

Hillside Primary School

Staff Discipline & Grievance Policy



Hillside Primary School

Staff Discipline & Grievance Policy

Contents

(Based on Norfolk County Council guidelines as of July 2018)

1. Purpose and scope.....	3
2. Procedure.....	4
3. Cases involving child protection issues, vulnerable adults or financial irregularities	4
4. Suspension.....	5
5. Investigation	6
6. Disciplinary hearing	7
7. Result of hearing - disciplinary action	8
8. Time limits for warnings	10
9. Appeals	11
10. Further statutory requirements	13
11. Links to other Policies.....	14
12. Monitoring & review, policy into practice	14

1. Purpose and scope

- 1.1 The *Employee discipline: model procedure for schools* supports the Governing Body's standards and rules (including the Guidelines on Conduct) and aims to ensure consistent and fair treatment for all. It is not there to deal with problems associated with unsatisfactory work performance arising from an employee's lack of capability.
- 1.2 The procedure applies to all employees except support staff in their probationary period (for which issues would be addressed within the **P113a Probation: model procedure** available on HR InfoSpace).
- 1.3 Any complaints from parents (or others associated with the school) concerning the conduct of a member of staff should be dealt with under this employee discipline procedure and not the school's complaints procedure. The details of the investigation and any sanction given as an outcome will remain confidential.
- 1.4 Disciplinary issues relating to all employees must be handled in a fair and equitable manner. Each case must be looked at on its own merits and any relevant circumstances taken into account.
- 1.5 The Headteacher (and/or governors when appropriate) is responsible for operating this procedure and is able to issue disciplinary *warnings*. Legislation allows for *dismissal* decisions to be made by:-
 - one or more governors
 - the Headteacher
 - one or more governors with the Headteacher

The Governing Body should, on at least an annual basis, discuss and agree where responsibility for dismissal of staff (other than the Headteacher) will fall and their decision must be formally recorded in the minutes of the full governing body meeting.

- 1.6 Where the conduct of the Headteacher is the focus of this procedure, all references to "Headteacher" in the text should be read "Chair of Governors or other nominated governor with advice and support from the Director of Children's Services or her representatives". At all stages in the process, the Chair of Governors should work with, and take advice from, the appointed representative(s) of the Director of Children's Services. Where there is a case to answer a panel of governors shall be convened to consider the allegations and take disciplinary action, including dismissal, where appropriate.
- 1.7 The Headteacher and Governors are advised to consult the **G303c Discipline guidelines on conduct of employees** (*HR Info Space*) document for more detailed support in how to consider alleged disciplinary offences. Where alleged misconduct appears to warrant action under the procedure, advice should be sought from HR Direct.

- 1.8 The Governing Body has overall responsibility for specifying the standards of behaviour required, enforcing the rules and ensuring that any breaches are tackled promptly.
- 1.9 Employees who abuse this (or any other) procedure by making malicious or frivolous allegations may face disciplinary action.
- 1.10 All parties involved in a disciplinary matter should treat the information which is the subject of the disciplinary investigation in strict confidence.
- 1.11 Information should not be shared with anyone who is not directly involved in these procedures. However those involved can discuss these matters with their representatives or advisers and, in some cases, there will be a requirement for information to be shared with other bodies (for example, where allegations of abuse are made or suitability to work with children in the future may be a concern).

2. Procedure

- 2.1 An employee who is subject to this procedure has the right to be:
 - accompanied by a trade union representative or work colleague at the investigation stage; and
 - represented by a trade union representative or work colleague at a disciplinary/appeal hearing.
- 2.2 The employee is responsible for arranging to be accompanied or represented.
- 2.3 An employee can be offered transfer to alternative employment in the school (including demotion to a post with less responsibility on a lower grade) as an alternative to dismissal, either as a result of a disciplinary hearing or on appeal, if this is considered appropriate. This would not be an option in cases of summary dismissal for gross misconduct and is unlikely to be deemed appropriate where the employee's misconduct was linked to working with children.
- 2.4 If the employee concerned is a trade union steward or officer, the Headteacher should, with the agreement of the employee, inform the full-time trade union officer prior to commencement of this procedure. Advice on this should be taken from HR Direct.
- 2.5 No employee will be dismissed for their first breach of discipline, unless it is a case of gross misconduct.

