

## Disciplinary Procedure

### 1 Scope and Purpose

- 1.1 This procedure applies to all members of staff other than “holders of senior posts” as defined in the College’s Articles of Government.
- 1.2 The procedures will be applied in accordance with the Articles of Government of the Corporation and in accordance with the Advisory, Conciliation and Arbitration Services Code of Practice, ‘Disciplinary and Grievance Procedures’.
- 1.3 The purpose of the procedure is to help and encourage employees to achieve and monitor acceptable standards of conduct at work.
- 1.4 It is also designed to ensure consistent and fair treatment for all in relation to disciplinary action taken in response to allegations of unacceptable conduct.

### 2 General Principles

- 2.1 Every effort will be made to avoid the use of disciplinary action where alternatives are appropriate. A separate procedure will be used to address issues of professional capability and competence.
- 2.2 An employee has the right to be present and accompanied and represented by a representative of a trade union or workplace colleague at any stage of the formal disciplinary procedure.
- 2.3 An employee may be accompanied by a representative of a trade union or workplace colleague at an investigative meeting if they so choose.
- 2.4 In the interest of ensuring that disciplinary matters are resolved as speedily as possible, time limits are given for appropriate stages in this procedure. These are for guidance. If it is not practicable to adhere to these time limits, they may be amended, ideally by mutual agreement. Due regard will be given to the personal circumstances of all parties involved in the procedure.
- 2.5 Nevertheless issues should be raised promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- 2.6 Staff will be informed of the issue and will be given the opportunity to put their case in response before any decisions are made.
- 2.7 It is recognised that disciplinary action against a trade union officer could be seen as an attack on the union’s functions. Although normal disciplinary standards will apply to their conduct as employees, no disciplinary action should be taken until the circumstances of the case have been discussed with a full-time official.
- 2.8 Matters concerning Safeguarding allegations are reported to the Local Authority Designated Officer (LADO) address Children's & Young People Safeguarding & Review - Independent

Review Service, Children's Services, Dudley Council, Council House, 1 Priory Road, Dudley, DY1 1HF 01384 813110

The LADO will be consulted and will be informed of outcomes of investigations and hearings. When there is a dismissal, a referral will be made to the Disclosure and Barring Service (DBS) (for those staff with QTS – a referral will also be made to the Teaching Regulations Agency).

- 2.9 When a written referral is made to the LADO the member of staff will be informed and in due course will be notified of the LADO's decision.

### **3 Investigations**

- 3.1 No disciplinary action will be taken against an employee until the College has fully investigated the circumstances of the matter complained of having regard to the employee's response to allegations. If appropriate, the College may suspend the employee, in accordance with Section 11 below, whilst the investigation is carried out.

### **4 Penalty**

- 4.1 No disciplinary penalty will be imposed without a disciplinary hearing. Other than in cases of serious or gross misconduct, when the penalty may be dismissal without notice or payment in lieu of notice, no employee will be dismissed for a first offence. An employee will have the right to appeal against any disciplinary penalty imposed.

### **5 Stages of the Procedure**

- 5.1 Normally, the procedure will be followed in the order of the stages set out in Sections 6 and 7 below. However, offences of a serious nature may be brought into the procedure at any stage, if any earlier stage would not be severe enough or appropriate to deal with it. For example, there may be occasions when misconduct is considered not to be so serious as to justify dismissal, but serious enough to warrant only one written warning which will be both the first and final written warning. At every stage of the procedure, the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.

### **6 The Procedure**

#### **Informal**

- 6.1 Before taking formal disciplinary action, every effort will be made by the line manager to resolve the matter by informal discussions with the employee, if appropriate.
- 6.2 Minor lapses from acceptable standards of conduct or work performance will usually be dealt with by the employee's line manager giving informal oral warnings or reprimands, which will not be recorded on the Personnel Unit's file relating to the employee.
- 6.3 If, despite informal discussions (or if informal discussions are not appropriate) the employee's conduct does not meet acceptable standards, the following formal procedure should be used.

