

Holmer Green Senior School



Conduct and Discipline Policy

March 2021

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1. Introduction

1.1 This document sets out the School's policy on conduct and discipline and the procedure to be applied when an employee's conduct falls below normal or acceptable standards. Its aim is to help and encourage all employees to achieve and maintain the required standards of conduct and to ensure that the School is objective, firm, reasonable and consistent in its approach to dealing with employee discipline issues.

2. Scope

2.1 The policy, procedure and Statutory Requirements set out in this document apply to teachers and BCC employees employed under the terms of Bucks Pay Employment Conditions but does not apply to:

- (With the exception of incidents relating to safeguarding as set out in the following paragraph 2.2) staff engaged on temporary contracts of less than 6 months in duration
- (With the exception of incidents relating to safeguarding as set out in the following paragraph 2.2) new staff who are still within their probationary period of employment and newly-qualified teachers during their statutory induction period.
- Where the employee has been barred from teaching by the Secretary of State, where the contract would be automatically terminated.
- Where a determination that the employee should no longer work at the school is imposed by reason of any other statutory provision (for example lack of physical or mental fitness)

2.2 Where conduct problems concern an allegation against a member of staff relating to children or young people, or vulnerable adults, the guidance in Appendix 1 must take precedence over this policy and procedure.

2.3 Where conduct problems are identified as having arisen due to lack of capability, they will be addressed through the School's capability procedure.

3. Roles and Responsibilities

3.1. The Headteacher, or Chair of Governors in the case of the Headteacher, is responsible for the overall management of standards of conduct within their School. The authority to take action under this Procedure rests in the Headteacher or Chair of Governors. The Headteacher will nominate those senior employees in the School who have the authority to give formal warnings.

4. Principles

4.1 The policy and procedure contained within this document is founded on the following principles:

- To maintain high standards of conduct within the School and to encourage improvement in conduct where shortcomings are identified.
- Where appropriate to address conduct issues without recourse to the formal stages of the disciplinary procedure.
- To ensure that employees facing action under the formal stages of the disciplinary procedure are treated fairly and consistently.

- Not to discriminate against any individual in the application of this policy and procedure on prohibited grounds e.g. on grounds of gender, trans-gender, race, trade union activities, disability, age, sexual orientation, part-time work status, religion or belief.

5. Informal Action

5.1 In the course of normal day-to-day management it is anticipated that the employee will be advised of any conduct issues by their manager and counselled about how to correct such issues. This process will generally be regarded as the first step in addressing conduct issues and represents informal action outside of the School's formal Conduct and Discipline Policy & Procedure. Informal action is appropriate for low-level misconduct, which is capable of early correction. Where informal action fails to bring about a remedy, further misconduct is likely to be considered within the formal stages of the School's Conduct & Discipline Policy & Procedure and the employee shall be warned of this.

6. Rules on Conduct

6.1 This section sets out examples of acts of misconduct, which are likely to lead to formal action being taken. The list is not exhaustive:

- Failure to comply with a reasonable management instruction
- Failure to observe the Council's and/or School's Standing Orders, financial or other operational regulations
- Failure to observe Council/School policy, for example, actions in breach of the Council's IT Security guidelines or the Council's data protection policy
- Negligence in the performance of duties
- Failure to provide a duty of care in the performance of role
- Breach of Health & Safety rules and requirements including any act or omission
- Poor-time keeping
- Misuse of School property and equipment including misuse of email, fax or internet facilities
- Failure to follow the School's sickness notification procedures and certification requirements
- Abuse of the sickness scheme e.g. engaging in activities which may delay recovery
- Actions during a period of sick leave likely to inhibit recovery or a return to health
- Being under the influence of alcohol or drugs
- Improper use of information obtained in the Council's and/or School's employment
- Abusive or inappropriate behaviour toward pupils, parents, fellow employees or members of the public