3. Cases involving child protection issues, financial irregularities or health and safety concerns

- 3.1 Any complaint involving allegations relating to child protection issues must, in accordance with Section 8.3 of the NSCB's policies and procedures manual, be discussed with the Local Authority Designated Officer (LADO) and then his/her advice must be considered before any investigation takes place under this procedure. There is no discretion for Headteachers over whether or not to discuss such allegations with the LADO. All cases must be discussed where a child is

involved and/or may be at risk or where the allegation is such that if judged to have foundation may bring into question the employee's suitability to work with children in the future. The LADO will then determine whether a formal LADO referral needs to take place and will advise on the appropriate course of action in line with the statutory guidance on handling allegations against members of staff who work with children. This requirement applies to schools and academies alike.

- 3.2 For schools, the Local Authority's Chief Internal Auditor must be notified without delay of any allegations or indications of financial irregularities. Normally, notification to the Chief Internal Auditor would be made on the school's behalf, in consultation with the Headteacher, by the advising HR Consultant or by a member of the Schools Finance Team but there is an obligation on the school to raise the concern with the HR Consultant or the Schools Finance Support Team in the first instance. Advice will then be given on ensuring school finances are secure and on appropriate action to investigate. In some situations, where loss of money has been incurred, a decision may be need to be taken to consult with the police. This requirement applies to schools only. For academies there is no requirement to report to the Local Authority's Chief Internal Auditor but Schools Finance Team will be able to give advice on referral to appropriate bodies where such concerns are identified.
- 3.3 Where the allegations made raise questions about health and safety practice in the school, whether this is caused by an accident or incident, a "near miss" or is an apparent breach of health and safety requirements, there is a statutory requirement for the matter to be reported. For schools, the requirement is for the Headteacher to refer the matter to the Authority's Health, Safety and Well-being Manager who will then consider whether the threshold for referral to the Health and Safety Executive has been met. The Health, Safety and Well-being Manager will then advise on appropriate investigation either alongside or as part of a disciplinary investigation. For academies who buy Health and Safety services from the Local Authority, the Health, Safety and Well-being Manager can be approached for advice although the obligation to make a statutory referral will rest with the academy. For academies who do not buy Health and Safety services from the local authority, the academy should contact the Health and Safety Executive direct where it is believed the threshold for referral has been met.

4. Suspension

- 4.1 The law delegates suspension to the Headteacher or nominated governors. In the case of employees other than the Headteacher, the Headteacher would normally take the decision to suspend. In the case of suspension of the Headteacher, the Chair of Governors (or other nominated governor) would take the decision.
- 4.2 If there are clear indications that an employee has acted in a manner which may constitute gross misconduct, or if the employee's presence at work could hinder the investigation, suspension would be appropriate. The Headteacher or nominated governor should, where possible, consult the employee before the decision to suspend is taken.

- 4.3 When a decision to suspend is taken, it must be made clear that the suspension is neither a disciplinary penalty nor an assumption of guilt. The employee must be given the details of people or organisations they can contact for support whilst suspended (e.g. Norfolk Support Line) and an internal point of contact (not be involved in the disciplinary investigation in any way) who will keep the employee informed of everyday developments in school in order to minimise any sense of isolation during the period of suspension and can be a conduit for the suspended employee's requests for information that fall outside the remit of the investigation (e.g. information relating to their normal terms and conditions of employment).
- 4.4 Gross misconduct is generally defined as misconduct serious enough to fundamentally undermine (i.e. damage beyond repair) the employment contract between the employer and the employee and to make any future working relationship and trust impossible. Examples of gross misconduct are given in the **G303c Discipline guidelines on conduct of employees** document.
- 4.5 If a suspended employee is certificated by his/her GP as being unfit for work, s/he will be paid in accordance with their sick pay entitlement for that period of certification. This means that if a period of certificated sick leave continues beyond the employee's entitlement to full pay, s/he will receive pay in line with their sick pay entitlement which may be at half pay or no pay rate.
- 4.6 At frequent intervals, the Headteacher and/or nominated governor should review whether an employee should remain suspended. Any suspension which extends beyond four working weeks must be reported to the Chair of Governors with details of how the investigation is progressing and when it is likely to end. Where any suspension continues for three months, the employee must be notified of the reasons for the suspension continuing and when it is likely to come to an end.
- 4.7 The responsibility for lifting suspension rests with the Governing Body although this can be delegated to the Chair of Governors.

