

Guidance Notes to accompany the Schools Model Disciplinary Policy

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Who can help?

For advice on disciplinary issues, headteachers/ line managers can contact HR Professional Support on 033022 22422 or email HR.Professional.Support@westsussex.gov.uk

1. Introduction and general comments

These Guidance notes support the Model Schools Discipline Policy and have been put together in line with the ACAS Code of Practice. The notes provide supplementary information and should be read alongside the Policy.

The Discipline Policy does not apply to the ending of fixed term contracts or redundancy situations, or for managing Capability issues, for which separate procedures apply.

The General approach is for the Headteacher to lead on all disciplinary matters in a school, excluding their own. On occasion, it may not be appropriate for the Headteacher to be involved (for example, if they have a conflict of interest or have been previously involved). In these cases, the Headteacher, or the Chair of Governors, will appoint a suitable alternative to lead the matter.

These Guidelines will be periodically updated and renewed; any changes will be communicated widely.

Academies and free schools who adopt the WSCC Model Policies

As with the policy, the guidance refers to Headteachers, Governing Bodies and the Education & Skills Directorate. These terms can be replaced with suitable alternative structures within academies and free schools as required.

Safeguarding

As soon as a safeguarding matter is identified, the matter should be referred to the Safeguarding service for advice. There are specific guidelines for managing disciplinary action relating to teachers and school-based staff facing allegations of abuse.

2. Headteacher disciplinary matters

In the main, the information contained in this guidance covers all school-based employees – i.e. both Headteachers, and other staff. Where there are differences, the information relating to Headteachers ONLY is given after the general information and is shown in italics.

Where no differentiation is made, then the guidance can be applied equally to Headteachers and other staff.

3. Reasonable adjustments for employees with disabilities

If an employee notifies the Headteacher (*member of the Panel*) that they may require adjustments, the employee and Headteacher should have a conversation about what type of adjustments the employee might need. For further advice see West Sussex Services for Schools.

4. The Informal Stage

The Informal stage is a distinct part of the disciplinary policy and it is not the same as the formal stage.

The Informal Stage of the process is designed to provide a format for Headteachers to speak to employees about small or recurring matters of misconduct, which concern them.

An Informal meeting would normally be conducted on a one-to-one basis, between the employee and the Headteacher. However, there may be situations where it is more appropriate for the employee's Line Manager to speak with the employee directly, with the authority of the Headteacher. Alternatively, it can sometimes be helpful for the Headteacher to invite another member of the Management Team to the meeting, usually the employee's Line Manager, who may be closer to the issues raised, and who can assist with the meeting. If a third person is to be present, the Headteacher must seek the prior agreement of the employee before the meeting.

A Headteacher would normally only speak to an employee once or twice about a single issue, before progressing to the formal stage if a matter is not resolved informally.

The Informal Stage is not appropriate for suspected acts of serious or gross misconduct; in these circumstances, the employee would normally be invited to a meeting under the formal procedure, following an investigation.

Any notes, which are taken following an Informal Stage meeting, are designed to act as a record of what was agreed. The employee must be given an opportunity to add their comments to the record of the meeting, and the notes are to be shared with them.

For Headteachers, the Chair of Governors would lead the informal warning, and a record made and shared with the Headteacher, as above.

5. Record Keeping

During all formal disciplinary meetings, notes must be taken. This would usually be done by the clerk to the governors. The note taker should endeavour to write the notes up quickly following the end of the meeting.

The notes do not need to be a verbatim account of the meeting. They should be detailed enough to adequately reflect the conversation, and the views expressed by all parties.

During the adjournment, the note taker must remain in the room to record the Headteacher / Chair's rationale for any decision taken. The note taker must take no formal part of the deliberations.

Following the meeting, the notes will be agreed by the Headteacher / *Chairperson*. It is very important that the minutes are reviewed carefully, because the notes may be used later (for example, in an appeal meeting or a further stage of the disciplinary), and the Chair may be called upon to explain their decisions at the Disciplinary meeting.

Copies of the notes taken at formal meetings will be given to the employee, after they have been agreed, for information only.