6.2 In general the following types of offences are deemed to constitute serious misconduct and are likely to lead to dismissal without notice, or pay in lieu of notice. The list is not exhaustive and is intended to give only an indication of the nature and type of offence, which will warrant dismissal without notice or pay in lieu of notice:

- Serious acts of insubordination
- Serious breaches of Financial regulations or other operational regulations
- Gross negligence in the performance of duties
- Theft from the School, its employees or members of the public or other acts of dishonesty
- Dishonest or improper use of information obtained in the Council's and/or School's employment, for example, disclosure of information pertaining to Council/School tender documents to outside contractors leading to unfair competition

- Serious breach of duty regarding non-disclosure of confidential information
- Serious breach of duty regarding disclosure of confidential information
- Serious breach of safe working practices and health and safety rules which endangers the health and safety of the individual, other employees, or members of the public and/or exposes the Council/School to claims against it
- Serious breach or failure to provide safe working environment for children and young people
- Taking drugs on School premises for other than medical reasons
- Buying, selling or offering drugs on School premises
- Offering alcohol to students
- Fraud
- Falsification of information, for example, qualifications or other relevant personal details in seeking and obtaining employment or promotion; information contained in time sheets, overtime claims, invoices, accounts, records or medical certificates
- Fighting
- Violent, offensive, abusive or indecent behaviour
- Bullying
- Unlawful acts of discrimination within the workplace on the grounds of race, sex, sexual orientation, age, disability, religious belief or trade union membership
- Harassment including discriminatory harassment, for example sexual harassment
- Unauthorised removal of and/or serious misuse of and/or deliberate damage to Council/School property and equipment including misuse of email, fax or internet facilities
- Sexual misconduct at work
- Aiding and abetting any of the above
- Other actions which fundamentally breach the relationship of trust and confidence which exists between employer and employee
- Conduct that is considered seriously contrary to the Code of Conduct for Officers
- Criminal offences and cautions outside of work, including reprimands, final warnings or penalty notices

7. Cases of Alleged Criminal Activity

- 7.1 BCC reserves the right to suspend any internal investigation pending a police investigation.
- 7.2 If the allegation involves suspected harm to children, young people or vulnerable adults, the guidance in Appendix 1 must take precedence over this policy and procedure.
- 7.3 If the allegation involves suspected serious financial irregularity or fraud, the Head of Finance must be informed.

8. Formal Stages of the Disciplinary Procedure and Disciplinary Sanctions

- 8.1 The School also reserves the right to take a range of actions in addition to formal warnings or as an alternative to more serious disciplinary action depending on the circumstances of the case. Such actions may include withholding annual pay increments or other pay supplements, demotion for a specified or unspecified period or transfer to an alternative job or location with or without a reduction in the contractual rate of pay.
- 8.2 The formal stages of the Disciplinary procedure are based upon a graduated system of warnings with more serious sanctions being applied where poor conduct is repeated or the employee fails to heed previous warnings. The stages are listed below. The seriousness of the offence may result in stages in the process being missed out. An employee will not normally be dismissed for a first breach of discipline. However, in cases of serious misconduct an employee may be

dismissed without having had any prior formal warnings as to their behaviour / conduct:

- Stage 1 – First Written Warning
- Stage 2 – Second Written Warning
- Stage 3 – Final Written Warning
- Stage 4 – Dismissal

- 8.3 Any warning applied is regarded as live and kept on the employee's personal file for a specified period of time (please see the Conduct & Discipline Schools' Toolkit for Managers for further information).
- 8.4 Where the same type of misconduct becomes a pattern, which is repeated every time a warning ceases to be live, previous warnings may be taken into account.
- 8.5 Where the sanction is dismissal this may either be dismissal with notice or in cases of serious misconduct dismissal without notice or pay in lieu of notice.

