

# **DISCIPLINARY PROCEDURES FOR EMPLOYEES**

**Followed by Three Towers AP Academy**



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**CHAIR OF RLT BOARD:** Mr G A Wilson

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This procedure has been adopted by the governing body of the Rowan Trust following consultation with staff and their trade union / professional association representatives. This procedure supersedes any procedure previously in place in this School either formally or through custom or practice.

## **1. Introduction**

1.1 The purpose of this disciplinary procedure is:

- To ensure that acceptable standards of professional conduct are maintained and to encourage improvements in individual conduct, where appropriate.
- To ensure order, fairness and good practice in the treatment of individual employees against whom allegations of misconduct are made.

1.2 Before initiating any action under this policy, the Headteacher in consultation with the CEO or Executive Headteacher will take full account of the background including any relevant personal, social or domestic circumstances.

1.2 Where an employee raises a grievance during the disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

1.3 It is not intended that the procedures be only a means to impose sanctions on employees, but should also be a means of giving guidance and support. For example, the procedure would not normally be used where problems of minor misconduct can be resolved by informal discussion between an employee and management. It is recognised that from time to time employees may need advice about their conduct and that minor infringements of discipline should be drawn to an employee's attention with appropriate guidance on how improvements could be made. Following counselling, realistic objectives should be established and a reasonable time limit set for these to be achieved. Normally, therefore, this formal disciplinary procedure will only be invoked after counselling concerning less serious misconduct has failed or where serious misconduct is alleged.

1.4 The disciplinary procedure is separate from the grievance procedure whereby the employee is entitled to air a grievance relating to his/her employment. The grievance procedure should not be used as a means of imposing a disciplinary penalty on an employee. If, however, the question of disciplinary proceedings arises as a result of the hearing of a grievance it will be dealt with in accordance with the disciplinary procedure set out below.

- 1.5 Where an employee fails to reach satisfactory standards on his/her work as a result of lack of ability, this will be addressed through the school's Capability Procedure, where the Local Governing Body (LGB) has adopted a separate procedure for use in such circumstances.
- 1.6 Where there is concern over an employee's attendance that is related to sickness absence, this will be addressed through the school's Managing Sickness Absence Procedure, where the LGB has adopted a separate procedure for use in such circumstances.
- 1.7 Employees who are convicted of a criminal offence which is not work related may be subject to disciplinary action if the offence affects the performance of their duties in relation to trust, respect and professional standing.
- 1.8 A decision to invoke criminal or civil proceedings against an individual employee will not necessarily delay any investigation or subsequent disciplinary hearing under this procedure. Similarly, a decision of the Criminal or Civil Court will not necessarily affect or impact on an investigation or the outcome of a disciplinary hearing.
- 1.9 Other than in exceptional circumstances, the Headteacher will invoke the disciplinary procedure where appropriate. The Headteacher will inform the CEO or Executive Headteacher and the Chair of the LGB when proposing to invoke the procedure.
- 1.10 The disciplinary procedure in relation to the specific case of a Headteacher is explained in Section 8 of this document.
- 1.11 Before disciplinary action for alleged misconduct is taken against an accredited trade union representative, the circumstance of the case shall be discussed with a full-time official of the Union.
- 1.12 Proceedings in disciplinary interviews and hearings shall be confidential.
- 1.13 It is intended that this is a flexible procedure and that with the agreement of **all** parties, it may be varied in individual cases in order to settle matters quickly.

## **2. Suspension**

- 2.1 The Headteacher, having consulted with the Chair of the LGB where practicable, shall suspend an employee from their duties where it is considered by the Headteacher that this is required. The Headteacher will also have sought advice from the CEO or Executive Headteacher before making a decision.

- 2.2 The Headteacher, when exercising that power, shall immediately inform the Chair of the LGB.
- 2.3 When exercising the power of suspension, the Headteacher shall write to the employee within twenty-four hours or as soon as possible thereafter, confirming the decision to suspend and giving reasons for the suspension.
- 2.4 Suspension is not in itself a disciplinary sanction. No record shall be kept on the employees file(s).
- 2.5 Suspension shall normally be appropriate only in cases of alleged gross misconduct but may also be appropriate where the investigation may be impeded.
- 2.6 Following a suspension, an investigation shall be completed as soon as possible.
- 2.7 In cases where a period of suspension is considered necessary, this period should be as brief as possible and will be kept under weekly review.
- 2.8 The Headteacher, having sought the advice from the CEO or Executive Headteacher, shall be delegated the power by the LGB to lift the suspension if or when considered appropriate.

