

Reviewed October 2017

**LONDON BOROUGH  
OF  
BARKING AND DAGENHAM**

**DEPARTMENT OF CHILDREN'S SERVICES**

**DISCIPLINARY PROCEDURE  
FOR TEACHING STAFF  
AT  
LOCALLY MANAGED SCHOOLS**

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March 1995  
Updated September 2000

# **LONDON BOROUGH OF BARKING AND DAGENHAM**

## **TEACHING STAFF: DISCIPLINARY PROCEDURES**

### **GUIDANCE FOR HEADTEACHERS AND GOVERNING BODIES**

#### **INTRODUCTION**

Following the introduction of Local Management of Schools there is a clear need for guidance to Governing Bodies and Headteachers on a range of issues. One of the most important of these is a disciplinary procedure for teaching staff. It is also particularly significant since this is a complex area. Procedures have to be in line not only with natural justice but with a variety of pieces of legislation. Mistakes and errors in this area can be time consuming and could be very costly. They can also wreck the working relationships between staff and school management and staff and Governors.

This guidance is offered to Governing Bodies and Headteachers as an example of good practice for adoption so as to secure fair and equitable treatment for all teachers within each school and across the Local Authority. These procedures have been agreed with the Secretaries of the Professional Associations locally. Adoption and operation of these procedures should ensure that the Governing Body and Headteacher operate in accordance with the following provisions:

1. The Education Acts 1944, onwards and regulations made under them.
2. The Employment Protection (Consolidation) Act 1978, and other relevant employment legislation.
3. The principles established by the Advisory Conciliation and Arbitration Service (ACAS) guide.
4. The Conditions of Service for School Teachers in England and Wales.
5. The Authority's Articles of Government for Schools.
6. The Conditions of Service issued to teachers at the time of their employment and the letters which confirm their Contract of Employment.

In order to avoid unfair treatment or discrimination, Governing Bodies and Headteachers should seek the advice and assistance of the Local Education Authority at all stages in the operation of these procedures. In any event the Director of Children's Services or his representative is entitled to attend all the meetings of the Governing Body's Disciplinary and Appeals Committee.

Adoption of these procedures will ensure that the Governing Body will have the full support of the Local Authority in progressing cases.

If a Governing Body chooses to adopt alternative procedures then a copy of these procedures, together with the reasons for their adoption, should be sent to the Director of Children's Services who will advise the Secretaries of the Professional Associations.

Governors must ensure that the adopted procedures are readily available to and understood by all members of the teaching staff.

These procedures relate exclusively to breaches of discipline by teachers and Headteachers in County Schools in the Borough. This document does not apply to Borough Unattached Staff, Peripatetic Staff, Advisory Teachers or Teachers in voluntary aided schools. It does not relate to issues of teaching ability/competence in respect of which separate guidance is available.

## **TEACHING STAFF: DISCIPLINARY PROCEDURES**

### **TITLE**

This document shall be known as "The Code for Disciplinary Procedures in respect of teaching staff".

### **DEFINITIONS**

- (a) "The Education Acts" means the Education Act 1944 as amended by any subsequent enactment.
- (b) "The Local Education Authority" means the Council of the London Borough of Barking and Dagenham.
- (c) "The Education Committee" means the Education Committee of the Council of the London Borough of Barking and Dagenham.
- (d) "The Governors" means all members of the Governing Body of a school appointed from time to time, in accordance with the provisions of the Education Acts and in accordance with the decisions of the Local Education Authority and the provisions of the Articles and Instrument of Government.
- (e) "The Director of Children's Services" means the Chief Officer appointed as such by the Council of the London Borough of Barking and Dagenham, or his representative.
- (f) "The Headteacher" means the person who has been appointed - whether on a permanent, temporary or acting basis - in accordance with the provisions of the Articles of Government.

- (g) "The Teacher" means the person employed by the Local Education Authority in a County School who is paid in accordance with the scales of salaries for teachers in such school.
- (h) "Complaint" means an allegation of misconduct, indiscipline and/or any other specific cause of disciplinary enquiry and/or action against a teacher. A Complaint may be about a single matter or comprise a number of separate issues.
- (i) "Misconduct" means a failure by the teacher to observe the normally understood and accepted rules affecting work procedures, safety standards and professional conduct, etc., whether written or not, to which a teacher is lawfully and reasonably expected to conform.
- (j) "Gross Misconduct" means misconduct so serious as to make it inappropriate for the teacher to continue in post.
- (k) "Friend" means the person chosen by the teacher to advise him and to accompany him at meetings held in accordance with paragraph 4 onwards. The friend may be a member of the Teachers' Professional Association.

