

DISCIPLINARY PROCEDURE FOR TEACHERS **NOTES OF GUIDANCE FOR RELEVANT BODIES**

1. Advice and Guidance

- 1.1 **It is strongly recommended that the advice and guidance of the Employing Authority be sought when any disciplinary action is being considered and at each stage of the operation of the disciplinary procedure.**
- 1.2 It is essential that the Disciplinary Procedure is adhered to and notes taken at each stage of its implementation.
- 1.3 The conduct of disciplinary proceedings must be fair, transparent and appropriate in all the circumstances.
- 1.4 Where issues arise which relate to child protection matters the guidance contained in the booklet “Pastoral Care in Schools: Child Protection”; The Department of Education Circular (DE 2015/13) Dealing with Allegations of Abuse Against Staff and any further statutory or other relevant guidance that may be issued from time to time by the Department of Education must be followed. These notes of guidance provide supplementary advice in those cases where it is decided to invoke the Disciplinary Procedure.
- 1.5 The Disciplinary Procedure and notes of guidance reflect the recommendations of the Labour Relations Agency’s Code of Practice Disciplinary and Grievance Procedures.

2. The Disciplinary Authority

Appendix I of the Disciplinary Procedure (TNC 2016/2) provides details of the appropriate disciplinary authority.

- 2.1 Where required, the Board of Governors should establish a sub-committee with delegated authority to deal with disciplinary matters. The sub-committee must comprise of a minimum of three voting members who shall not participate in any meeting of the Board of Governors hearing an appeal against disciplinary action.
- 2.2 When nominating to the sub committee attention shall be given, where possible, to gender balance.

3. Investigation

- 3.1 Before considering disciplinary action the Disciplinary Authority shall carry out a investigation into any allegation of misconduct to establish if there is a case to be answered. The Disciplinary Authority shall prepare a report of the investigation and seek the advice and guidance of the Employing Authority on matters such as: safeguarding the rights of the teacher, non contamination of future process and rights and responsibilities of witnesses.
- 3.2 Where it is reasonable and practicable to do so the Disciplinary Authority may delegate the investigation to an investigatory panel. In the case of allegations of serious or gross misconduct the Disciplinary Authority should delegate the investigation to an investigatory panel. In such cases the members of the

Disciplinary Authority should play no further part in the investigation. The investigatory panel, with delegated authority to carry out the investigation, may consist of governors, the Principal, or external third party/parties, or any combination. In circumstances where Governors are intending to engage an external third party/parties the rationale for this course of action and the identity of the third party/parties will be communicated to the teacher and/or Trade Union in advance of the commencement of the engagement. At the conclusion of the investigation, the investigatory panel will report the findings to the Disciplinary Authority which will decide whether or not disciplinary action should proceed. The remaining Governors will take no further part in the investigation, but will remain available to participate in any subsequent disciplinary action and, if necessary, appeal process.

- 3.3 However, in the case of an allegation of child abuse the guidance 1.4 above must be followed. No disciplinary investigation shall be commenced and there must be no interference with evidence.
- 3.4 In the case of other allegations of misconduct which may lead to a police investigation the advice and guidance of the Employing Authority must be sought before any action is taken, including an investigation. Where a police investigation is taking place into a directly related matter at the same time as an internal school based investigation, the school investigation shall normally be deferred, pending the outcome of the police enquiry.
- 3.5 As part of the investigation the Disciplinary Authority or other delegated person/s may wish to meet with and/or consider relevant information from other persons. See Section 5 on witnesses and witness statements.
- 3.6 The Disciplinary Authority should write to the teacher to advise him/her of the allegations being investigated and invite him/her to a meeting to respond to the allegations. The teacher should be made aware of the potential disciplinary consequences of the allegations and advised of the timescale in which he/she will be informed of the outcome of the investigation.
- 3.7 An investigation conducted under the Bullying and Harassment Procedure shall substitute for an investigation required under the Disciplinary Procedure, as appropriate.
- 3.8 On concluding the investigation the Disciplinary Authority may decide that:
 1. disciplinary action is appropriate and shall proceed to the formal stage of the procedure by inviting the teacher to a disciplinary meeting, or
 2. disciplinary action is not appropriate. In which case the matter should be discussed with the teacher informally, with a view to seeking ways of improving the situation. The Disciplinary Authority should make it clear to the teacher that this discussion is not a verbal warning, but an informal attempt to resolve the issues. A brief record of this discussion should be taken, a copy retained in school and a copy given to the teacher.