### **3. Investigations**

- 3.1 No disciplinary action shall be taken against an employee until the case has been fully investigated.
- 3.2 The investigation shall be undertaken by a senior member of staff. The support and guidance of a Trust representative, in undertaking the investigation, may be requested.
- 3.3 The employee shall normally be given ten school working days' notice in writing of an investigatory interview and will always be informed of the right to be accompanied at the interview by a work colleague of his/her choice or their trade union representative.
- 3.4 Any witnesses will be interviewed by the Investigating Officer. They will be made aware that they are being interviewed as part of the disciplinary process. All statements taken will be provided in writing and signed by the witness. Such statements will be exchanged in accordance with paragraph 6.3 of this policy. Only signed statements may be submitted.

#### **4. Outcome of Investigation**

- 4.1 Once the investigation has been completed the Headteacher must consider all the evidence available to her/him and reach a decision about the next step, as soon as possible but within 14 school working days.
- 4.2 On the balance of probabilities it may be decided that there is no case to answer. If this is the case the employee must be informed of this in writing and, if applicable, any suspension should be lifted immediately. If there is no case to answer, this will clearly be indicated in the kept records.
- 4.3 It may be decided that a formal verbal or written warning is the most appropriate sanction. If this is the Headteacher's opinion, having considered all the information available to her/him, then, s/he shall have the power not to refer the matter further to a disciplinary hearing but to issue a formal verbal or written warning. The Headteacher can only exercise this power if the employee concerned is in agreement with this course of action and the sanction to be issued.
- 4.4 If the Headteacher chooses to exercise the powers conferred on her/him by the above paragraph, the employee (or his/her representative) will be provided with an opportunity to address the Headteacher prior to a decision on the sanction being made.
- 4.5 The Headteachers decision should be conveyed to the employee in the presence of her/his representative. The employee should be given the opportunity to consider this sanction in private with her/his representative. If the decision is to issue either warning, a letter confirming this should be given to the employee within 7 school working days.
- 4.6 Where the sanction proposed by the Headteacher is not accepted by the employee then the issue should be referred to the LGB under section 6 below. This should also be the case where the Headteacher decides that there is a disciplinary case to answer that s/he feels should be referred to the LGB in the first instance.

#### **5. Disciplinary Sanctions**

- 5.1 Possible disciplinary sanctions are:
  - Verbal warning
  - First or further written warning
  - Final written warning (this could also be a first and final warning)
  - Dismissal
- 5.2 In this document, any reference to a warning which does not specify the

type shall include all types of warning, i.e. verbal, written, further written and final. Any reference to a warning which does not specify the type shall include all types of written warning i.e. written, further written and final.

- 5.3 In normal circumstances should an employee have an outstanding appeal against a final warning, a further disciplinary hearing which could result in the dismissal of the individual will be postponed until the appeal against the final warning has been decided. Except for gross misconduct (see examples at Appendix 1) no employee shall be dismissed without first receiving a final warning.
- 5.4 A disciplinary warning shall remain in force and on the employee's file for the specified periods:
- Verbal warning – six months
  - First or further written warning – twelve months
  - Final warning – twelve months (or two years in exceptional circumstances)
- 5.5 All disciplinary warnings should state the nature of the conduct and confirm the type of improvement needed from the employee together with the potential consequences of failing to comply, such as further warnings or dismissal.
- 5.6 Should any disciplinary action be rescinded on appeal, all reference to it shall be removed from the employee's file and the employee notified accordingly.

## **6. Disciplinary Hearing**

- 6.1 Following an investigation into the alleged offence, should it be considered that there is a case to answer, and the matter has been referred to a governors' committee, a disciplinary hearing shall be convened.
- 6.2 At least ten school working days' notice of the disciplinary hearing shall be given and part-time employees shall normally only be called to a hearing on one of their contractual days of work.
- 6.3 The parties shall exchange copies of all documents to be referred to and a list of witnesses who will attend the hearing no later than five school working days prior to the hearing date.
- 6.4 The employee shall have the right to be accompanied to the disciplinary hearing by a work colleague or trade union representative of his/her choice.
- 6.5 A Trust representative may attend the hearing to provide advice.
- 6.6 The hearing shall be heard by the governors' committee.
- 6.7 The hearing shall be conducted in accordance with the procedure at

## Appendix 2.

Having considered the case, the committee shall invite both parties to return to the meeting and may:

- (a) Where the employee has no previous warning on file:
  - (i) Dismiss the allegation and determine that no further action be taken against the employee arising out of matters heard; or
  - (ii) Issue a verbal warning; or
  - (iii) Issue a first written warning; or
  - (iv) Issue a first and final written warning where serious misconduct is established
  
