



Bladon C of E Primary School

Staff Disciplinary & Capability Policy (S03)

Date of policy: September 2009

Date reviewed: September 2016

Next Review: September 2019

Authorised by:

Approved by:

.....
(Tracey Fletcher, Head Teacher)

.....
(Ray Banks, Chairman of Governors)

The purpose of this policy is:

To set out the steps to be followed by the Head Teacher and/or the Board of Governors in order to provide a consistent and fair approach when considering cases where staff performance falls below required standards. A key requirement is to assess whether the problem is due to misconduct or lack of capability. The intention is not to be punitive but to improve the performance of an employee with a view to helping them to fulfil their duties and responsibilities successfully. In some cases it may not be possible to reach a conclusion on this question until after a hearing has taken place. In other cases it may be a combination of both causes. The procedure outlined should be used irrespective of the underlying reasons.

Key principles

At all stages of formal Disciplinary & Capability action, the employee has a right to be accompanied by a trade union representative or a work colleague. An employee has the right of appeal against any decision or related action arising.

An employee will be given a copy of this procedure before any hearing about her/his performance takes place. The policy applies to all employees, including those who are on a temporary or fixed term contract except casual workers.

Breaches of discipline or failures in performance which are not of a similar nature may be added together and result in progression through the Disciplinary & Capability procedure.

Formal procedures can have serious impact on the individuals involved, on the wider team and to service delivery. The Head Teacher and/or Board of Governors will ensure that adequate priority is given to this policy and timescales are strictly adhered to, as far as this is practicable. Any individual who is involved should be informed of the personal support available to them and be kept informed about progress.

All matters relating to this procedure must be treated as confidential by all parties.

Misconduct

Misconduct may cover any failure to comply with accepted standards of work or behaviour, eg:

- unauthorised absenteeism and/or persistently poor timekeeping
- refusal or failure to obey lawful and proper instructions
- failure to follow financial rules and procedures or other formal procedures
- breach of health and safety regulations
- conduct likely to bring the school into disrepute
- bullying, harassment or victimisation
- misuse of school time, property, systems or equipment (including IT equipment)
- accessing, disclosing or otherwise using confidential information without authority
- being incapable of working through misuse of substances, selling or possessing drugs
- making complaints which are frivolous, malicious or for personal gain.

Gross Misconduct

Gross misconduct is misconduct serious enough to destroy the employment contract between the school and the employee and which makes any further working relationship and trust impossible, for example:

- actions, omissions or negligence which endanger others
- theft in the course of employment
- fraud or deliberate falsification of claims and/or records
- assault or threatening behaviour at work, including abuse of service users

While an allegation of gross misconduct is being investigated, the employee will normally be suspended from work. Suspension may also be necessary when investigating other serious misconduct. The consequence of gross misconduct is summary dismissal, i.e. following a Disciplinary & Capability hearing, dismissal without notice or payment in lieu of notice.

Capability

Poor performance may result from lack of capability due to lack of skill, experience, knowledge or aptitude. It could also result from poor attendance or high levels of sickness absence which mean the requirements of the job role are not being met.

Before using this formal procedure, the school should consider whether an employee's poor performance or attendance might be health and/or disability related and whether reasonable adjustments should be made in accordance with the Disability Discrimination Act 1995. The advice of OCC HR and Occupational Health should be sought at the earliest opportunity.

It may still be necessary to follow this procedure but this will be, as far as is reasonably practical, in the context of having clarified the extent to which the employee's health is affected by his/her work (or vice versa).

In exceptional circumstances the level of performance may be so low that it constitutes gross incapability.

Authority to take formal Disciplinary & Capability action

The Head Teacher will normally bring a case for Disciplinary & Capability action and may request the assistance of an appropriate governor who must ensure that there are no substantial reasons which would make it inappropriate for him/her to hear the case.

Before meeting with an employee under this procedure, the Head Teacher should determine the following, gathering supporting evidence where practical:

- What are the issues causing the concern?
- How and when has this been raised with the employee?
- Has consideration been given to any health/disability issues affecting performance?
- How has the 'gap' been addressed, e.g. further training, mentoring, shadowing, issue of written procedures, extra supervision etc?
- What personal support has been offered to the employee?
- How has the employee responded?