The Interpretation Act 1978 as amended by any subsequent enactment shall apply to the interpretation of this code as it applies to an Act of Parliament. Consequently, although throughout this code the teacher is referred to as "he" the code is equally applicable to female teachers.

## **1 SCOPE OF THE PROCEDURE**

- 1.1 The procedure detailed in this code shall apply to teachers and Headteacher's as defined in the "Definitions" paragraphs of this document.
- 1.2 This procedure is intended to deal with cases in which misconduct has been alleged or shown to exist.
- 1.3 All stages of the formal procedure shall be carried out as promptly as possible in the interests of all the parties involved.
- 1.4 A teacher is entitled to be accompanied by a friend or representative at any stage in the proceedings, referred to in paragraph 4 onwards, and should be advised of this before the commencement of proceedings.
- 1.5 All formal proceedings shall be confidential and held in private. If a public statement is considered necessary it will normally be confined to the operative decision only.
- 1.6 Although action against teachers would normally be initiated by the Headteacher, where such action is against the Headteacher the role of the Headteacher shall be taken by such person as the Governing Body choose to appoint for that purpose.

1.7 When disciplinary action is not directly related to misconduct within the school but to conduct which is not considered within the normally accepted standards of professional conduct, action will be initiated by the Headteacher in consultation with the Chairman of Governors, having consulted and taken the advice of the Director of Children's Services.

1.8 Paragraph 15(b) of the ACAS Code of Practice and Disciplinary Procedures states:

*"Disciplinary action against a trade union official can lead to a serious dispute if it is seen as an attack on the union's functions. Although normal disciplinary standards should apply to their conduct as employees, no disciplinary action beyond an oral warning should be taken until the circumstances of the case have been discussed with the senior Trade Union representative or full time official."*

No action beyond an oral warning shall be commenced against a teacher who is a Union representative without the Headteacher having first discussed the matter with a senior representative of the teacher's Union or full time official.

1.9 Save in exceptional circumstances this procedure shall not apply to cases of absenteeism and sickness or of alleged inadequate performance. It is recognised where alternatives to resolve such matters by other means have been exhausted that this procedure may be invoked. In any case consultation with the Director of Children's Services is urged before any action is contemplated.

1.10 This disciplinary procedure is separate and distinct from the Grievance Procedures. Disciplinary action should not normally arise out of the hearing of a grievance. If, however, such a question arises it should be dealt with in accordance with this procedure.

1.11 Attached as Appendix A is a list of offences that could lead to disciplinary action; this list is not intended to be exhaustive.

1.12 Attached as Appendix B is advice on the procedures to be followed when investigating complaints.

## 2 **CONFIDENTIALITY**

Headteacher's and Governors involved in the various stages in this disciplinary procedure are warned that under no circumstances whatsoever should they discuss the case with any other party or amongst themselves. Failure to observe this instruction could well result in the case being dismissed on procedural grounds.

This matter is of particular relevance because certain members of the Governing Body may at a later stage have to act as an appeal body and natural justice demands that they must have no prior knowledge of the case whatsoever.

### 3 **INFORMAL ADVICE**

- 3.1 In the case of minor breaches of discipline the Headteacher, or his representative, should attempt to resolve the problem by the use of informal oral advice.
- 3.2 If it appears likely that the case will progress at this stage consultation should take place with the Director of Children's Services before further action.

### 4 **ORAL WARNINGS**

In more serious cases the Headteacher may issue an oral warning. The teacher should be advised that he may be accompanied by a friend. The fact that no oral warning has been given shall be confirmed in writing to the teacher and shall be recorded in the teacher's file.

### 5 **FORMAL WARNINGS**

- 5.1 Where, after careful consideration and any investigations that may be required the Headteacher concludes that the complaints or allegations against the teacher are justified, he may issue a Formal Warning in accordance with the next sub-paragraphs.
- 5.2 Where the conduct of a teacher is considered unsatisfactory or where previous advice has proved ineffective the Headteacher may arrange an interview with a teacher, at which both parties may be accompanied by a friend, and at which he shall be given the opportunity to comment on the allegation(s) made against him, and to produce evidence to support his case. The teacher shall be given written details of the allegation(s) against him, including copies of any supporting documents. Reasonable notice of the interview will be given, to allow the teacher to arrange for a friend to accompany him.
- 5.3 The result of the interview in 5.2 above may result in the Headteacher issuing a Formal Warning, which should subsequently be confirmed in writing.
- 5.4 The warning letter will indicate that it is a Formal Warning and will inform the teacher that he has the right to appeal to the Appeals Committee of the Governing Body within ten working days of the date of the warning. Any such appeal should be put in writing and addressed to the Clerk to the Governors. If the teacher elects not to appeal he shall have the right, nonetheless, to have his written comments placed on the formal record.
- 5.5 Formal Warning letters should set out the nature of the complaint and in appropriate circumstances indicate the implications of further misconduct. An additional copy of the warning letter shall be given to the teacher so that he may pass it to his professional association if he so wishes.