5. Investigation

- 5.1 Disciplinary action must not be taken before there has been an investigation into the circumstances.
- 5.2 Good practice suggests that the investigation should be undertaken by an appropriate individual other than the individual who will consider whether a sanction should be applied. In larger schools, there is likely to be scope for the investigation to be conducted by a Deputy or Assistant Headteacher, leaving the Headteacher free to hear the case. In small schools, this may not be an option and the Headteacher may need to conduct the investigation him/herself. Consideration as to who will carry out the investigation will be particularly important in those schools where the authority to dismiss has been delegated to the Headteacher. Where allegations have been made against the Headteacher, the Chair of Governors (or nominated governor) is advised to seek support for the investigation through the Director of Children's Services.

- 5.3 The employee may be required (and this would normally be the case) to attend a formal investigatory interview. The employee must receive at least five working days notice, in writing, of the requirement for him/her to attend. The letter should give him/her information about the allegations and his/her opportunity to be accompanied by a trade union representative or work colleague.
- 5.4 The investigation should be completed within four working weeks unless there are exceptional circumstances.
- 5.5 On completion of the investigation, the Headteacher (or nominated Governor where allegations are against the Headteacher) should review all the information available and decide which of the following is appropriate:
- no action*;
 - informal advice and discussion;
 - consideration under the formal disciplinary procedure (see 6 below).

Headteachers/Principals should also decide that if an allegation is shown to be malicious or frivolous whether any disciplinary action should be taken against the person who made it. If this person was not an employee (e.g. a pupil) the procedure for this is outside the scope of this policy.

*In some cases, specifically those where allegations are made by a pupil or relate to claimed abuse of a pupil, a “no action” decision is likely to be the outcome when the allegation was either substantiated but not serious enough to warrant disciplinary action, unsubstantiated or malicious. The child protection process overseen by the LADO will help in this determination and will ensure that a finding is made. The issue of whether an allegation is found to be unsubstantiated or even malicious is significant for the employee, particularly around what records are held on file and what is said in a reference.

6. Disciplinary hearing

- 6.1 If the Headteacher (or nominated Governor) concludes, following investigation, that there is a case to answer at a disciplinary hearing, the employee will be notified in writing that a hearing will take place. The employee should be given at least five working days notice of the hearing. If the employee’s union representative is unable to make the specified date, the employee can propose an alternative date within five days. Because of this provision (from the ACAS guidance) the approach may be taken to consult the union representative on their availability before setting a date. The following information should also be included in the letter:
- who will make the decision regarding disciplinary action;
 - a copy of the disciplinary procedure;
 - the date and time of the hearing;
 - details of the allegations;
 - reference to all documents that may form part of the evidence supporting the complaint or allegation and, where possible, a copy of these;
 - the names of any witnesses to be called;

- the fact that the employee will have the opportunity to state his/her case and question any witnesses;
- the right to invite a trade union representative or work colleague to represent them;
- any previous warnings that could be taken into account when deciding the level of any disciplinary action;
- the fact that, depending on its findings, the hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal;
- a statement that the employee must take all reasonable steps to attend the meeting.

A second copy of the documentation above should be provided to the employee for them to pass to their trade union representative or work colleague. If requested by the employee, this second set of papers can be issued direct to the trade union representative or work colleague.

- 6.2 Where the alleged misconduct is not likely to require a sanction beyond a Final Written Warning, the case will be heard by the Headteacher (or a panel of governors where the Headteacher's conduct is in question).
- 6.3 Where the alleged misconduct has the potential to result in dismissal, the case will be heard by a panel of governors unless the authority to dismiss has been delegated to the Headteacher, in which case the Headteacher will hear the case. The exception to this is where the Headteacher's conduct is in question.
- 6.4 At a disciplinary hearing which may result in dismissal, a representative of the Local Authority (a senior member of the HR team) must be present to advise the Governors' Disciplinary Panel. A full set of the papers detailed in 6.1 must be issued to Local Authority adviser at least five days in advance of the hearing.
- 6.5 The hearing should follow the sequence of steps detailed at '*Procedure at Disciplinary and Appeal Committee hearings*'.
- 6.6 Disciplinary action can be taken at any level from a recorded oral warning to dismissal, depending on the nature of the misconduct.

