**SOUTHWARK COUNCIL MODEL SCHOOLS’ HR POLICY AND PROCEDURE**

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| Policy and procedure: | Disciplinary |
| Date of implementation: |  |
| Reviewed and recommended by: |  |
| Signed by Chair: |  |
| School: |  |

# Legislation and guidance

Maintained schools insert:

We are required to set out disciplinary procedures under [The School Staffing (England) Regulations 2009](http://www.legislation.gov.uk/uksi/2009/2680/contents/made), in particular regulation 7.

Academies, including free schools insert:

We are required to set out disciplinary procedures under general employment law.

All schools insert:

These disciplinary procedures are based on the [disciplinary and grievance code of practice from Acas.](http://www.acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf)

*Academies, including free schools, if applicable, add/amend:*

These procedures also comply with our funding agreement and articles of association.

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1. **INTRODUCTION** 
   1. The purpose of this formal procedure is to provide a framework for addressing misconduct and gross misconduct matters in a fair and consistent manner.
   2. In the first instance, the school will manage issues of misconduct informally wherever possible, as part of the normal day to day management of staff. Any shortcomings will be brought to the employee’s attention as soon as possible in an effort to achieve an improvement informally.
2. **PRINCIPLES**
   1. Informal action will be considered, where appropriate, to resolve problems.
   2. No disciplinary action will be taken against an employee until the case has been fully investigated.
   3. For formal action the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made at a disciplinary meeting.
   4. Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary meeting.
   5. At all stages of the formal procedure the employee will have the right to be accompanied by a trade union representative, or work colleague.
   6. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice.
   7. An employee will have the right to appeal against any disciplinary action.
   8. The procedure may be implemented at any stage if the employee’s alleged misconduct warrants this.
3. **SCOPE OF THE FORMAL PROCEDURE**

This procedure applies to all school based employees (support and teaching staff, including Headteachers).

1. **THE ROLE OF THE LOCAL AUTHORITY**
   1. The local authority has advisory rights as regards all proceedings of a governing body of all Community, Voluntary Controlled, Community Special and Maintained Nursery Schools where potentially a dismissal may take place. The local authority may choose to send a representative from Southwark Schools Human Resources.
   2. In some circumstances, it may be appropriate for a strategy meeting to be convened with the Director of Education (or delegated representative) where the conduct of a Headteacher is in question.
   3. This also applies to Foundation, Voluntary Aided and Foundation Special Schools where the Governing Body have afforded Southwark Council those rights of attendance and of giving advice.

## **REPRESENTATION**

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* 1. The employee has the right to be accompanied at the formal stages by: a fellow worker; a trade union official employed by the union; or a trade union official who is certified in writing by the union as having the necessary experience or training to act as a companion.
  2. There is no right to representation at the informal stage, which falls outside of this procedure or at the investigation stage.
  3. The role of the companion at the hearing is:

1. Address the hearing to put and sum up the worker’s case
2. Respond on behalf of the employee to any views expressed at the hearing
3. Confer with the employee during the hearing
   1. The companion does not have the right to:
4. Answer questions on the employee’s behalf
5. Address the hearing if the employee does not wish it
6. Prevent the employer from explaining their case
7. **ARRANGING MEETINGS UNDER THIS PROCEDURE**
   1. If an employee’s chosen companion will not be available at the time proposed for the hearing, the employer must postpone the hearing to a time proposed by the employee provided the alternative time is both reasonable and not more than five working days after the date originally proposed.
   2. Where the date offered is more than five working days after the date originally proposed and/or is not reasonable, the employer will arrange the date. There will be no right to request any further adjournments.
   3. If the employee does not attend the hearing without good reason, this may proceed in their absence.
8. **DISCIPLINE OF A TRADE UNION REPRESENTATIVE** 
   1. Any disciplinary action being contemplated in respect of staff representatives of recognised trade unions within this procedure should not be instigated without the prior involvement of the full-time official or nominee, of the appropriate Trade Union.
9. **ADJUSTMENTS TO THE PROCESS**
   1. Those involved in the process should disclose information about any adjustments that may be required to enable them to take part in the process.
10. **SAFEGUARDING ALLEGATIONS** 
    1. In line with Keeping Children Safe in Education, a safeguarding allegation against a professional is where they have:
11. behaved in a way that has harmed a child, or may have harmed a child;
12. possibly committed a criminal offence against or related to a child;
13. behaved towards a child or children in a way that indicates he or she may pose a risk of harm to children; or
14. behaved or may have behaved in a way that indicates they may not be suitable to work with children.
    1. The allegations against the employee can also relate to actions in their personal life.
    2. In the first instance, the Designated Person must immediately consult the Council’s Local Authority Designated Officer (LADO) and the Head of Southwark Schools Human Resources for further advice and action as appropriate.
15. **RAISING A GRIEVANCE DURING A DISCPLINARY PROCESS** 
    1. Where a grievance has any bearing on the disciplinary proceedings, the matter will be addressed as part of the disciplinary process, not separately.
    2. Where the grievance has no bearing on the disciplinary proceedings, this will be considered once the disciplinary process has been completed.
16. **IF THE EMPLOYEE RESIGNS BEFORE THE DISCIPLINARY PROCESS IS CONCLUDED**
    1. Where the employee resigns before the disciplinary process is concluded, there may still be a responsibility for the school to conclude the process depending on the nature and seriousness of the allegations.

Example: safeguarding cases

1. **RECORD KEEPING**
   1. Minutes will be kept of all meetings.Where possible, these will be confirmed as an accurate reflection of what was discussed during the meeting.
   2. Records of all materials relating to the grievance process will be kept securely, only for as long as necessary and in line with data protection law, our privacy notices and [records management policy/record retention schedule].
2. **MONITORING AND REVIEW**
   1. The Governing Body should receive monitoring data on the number of Discipline matters and their progress on a termly basis in order to learn, assess and incorporate them into to future processes.
   2. The policy will be reviewed periodically by the School and may be amended at any time following appropriate consultation. The policy will initially be reviewed 12 months after implementation.

## **THE FORMAL PROCEDURE**

1. **CARRYING OUT AN INITIAL ENQUIRY**
   1. The manager will establish the allegations.
   2. The manager will carry out an initial enquiry by asking the employee and any witnesses to provide a written contemporaneous witness statement.
   3. The manager will then assess whether the matter needs to progress in line with the formal procedure.
   4. The manager will also consider whether suspension is necessary in the circumstances.
2. **SUSPENSION**

**Considering suspension**

* 1. Suspension is not automatic and does not imply guilt. It will be considered if there is a serious allegation of misconduct and:

1. working relationships have severely broken down
2. the employee could tamper with evidence, influence witnesses and/or sway the investigation into the allegation
3. there is a risk to other employees, property or customers
4. the employee is the subject of criminal proceedings which may affect whether they can do their job.
   1. Suspension will normally be on full pay, although there may be circumstances where it will not be on full pay. In such circumstances, the school should seek advice from Southwark Schools HR.
   2. Suspension will be confidential.

**Alternatives to suspension**

* 1. Prior to suspending, the Headteacher / Chair of Governors should consider alternatives to suspension.

Examples:

1. Being moved to a different area of the school
2. Working from home
3. Changing working hours
4. Restricted duties
5. Working under supervision
6. Being transferred to a different role within the school (the role should be of a similar status to their normal role, and with the same terms and conditions of employment)
   1. Where alternative options to suspension are not practical, then suspension will be necessary.

**Authority to suspend / lift suspension**

* 1. The Headteacher or Chair of Governors have the authority to suspend a member of staff from duty.
  2. The Chair of Governors or nominated Governor have the authority to lift the suspension.

**The suspension process**

* 1. The Headteacher should inform the employee that they are being invited to a formal meeting to discuss whether suspension is appropriate in the circumstances. They have the right to be accompanied by a trade union representative or work colleague.
  2. The employee will, in the meantime, be placed on an initial ‘cooling off period’, not normally exceeding three days.
  3. Where it is not possible to arrange a meeting within three days or where it is not appropriate to hold the suspension meeting, the employee may be suspended without the meeting taking place.
  4. The employee will receive a letter regarding the disciplinary process and confirming the suspension.
  5. The school is required to notify the Head of Southwark Schools HR of any suspension.

