



SPARKEN HILL
ACADEMY

DISCIPLINARY POLICY

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SPARKEN HILL ACADEMY
SPARKEN HILL
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DISCIPLINARY POLICY

Scope

This procedure applies to all employees. It does not apply to agency workers or self-employed contractors. This procedure is to be used to deal with issues of misconduct. Separate procedures exist to deal with matters of unsatisfactory performance and absence due to ill health.

In the event of a disciplinary matter arising concerning the headteacher, all references throughout this document to the headteacher should be replaced by the chair of governors.

This procedure does not form part of any employee's contract of employment and it may be amended at any time.

Policy

The governing board expects all staff to maintain appropriate standards of behaviour and performance. To assist employees in complying with this requirement, the governing board has formulated a set of disciplinary principles and has established a procedure to be followed when disciplinary matters arise. The purpose of the policy and the supporting procedures is to enable any disciplinary issue to be addressed speedily, ensuring fairness and consistency in the treatment of individual employees.

The following should be considered:

- Where an employee's conduct appears to be unsatisfactory, no disciplinary action shall be taken until the case has been carefully investigated and a disciplinary hearing has taken place.
- In all cases, the employee will be advised in writing, as soon as practicable, of the details of any allegations/complaints made against them.
- The employee will be given the opportunity to prepare and present their case before any decision is made.
- No employee will be dismissed for a first breach of discipline except in cases of gross misconduct.
- Wherever possible, meetings will be held during the employee's normal working time unless otherwise agreed.
- The employee may be accompanied by a colleague or trade union representative during the investigatory stage. The employee will have the right to be accompanied during the disciplinary procedure by a trade union representative or work colleague. If an employee's chosen companion will not be available at the time proposed for the meeting by the school, the employer must postpone the meeting to a time proposed by the employee, provided that the alternative time is both reasonable and not more than five working days after the date originally proposed. Where there is a request to postpone a hearing for more than five days because a trade union representative or other companion is not available, consideration should be given to allow the postponement if it does not cause unreasonable delay. The facts should be considered to decide what is fair and reasonable in the circumstances.

- In every case, and at every stage, when determining the disciplinary action to be taken, the headteacher or the governors shall bear in mind the need to satisfy the test of reasonableness having due regard to all the circumstances.
- The headteacher shall ensure that the employee is given an explanation for any sanction imposed and is told of his/her right of appeal, how to make it and to whom.
- Governors and headteachers should be particularly careful not to discriminate on the grounds of race, gender, disability, sexual orientation, religion, trade union membership or age.
- Appropriate advice should be sought from the school's HR adviser in all cases where disciplinary action is being considered and, in maintained schools, as necessary from the local authority (LA) (for example, where dismissal is a possible outcome).
- There may be occasions where this procedure needs to be modified to comply with the requirements of the school's child protection and safeguarding policies, for example, by allowing the Local Authority Designated Officer (LADO) to offer advice to the headteacher and governors at appropriate stages.

Informal process

Minor conduct issues should be resolved informally between the employee and headteacher. Such discussions should be held in private and, where appropriate, a note of any informal discussion should be placed on the employee's personnel file. Any note taken should be marked 'informal' and should not form part of the employee's disciplinary record and should be ignored for the purposes of any future disciplinary hearings.

The employee should be advised of the standard required and given reasonable opportunity to achieve the required standard. In the event of insufficient improvement, or if an informal discussion is not appropriate due to the seriousness of the allegation, formal steps should be taken under this procedure.

Suspension

There may be instances where suspension is necessary while investigations are carried out. Suspension will be on full pay and kept as brief as possible. Suspension is not a disciplinary penalty and does not imply that any decision has already been taken. Alternatives to suspension should always be considered and the reasons for rejection recorded.

Suspension should only be considered where it is reasonable and proper to do so, or the allegation is of a serious nature where:

- There are reasonable grounds to believe that the employee might seek to tamper with or destroy evidence or influence witnesses.
- Working relationships have broken down to the point that there is a genuine risk to other employees, property, pupils or business interests.
- The employee is subject to criminal or safeguarding proceedings which may affect whether they can do their job or there is a risk of harm to pupils.

Most disciplinary procedures will not require suspension. An employee will usually be able to continue doing their normal role while the matter is investigated.

