the authority to issue warnings or to dismiss an employee. Refer to Para 6.1.3 of the [Disciplinary Guidance](#) and the grid at appendix A for additional advice on the composition of the panel (as composition may vary according to the case).

## **8 Formal Disciplinary Hearing**

- 8.1 The employee must be given at least five working days notice of the hearing or ten working days where the recommendation is dismissal.
- 8.2 Any papers the employee or his/her representative wishes to present to the hearing should be submitted to the hearing manager at least four days in advance of the hearing together with a list of any witnesses he/she intends to call.
- 8.3 Where the employee's chosen representative/companion cannot attend on the hearing date proposed, the employee can offer an alternative time and date so long as it is reasonable and it falls within five working days beginning with the first working day after the date proposed by the Council. See Section 12 of the [Disciplinary Guidance](#) for more information on hearings.

## **9 Timescales**

- 9.1 Unless stated otherwise, the time scales specified within this Procedure refer to working days. School closure holiday periods will not usually be included in this calculation. The prescribed time scales can be varied by mutual agreement between the parties concerned.

## **10 Formal Procedure**

Following the completion of the disciplinary investigation there may be a range of options taken including:

- no further action

- an expectation setting meeting (this may include a recommendation for informal conduct counselling – see [Disciplinary Guidance](#) Section 4 and separate Wave [management guidance on conduct counselling](#)).
- further investigations
- setting up a formal disciplinary hearing.

Following the hearing there may be three different outcomes:

- No sanction (but may include an expectation setting meeting as above)
- Disciplinary warnings (at three levels shown below under 10.1 below)
- Dismissal (see 10.2 below).

## 10.1 Written Warnings

10.1.1 Subject to paras 10.1.5 & 6.a disciplinary warning will be disregarded for disciplinary purposes after the following periods from the date the warning was given:

- a) A first warning – after six months
- b) An intermediate warning – after one year
- c) A final warning – after 18 months.

10.1.2 The hearing manager will inform the employee of the decision at the conclusion of the hearing or when this is not possible, the decision will be communicated in writing within five working days.

10.1.3 A letter confirming the decision to issue a written warning will be sent to the employee **within five days** of the disciplinary panel making their decision.

10.1.4 A copy of the written warning will be placed on the employee's personal file.

- 10.1.5 a) Warnings will only be disregarded if no further formal disciplinary warning has been given to the employee during the relevant period.
- b) The employee's disciplinary record may be taken into account at a subsequent hearing.
- c) In cases where a pattern of behaviour is alleged, previous behaviour considered to form part of that pattern may be taken into account.

### 10.1.6 Warnings not disregarded automatically

A warning will not be disregarded automatically where it has been given following improper behaviour of a sexual or physical nature towards pupils, students or young people. At the time such a warning is given, the employee shall be informed that it falls within this category.

## 10.2 Dismissal

- 10.2.1 A further breach of conduct by an employee before the final written warning is spent will normally result in dismissal with notice or pay in lieu of notice.
- 10.2.2 A breach of discipline by an employee which is considered serious enough to be termed an act of gross misconduct will normally result in instant dismissal.
- 10.2.3 The hearing manager will inform the employee of the decision at the conclusion of the hearing.
- 10.2.4 A letter confirming the decision to dismiss will be sent to the employee **within five working days** of the disciplinary panel reaching their decision. For maintained schools see also the additional notification to LA under para 11 below.
- 10.2.5 A copy of the letter of dismissal will be placed on the employee's personal file.

## 10.3 Appeals against Written Warnings

- 10.3.1 An employee may appeal any written warning **within ten working days** of having been informed in writing of the decision.
- 10.3.2 The appeal must be made in writing to the clerk to governors and should clearly state the ground(s) for the appeal. See [Disciplinary Guidance](#) Section 6.
- 10.3.3 The appeal hearing will be arranged as soon as reasonably practicable. The hearing manager for the appeal panel will be a manager who is senior to the manager who gave the warning or a panel of governors <sup>1</sup> authorised by the governing body for the purpose of hearing appeals. The appeal panel will be advised by a Human Resources representative who was not involved in the original disciplinary hearing. Refer to Disciplinary Guidance Section 6.
- 10.3.4 Normally, the appeal panel will be made up of three governors <sup>1</sup>. No governor hearing an appeal should have been involved in the case to which the appeal relates. Staff governors may be members of the Panel provided they are not involved in any way in the case, either as a witness or as the person making the allegation under consideration. Refer to Disciplinary Guidance Section 6 and grid at Appendix A for more information.
- 10.3.5 The appeal hearing manager may uphold the appeal, reject the appeal or reduce the level of the warning. The hearing manager will inform the employee of the decision at the conclusion of the hearing.