**Keeping the suspension under review**

* 1. The employee will have a designated contact of support during this time. Their role is to keep in regular contact with the employee.
  2. The Headteacher / Chair of Governors will keep the suspension under regular review, every two weeks, to ensure that suspension is still appropriate to the situation.
  3. The suspension may be lifted at any time.

**Suspension of a Headteacher**

* 1. The Chair of Governors will liaise with the Director of Education when suspending a Headteacher and seek advice from Southwark Schools Human Resources.

1. **STARTING THE FORMAL PROCEDURE**
   1. The manager will write to the individual setting out the following:
2. the allegations
3. possible consequences, for example, if the allegations may result in dismissal
4. details of the investigation
5. a copy of the school’s disciplinary procedure
6. if the employee is suspended, the arrangements and terms of the suspension
7. **INVESTIGATION** 
   1. The manager will appoint an appropriate person to promptly and thoroughly investigate the allegations.
   2. The investigation will be completed within 30 days of commencement.
   3. The employee will be invited to an investigatory interview. There is no right for employees to be accompanied at an investigatory interview.
   4. As part of the investigatory interview, the employee will be able to put forward the names of any witnesses relevant to the case. The investigating officer will consider the relevance of them to the investigation and will make a decision as to whether they should be interviewed.
   5. The investigating officer will then complete a report that is submitted to the manager, who will make a decision as to whether the:
8. the allegations are not founded– no further action will be taken
9. the allegations are not serious to warrant proceeding to the formal stage – this is referred back to the line manager to address informally through informal management action
10. the allegations are serious to proceed to the formal stage – the employee is informed of this and arrangements are made for the hearing in line with this procedure
11. **THE FORMAL HEARING**
    1. The employee will be invited to attend a disciplinary hearing. They have the right to be accompanied by a trade union representative or work colleague.

**Step 2: Arranging the hearing**

* 1. Arrangements for a hearing will be made within ten working days of the disciplinary investigation concluding.
  2. All parties are required to provide, at least five working days before the hearing, the following:

1. Names of any relevant witnesses they intend to call
2. The documentation they intend to rely on

**Step 3: Holding the hearing**

* 1. The process to be followed at the meeting is detailed in **Appendix 2**.
  2. The employee will be notified within 5 working days of the outcome in writing.

**Step 4: The outcome letter**

* 1. The outcome letter will contain the following information:

1. The decision

* Whether the allegations are upheld,
* The allegations are not upheld, or
* The grievance is partially upheld

1. The reasons for the decision
2. The sanction, if any
3. The employee’s right of appeal against the decision, which must be submitted within 5 working days of receipt of the outcome letter

**THE APPEAL HEARING**

**Submitting an appeal**

* 1. The employee has the right of appeal against the decision.
  2. An appeal can be made on the following grounds:

1. Procedural issues
2. Additional information has come to light that was not available at the time of the original hearing
3. The outcome was unreasonable that no reasonable person would have reached that outcome

* 1. The appeal must be submitted in writing to the individual named in Section 5 above, within five working days of receipt of the outcome.
  2. The appeal will then be sent to the Chair of the Disciplinary Panel, who will have an opportunity to consider the grounds of appeal and respond.
  3. The appeal is not intended as a full rehearing and will only be a consideration of the appeal points.

**Step 2: Arranging the hearing**

* 1. Arrangements for a meeting will be made within ten working days of the notification of the appeal.
  2. All parties are required to provide, at least five working days before the hearing, the following:

1. Names of any relevant witnesses they intend to call
2. The documentation they intend to rely on
   1. The process to be followed at the meeting is detailed in **Appendix 2**.
   2. The employee will be notified within 5 working days of the outcome in writing.

**Step 3 – The Outcome Letter**

* 1. The outcome letter will contain the following information:

1. The decision

Whether the appeal is upheld, or

Whether it is partially upheld, or

Whether it is not upheld

1. The reasons for the decision
   1. There is no further internal right of appeal against the decision of the Appeal Panel.