Retention of disciplinary warnings

All records must be kept confidentially.

The panel members will be asked to give their paperwork to the HRPS Adviser present. Documents such as notes from meetings, will be kept securely for 7 years, in accordance with the County Council's file retention policy.

Schools will be asked to keep copies of the outcome letter live on the employee's file for the duration of the warning.

After the warning expires, the warning can be removed from the employee's personal file, if the employee requests for this to happen.

If the disciplinary matter has raised any safeguarding issues, then the disciplinary files will be kept for a minimum of 10 years or until the employee retires, whichever is longer.

Use of spent warnings

A previous warning should not usually be referred to as part of a later disciplinary.

In some limited circumstances, spent warnings may be referred to if they are relevant; e.g. if an employee has been given repeated warnings for related matters, in order to demonstrate a chronology of events or to indicate a pattern of behaviour.

Likewise, Headteachers / Disciplinary panels may take into account the fact that previous warnings have been given, when considering any disciplinary sanctions.

6. The Investigation Process



For further assistance:

- See the Investigating Officers Pack (available on West Sussex Services for Schools)
- Call HRPS on 0330 22 22422

KEY POINTS

- All matters which may lead to formal disciplinary action will be investigated as thoroughly, and as quickly, as possible.
- In the event that Safeguarding issues have been raised, the Safeguarding Investigation process will take priority over the disciplinary investigation.
- Straight forward matters can be investigated directly by the Headteacher; more serious or complicated allegations should be referred to an Investigation Officer.

Short Investigation

A short investigation will be sufficient in many minor matters of misconduct – for example, suspected timekeeping concerns. The Headteacher will usually carry out the investigation, unless there are specific reasons why this is not appropriate.

The Headteacher should meet with the employee and advise them that an investigation is taking place.

The investigation will involve gaining some basic facts about what has happened and gathering documentary evidence. The Headteacher may also meet with the employee to ask them some questions as part of this process. The Headteacher will need to write a meeting note of this conversation and collate any other documents or records.

As a result of the short investigation, the Headteacher may conclude:

- That a fuller, more detailed investigation is needed
- That there is sufficient information to support a breach of conduct, and therefore the employee will be called to a disciplinary meeting.
- That there are no grounds to proceed on a formal basis. In these circumstances, it can be helpful to consider further informal actions, such as a 'lessons learned' meeting, and to meet with the employee to discuss why there is not going to be any further formal action. The employee may bring a Companion with them to such a meeting.

For Headteachers:

- *The role carried out by the Headteacher will be carried out by a Representative from the Governing Body (usually the Chair of Governors) and a Representative from the Director of Education & Skills.*

Full and formal investigation

If the misconduct is of a more serious or complex nature, or if there is a need to interview witnesses, then a more thorough and formal investigation is required.

- An Investigating Officer will be appointed from within the school to carry out the investigation.
- Before the investigation starts, the Headteacher will meet with the employee to tell them about the investigation and give them the name of the Investigation Officer. The employee may wish to comment at this stage. This will be confirmed in writing within 2 days of the meeting.
- If an Investigation Officer has yet to be appointed when the employee is notified, their name must be confirmed to the employee in writing, within 5 days of the meeting.

In exceptional cases, the employee may be placed on suspension on full pay during this time.

The Investigation process

Early on in the investigation, the Investigation Officer (IO) will meet with the employee to ask them questions about the alleged misconduct. They will share with the employee the proposed list of witnesses and ask the employee if there are any further people they want to be interviewed. The decision about whether to do so is at the Investigating Officer's discretion.

In some, limited cases it may be helpful to obtain a statement from a student, parent or member of the public, although this is not generally encouraged. Witness statements from students must be anonymised to protect the identity of the witness and it may be appropriate to do so if the statements are from parents.

The Investigation needs to be conducted in a timely fashion. Investigation Officers need to give dedicated time to this activity, and consideration should be given to freeing up the IO from their substantive role for a few weeks, while the Investigation is concluded.

The Investigation Report

The investigation and the report of the findings, should be concluded within 15 to 20 working days.