- (b) Where the employee has a verbal or written warning other than a final warning on file:
  - (i) Dismiss the allegation and determine that no further action be taken against the employee arising out of the matters heard; or
  - (ii) Find the allegation to be substantiated and issue the employee with first or further written warning or a final warning
  
- (c) Where the employee has a final warning on file:
  - (i) Dismiss the allegation and determine that no further action be taken against the employee arising out of matters heard; or
  - (ii) Find the allegation to be substantiated and determine that the employee's contract of employment be terminated with the appropriate notice as laid down in the Employment Rights Act 1996.
  
- (d) Where there has been an allegation of gross misconduct on the part of the employee:
  - (i) Dismiss the allegation and determine that no further action be taken against the employee arising out of the matters heard; or
  - (ii) Dismiss the allegation of gross misconduct but determine misconduct is proven and, therefore, that either an appropriate warning will be issued or, if a final warning is on file, the contract of employment be terminated;
  - (iii) Find the allegation of gross misconduct to be substantiated and determine that the employee's contract of employment be terminated.



6.8 The Headteacher or governors' committee conducting the hearing shall confirm its decision in writing to the employee and the reasons for it. The employee shall also be advised of the right of appeal.

## **7. Right of Appeal**

7.1 An employee wishing to exercise the right of appeal must submit a written appeal to the Clerk to the LGB within five school working days' of receiving written notification of the determination to dismiss and should state the grounds on which the appeal is to be made. The employee must indicate which of the original documents used at the first hearing will be re-submitted.

7.2 The appeal will be heard by a different committee of the LGB with at least ten school working days' notice. Part-time employees shall normally only be called to a hearing on one of their contractual days of work.

7.3 The investigating officer will indicate which of the original documents used at the first hearing are to be re-submitted.

7.4 If either party wish to deal with some aspect that was not included in the original hearing any documentation relating to this aspect must be submitted to the Clerk to the LGB at least five school working days in advance of the hearing.

7.5 The employee shall have the right to be accompanied to the appeal hearing by a work colleague of his/her choice who may be a trade union representative.

7.6 A Trust representative may attend the hearing to provide advice.

7.7 The conduct of the appeal hearing shall be in accordance with Appendix 2 to this procedure.

7.8 Where there has been no finding of gross misconduct but where the employee has received a warning or it has been determined that the employee shall cease to work at the school, the Appeal Committee may decide that:

- (i) The employee's appeal be upheld and no further action be taken against the employee arising out of matters heard; or
- (ii) The decision of the governors' committee is upheld; or
- (v) The allegation is substantiated but a lesser penalty will be issued.

7.9 Where there has been a finding of gross misconduct at the first hearing, the Appeal Committee may decide that:

- (i) The employee's appeal be upheld and no further action be taken against the employee arising out of matters heard; or

- (ii) The allegation of gross misconduct be dismissed but misconduct proven and, therefore, that either an appropriate warning will be issued or, if a final warning is on file, that a final warning be re-issued or the contract of employment be terminated;
- (iii) The decision of the governors' committee is upheld; or
- (iv) The allegation of gross misconduct is substantiated but a lesser penalty than dismissal will be issued.

7.10 The decision of the Appeal Committee will be confirmed to the employee in writing.

7.11 In the case of dismissals, if the appeal is upheld, termination of contract and any notice period will be rescinded.

## **8. Initiation of the Disciplinary Procedure against a Headteacher**

8.1 Where it is alleged that a Headteacher has committed an offence of misconduct, the Chair of the LGB, in consultation with the CEO or Executive Headteacher, shall ensure that an investigation is undertaken to establish whether there is a case to answer. The Trust will nominate a senior officer to undertake this investigation on the behalf of the Chair of Governors.

7.2 Where it is considered necessary the Chair of LGB, in agreement with the Trust, may suspend the Headteacher from duty pending the completion of the investigation.

7.3 The provisions in Section 2 above will apply to any suspension.

7.4 Following the investigation, the Chair of LGB will decide as to whether there is, in his/her opinion, a case for the Headteacher to answer. If that opinion is that there is a case to answer, the matter shall be referred to a governors' committee of the LGB.