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<sup>1</sup> The [School Governance \(Miscellaneous Amendments\) \(England\) Regulations 2015](#), allow constitutionally elected Associate Members to serve on discipline or appeals panels. Also see the statutory [guidance on the constitution of governing bodies of maintained schools](#) (including partnership arrangements) dated August 2015.

10.3.6 The decision will be confirmed in writing to the employee (and copied to the Headteacher as appropriate by the clerk to governors if the panel is made up of governors) **within ten working days** of the hearing being held.

10.3.7 A copy of this outcome letter should be sent to Human Resources for placing on the employee's personal file (and also retained at the school).

#### **10.4 Appeals against Dismissal**

10.4.1 Appeals against dismissal must be made in writing to the Clerk to Governors within **ten working days** of receiving written notification of dismissal and should clearly state the ground(s) for the appeal.

10.4.2 A panel of at least three governors <sup>1</sup> appointed and authorised by the governing body to determine appeals shall hear the appeal. No governor hearing an appeal shall have been involved in the decision to which the appeal relates. .

10.4.3 Staff governors may be members of the Panel, unless they could be a candidate for the post held by the employee concerned, or they have been involved in any way in the case either as a witness or as the person making the allegation under consideration.

10.4.4 Upon receipt of the appeal, arrangements will be made for the case to be heard by a panel comprising of members of the governing body <sup>1</sup>, as soon as reasonably practicable.

10.4.5 In exceptional circumstances, where an appeal panel cannot be drawn from within the school governing body <sup>1</sup> the LA will consider the use of governors from other Brighton & Hove schools. The Dismissal Appeal Panel will be assisted by an adviser from Legal Services/HR.

10.4.6 The parties will be given **at least ten working days** notice in writing of the date of the appeal hearing.

10.4.7 The appeal panel may uphold or reject the appeal or reduce the sanction to a written warning.

10.4.8 A letter giving written confirmation of the decision must be sent to the employee (copied to the Headteacher) by the Clerk to Governors **within seven days** of the hearing being held.

10.4.9 A copy of this letter should be sent to the Human Resources for placing on the employee's personal file.

**The Dismissal Appeal Panel is the final level of appeal.**

### **11 Local Authority Action on Dismissal of Employees by the School**

#### **11.1 Notification to the Director of Children's Services of a Decision to Dismiss an Employee (maintained schools only)**

Where a Panel of Governors <sup>1</sup> has determined in accordance with paragraph 10.2 above that an employee shall cease to work at the school, and the Panel of Governors has confirmed the determination, the Clerk to the governing body should notify the Strategic Director (usually via HR) in writing as soon as possible of the determination with the reasons.

**11.2 Action on the Part of the Council**

The Strategic Director shall write to the employee to terminate his/her employment at the school as soon as possible (and within a period of fourteen consecutive calendar days from the receipt of the notification of the determination),

**11.3 Period of Notice**

Unless the cause of the determination is gross misconduct or other urgent cause, the period of notice to be given shall be that required in accordance with the employee's conditions of service. Where the cause of the determination is gross misconduct or other urgent cause, the dismissal shall take effect from the date of the letter sent to the employee to terminate his/her contract of employment in accordance with paragraph 11.2 above.

**11.4 Position when Employee also Employed by the Council Elsewhere**

If the employee is employed by the Council to work at the school and elsewhere, the Strategic Director shall, in addition to terminating the employee's employment at the school, consider what action is necessary in respect of the employment elsewhere.

**12 Referrals**

12.1 The School has a duty to make a referral to the DBS if a person in regulated activity has been dismissed or removed due to safeguarding concerns, or would have been had they not resigned. This is confirmed by the KCSIE statutory guidance (para 84).

12.2 Where a teacher is dismissed because of serious misconduct or might have been dismissed had they not left first, the school must consider whether to refer the teacher to the Secretary of State via the NCTL.

**Disciplinary Procedure to be used in conjunction with:**

Disciplinary Guidance for Heads/Governors/Manager