7. Result of hearing - disciplinary action

If, following an investigation and disciplinary hearing, the Headteacher (or nominated Governor) concludes that disciplinary action is required, the following options are available:

7.1 Recorded oral warning

If the conduct concerned is unacceptable but not serious in nature, a recorded warning will normally be appropriate. (See paragraph 7.5 about written confirmation.)

7.2 Written warning

If the offence is too serious for a recorded oral warning, or if there is further misconduct while a recorded oral warning remains in force, the Headteacher/governors may determine to give the employee a written warning. (See paragraph 7.4 about written confirmation).

7.3 Final written warning

If the misconduct is too serious for a written warning but not serious enough to warrant dismissal, or if there is further misconduct while a previous written warning remains in force, the Headteacher/governors may determine to give the employee a final written warning. (See paragraph 7.5 about written confirmation).

7.4 Written confirmation of warnings

The Headteacher/governors must give the employee written confirmation of any warning, within five working days together with an explanation of:

- the reason for the warning;
- whether it is a recorded, written or final warning;
- the employee's right of appeal (see paragraph 9);
- the fact that a permanent note will be kept on their personal file indicating that a warning has been given, the reasons for it and any required improvements in conduct which have been specified;
- the fact that further misconduct may lead to further disciplinary action which could, where appropriate, include dismissal;
- the fact that the warning will be disregarded for further disciplinary purposes after the expiry of the time period.

7.5 Dismissal with notice (including dismissal with offer of re-engagement)

If, while a final written warning is still in force, the employee's conduct is still unsatisfactory, as determined by a subsequent investigation and disciplinary hearing, the Headteacher/disciplinary panel will determine to dismiss with contractual notice. The Headteacher/Chair of the Disciplinary Panel will confirm the dismissal recommendation in writing within five working days, explaining the reasons for the dismissal and the employee's right of appeal. (See paragraph 9). The employee will receive full pay during the notice period. Community Schools must inform the LA of the panel's determination and recommend to the Authority that the employee is dismissed. The Local Authority will then action the dismissal and terminate the employee on payroll. Foundation and Voluntary Aided schools will themselves issue the formal confirmation of dismissal to bring employment to an end.

If appropriate and an opportunity exists, the Headteacher or panel of governors *may* dismiss an employee on the above grounds and offer to re-employ them in a different job in the school. The alternative post should be identified when the employee is told the outcome of the disciplinary hearing and this may require the proceedings to be adjourned. The alternative post may mean demotion to a lower grade. No pay protection will apply. A final written warning will form part of such a disciplinary decision. If the employee refuses the offer of transfer/demotion, his/her dismissal will take place.

7.6 Summary dismissal

If, following an investigation and disciplinary hearing, the Headteacher or panel of governors is satisfied that an employee is guilty of gross misconduct, the determination can be made to dismiss the employee. The Headteacher or Chair of the Disciplinary Panel will confirm the determination to dismiss in writing, within five working days explaining the reasons for the dismissal and the employee's right of appeal. Community schools must inform the Local Authority of the panel's decision and recommend to the Local Authority that the employee is dismissed. The Local Authority will then action the dismissal and terminate the employee on payroll. Foundation and Voluntary Aided schools will themselves issue the formal confirmation of dismissal to bring employment to an end.

8. Time limits for warnings

8.1 Unless there are exceptional circumstances, disciplinary warnings will be disregarded for disciplinary purposes once the following periods of time have elapsed since the warning was given:

- recorded warnings - 6 months
- written warnings - 1 year
- final written warnings - normally 1 year. However, in some circumstances the decision maker can exercise discretion in determining the period of time. See paragraph 8.2 below

See paragraph 7.1 of **G303c Discipline guidelines on conduct of employees** for advice on record keeping.