The Investigating Officer will put all of the findings into a report. The report should not be about apportioning blame. The findings will be kept confidential and shared with the Headteacher who will make a decision about whether there is a need to call a disciplinary meeting, and at what stage in the procedure. The HR Professional Support Team can assist with this decision.

For an example of how to write an Investigation Report, and a breakdown of the information required, see the attached sample Investigation Report.

Following the conclusion of the Investigation stage, the employee must be notified in writing within 5 days. There are two potential outcomes of an Investigation:

- The employee will be asked to attend a disciplinary meeting, or
- The employee will be told that the allegations are not being pursued under the Disciplinary procedure.

If a Disciplinary meeting is called, the employee will be sent a copy of the Investigation report.

Full and Formal Investigation: Headteachers

The process mirrors that for non-Headteachers, except that:

- *The Investigating Officer will be appointed by a Representative from the Governing Body (usually the Chair of Governors) and a Representative from the Director of Operations, Learning.*
- *The IO will present their findings to both these people at the conclusion of the investigation, and they will jointly decide how to proceed.*

7. Suspension of Staff

For further assistance:



- Call HRPS on 0330 22 22422 before proceeding with a suspension decision.
- See the "Guidance for employees potentially at risk of suspension" available on West Sussex Services for Schools.
- See the "Statutory guidance on dealing with allegations of abuse" available on West Sussex Services for Schools, if applicable.

KEY POINTS

- Both the governing body and the headteacher can suspend any staff employed or engaged at the school.
- The headteacher, governing body and Local Authority (in the case of community, voluntary controlled, community special and maintained nursery schools) must all be made aware of the suspension.
- Before suspending an employee: Headteachers must contact HRPS on 0330 22 22422 before proceeding with a suspension. HR Professional Support will provide advice to the Headteacher and will send them the "Suspension checklist", the purpose of which is to help Headteachers think through and record their rationale for placing an employee on suspension.
- **Only the governing body may lift the suspension.**

Why suspend?

Suspension should not be undertaken without good reason. Circumstances in which suspension may occur include:

- Where the allegations are so serious that dismissal for gross misconduct is possible;
- Where it is necessary for the conduct of the investigation to proceed unimpeded;
- Where children are potentially at risk.

The HR Professional Support Team must be consulted before any decision is made to suspend an employee.

Alternative options

- It may be possible for an employee to continue in their role while a disciplinary matter is investigated (possibly not undertaking certain activities, such as attending a particular meeting or venue), OR
- it may be possible for the employee to be assigned to alternative duties.
- In both these cases, it may be appropriate to appoint someone as a Contact Officer for the employee while they are away from their regular duties / location.

For WSCC schools only: the Head of Human Resources, West Sussex County Council is notified whenever an employee is placed on Suspension, and regularly reviews the list to ensure that periods of suspension are kept to an operational minimum.

The meeting before suspension

- Where suspension of a member of staff is being considered, a meeting should be arranged. Whilst this does not automatically have to take place outside of contact time, you will need to consider the visibility of the meeting room, being mindful of the employee's need for sensitivity and confidentiality.
- The employee must be told "in broad terms" about the matters of concern. This means that the employee must be given sufficient information about the allegations made against them, in order that they can begin to prepare their response to these allegations.
- In almost every circumstance, the meeting should be face to face. Only in very unusual circumstances would it be appropriate for the employee to be suspended via a telephone call.
- In circumstances where an employee has been accused of something by another employee, it is important to share enough information with the suspended employee to enable them to understand the allegations and prepare a response. This should be done with due care as the allegations may be very sensitive.
- If the employee is a trade union or safety representative, the meeting should not be arranged without prior discussion with the relevant branch secretary or a full-time official of the trade union concerned.
- It is not essential to take notes at a suspension meeting, but if they are kept, a copy should be given to the employee afterwards for information.