## 7 Disciplinary Hearings

### Formal

- 7.1 If the College decides to hold a disciplinary hearing relating to the matter complained of, the employee will be advised of the nature of the complaint against him or her, with sufficient information to let the employee know what the alleged problem is, at least five working days before such hearing. Documentation to be used at the hearing should be exchanged by the employer and the employee at least three working days before such hearing.
- 7.2 At any disciplinary hearing, the employee will be given an opportunity to state his or her case and answer any allegations made. The employee will have the right to be accompanied and represented by the trade union representative or workplace colleague of his or her choice.
- 7.3 During the hearing the member of staff will be given an explanation of the complaints against them and go through the evidence that has been gathered. The member of staff will be allowed to set out their case and answer any allegations that have been made. They may ask questions, present evidence and call relevant witnesses. They will be given an opportunity to raise points about any information provided by witnesses. If the investigating officer calls witnesses the employee will be given notice in advance of the hearing that they intend to do this.
- 7.4 If the employee fails, without good reason, to attend a disciplinary hearing which the College has instructed him or her to attend, the hearing will take place, and a decision will be made, in his or her absence.
- 7.5 However if the chosen representative of the employee is unavailable on the date of the initial hearing, the employee may delay the date of that hearing once up to five working days to enable the chosen representative to attend. The location and timing of any alternative hearing should be convenient to both the employer and the employee.
- 7.6 Following the disciplinary hearing the manager will decide what action is justified and inform the employee.

#### 7.6.1 Allegation outcomes:

The definitions that should be used to determine the outcome of an allegation are set out below:

- (a) Substantiated: there is sufficient evidence to prove the allegation;
- (b) Malicious: there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive or cause harm to the person subject of the allegation;
- (c) False: there is sufficient evidence to disprove the allegation;
- (d) Unsubstantiated: there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence; or,
- (e) Unfounded: to reflect cases where there is no evidence or proper basis which supports the allegation being made.

### Stage 1 - Oral Warning

- 7.7 If conduct or work performance does not meet acceptable standards, the employee will normally be given a formal **oral warning** by his or her line manager. The employee will be advised of the reason for the warning, that it is the first stage of the formal disciplinary procedure, that he or she has a right to appeal against it in accordance with Section 9 below. A brief note of the oral warning will be placed on the Personnel Unit's file relating to the employee. After six months, the warning will be spent and the note thereof will be removed from the Personnel Unit's file, subject to the employee's conduct and work performance having been satisfactory throughout that period.

### Stage 2 - Written Warning

- 7.8 A **written warning** will be given to the employee by his or her line manager or appropriate senior manager if:
- (i) the employee commits a serious offence of misconduct or the standard of his or her work performance is seriously inadequate;
  - (ii) the employee fails to comply with a formal oral warning given under Stage 1;
  - (iii) or despite having been given, under Stage 1, a formal oral warning as the result of either misconduct or unsatisfactory work performance, the employee commits a further offence of misconduct, or his or her work performance continues to be unsatisfactory.
- 7.9 This written warning will give details of the complaint against the employee, the improvement required and the time limit within which such improvement must be achieved. In the case of misconduct, the warning will state that, if the employee commits a further offence of misconduct during the period specified in the warning, action under Stage 3 will be considered. In the case of unsatisfactory work performance, the warning will advise the employee as to what steps he or she should take to improve and will state that, unless such improvement is achieved within the period specified in the warning, action under Stage 3 will be considered. The written warning will also advise the employee of the right of appeal in accordance with Section 9 below. A copy of the written warning will be placed on the Personnel Unit's file relating to the employee. The warning will be spent, and will be removed from the Personnel Unit's file, after twelve months, subject to the employee's conduct and work performance having been satisfactory throughout that period.