9. Suspension

- 9.1 An employee may be suspended from duty on full pay at any time in any of the circumstances described below:
- Where the School has grounds to suspect that the employee is guilty of serious misconduct or
 - Where there is a real risk that the employee's continued presence at their place of work may interfere with a disciplinary investigation being undertaken or
 - Where the continued presence of the employee at their place or work might be detrimental to their health or
 - Any combination of the above
 - Where suspension relates to a safeguarding allegation, the guidance in Appendix 1 must take precedence over this policy and procedure
- 9.2 Alternatives to suspension may be agreed pending the results of a preliminary investigation and a decision on whether to suspend. These alternatives will normally only be used in the short term, not more than one week, and include:
- Permitting the employee to work from home
 - Work at an alternative location or in an alternative role
 - Work in a more closely supervised environment
 - Management leave
- 9.3 Suspension does not constitute part of the formal disciplinary procedure. However, failure to observe the terms of suspension, detailed in Paragraph 9.7 of this document, will constitute a disciplinary offence.
- 9.4 Suspension will be for the shortest time possible. However, suspension will usually continue until either it is decided not to proceed with a disciplinary hearing against the employee or the disciplinary hearing has taken place and the employee has been informed of the outcome of it. In cases where it is anticipated that the employee will be suspended for a period exceeding three calendar months there shall be a review at monthly intervals to determine whether it is necessary for the employee to remain suspended.
- 9.5 When an employee is suspended he/ she will be informed of:

- The reason for the suspension
- Any terms of the suspension
- The date from which the suspension shall apply
- The likely duration of the suspension
- The name of their nominated contact

9.6 Depending on the nature of the conduct under investigation an employee may or may not be given details about the allegations under investigation at the time of suspension. For example, an employee may not be given details about the allegations under investigation if they include an allegation made by a child that is the subject of a criminal investigation.

9.7 During the period of suspension, unless otherwise informed the employee is:

- Prohibited from attending his/her place of work other than for the purposes of attending investigatory interviews or attending a disciplinary hearing.
- Prohibited from contacting any pupil, parent, employee of the School or officer of the Council other than their representative or contact. This prohibition does not prevent the employee from having social contact with their colleagues outside of the work place, provided the disciplinary issues that are the cause of the suspension are not discussed.
- Prohibited from undertaking alternative employment with another employer.
- Obligated to co-operate with the disciplinary investigation including any request to furnish or identify documents and attend meetings.
- Obligated to ensure that they are, and remain, contactable during normal working hours.

9.8 During the period of suspension the employee will normally be entitled to receive full contractual pay, not including any enhanced rates of pay or payments, special allowances, or payments for unsociable hours. However, pay may be stopped during the period of suspension in circumstances where the employee refuses and/or fails to co-operate or assist with the investigation. Any decision to stop pay during a period of suspension will be notified in writing to the employee. Should the employee commence sick leave during a period of suspension, he/she must notify the nominated contact on the first day of sickness, submit medical certificates for the relevant period and comply with the School's sickness reporting procedures. During periods of sickness the employee will be paid in accordance with the School's rules on sick pay.

10. Investigations

10.1 In most cases an investigation will be required to establish whether or not there is a case for the employee to answer at a formal disciplinary hearing. Where an investigation takes place, the School will aim to conduct it promptly and without unnecessary delay. However, the nature, scale and duration of any disciplinary investigation will depend on the seriousness and complexity of the misconduct being investigated.

10.2 Investigations relating to safeguarding allegations must be made with reference to Appendix 1.

- 10.3 The person with responsibility for the investigation is the Investigating Officer. The Investigating Officer may also undertake the role of Presenting Officer during the hearing.
The function of the Investigating Officer is to: -
- Ascertain the facts and circumstances surrounding the allegation or allegations of misconduct.
 - Ascertain the employee's initial response to the allegation.
 - Form a view as to whether there is a case to answer at a formal disciplinary hearing.
- 10.4 The Investigating Officer may be the employee's immediate manager, other designated person or an independent investigator. The remit and format of the investigation will depend on the circumstances of each case but will, in every case, be governed by the principles of reasonableness and proportionality.
- 10.5 The employee suspected of misconduct will be required to attend an investigatory interview. The employee must endeavour to attend any investigatory interviews and co-operate with the investigation. It is recognised that the employee may wish to be accompanied at such an interview. The employee has the right to be accompanied by a union representative or a work colleague at such an interview (see paragraph 13.1 for further details).
- 10.6 At the conclusion of the investigation, the Investigating Officer will form a view as to whether or not there is a case to answer at a formal disciplinary hearing.