- The meeting would normally be carried out by the Headteacher who may wish to discuss the matter with the chairman of governors and/or an officer from the Local Authority. Where the Headteacher is unavailable, or in cases where the Headteacher him/herself may be suspended, a governor (preferably the chairman or vice chairman) should carry out the interview, having previously sought advice from HR Professional Support.
- A member of staff called to an interview where suspension is a likely outcome should be advised by the Headteacher that he/she may be accompanied by a trade union representative or friend. However, suspension should not be delayed because a union representative is not available.
- The member of staff should be informed at the outset of the interview that a serious matter is under consideration and that, at the conclusion of the interview, suspension might occur. The member of staff, where accompanied, should be offered the opportunity of a brief meeting with the representative or friend, or, in the absence of representation, should be offered the opportunity of a brief adjournment. It should be made clear, however, that the interview is not a formal disciplinary hearing but is for the purpose of putting forward matters of concern which may lead to suspension and further investigation.
- The member of staff should be given as much information as possible about the allegation and about the reasons for the suspension consistent with the requirements of the investigation. The member of staff should be given an opportunity to respond but there is no obligation to do so at this stage. An adjournment should be offered to the member of staff prior to response.
- If, as a result of the interview, it is considered by the Headteacher that suspension is necessary, the member of staff should be advised that he/she is suspended until further notice on full pay. Written confirmation should be given within 4 working days, giving reasons for the suspension. The letter should also state that he/she should not contact school colleagues or come onto the school premises during the suspension without authorisation.
- The employee is likely to be distressed during or after the suspension meeting. The Headteacher may like to discuss with them the practical arrangements such as outstanding teaching or work commitments, training which they are booked to attend etc.
- The Headteacher should make the employee aware of the counselling support available.

After the suspension meeting

- A letter confirming the suspension must be sent to the employee within 4 days. The letter should provide a brief outline of the allegations against the employee and provide the employee with details of the Contact Officer and the Counselling service.
- The Headteacher will appoint a school-based Contact Officer to act as a liaison between the school and the individual during their period of suspension.
- Arrangements must be made to notify the school's payroll provider to ensure that the employee is paid at a "neutral" rate during their period of suspension (i.e. to ensure that they are no better or worse off during the period).
- Consideration must be given to the employee's access to the school, and any computerised records.
- Where a member of staff has been suspended, the Headteacher should inform the Chair of governors and the Director of Education & Skills, of the suspension formally, in writing (WSCC schools only). The Headteacher should report to the governing body that a member of staff has been suspended pending investigation. It is not advisable to provide more than the minimum information necessary to the governing body, as more than this could prejudice governors' impartiality in any subsequent hearing or appeal in disciplinary proceedings.
- In cases of allegations of physical/sexual abuse against a pupil, the pupil or parent making the allegation should normally be informed confidentially of the suspension, so far as is consistent with child protection procedures.
- The Headteacher should not inform other staff or colleagues in the school of the suspension to protect the confidentiality of the individual. The Headteacher could ask the suspended employee and/or their professional association representative, what information, if any, they would like shared with colleagues.
- In certain circumstances, it may be necessary for the Headteacher to provide immediate reassurance to parents and children in the school and there may be a need for certain information to be provided during the course of an investigation to parents, children and other colleagues. Guidance should be sought on these matters from HR Professional Support.

- The Headteacher should consider carefully, and keep under review, decisions as to who is informed of the suspension and investigation and to what extent confidentiality can or should be maintained, according to the circumstances of a particular case. It is the Headteacher's role to ensure that the case is "managed" and that information is shared with the employee about the progress of the investigation and the likely timetable for any subsequent disciplinary meeting.

- In exceptional circumstances, where a matter becomes common knowledge or the subject of general gossip, it may be desirable to provide an accurate statement for public information. The headteacher should take advice from HR Professional Support on this matter as necessary, prior to any action being taken.

- The employee may request to attend certain whole school events – e.g. prize day, nativity plays. Decisions should be made on a case by case basis rather than automatically refused. Requests to attend should be channelled via the contact officer to the decision maker.