- 5.6 Where a Formal Warning has failed to bring about an improvement in behaviour within a reasonable period of time the Headteacher may issue one or more further Formal Warnings or a Final Formal Warning.

## **6 PROCEDURES LEADING TO FURTHER ACTION (including SUSPENSION)**

- 6.1 Where a Final Formal Warning has failed to bring about an improvement in behaviour within a reasonable period of time or where a complaint alleges serious misconduct, consideration may be given by the Headteacher in consultation with the Chairman of Governors and the Director of Children's Services, to referring the case to the Disciplinary Committee of the Governing Body.
- 6.2 Where the alleged misconduct is so grave (i.e. gross misconduct) that it is not reasonable for the teacher to remain at school pending the resolution of the matter the Headteacher, in consultation with the Chairman of the Governing Body and the Director of Children's Services, may exercise their power to suspend the teacher on full pay. He should confirm this action and the reasons for it in writing to the teacher. The Director of Children's Services is immediately to be sent written notice of such a suspension. The teacher shall be advised to make immediate contact with his Professional Association.

## **7 ACTION BY THE GOVERNING BODY**

The Governors will act through a Disciplinary Committee with delegated powers. This committee would normally comprise three members:

- 7.1 Where a complaint arising from paragraph 5 and/or 6 is referred to the Governing Body a meeting of the Committee shall be convened within fifteen working days to consider the complaint. The teacher shall be given not less than seven working days' notice, in writing, of the meeting and shall be informed of the nature of the allegations, the time and purpose of the meeting. Not less than five working days before the date of the meeting the teacher shall be provided with two copies of all documents/written evidence and a list of the persons to be called in support of the complaint. The Governing Body will be advised to follow a procedure for continuing the meeting as set out below.
- 7.2 The Director of Children's Services shall appoint an appropriate officer to advise the Governors as required on procedures and to act on his behalf as Clerk to the proceedings. The Committee should consider this advice prior to making its decision.
- 7.3 The Headteacher will put the case against the teacher and shall call witnesses as necessary in the presence of the teacher who may be accompanied by a friend or representative.

- 7.4 The teacher and/or his representative shall have the opportunity to ask questions of the Headteacher or any witnesses on the evidence presented.
- 7.5 The teacher or his representative will put their case calling witnesses and/or documentary evidence as he considers appropriate.
- 7.6 The Headteacher shall have the opportunity to ask questions of any witness on the evidence presented.
- 7.7 The members of the Governing Body shall have the opportunity at any stage to ask questions of both parties, their representatives and witnesses.
- 7.8 Before summing up, either party may, in appropriate circumstances, recall and re-examine any witness. Thereupon the other party shall also have the right of re-examination.
- 7.9 The Headteacher shall have the opportunity to sum up but may not introduce new evidence at this stage.
- 7.10 The teacher, or his representative, shall have the opportunity to make the final summing up but may not introduce new evidence at that stage.
- 7.11 Both parties and all witnesses shall then withdraw, leaving the Governing Body to deliberate in private. The officer appointed as Clerk shall remain with the Governing Body in order to advise on procedural matters and to record their decisions. The Director of Children's Services or his representative shall also remain to give advice to the Governing Body.

If there is a need to recall either side to clarify points of uncertainty then both parties will return, even if only one side is involved. Witnesses may be recalled and re-examined by the Governors in the presence of both parties.

- 7.12 The decision may be indicated to both parties verbally after the meeting and shall subsequently be communicated in writing as soon as possible thereafter.
- 7.13 The Governors may decide to take one or more of the following courses of action:
  - 7.13.1 to take no further action where no suspension has taken place.
  - 7.13.2 to reinstate the teacher who has been suspended.
  - 7.13.3 to issue a Formal or Final Written Warning. In addition to such warnings the Governors may also take such action as may be appropriate under the current pay and conditions document.
  - 7.13.4 to dismiss the teacher and terminate his contract, in which case the teacher shall normally be suspended until the matter is resolved.