### First stage of formal procedure

This will normally be either:

* an improvement note for unsatisfactory performance if performance does not meet acceptable standards. This will set out the performance problem, the improvement that is required, the timescale, any help that may be given and the right of appeal. The individual will be advised that it constitutes the first stage of the formal procedure. A record of the improvement note will be kept for ... months, but will then be considered spent – subject to achieving and sustaining satisfactory performance

**or**

* a first warning for misconduct if conduct does not meet acceptable standards. This will be in writing and set out the nature of the misconduct and the change in behaviour required and the right of appeal. The warning will also inform the employee that a final written warning may be considered if there is no sustained satisfactory improvement or change. A record of the warning will be kept, but it will be disregarded for disciplinary purposes after a specified period (e.g. six months).

1. **Sanctions**

No further action

Guidance and/or training

**First written warning**

**Final written warning**

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve performance during a live warning in place, a final written warning may be given.

Dismissal

**Written warnings**

A written warning is a formal warning that the employer can give the employee at the end of the disciplinary procedure.

A first or final written warning should say:

* what the misconduct or performance issue is
* the changes needed, with a timescale
* what could happen if the changes are not made
* what could happen if there is further misconduct or no improvement to performance
* how long the warning will stay in place
* in performance cases, any support or training the employer will provide

**First written warning**

A first written warning is normally the first step an employer will take when misconduct or poor performance is confirmed.

**Final written warning**

The employer can give a final written warning if, within a set timeframe, the employee either:

* repeats or commits another misconduct
* does not improve performance

In cases of serious misconduct or poor performance, the employer does not have to give a first written warning and can instead go straight to a final written warning. For example, where the employee's actions have, or could, cause serious harm to the business.

If an employee does not meet the requirements of their final written warning in the timeframe set, it could lead to dismissal. The employer should make this clear to the employee.

### Final written warning

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve performance during the currency of a prior warning, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal. A copy of this written warning will be kept by on file, but will be disregarded for disciplinary purposes after **24** months subject to achieving and sustaining satisfactory conduct or performance.

### Dismissal or other sanction

If there is still further misconduct or failure to improve performance the final step in the procedure may be dismissal or some other action short of dismissal such as demotion or disciplinary suspension or transfer (as allowed in the contract of employment). Dismissal decisions can only be taken by the appropriate senior manager, and the employee will be provided in writing with reasons for dismissal, the date on which the employment will terminate, and the right of appeal.

If some sanction short of dismissal is imposed, the employee will receive details of the complaint, will be warned that dismissal could result if there is no satisfactory improvement, and will be advised of the right of appeal. A copy of the written warning will be kept by the supervisor but will be disregarded for disciplinary purposes after ... months subject to achievement and sustainment of satisfactory conduct or performance.

**APPENDIX**

**MISCONDUCT**

1. Misconduct is defined as unacceptable or improper behaviour that falls short of the school's expected standards.
2. The examples of misconduct listed here would normally, where it is a first offence, warrant formal disciplinary warnings or other action, rather than dismissal. However, in some cases, the actions may be regarded as of such an extreme nature that they would amount to gross misconduct.
3. Examples

*This list is not exhaustive:*

* Poor time keeping
* Failure to follow a reasonable management instruction
* Failure to comply with the school's policies and standards of behaviour
* Unauthorised absence
* Misuse of social media

**GROSS MISCONDUCT**

1. Gross misconduct is behaviour that is very serious or has very serious effects.
2. Gross misconduct is also behaviour that falls so far below the standards that it is a fundamental breach of contract.
3. Allegations of gross misconduct result in summary dismissal (dismissal without notice).
4. Examples

*This list is not exhaustive:*

* theft or fraud
* physical violence or bullying
* deliberate and serious damage to property
* serious misuse of an organisation’s property or name
* deliberately accessing internet sites containing pornographic, offensive or obscene material
* serious insubordination
* unlawful discrimination or harassment
* bringing the organisation into serious disrepute
* serious incapability at work brought on by alcohol or illegal drugs
* causing loss, damage or injury through serious negligence
* a serious breach of health and safety rules
* a serious breach of confidence