8.2 Depending upon the nature of the misconduct, the Headteacher or Governors' Disciplinary Panel may impose a final written warning that will remain in force for a period greater than 1 year. It is advised that the warning should have a time limit of a minimum of 1 year and a maximum of 2. In considering an appropriate timescale the Headteacher or disciplinary panel will need to take into account the nature of the misconduct. The timeframe should not be dependent on the severity of the misconduct because the level of sanction reflects this. The timeframe should be enough that it gives time to see a positive change in behaviour. For example, if the warning relates to an event that only happens once a year or for a limited time each year (e.g. exams, SAT's, non-curriculum days), the decision may be for a two year timeframe to allow two annual cycles to be completed to ensure conduct has been adjusted. In other cases where it relates to regular events that happen every day (e.g. interaction with children or colleagues) a one year period may well be enough to see that conduct has been adjusted. In any event the employee must be told at the outset and in writing how long the warning will remain in force and the reason for the longer time period. There is no need for an employee to apply to request that the sanction is expired as it will automatically expire at the end of the time limit given, unless an extension is required. However, the record will remain on the employee's file.

8.3 In Aided Schools and Foundation Schools the Governing Body is the employer and therefore the decision to dismiss should be acted on by the school.

- 8.4 In exceptional circumstances (eg abuse against children), the written warning may be extended for as long as the employee concerned is employed in his/her current job or a similar job. If an employee considers that the extended time period is unreasonable, he or she may appeal to the Clerk to the Governors who will convene an Appeal Hearing.
- 8.5 Where disciplinary action relates to abuse against children, breaches of financial regulations or issues which relate to racial, sexual or disability discrimination, the relevant documentation should be retained on the employee's personal file until the employee reaches normal retirement age or 10 years whichever is the longer, but will not form part of any subsequent disciplinary action if it is time-expired. It is important that a comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on the file of the person accused and a copy provided to the person concerned. If the allegations are found to have been malicious they should be removed from the employee's personal file.

The purpose of this record is to:

- enable accurate information to be given in response to future references
- prevent unnecessary re-investigation should an allegation re-surface
- provide clarification if a future DBS check revealed the allegation (which did not result in a criminal conviction)

- 8.6 In all other disciplinary actions the relevant documentation will be removed from the file and will be destroyed, with the exception of the letter to the employee which confirms the outcome of the disciplinary hearing. This letter will not, however, form part of any subsequent disciplinary action if it is time-expired.

9. Appeals

- 9.1 *Where an employee appeals against formal disciplinary action taken against them, they must put their grounds of appeal in writing to the Clerk of Governors within five working days of receiving the decision in writing. They must state the reasons for the appeal which will normally be one or more of the following:*

- *there was a defect in the procedure*
- *there was insufficient evidence to support the finding*
- *the disciplinary sanction was too severe*
- *new key evidence, not taken into account at the hearing, has come to light since the hearing which may have an impact on the decision.*

- 9.2 It is possible that, if new evidence has come to light since the hearing, the matter is referred back to the individual or panel who made the decision rather than proceeding directly to appeal.

- 9.3 The Appeal will normally be conducted as a 'Review Meeting' unless it is claimed:

- there was a procedural defect at the original hearing such that the hearing was unfair.

- new evidence has come to light which needs to be heard in full.
- there is a dispute about evidence given by one or more witnesses at the original hearing.

Note that this is not an exhaustive list.

In these cases the appeal will normally be conducted as a re-hearing (in full or part). It may be necessary to re-hear the witness evidence at the appeal.

The decision as to whether the hearing will be conducted as a re-hearing or a review meeting rests ultimately with the Appeals Panel.

9.4 For all appeals.

The Appeals Panel will have available all the documents presented to the original hearing. They will also have a copy of the record of the hearing, the letter confirming the outcome of the original disciplinary hearing, the letter of appeal and all other relevant information. The Appeals Panel will reach findings based on the documentation and the submissions at the appeal hearing from the parties.

9.5 Procedure for Review Meetings

The procedure for a review meeting will be that the employee and/or their representative will first put their case by explaining the grounds of appeal and presenting any relevant evidence. The management case will then be put, responding to the grounds of appeal and presenting any relevant evidence. Opportunities for questioning will be included. Relevant witnesses may be brought by either side and may be questioned by all parties.