## 8 APPEALS PROCEDURE

### 8.1 Against Formal/Final Warnings issued by the Headteacher

8.1.1 In the event of the teacher wishing to appeal against a formal warning issued by the Headteacher, written notice of the appeal, together with the grounds upon which the appeal is based should be lodged within ten working days of the date of the warning with the Clerk to the Governing Body. The appeal shall be made to the Appeals Committee of the Governing Body who will give at least seven working days' notice of the date and place of the hearing to the teacher. The procedure to be followed will be as in paragraph 7. The Appeals Committee will normally comprise three members.

8.1.2 The Appeals Committee may choose to:

- i) Dismiss the appeal
- ii) Impose a lower penalty
- iii) Uphold the appeal

The Committee shall not be empowered to impose a more severe penalty than originally imposed by the Headteacher.

### 8.2 Against Final Written Warnings and Formal Warnings when issued by Governors

8.2.1 In the event of the teacher wishing to appeal against a Final Written Warning (or a Formal Warning when issued by the Governors) written notice of the appeal, together with the grounds upon which the appeal is based, should be lodged within ten working days of the receipt of the Final Written Warning with the Clerk to the Governing Body. The appeal shall be made to the Appeal Committee of the Governing Body who will give at least seven working days' notice of the date and place of the hearing of the appellant.

This meeting shall not include any member of the Disciplinary Committee. The procedure to be followed is as set out in paragraph 7.

8.2.2 The Appeal Committee may choose to:

- i) Dismiss the appeal
- ii) Impose a lower penalty
- iii) Uphold the appeal

The Committee shall not be empowered to impose a more severe penalty than originally imposed by the Governing Body.

## 9 APPEALS AGAINST DISMISSAL

- 9.1 Where the Disciplinary Committee had decided to dismiss the teacher, the teacher has the right of appeal to the Appeals Committee of the Governing Body. This committee will normally consist of three members of the Governing Body and, in any case, of no fewer members than the Disciplinary Committee. Any decision to appeal should be communicated in writing to the Clerk to the Governors within seven working days of the original hearing.
- 9.2 The teacher shall be given fifteen working days' notice of the time and place of the appeal, in writing. This appeal will normally take the form of a re-hearing under the procedures as set out in paragraph 7.
- 9.3 The Appeals Committee may decide to:
- i) Uphold the dismissal of the teacher
  - ii) Impose a lesser penalty
  - iii) Reinstatement the teacher

## 10 PROCEDURAL NOTES

- 10.1 Any witnesses called, shall, after giving any evidence, withdraw from the proceedings.
- 10.2 Any person involved in an earlier stage of the decision making process set out in this document should not be involved at a later stage of the same process.

## 11 RETENTION OF PERSONAL RECORDS

### 11.1 Oral Warnings

The record of oral warnings shall be removed from all teachers' files six months after the date upon which they were issued.

### 11.2 Formal Warnings

Formal warnings shall be removed from all teachers' files one calendar year after the date upon which they were issued providing no further breaches of discipline have occurred during that period.

### 11.3 Final Warnings

Final warnings shall be removed from all teachers' files eighteen months after the date they were issued providing no further breaches of discipline have occurred during that period, except in exceptional circumstances notified at the time of the issuing of the final warning.

#### 11.4 Complaints

Where a complaint against a teacher is rejected in accordance with the procedure set out above all references to the complaint shall be removed from the teacher's file.

When a complaint is upheld against a teacher and a Formal Warning is issued the teachers' written observations shall be included in the record alongside the warning.

**Examples of Gross Misconduct**

The distinction between misconduct and gross misconduct is often a matter of degree. As illustrations of acts of gross misconduct DES Administrative Memorandum 2/90 indicates acts of conduct most likely to lead to the exclusion of a teacher from the profession by the Secretary of State. It is emphasised that this is not an exhaustive list.

- 1 Sexual offences and violence involving children or young people.
- 2 Other serious kinds of violence.
- 3 Drug related offences, particularly drug trafficking.
- 4 The misappropriation of school monies.
- 5 False claims of a gravely deceptive nature as to qualifications.
- 6 Repeated misconduct or multiple convictions unless of a minor kind.

In addition, the following list of examples illustrates conduct likely to amount to gross misconduct. The list is neither exclusive nor exhaustive.

- (a) Dishonesty associated with place of work or job being undertaken
  - i) Theft or misappropriation of property belonging to the Local Education Authority or any other Authority, a contractor, governors, trustees, another teacher, pupil or other third party.
  - ii) Falsification of records or expenses claims.
  - iii) Demanding or accepting monies or other considerations as a bribe for the use of Council property, provision of Council services or the showing of favour on behalf of the Council.
  - iv) Falsification of any information given on an application form for a teaching post in order to gain advantage whether pecuniary or otherwise.
  - v) Failure to disclose criminal convictions under the terms of the Rehabilitation of Offenders Act 1975.
  - vi) Falsification of registration of pupils or students.
- (b) Refusal to carry out a reasonable, lawful and safe instruction, or the normal duties of the post.
- (c) Gross negligence in unreasonably failing to attend to or to carry out the duties of the post.