Acas guidance states that suspension should usually only be considered if there is a serious situation being investigated and the employer believes that it is needed to protect any of the following:

- The investigation, for example if there are concerns about someone damaging evidence or influencing witnesses.
- The business, for example if there is a genuine risk to customers, property or business interests.
- Other staff.
- The person being investigated.

A suspension risk assessment form should be carried out which details other considerations to take into account when considering suspension. Action short of suspension, such as moving the individual to another department temporarily, or working from home, may be potential options depending on the circumstances.

Formal process

Stage 1 – investigation

All allegations of misconduct should be investigated promptly to establish whether or not there is a case to answer. The headteacher will first appoint someone of appropriate seniority and experience and who, where possible, has completed suitable, approved training (hereafter called the investigating officer) to establish the facts promptly before recollections fade and to obtain signed witnesses' statements without undue delay. The investigating officer must be neutral and independent, ie have had no previous involvement and will not be involved in deciding the outcome of the case.

Initial investigations should be conducted at the earliest opportunity. The amount of investigation required will depend on the nature of the allegations and will vary from case-to-case. Often further information can come to light during the investigation which may result in the investigating officer carrying out further investigation or interviewing additional witnesses or re-interviewing witnesses.

The employee should be notified of the allegation(s) against them and invited to an investigatory meeting. The employee should be provided with reasonable notice of the meeting. The employee may be accompanied by a colleague or trade union representative during the investigatory stage. It is advisable to hold a further investigation meeting with the employee to obtain a further statement once all the facts have been gathered.

Witnesses must be advised of the purpose of the meeting and further advised that any information discussed should remain confidential and matters should not be discussed with any other member of staff. All statements taken should be dated and signed by the witness. If a witness wishes to remain confidential, the investigating officer should seek the reasons for this. No guarantee of complete anonymity can be provided to a witness.

Where statements from pupils are deemed necessary, these will be taken as soon as possible after the incident and in such a way as to avoid the risk of collusion between pupils. All interviews should

be conducted with another senior member of staff present and (particularly where very young pupils are involved) consideration should be given to the presence of at least one parent/guardian.

The investigation stage is solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has taken place.

Once the investigation is complete, the investigating officer should complete a report detailing their findings and identifying any recommendations, such as proceeding to a formal disciplinary hearing. The investigating officer should not recommend a possible sanction as this should be for the panel to consider at any subsequent disciplinary hearing. In the event of contested or contradictory evidence, the investigating officer should decide, on the balance of probabilities, which version of events to accept and explain the reasoning.

The investigation report should include the following:

- Details of the allegations considered.
- Background to the investigation.
- Details of the investigation process.
- A summary of any written and physical evidence.
- A summary of witness evidence.
- Any facts established.
- Any facts that could not be established.
- Any mitigating factors.
- Any other relevant information.

Please see appendix A for guidance on carrying out an investigation.

Stage 2 – disciplinary hearing

Following an investigation, if there are grounds for disciplinary action, the employee will be invited to attend a disciplinary hearing which will be held as soon as reasonably practicable.

Disciplinary hearing panel

The case will be considered by a disciplinary hearing panel, consisting of three panel members. This could include the headteacher and/or governors.

The disciplinary hearing panel should consist of members who have not previously been involved in the case and are not staff governors and, ideally, not parent governors.

Representation

The employee may be accompanied, if s/he so wishes, by a recognised trade union representative, or work colleague of his/her choice.

Notice requirements

The employee will be given at least **five working days'** notice in writing of the time, date and place of the hearing before the disciplinary hearing panel. If the trade union representative/colleague is unable to attend on the date proposed, the employee can offer an alternative time and date, within five working days of the original. Normally only one postponement on these grounds will be permitted. Where there is a request to postpone a hearing for more than five days because a trade union representative or other companion is not available, consideration should be given to allow the postponement if it does not cause unreasonable delay. The facts should be considered to decide what is fair and reasonable in the circumstances.

In proposing an alternative date, the employee must have regard to the availability of the disciplinary hearing panel. Where it is impossible to convene a panel, the school will liaise with the employee as to other suitable dates beyond the usual five working days.