9.6 Procedure for Re-hearings

The procedure for a 'rehearing' will be:-

The procedure for a review meeting will be that the grounds for appeal will be clearly established. The management case will then be presented with relevant evidence followed by the employee and/or their representative presenting their response with relevant evidence. Opportunities for questioning will be included. Relevant witnesses may be brought by either side and may be questioned by all parties. The '*Procedure at Disciplinary and Appeal Committee hearings*' may be used as a framework for a re-hearing

9.7 The employee will be given at least five days notice of the appeal hearing and will be given the following information in a letter:

- who will hear the appeal,
- the procedure to be followed (i.e. a re-hearing or a review meeting)
- date, time and place of the appeal hearing,
- a reference to any key documents that may form part of the hearing and, if appropriate, copies of these,
- the right of the employee to be accompanied by a companion,

- a statement that the employee must take all reasonable steps to attend the meeting,
- the names of any witnesses to be called by those putting the case against the employee; similarly a statement that the employee may call witnesses,
- a statement of the range of possible outcomes of the hearing.

- 9.8 An appeal against any warning or dismissal will be heard by a panel of three governors who have not previously been involved in the case. The appeal will normally take place within six working weeks of the appeal request being received by the Clerk to the Governors.
- 9.9 At an appeal hearing against dismissal in a Community or VC School, a representative of the Local Authority (a senior member of the HR team) must be present to advise the Appeals Panel. In Foundation or Aided Schools, it is advised that a senior member of the HR team is present to support the Appeals panel.
- 9.10 In cases of gross misconduct, dismissal will be summary following the first hearing and if the employee is reinstated on appeal, pay will be reinstated and backdated to the date of the first hearing. In other cases of dismissal, employees shall be given contractual notice of dismissal following the first hearing. Every effort will be made to conclude any appeal process within the notice period.
- 9.11 At an appeal hearing against dismissal in a Community or VC School, a representative of the Director of Children's Services (usually a senior member of the HR team) must be present to advise the Governors' Appeals Panel. In Foundation or Aided Schools, it is advised that a senior member of the HR team is present to support the Appeals panel.
- 9.12 The outcome of the appeal will be either:-
- the case against the employee is upheld (in whole or part) in which case the sanction will then be the same or a lesser penalty.
 - the case against the employee is not upheld (i.e. the appeal is successful) in which case any related sanction will be removed.
- 9.13 The Chair of the Appeals Panel must confirm the decision of the Panel in writing to the employee within five working days.

10 Further statutory requirements

- 10.1 Disclosure and Barring Service (DBS)
The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This is when an employer has **dismissed or removed** a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.) because the person has:
- Been cautioned or convicted for a relevant offence; or
 - Engaged in relevant conduct in relation to children and/or vulnerable adults [i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm]; or

- iii. Satisfied the Harm Test in relation to children and/or vulnerable adults. [i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists].

10.2 National College for Teaching and Leadership (NCTL)

Whether or not a teacher who has been dismissed for misconduct is referred to the DBS, they must be referred to the National College for Teaching and Leadership (NCTL).

10.3 Statutory guidance exists which requires employers to see through to a conclusion disciplinary cases linked to child safeguarding. Even in situations where an employee resigns from the school when they could have been dismissed, the case should be heard in accordance with this procedure so that a decision is reached and referral made to the DBS and/or National College for Teaching Leadership (NCTL) can be made as appropriate.

10.4 There is a requirement for any post-dismissal referrals (DBS and/or NCTL) to be completed within one month of employment ending.

11 Links to other policies

- Safeguarding & Child Protection Policy
- Staff Code of Conduct Policy
- Allegations of Abuse Policy
- Anti-Bullying Policy
- Complaints Policy
- Equality & Diversity Policy

12 Monitoring & review, policy into practice

12.1 The named Governor for this policy, alongside the headteacher, will regularly monitor and evaluate mechanisms to ensure that the policy is being consistently applied. Any issues identified will be incorporated into the school's action planning.

Name/Signature of Governor: Trevor Wainwright

Name/Signature of Headteacher: Simon Minter

Date: July 2018

Review date: July 2020