- (d) Ignoring responsibilities/instructions thus placing other members of staff/pupils in risk of danger, e.g. ignoring handling instructions/safety regulations in respect of radioactive materials.
- (e) Being unfit to perform duties associated with the post as a result of taking alcohol or drugs other than in accordance with medical advice.
- (f) Unauthorised disclosure of information classified as confidential by the Authority or the Governors of the school.
- (g)
  - i) Acts of violence or vandalism in the course of employment, malicious damage to property.
  - ii) Physical violence to others, members of school staff/parents/pupils/governors/members of the public/Members/Officers of the Authority.
- (h) Sexual misconduct at work.
- (i) Off-duty misconduct incompatible with professional role and status, such as:
  - i) sexual offences
  - ii) drug offences
  - iii) sexual relations with pupils of a school

### **Misconduct**

The following list illustrates conduct likely to signify misconduct. The list is neither exclusive nor exhaustive.

- 1 Absenteeism and lateness, for example:
  - i) Failure to remain at the place of work during normal working hours without permission or sufficient cause for absence.
  - ii) Frequent failure to attend work punctually.
  - iii) Failure to notify the school immediately or as soon as reasonably practicable, when absence is due to sickness.
  - iv) Failure to provide medical certificates in accordance with the conditions of service and current national regulations.
- 2 Dishonest - petty wrongs, for example:
  - i) making unauthorised private telephone calls.
  - ii) sending personal mail at Council/school's expense.

- 3 Neglect of duty, for example:
  - i) Failure to adopt safe working practices/use protective equipment where required by law or management.
  - ii) Negligent use of property in such a way as is likely to cause serious damage or loss.
  - iii) Failure to discharge obligations placed on a teacher by statute, contract of employment, or reasonable instructions given by the Headteacher.
  - iv) Failure to exercise proper control or supervision of pupils or students.
  - v) Failure to report any serious and known losses or damage to any property issued to or by a teacher in connection with his/her employment.
- 4 Abusive, threatening or offensive behaviour or language which arises directly out of or in connection with work.
- 5 Victimisation of other employees or pupils in the course of duty.
- 6 Unlawful discrimination against other employees, pupils or members of the public in the course of duty.
- 7 Racial or sexual harassment of other employees, pupils or members of the public in the course of duty.
- 8 Any conduct prejudicial to the Council/school's interest whether:
  - i) committed at work, or
  - ii) committed outside working hours having regard to the nature of the offence, the duties of the employee's post and any damage to the reputation and integrity of the Authority or the school.

The NUT, the NASUWT and the AMMA note the inclusion of the statements concerning gross misconduct and misconduct as a guideline, but have not confirmed their agreement with the content.

**ADVICE ON PROCEDURES TO BE FOLLOWED WHEN INVESTIGATING COMPLAINTS**

- 1 Where there is a possibility of the formal disciplinary procedure being applied, the Headteacher or representative who shall be a senior member of staff, should establish the facts promptly before recollections fade, taking into account the statements of any available witnesses. The investigation should take place, as far as possible, on the working day on which the complaint was made.
- 2 If a complaint alleging misconduct against an employee is made, then:
  - the complaint should be received in writing. If initially given orally, the person making the complaint should be expected to confirm the details in writing. Where the complaint is made by a pupil, the Headteacher should interview the pupil and record a detailed statement of the interview in writing. Subsequently the statement should be read to the pupil and endorsed by the Headteacher to indicate that the pupil has confirmed the accuracy of the statement.
  - the employee concerned should be provided with a copy of the complaint and given a full opportunity to respond to the Headteacher. A written note should be made of any explanation given.
  - all witnesses interviewed should either themselves provide written statements or be provided with a written statement prepared subsequent to the interview for their verification.
  - the employee concerned should receive copies of all such statements, so that he is fully aware of the nature of the allegation laid against him.
- 3 If the complaint or allegation appears to be justified, then all relevant circumstances, including past findings and warnings of a similar kind, unless formally disregarded, should be taken into account by the Headteacher when deciding the most appropriate course of action.
- 4 If, having examined all statements, the Headteacher decides to proceed with disciplinary action, this should be in accordance with paragraphs 4, 5 and 6 of the disciplinary procedure.