At the same time as the notice is sent, the employee shall be:

- Provided with the full details of the allegations, the basis for the allegations, and what the likely range of consequences will be if the allegations are found to be true.
- Provided with a summary of relevant information gathered during the investigation.
- Provided with two copies of any relevant documents to be considered by the headteacher/disciplinary hearing panel, the second copy being provided for the use of his/her representative.
- Provided with two copies of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the employee will be provided with as much information as possible while maintaining confidentiality.
- Told to forward to the clerk to the hearing any papers that s/he wishes to be considered by the headteacher/disciplinary hearing panel no later than two working days before the date of the hearing.
- Asked to acknowledge receipt of the letter and say whether s/he will attend the hearing, accompanied or otherwise.

If an employee is unable to attend the hearing they must inform the headteacher or clerk to the disciplinary hearing panel immediately so an alternative date and time can be arranged. It is good practice to arrange an alternative date if the employee fails to attend. If an employee persistently fails to attend, a decision may have to be taken based on the evidence available.

The hearing may be adjourned if there is a need to carry out further investigations. The employee will be provided with reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The employee will be notified of the decision, including full reasons within **five working days** of the hearing.

Please see appendix B for details of the procedure to be followed at the hearing.

Stage 3 – appeal

Appeals against disciplinary action will involve either:

- An appeal against a decision of the headteacher; or
- An appeal against a decision of the disciplinary hearing panel.

If an employee feels that disciplinary action taken against them is wrong or unjust, they should appeal in writing, stating their full grounds of appeal, to the clerk to the disciplinary hearing panel within **ten working days** of the date on which they were informed of the decision.

The appeal should be dealt with as promptly as possible, and wherever possible within **20 working days** of the appeal being lodged. The employee will be provided with at least **five working days** notice of the date, time and place of the appeal hearing, along with any relevant documentation as set out above.

A staff appeals panel appointed by the governing board and comprising at least three governors shall hear all appeals. The staff appeals panel should consist of members who have not previously been involved in the case and are not staff governors and, ideally, not parent governors.

The procedure to be followed at the appeal hearing shall be similar to the disciplinary hearing set out within appendix B, except that the employee (appellant) shall present the case for appeal first, with the chair of the disciplinary hearing panel, the headteacher or authorised representative answering the appeal.

Where an appeal is upheld, all appropriate persons shall be informed accordingly.

The provision and arrangements for representation shall be the same as for the stage 2 – disciplinary hearing above.

The decision reached by the staff appeals panel will be final.

Disciplinary sanctions

The usual penalties for misconduct are set out below. Each case will be assessed on its own merits.

An employee will not normally be dismissed for a first act of misconduct unless it is decided the conduct amounts to gross misconduct.

At the same time as the sanction is determined, consideration may be given, in the case of teachers, to withholding an increment as provided for in the School Teachers' Pay & Conditions of Service Regulations.

First written warning

A first written warning will usually be appropriate for a first act of misconduct where there are no other active written warnings on the employee's disciplinary record.

A first written warning will remain active for six months.

Final written warning

A final written warning will usually be appropriate for:

- Misconduct where there is already an active written warning on the employee's record; or
- Misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the employee's record.

A final written warning will remain active for 12 months.

Dismissal

Dismissal will usually be appropriate for:

- Further misconduct where there is an active final written warning on the employee's record; or
- Any gross misconduct regardless of whether there are active warnings on the employee's record.

Gross misconduct will usually result in summary dismissal without notice or payment in lieu of notice. Examples of gross misconduct are set out within appendix C.

Where dismissal takes place or where an employee leaves in circumstances where they might have been dismissed, the matter shall be reported to the appropriate persons or bodies as required by statute.

Other sanctions

Other sanctions may also be considered, although in all cases advice must be sought from HR. Possible alternative sanctions include a transfer to another post or demotion with or without protection of salary.

Miscellaneous notes

Child protection

Allegations relating to child protection against employees should be dealt with in accordance with the relevant policy in force.

Disciplinary action against trade union officials

All the foregoing disciplinary standards and procedures apply to the conduct and performance of all union officials, including school representatives, who are employees of the LA/school. No disciplinary action, beyond a formal oral warning, shall be taken until a senior trade union representative or full-time official of the member of staff's trade union or association has been given an opportunity to discuss them with the headteacher. In such cases, the discussion must take place within seven working days of notification by the headteacher.