### Stage 3 - Final Written Warning

- 7.10 A **final written warning** will normally be given to the employee by his or her line manager or appropriate senior manager if:
- (i) the employee fails to comply with a first written warning given under Stage 2;
  - (ii) despite having been given, under Stage 2, a first written warning as the result of either misconduct or unsatisfactory work performance, the employee commits a further offence of misconduct, or his or her work performance continues to be unsatisfactory;
  - (iii) or the employee's misconduct or unsatisfactory work performance, although not considered to be serious enough to justify summary dismissal, is sufficiently serious to warrant only one written warning (in effect both the first and a final written warning).
- 7.11 The final written warning will give details of the complaint, the improvement required and the time limit within which such improvement must be achieved. In the case of misconduct,

the warning will state that, if the employee commits a further offence of misconduct, during the time limit specified in the warning, his or her employment may be terminated. In the case of unsatisfactory work performance, the warning will advise the employee as to what steps he or she should take to improve and state that, if such improvement is not achieved within the period specified in the warning, his or her employment may be terminated or some other action taken such as demotion or loss of seniority. The final written warning will also advise the employee of the right of appeal in accordance with Section 9 below. A copy of the final written warning will be placed on the Personnel Unit's file relating to the employee. The warning will be spent and will be removed from the Personnel Unit's file, after eighteen months (although, in exceptional cases, the period may be longer), subject to the employee's conduct and work performance having been satisfactory throughout that period.

#### **Stage 4 - Dismissal**

- 7.12 The Principal or a senior post-holder to whom the power to dismiss has been delegated by the Principal may, having complied with the procedure in sections 7.11-7.12 give notice of dismissal to the employee if:
- (i) the employee fails to comply with a final written warning given under Stage 3;
  - (ii) or despite having been given, under Stage 3, a final written warning as the result of either misconduct or unsatisfactory work performance, the employee commits a further offence of misconduct or his or her work performance continues to be unsatisfactory.
- 7.13 Prior to being given such notice of dismissal, the Principal shall send to the employee a written statement setting out the alleged conduct, characteristics or other circumstances which led to that employee being considered for dismissal, and the employee shall be afforded a reasonable opportunity to respond to it. The Principal shall invite the employee to a meeting with the Principal, and no disciplinary action, except paid suspension, shall be taken against the employee until that meeting has taken place. The employee shall have the right to make representations, (including oral representations) to the Principal, for which purpose he or she may be accompanied and represented by a trade union representative, or workplace colleague.
- 7.14 After taking any representations into account, the Principal shall take such action as he/she considers appropriate, which may include dismissal, and shall communicate the decision to the employee concerned without unreasonable delay. The communication must be in writing, and if the decision is to dismiss, it will specify the reasons for dismissal and the date on which the employment will terminate. The communication must also notify the employee of his/her right of appeal against the decision in accordance with Section 9 below. Any steps which the Principal can take under sections 7.11-14 can also be taken by a senior post-holder to whom the responsibility has been delegated by the Principal, and the provisions of sections 7.11-14 shall be read accordingly.

### **8 Gross Misconduct**

- 8.1 An employee who is accused of serious or gross misconduct may be suspended from work, in accordance with the provisions of Section 11 below, whilst the College investigates the alleged offence. The Principal may summarily dismiss the employee if, on completion of an investigation and a disciplinary hearing carried out in accordance with sections 7.11-14 above, it is established that the employee has been guilty of serious or gross misconduct.
- 8.2 If an employee is accused of serious or gross misconduct and the Principal considers that the circumstances are such that the College would be entitled to summarily dismiss the

employee without the need to undertake the process of investigation and hearing detailed in sections 7.11-14 above, then the Principal may dismiss the employee without undertaking any process of investigation or hearing. This will normally be confined to the most exceptional cases (that is, a small subset of serious or gross misconduct cases), where the evidence of the serious or gross misconduct is clear and compelling, and there is no realistic possibility that the employee can produce evidence which casts doubt on the fact of his/her being guilty of serious or gross misconduct, or by way of mitigation of possible penalty.