The role of the Contact Officer

- A Contact Officer should be appointed to:
 - Provide contact and support to the suspended employee / employee on alternative duties
 - Assist the employee with information or documents if they are needed from the workplace to assist with the disciplinary meeting.
 - Ensure that personal belongings are returned
 - Provide updates on the school in general, according to the needs and wishes of the employee to be kept informed
 - Make contact with any potential witnesses which the employee wants to invite to a disciplinary meeting.
 - Get copies of documents which the employee requires for their investigation or disciplinary meeting.
 - Remain unbiased and confidential.

During the investigation:

- Headteachers must regularly review periods of suspension to ensure that no employee is kept on suspension longer than is necessary.

- The disciplinary investigation should be conducted in a timely fashion, balancing the need for a timely outcome with the need for a full and thorough investigation.

- Should an investigation reveal that there is no disciplinary case to answer, the employee will be informed of this outcome and the lifting of suspension should be confirmed in writing following a decision by the governing body (or whoever is authorised to do so in an Academy).

8. Witnesses at the disciplinary meeting

KEY POINTS

- It is not essential for all the people interviewed at the Investigation stage to be called to attend the meeting as witnesses. Their evidence / information can be taken in written format and be as valid as the 'spoken' witness information.
- Witnesses would usually not be called to attend the disciplinary meeting where there is no conflict between the information they provide and another witness (i.e. it is not contested) and where neither the employee nor the panel have additional questions for them.

Witnesses called by the Headteacher

The Headteacher is responsible for identifying which witnesses to invite to the disciplinary meeting. This does not need to be every person who was interviewed at the investigation stage because written transcripts will be available at the disciplinary meeting of all the interviews.

The witnesses invited to the Disciplinary meeting will usually include the person who witnessed the act of misconduct or who is making the allegation.

The Headteacher will also usually invite any witnesses where there is significant conflicting evidence.

- The Headteacher will provide the employee with the names of witnesses, so that they may have the opportunity to prepare any questions for them.
- The Investigating Officer may be called as a witness, by either the employee or the DLM, although there is no requirement to do so.
- Witness statement will have been read by the disciplinary panel in advance, and so witnesses should come to the meeting ready to answer questions. They will not usually be asked to read out their statements in full.
- Children/young people should not be called as witnesses by management. Consideration should be given to using witness statements supported by clarification sought from the investigating officer.

Witness requests by the employee

- The employee has the right to call witnesses to the disciplinary meeting. In order to do this, the employee will need to arrange for their witnesses to attend (via their Contact Officer if they are suspended).
- Witnesses will normally have been interviewed at the Investigation Stage. It would be unusual for further witnesses to be called, by the employee, who have not previously been involved at the Investigation Stage.
- If the employee wants to call a student (or their parents) as a witness, this will usually be refused and a written statement (potentially with follow on written questions if necessary) provided instead. It would not be appropriate for an employee to call such a person to act as a character witness for them, or to vouch for the employee doing a “good job”.
- If the employee does want to invite “new” witnesses to the Disciplinary meeting, they must give the Disciplinary Chair an insight into what information they will bring, and the Disciplinary Chair will have to consider:
 - Whether to call the Witness to the Disciplinary meeting;
 - Whether to return to the Investigation stage if the witness has significant new information;
 - Whether to ask the witness to supply a witness statement in preference to attending the meeting, or
 - Whether the witness’ information is already provided elsewhere and therefore will be repetitive (the employee’s request will be refused)
 - Is the request proportionate?

The Disciplinary Chairperson will not unreasonably refuse such a request.

The employee must provide the names of all their witnesses to the Headteacher, at least 3 working days before the meeting.

For Headteacher disciplinaries:

The principles outlined above apply. The Headteacher will usually inform the Clerk to the governors who they want to call as witnesses at the meeting.

The decision on whether to allow witnesses who have not been interviewed at the investigation stage will be made by the Representative from the Governing Body (usually the Chair of Governors) and the representative from the Director of Education & Skills, or as appropriate for Academies.

The role of witnesses at Disciplinary Meetings

Witnesses will attend the meeting to provide information and answer questions. When this is over, they will leave the meeting. They may be recalled if the panel have further questions.