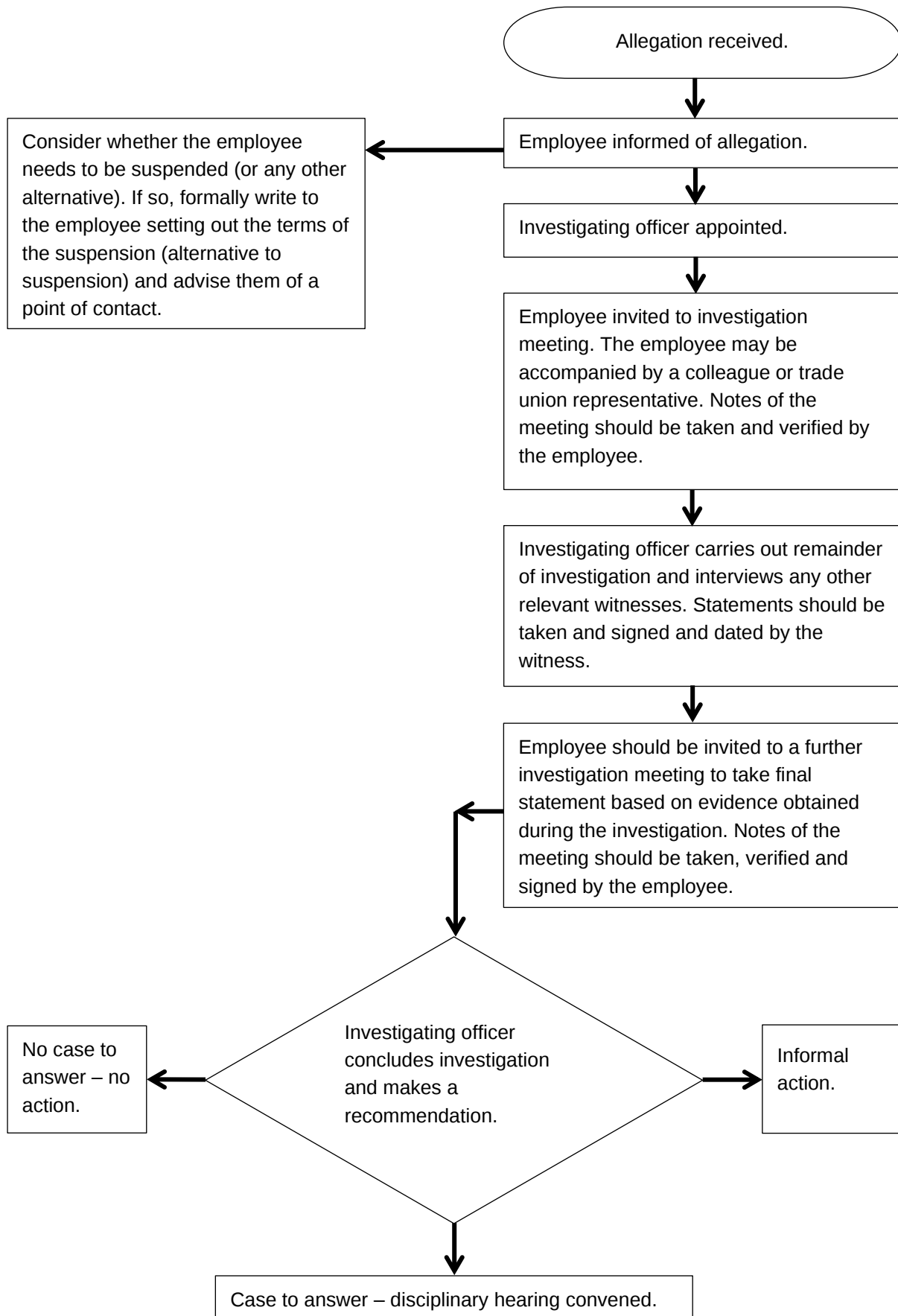
Confidentiality

All proceedings described in this document shall be confidential. Any public statement or publication of the decision, save to the employee and his/her representative, shall be confined to the operative decision only. All employees/witnesses must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

Criminal charges or convictions outside employment

These should not be treated as automatic reasons for dismissal. The main consideration should be whether the offence is one that makes workers unsuitable for their type of work. In all cases, headteachers (and/or the disciplinary hearing panel) having considered all the facts, will need to

consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure. In addition, staff should not be dismissed solely because a charge against them is pending or because they are absent as a result of being remanded in custody.