11. Notification to attend a disciplinary hearing

- 11.1 Where a formal disciplinary hearing is to take place, the employee will receive written notification from the Hearing Officer at least 7 working days in advance, of the requirement to attend a disciplinary hearing. The letter will advise the employee of the following:
- The location, date and time of the proposed disciplinary hearing
 - Details of the disciplinary allegations which the employee is to face
 - Whether dismissal is being contemplated as a sanction
 - Their right to be accompanied
 - The identity of the Hearing Officer and, where appropriate, the supporting panel of governors
 - The requirement for the employee to confirm in writing that they are attending, at least 5 working days before the disciplinary hearing, providing all relevant documentation and confirming the names of their employee representative and any witnesses that are likely to be called.
- 11.2 If the disciplinary hearing could potentially lead to dismissal the Council will also be informed and given the opportunity to attend, in accordance with the attached Schedule of Statutory Requirements relating to Dismissals.
- 11.3 Unless already provided the employee will also be provided at this stage with copies of any documents it is intended will be relied upon at the disciplinary hearing (known as the bundle). For example:
- A copy of the report by the Investigating Officer
 - Copies of or a summary of any statements obtained as part of the investigation
 - Notes of any investigatory interview they attended
- 11.4 The disciplinary hearing will not take place unless and until the employee has had proper opportunity to consider the information supplied to him/her. An employee

who requires further time to prepare his/her case may make a request in writing, normally within two days of receiving notification of the hearing, asking for the disciplinary hearing to be held at a later date, normally within five working days of the date of the original hearing.

11.5 The employee is under a duty to take all reasonable steps to attend the hearing. The disciplinary hearing may proceed in the employee's absence but only when all of the following conditions are met:

- The employee has either failed to attend two disciplinary hearings (or failed to respond to two previous notifications to attend a disciplinary hearing).
- The employee is on notice that the disciplinary hearing may proceed in their absence.
- The employee has been informed of the opportunity to provide a written statement setting out their defence to the allegations.
- The employee has not been certified as unfit by a doctor to attend the disciplinary hearing.

12. Right to be Accompanied

12.1 At any disciplinary hearing the employee has the right to be accompanied by a representative of their choice. The representative may be an accredited union representative or work colleague but not a friend, family member or legal representative. The School will not meet any of the costs associated with the attendance of the representative at a disciplinary hearing beyond granting paid time off to a representative who is a School employee.

12.2 Exceptionally, an employee is entitled to legal representation at a disciplinary hearing or appeal hearing. This is only applicable in circumstances where the decision of the disciplinary hearing may result in the employee being referred to an external body, as a result of which the employee may lose the right to practice their profession.

13. Grievances during the course of the disciplinary process

13.1 Where, during the course of the disciplinary process the employee raises a grievance about any aspect of the disciplinary process, the employee's grievance will be dealt with as part of the disciplinary hearing and will not be treated as a separate grievance under the School's grievance procedure.

14. Disciplinary Hearings

14.1 The disciplinary hearing will be chaired by the Headteacher/Chairman for alleged misconduct. If dismissal is a possible outcome, the Headteacher/Chairman will be supported by a Governor and must be assisted by an HR Officer. In general terms the following format will be adopted (see point 14 of Conduct & Discipline Schools Toolkit for Managers for a more information on the format of the hearing):