It can be very stressful to be a witness at a Disciplinary meeting. The Headteacher and / or IO should consider the need to help a witness to prepare for the meeting, or to allow them to debrief afterwards. This can be done either informally and confidentially within the school (the HR Professional Support Team can advise on who would be appropriate to take on this role) OR by directing the employee to the Employee Assistance counselling support offered.

9. The Role of the Companion at disciplinary meetings and Appeal Meetings.

The companion is allowed to address the meeting in order to:

- Present the employee’s case
- Respond on the employee’s behalf to any view expressed at the meeting
- Confer with the employee during the meeting.
- Ask questions of witnesses
- Sum up the employee’s case

The Companion may not:

- Answer questions on the employee’s behalf,
- Address the meeting if the employee does not wish it, or
- Prevent the employee from explaining their case.

Taking action against a Trade Union Rep

If a school is taking action against a TU rep – the Headteacher, *or person calling the disciplinary in cases involving a Headteacher*, should discuss this with a senior Trade Union representative before proceeding with any action.

10. Timescales

This section sets out the **minimum** timescales, which must be provided at each stage in the procedure.

All the days are given in **working days (that is Monday – Friday)** when the school is open in term time.

Investigation & Suspension letters	
Letter confirming that an investigation is to be carried out	2 days after the meeting with employee
Letter confirming outcome of an investigation	5 days after the end of the investigation

Letter confirming suspension	4 days of the meeting with the employee
Disciplinary letters	
Letter inviting the employee to a disciplinary meeting	5 days notice
Employee's letter/s: - Requesting postponement - Name of Companion - Requesting further witnesses	3 days notice
Letter confirming the outcome of a Disciplinary meeting	5 days of the meeting
Or – advising the outcome of a Disciplinary meeting when not advised verbally	3 days of the meeting
Appeal letters	
Letter from employee requesting an Appeal	5 days after receipt of disc. outcome letter
Letter advising the dates for an Appeal meeting	5 days notice
Letter confirming the employee of the outcome of their Appeal.	5 days after the Appeal.
OR letter advising the outcome of an Appeal when not advised verbally	3 days after the appeal.

Appointment of an Investigation Officer	5 working days
Conclusion of an Investigation Process	15 - 20 working days
Disciplinary meetings to be held	within 20 working days of the conclusion of the investigation.

Any of these time limits can be altered with the agreement of all parties.

If the employee has declined to attend the meeting, the meeting will take place in the same way and the Disciplinary Chairperson/Panel will consider the evidence from the Investigation report, plus any written representation that the employee might like to put forward and the oral evidence.

The employee will be advised in writing of the outcome of the Disciplinary meeting.

11. Miscellaneous

Prior to the Meeting

The Headteacher must ensure there is a room available, with suitable attention given to the number and positioning of seats, availability of water, paper for note taking etc.

They should also provide a room for the employee and their Companion to wait in before the meeting, and also during the adjournment.

New information

If the employee, wishes to bring new information to the disciplinary (which was not shared at the Investigation stage), the Headteacher may want to challenge why this information was not previously made available to the Investigating Officer, and whether it brings anything "new" to the meeting.

Provided the information is relevant to the case, then limited, late information may be allowed.

Breaks during the meeting

- During the disciplinary meeting, any of the people present may ask for a short break, and, provided there is general consensus to this request, the Headteacher will agree.
- Whilst there is no limit on the number of breaks, the Headteacher may choose to refuse a request if the number of breaks is becoming excessive.

Referral to the Teaching Regulation Agency (Teachers Only)

If a teacher has been dismissed for serious misconduct or would have been dismissed for that reason if they had not resigned, the case may be referred to the Teaching Regulation Agency (TA) by the HR Professional Support Team. The TA considers, investigates and hears cases of alleged serious misconduct. This process could lead to the issue of a prohibition order against the teacher concerned.

Date written: February 2010
Minor changes: May 2012 (Teachers Disciplinary Regulations 2012)
Revised: April 2014 (previous version)
Reviewed: February 2020 NH SHRS (updated ref to Teaching Regulation Agency, Director or Education & Skills and HR contacts)
Sense checked: May 2020 KMG SHRS
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