APPENDIX A – CARRYING OUT AN INVESTIGATION

APPENDIX B – PROCEDURE TO BE FOLLOWED AT A DISCIPLINARY HEARING

Introductions

- The chair of the disciplinary hearing panel should make introductions, explain the purpose of the hearing and the procedure to be followed.
- After the introductions, the chair should confirm that the hearing is being held as part of the school's disciplinary procedure and that there will be a written record of the hearing.
- The chair should clarify whether or not there will be any witnesses called by the parties.
- The allegations against the employee should be fully outlined.

School to present case

- The presenting officer (usually the investigating officer) should present the school's case to the chair, putting forward all relevant facts which led to disciplinary proceedings being instigated against the employee. The investigating officer's report and recommendations should be presented referring to relevant documentary evidence where necessary. The presenting officer should also call any relevant witnesses as necessary.
- The employee should be invited to ask the presenting officer any questions and to raise any points about any documentary or witness evidence presented.
- The chair and panel members may also ask the presenting officer any questions with regards to the evidence provided.

Employee to present case

- The employee or his/her representative should present their case using any evidence in support of their case including documentary and witness evidence where necessary. The employee or his/her representative must be allowed a full and fair opportunity to state his/her side of events and explain any conduct or mitigating factors.
- The employee should be permitted to call witnesses to give evidence as necessary.
- The presenting officer should be invited to ask the employee any questions and to raise any points about any documentary or witness evidence presented.
- The chair and panel members may question the employee about any points/evidence raised. While the employee should be allowed to confer with their representative, they should personally address any questions asked of them.

Summing up and decision

- After all the evidence has been heard, the chair should summarise the key points.
- The chair should retire to consider his/her decision with the panel and should be accompanied by only the technical advisor and clerk to the appeal. Such discussions or minutes are not privy to the employee or his/her representative.

- The chair should inform the employee whether the decision will be communicated orally that day or provided at a later date in writing.
- The employee must be notified of his/her right of appeal against any disciplinary action taken.

In respect of the appeal hearing, the above steps should be followed, save that the employee will present their case first.

Additional points to note

- At any time during the proceedings, either side may request an adjournment for a reasonable period to allow consultation.
- Full minutes of the hearing should be taken. Ideally a separate minute taker should be appointed who is also independent to the proceedings. A copy of the minutes should be sent to the employee following the hearing and the employee should be asked to sign a copy to confirm they are accurate.
- If the employee fails to attend the hearing, it is good practice to re-arrange the hearing to an alternative date in order to give the employee a further chance to attend. If the employee persistently fails to attend without good reason, the hearing can proceed in the employee's absence. The employee should be warned in advance that this will be the case.
- In the event of a disabled employee, consideration should be given to any reasonable adjustments necessary.

APPENDIX C – GROSS MISCONDUCT

Gross misconduct may be defined as conduct warranting summary dismissal, demotion or dismissal and the withholding of increments, that is, it is of such a nature that the employee's continued presence at work is intolerable either to management, or to his/her fellow employees. Examples of the type of conduct that shall warrant summary dismissal (that is, dismissal without the normal period of notice) are described below:

- Theft, fraud or embezzlement in relation to his/her employment.
- Offences relating to child protection.
- Fighting and offences involving violence against the person of others while at work. (A member of staff is entitled to use such force as is necessary and reasonable to defend him/herself where s/he did not initiate such action.)
- Serious bullying or harassment.
- Serious insubordination.
- Serious breach of the Teachers' Standards
- Misuse of the school's property or name and/or bringing the school into serious disrepute.
- Serious incapability while on duty brought on by alcohol or other substances.
- Serious negligence which causes or might cause unacceptable loss, damage or injury.
- Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998).
- Unauthorised removal of, or malicious damage to, the property of the school, of its employees or of persons in relation to whom the school and/or its employees are in a position of trust.
- Falsification of time records, travel, subsistence and expense claims in relation to his/her employment.
- Sexual offences and sexual misconduct while at work.
- Serious breaches of safety regulations endangering other persons, including deliberate damage to, neglect of, or inappropriate use of safety equipment.

The above list is neither exclusive nor exhaustive and, therefore, does not preclude the possibility of dismissal for other offences of similar gravity not specified. Notwithstanding the above reference to summary dismissal in relation to gross misconduct, the disciplinary hearing panel may arrive at a decision other than summary dismissal having regard to all the circumstances.