- The Investigating Officer shall outline the management case against the employee
- The Investigating Officer shall call any witnesses or read from the statement of any witnesses he or she wishes to rely on and direct the Headteacher/Chairman's attention to any documents to be relied on
- The Employee and the Headteacher/Chairman shall have the opportunity to ask questions of any witnesses called
- The Employee shall outline his/ her case in response to the allegations
- The Employee shall give their evidence and call any witnesses or read from the statements of any witnesses they wishes to rely on and direct the Headteacher/Chairman's attention to any documents to be relied on
- The Investigating Officer and the Headteacher/Chairman shall have the opportunity to ask questions of the Employee and any witnesses called by the Employee

- The Investigating Officer and the Employee shall have the opportunity to sum up their respective cases if they so wish
- The meeting will adjourn for the Headteacher/Chairman to consider the outcome

15. Confirmation of the outcome of the disciplinary hearing

- 15.1 Whether or not the employee has been informed of the outcome of the disciplinary hearing orally at its conclusion, the employee will be notified of the outcome of the disciplinary hearing in writing. Written notification will normally be within 5 working days of the date of the hearing and will include:
- The reasons for upholding any allegation of misconduct
 - The details of any disciplinary sanction applied
 - If the disciplinary sanction is by way of warning, the nature and type of the warning and the date of its expiry
 - A warning as to the consequence of further offences of a similar or different nature
 - Any specific requirements for future conduct
 - Any specific requirements in respect of training to be undertaken
 - If the disciplinary sanction is dismissal, the reason(s) for dismissal
 - Any right of Appeal, giving the name of the person to whom the appeal should be addressed
- 15.2 If the disciplinary sanction is dismissal, the Local Authority will also be informed in writing, at the same time as the employee, in accordance with the attached Schedule of Statutory Requirements relating to Dismissals.

16. Right of Appeal

- 16.1 An employee may appeal against a decision to issue them with any level of disciplinary sanction, i.e. first written warning, second written warning, final written warning or dismissal.
- 16.2 An employee seeking to appeal must do so within 10 working days' of written notification of the decision. The employee should send their letter of appeal together with the grounds of appeal to the Warning Appeal Panel or Staff Dismissal Appeal Committee, named in the letter confirming the outcome of the hearing. If the employee, for whatever reason appeals outside of the specified time limit he shall include with his letter of appeal an explanation for why the appeal is being presented late. In such circumstances the decision as to whether to hear the appeal or not shall rest with the Warning Appeal Panel or Staff Dismissal Appeal Committee.
- 16.3 Once an appeal has been received in writing, an appeal hearing will normally be convened promptly, allowing at least 10 working days written notice of the hearing.
- 16.4 An appeal against a first or second written warning will be considered by the Warning Appeal Panel. The Warning Appeal Panel will review all the papers that were presented to the Hearing Officer.
- 16.5 An appeal against a final written warning will be heard by the Warning Appeal Panel.
- 16.6 An appeal against a decision to dismiss will be heard by the Staff Dismissal Appeal Committee
- 16.7 In the case of an appeal against a final written warning or dismissal, where the grounds of appeal are based on the severity of the disciplinary sanction alone, the role of the appeal panel shall be to conduct a review of the case.

- 16.8 Where the grounds of the appeal are broader than an appeal against the sanction, the role of the appeal panel shall be to conduct a re-hearing of the evidence and submissions made when the initial decision was taken, plus to consider all matters raised which are related to that decision whether or not they were known to the Headteacher/Chairman at the time the initial decision was made.
- 16.9 The Appellant shall be given notice in writing of the venue, date and time of the appeal hearing. Copies of any documents relevant to the case including documents which were not before the Headteacher/Chairman and which are intended for consideration at the appeal hearing will be exchanged at least 5 working days in advance of the hearing.
- 16.10 The Staff Dismissal Appeal Committee hearing the appeal have a broad discretion. They may uphold the decision of the hearing, revoke it in its entirety or substitute a lesser or a greater penalty. For example, substitute a final written warning for a dismissal or substitute dismissal with notice for dismissal without notice.
- 16.11 The effect of a successful appeal against dismissal will be that the employee is reinstated and their continuity of employment is preserved.

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