- 8.3 In the event of summary dismissal in the circumstances detailed in section 8.1 or 8.2, the Principal shall, without unreasonable delay, provide the dismissed employee with a written statement of the alleged misconduct which has led to the dismissal and the reasons why the Principal considers that the employee was guilty of such misconduct and notifying that employee of the right to appeal to the Corporation against the dismissal. Any steps which the Principal can take under sections 8.1-8.3 can also be taken by a senior post-holder to whom the responsibility has been delegated by the Principal.
- 8.4 The following offences are examples of offences which are normally regarded as grounds for summary dismissal:
- Theft or unauthorised possession of any property or facilities belonging to the College, or to any employee or student.
  - Serious damage deliberately sustained to College property.
  - Safeguarding breaches
  - Acts that bring the College into serious disrepute
  - Deliberate falsification of College registers, reports, accounts, expense claims or self-certification forms.
  - Bribery or corruption.
  - Refusal to carry out duties or reasonable instructions or to comply with College rules.
  - Serious acts of insubordination.
  - Serious negligence/incompetence which causes unacceptable loss, damage or injury.
  - Serious incapability as a result of being intoxicated by reason of alcohol or illegal drugs.
  - Violent, dangerous or intimidatory conduct.
  - Violation of the College's rules and procedures concerning health and safety at work.
  - Violation of the College's rules in accordance with the Acceptable Use Policy (computer).
  - Sexual, racial or other harassment of another employee or a student.
  - Serious misconduct (whether it is committed during or outside the employee's hours of work for the College) or a criminal offence, which may adversely affect the College's reputation, the employee's suitability for the type of work that the staff member is employed by the College to perform or his or her acceptability to other employees or to students.
- 8.5 The above examples are not exhaustive or exclusive and offences of a similar nature will be dealt with under this procedure.

## 9. Recording Keeping concerning Safeguarding Allegation Outcomes

- 9.1 Details of allegations following an investigation that are found to have been malicious or false should be removed from personnel records, unless the individual gives their consent

for retention of the information. However, for all other allegations, the following information will be kept on the file of the person accused:

- (a) a clear and comprehensive summary of the allegation;
- (b) details of how the allegation was followed up and resolved;
- (c) a note of any action taken, and decisions reached and the outcome as categorised above;
- (d) a copy provided to the person concerned, where agreed by children's social care or the police; and,
- (e) a declaration on whether the information will be referred to in any future reference.

9.2 The purpose of the record is to enable accurate information to be given in response to any future request for a reference. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time.

9.3 The College has an obligation to preserve records which contain information about allegations of sexual abuse for the Independent Inquiry into Child Sexual Abuse (IICSA), for the term of the inquiry (further information can be found on the IICSA website). All other records will be retained at least until the accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer.

9.4 The Information Commissioner has published guidance on employment records in its Employment Practices Code and supplementary guidance, which provides some practical advice on record retention. This can be found on the ICO website.

## **10. Appeals against Disciplinary Penalties other than Dismissal**

10.1 An employee who wishes to appeal against a formal oral warning, a written warning (or) a final written warning [or a disciplinary suspension] should inform the Director of HR within two working days of the date of the decision which forms the subject of the appeal. When submitting an appeal, the employee shall normally set out briefly whether the appeal is:

- (a) against the actual decision of the disciplinary hearing that the complaint against the employee was justified;
- (b) against the severity of the disciplinary action taken, even if the complaint is upheld;
- (c) against the procedures followed.

The appeal will be heard by:

- (i) the appropriate senior manager in the case of a disciplinary penalty imposed by the employee's line manager, or  
  
a senior post-holder in the case of a disciplinary penalty imposed by a senior manager.
- (ii) The Principal, if a senior post-holder was directly involved in the procedure when the disciplinary penalty complained of was imposed.
- (iii) An Appeals panel of the governing body, if the Principal was directly involved in the procedure when the disciplinary penalty complained of was imposed.

The senior manager, senior post-holder, Principal or disciplinary panel as appropriate, will conduct an appeal hearing not later than ten working days after the notice of appeal has been received. At the hearing of the appeal, the employee will be given an opportunity to state his or her case and will be entitled to be accompanied and represented by the trade union representative or workplace colleague.

- 10.2 If the employee's representative is unavailable on the date of the initial appeal, the employee may delay the date of the appeal once up to five days to enable the chosen representative to attend.
- 10.3 At the appeal, the disciplinary penalty imposed will be reviewed, but it cannot be increased. The decision of the senior manager, senior post-holder or Principal, or disciplinary panel, as appropriate, will be notified to the employee in writing within ten working days of the appeal hearing and will be **final** and binding.