The Disciplinary and Capability hearing

The employee will be given at least five clear working days' notice of the hearing, the intention being to agree an early mutually convenient date. When given notice of the hearing, the employee will be informed in writing:

- that s/he is required to attend a Disciplinary & Capability hearing under the procedure
- the reason for the hearing, including the specific issues to be addressed
- the time and place of the hearing
- the right to be accompanied by a trade union representative or fellow member of staff
- that the employee will have the right of appeal.

At the conclusion of the hearing, the employee will be informed in writing of the outcome and of any action to be taken within no more than three working days. The employee will be reminded of the right of appeal and of the procedure and time limit for doing so. Any notes taken at the hearing will be given to the employee as a record of the hearing. Normally this will be done within 10 working days of the hearing. Any disagreement by the employee or their representative as to the accuracy of the record should be noted.

Actions resulting from the hearing

Warnings

Disciplinary and Capability warnings will normally follow this progression

- First written warning
- Final written warning
- Dismissal with due notice
- In cases of gross misconduct only - Summary dismissal, i.e. dismissal without notice.

However, there may be occasions when this progression will not be followed. For example, a final written warning may be appropriate without having been through the first written warning stage or dismissal may be necessary for a first but very serious breach of discipline or failure in performance. Breaches of conduct, capability or attendance which have resulted in Disciplinary & Capability action and which are not yet 'spent' may lead to progression. Any warning will specify the reason for the warning, i.e. the nature of the shortcoming, the improvement expected and the time allowed for improvement, including dates where appropriate, before a further review of the employee's performance or conduct. The timeframe will normally be not less than one month or more than one year, but may be open-ended where the nature of the case warrants it. The employee will be told what assistance or support will be given (e.g. additional training), the arrangements for a review, the implications of a failure to improve or of any further shortcomings and details of the appeal process, including the timescales and details of the person to whom the appeal should be sent.

Final Written Warning

If an employee's performance or conduct does not improve in the stated period following a first written warning, or if an employee's shortcomings are sufficiently serious, a final written warning will normally be issued. A final written warning will make it clear that any further failure to reach the required standards is likely to result in dismissal.

Dismissal

In cases of gross misconduct, gross incapability or if conduct or performance is still unsatisfactory following warnings and any other actions, dismissal will normally result. No decision to dismiss can be taken without the agreement of the OCC HR Manager. The employee will be provided as soon as reasonably practicable with written reasons for dismissal, the date on which employment will terminate and the right of appeal.

Other disciplinary measures

In addition to warnings under the procedure, Disciplinary & Capability action might include:

- Loss of pay
- Withholding increments or career grade progression
- Demotion (with the accompanying reduction in pay to the level of the new post)
- Dismissal

If the employee does not turn up for the hearing

The hearing should be adjourned and a letter sent to the employee setting another date and making it clear that, if s/he does not attend without a reasonable cause, the hearing will take place in her/his absence.

If the employee is ill and cannot attend

Sickness covered by a doctor's certificate will normally result in an adjournment until the employee is fit enough to attend. Occupational Health can advise about the fitness of the employee to attend a hearing and to understand the case against them. In some circumstances it may be appropriate to hold the hearing in the employee's absence.

Appeals

An employee has the right of appeal against disciplinary decisions. For First and Final warnings the Board of Governors will appoint two experienced governors to hear the appeal who have no prior involvement in the case. In cases where the outcome was dismissal or demotion, and the employee has over one year's service, the appeal will be heard by a majority of the Board of Governors chaired by the Chairman of Governors.

If an employee wishes to appeal s/he should do so in writing to the Chairman of Governors within ten working days of the receipt of the written notification of the Disciplinary & Capability decision.

The outcome of the appeal will be notified either immediately after the hearing and confirmed in writing, or in any event by written notification within five working days of the appeal hearing.

Disciplinary and Capability Records

Employees subject to Disciplinary & Capability action will have access to all associated records and correspondence on file. After satisfactory completion of the specified period, all records will be removed from the employee's personal file and retained on a separate file.

Should any Disciplinary & Capability action be later found to be unwarranted it will be withdrawn and expunged from the employee's records. The employee will be notified accordingly.

Rights under Employment Legislation

Nothing in this procedure detracts from the individual's rights to make a complaint to an employment tribunal.

NB

This policy should be read alongside any local or nationally agreed conditions of service, policies, procedures and guidelines that may be appropriate