## **APPENDIX 1**

### **GROSS MISCONDUCT**

Certain acts of misconduct are so serious that the first occurrence is likely to lead to dismissal. Misconduct of this type is termed gross misconduct. Such misconduct would include:

- Dishonesty, such as theft of property, falsifications of expenses claims, fraudulent overtime claims etc.
- Being unfit to perform duties associated with the post as a result of taking alcohol or illegal or banned substances, unless this accords medical advice.
- Physical acts of violence or verbal abuse of colleagues, children, parents or visitors to the school.
- Wilful abuse or destruction of the School's property.
- Sexual misconduct.
- Repeated and serious failure to follow reasonable instructions.
- Any actions that intentionally place others in danger.
- Sexual, racial or other forms of harassment.

This is not an exhausted list.

## **APPENDIX 2**

### **Conduct of a Disciplinary Hearing**

1. The Headteacher or Chair of the committee conducting the hearing will invite all parties into the room and introduce all persons present.
2. The purpose of the meeting and the order of proceedings will be explained.
3. Presentation of case against the employee by the manager, including the calling of witnesses. Witnesses should attend only for that part of the hearing to give witness. Questions should be asked of witnesses before they leave.
4. The Headteacher or committee will be given the opportunity to ask questions.
5. The employee or their companion will be given the opportunity to ask questions.
6. Statements by the employee or their companion, including the calling of witnesses. Witnesses should only attend for that part of the hearing to give witness. Questions should be asked of the witness before they leave.
7. The Headteacher or committee will be given the opportunity to ask questions.
8. Management will be given the opportunity to ask questions.
9. The manager will be given an opportunity to sum up his/her case.
10. The employee or their companion will be given an opportunity to sum up his/her case.
11. Both parties will then leave the room to allow the committee conducting the hearing to give proper consideration to all matters raised.
12. The Headteacher or committee conducting the hearing may recall either party to clear points of uncertainty on representation already given. Should this occur, both parties will be present.
13. When a decision has been made, both parties shall be recalled and the employee informed of the action (if any) that will be taken.
14. The outcome of the hearing will be confirmed in writing with information about any right of appeal.

## **APPENDIX 3**

### **MODEL FOR THE CONDUCT OF A SUSPENSION INTERVIEW**

If the reason for suspension is not suspected gross misconduct, but the Headteacher is exercising her/his powers under Paragraph 2.1 of this Procedure, the following format should be amended appropriately.

The meeting will be conducted by the Headteacher.

The employee should be allowed to spend a few minutes discussing the situation with their representative prior to the meeting if s/he is to be represented.

The Headteacher should inform the employee that the meeting is not a formal disciplinary hearing but has been called to put to her/him a serious disciplinary matter, which could potentially lead to a charge of gross misconduct and dismissal. The employee should be informed that, after the allegation has been put to her/him, s/he will be allowed a break to discuss the issue with their representative (if represented) or to consider whether s/he wishes to make a response (if not represented).

The Headteacher should inform the employee that any response s/he wishes to make will be considered, but her/his immediate suspension on full pay is a possible outcome of the meeting. The employee should also be warned that any response s/he makes will be recorded and may be used in evidence if disciplinary action becomes necessary.

In considering the options in cases involving safeguarding issues, the Headteacher should consider paragraphs 141-147 of "Keeping children safe in education", the statutory guidance for schools and colleges issued by the Department for Education.

The Headteacher should briefly outline the allegation(s) against the employee and then allow an adjournment for her/him to consider whether s/he wishes to respond.

The Headteacher should consider any response, which may be made. A record of any response must be taken since this will form part of the investigation. The Headteacher may wish to take a short break to consider the employee's response. The employee should be informed of the Headteacher's decision at the end of the meeting. If the Headteacher decides to suspend the employee s/he should make it clear that suspension shall not be regarded as an indication of guilt and is not in itself a disciplinary sanction and that no decision will be made as to the validity of the allegations until the investigation is complete.

The employee should be informed that s/he will have to attend an Investigatory Interview, when s/he will be given the opportunity to respond fully to the allegations against her/him.

The employee should be asked to return any school property, such as keys, and to remove any personal belongings from the premises. S/he should be given a named person in the School whom s/he may contact during the period of suspension. This

named employee should be a member of the School Senior Leadership Team. The employee should be informed that the purpose of having a named contact in School is to allow for information sharing on School issues – it is not to discuss any aspect of the suspension and/or disciplinary investigation. S/he should be instructed not to discuss the investigation with any other member of the school staff; any governor of the school and any parent/guardian of any children who attend the school and not to re-enter the school premises without the prior permission of the Headteacher.

The employee should be informed that a conclusion as to the need for further formal action would be reached as soon as possible and that if, at the end of the investigation, it is found that there is no case to answer, this will clearly be indicated in the kept records.