## **11 Appeals against Dismissal or Notice of Dismissal**

- 11.1 An employee who wishes to appeal against dismissal or notice of dismissal should inform the HR Director in writing within ten days of the date of the decision which forms the subject of the appeal. The appeal will be heard by the Principal (if the dismissal was determined by a senior post-holder or by a committee established by the Corporation and consisting of three members of the Corporation, excluding the Principal, the staff members and the student member. The appeal must be heard by a committee established by the Corporation in circumstances where the employee has been dismissed with immediate effect by reason of serious or gross misconduct, as detailed in sections 8.1-8.2 above. The Principal must not hear the appeal if s/he has been involved in the detail of the investigation or the decision to dismiss.
- 11.2 The appeal hearing will take place as soon as reasonably practicable after the notice to appeal has been received by the HR Director. The employee will be given at least ten working days' notice of the date, time and place fixed for the appeal hearing (unless an earlier date has been mutually agreed). At the appeal hearing, the employee will be given an opportunity to state his or her case and will be entitled to be accompanied and represented by the trade union representative or workplace colleague of his or her choice. The Principal, or Corporation's committee appointed to hear the appeal, shall take into account any representations of the employee and the Principal's decision (or, where applicable, the decision of another senior post-holder) to dismiss, and take such action as it considers appropriate. The decision will be notified to the employee within five working days (and, as appropriate to the Principal or other senior post-holder who took the decision to dismiss). The decision will be final and binding.

In the case of an appeal against a notice of dismissal, the dismissal will not be confirmed until the appeal has been determined.

## **12 Suspension Pending Disciplinary Hearing**

- 12.1 When the Principal is of the view that an employee is suspected of gross misconduct, or that because of some other good and urgent cause the continuing attendance of the employee at the College cannot be permitted, the Principal may suspend the employee from duty pending an investigation and the holding of a formal disciplinary hearing.
- 12.2 Such a suspension should only be imposed after careful consideration and it should be made clear to the employee that it is not considered a disciplinary act.



- 12.3 Prior to the decision to suspend basic fact finding and a risk assessment will be undertaken. All options to avoid suspension will be carefully considered. In cases of a safeguarding nature, it will be considered if there is a cause to suspect a child or other children are at risk of harm or the case is so serious that it might be grounds for dismissal, (KCSIE 2021) and the LADO will be informed and consulted. The member of staff will be informed of the matter being referred to the LADO.
- 12.3 If the Principal decides to suspend an employee from duty, he/she shall:
- (i) confirm the suspension in writing to the employee without unreasonable delay; and
  - (ii) inform the employee in writing of the reasons for the suspension, without unreasonable delay.
- 12.4 An employee who is suspended from duty shall, throughout the period of suspension, continue to be entitled to his/her full pay unless there is a provision in the contract to the contrary.
- 12.5 An employee who has been suspended may appeal both in writing and orally to the Chair of the Corporation against the suspension. Notice of such appeal shall be given in writing by the employee to the Clerk to the Corporation and the appeal shall be heard as soon as possible by Chair of the Corporation or in his or her absence the Vice Chair.
- 12.6 A suspension against which an appeal by an employee is made shall continue to operate pending the determination of the appeal.
- 12.7 Where an appeal against suspension is made by an employee to the Chair of the Corporation, the employee shall be given at least five working days' notice of the date, time and place fixed for the hearing, unless an earlier date has been mutually agreed.
- 12.8 At the hearing of an appeal against suspension, the employee may be accompanied and represented by a trade union representative or workplace colleague of his or her choice.
- 12.9 Following the hearing of an appeal against suspension, the Chair or Vice Chair of the Corporation may either confirm the suspension or lift the suspension. The decision of the Chair or Vice Chair, and the reasons for the same, shall be confirmed by the Clerk to the Corporation in writing to the employee without unreasonable delay following the hearing of the appeal.

<b>Reviewed / Approved</b>	<b>By</b>	<b>Date</b>
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