4. Precautionary Suspension

- 4.1 The Employing Authority must, where practicable, be consulted immediately before a suspension is imposed, or, where this is not practicable, as soon as possible thereafter. Where the nature of the allegation/s of misconduct are such that it is considered appropriate to impose a period of precautionary suspension, the Board of Governors, the Chairperson or the Principal shall suspend a teacher. Precautionary suspension shall be with full pay.
- 4.2 Such suspension should only be imposed after careful consideration, should be kept under regular review and not be unduly protracted. Precautionary suspension is appropriate where, for example:
 - i. children are deemed to be at risk
 - ii. the continued presence of the teacher would place him/her at risk
 - iii. the teacher's continued presence may impede the investigation
 - iv. the alleged offence is of such serious nature that it may constitute gross misconduct.
- 4.3 The Board of Governors should consider alternative actions, which would be acceptable to the teacher, yet serve the same purpose as a precautionary suspension, such as a temporary transfer to other duties or alternative work without loss of pay. It should be made clear that any action taken is not disciplinary action.
- 4.4 The Board of Governors, Chairperson or Principal when exercising the power to suspend must immediately inform the principal or (as the case may be) the Board of Governors or Chairperson and record the action taken.
- 4.5 Where practicable, the Chairperson should meet the teacher concerned to confirm the precautionary suspension. The teacher shall be given written confirmation of the suspension, indicating that it is a precautionary measure pending criminal or disciplinary investigations or proceedings.
- 4.6 Precautionary Suspension should be kept under regular review and can only be ended by the Board of Governors.
- 4.7 Investigation of the alleged offences may result in the following outcome:
 - i. it is considered that there is no case to answer in which case the suspension shall be ended by the Board of Governors.
 - ii. there is a case to answer, and precautionary suspension is no longer necessary. The suspension shall be ended by the Board of Governors and the disciplinary procedure invoked.
 - iii. there is a case to answer and it is considered that the nature of the offence is such that precautionary suspension shall continue. The disciplinary procedure shall be invoked.
- 4.8 The Employing Authority must be kept informed throughout this process and its advice and guidance sought and considered.

- 4.9 Precautionary suspension is not a disciplinary penalty and its imposition is not intended to imply any decision about the outcome of the disciplinary process.

5. Witnesses and Witness Statements

- 5.1 Where, in the course of the investigation, the Disciplinary Authority meets with other persons to obtain relevant information on the alleged incident/s they will ensure that any information is not only truthful but also objective, verifiable and relevant to the issues being investigated.
- 5.2 All those giving information to the investigatory panel should do so privately and not in the presence of any other person involved in or present during the alleged incident/s.
- 5.3 Witnesses shall be advised at the outset of the meeting of the extent of the information sought, that evidence will be treated as confidential, but that their anonymity cannot be guaranteed should the matter become the subject of disciplinary action, appeal, further proceedings or statutory discovery.
- 5.4 A written record of such meetings should be retained and witness statements taken.
- 5.5 Where possible a witness statement shall be in the witness' own handwriting, signed and dated. If this is not possible the witness statement shall be certified a true and accurate record, signed and dated by the witness and countersigned and dated by the person who prepared the statement.
- 5.6 No child under 18 years shall be interviewed as a (potential) witness without his/her parent or guardian being given an opportunity to be present. This does not preclude making general enquiries from pupils as to actions that may have occurred. Where a parent or guardian is present he/she should be required to give an undertaking of confidentiality. In the absence of a parent or guardian a teacher, other than an investigating teacher, should be present and act in loco parentis.
- 5.7 A witness shall not be party to a disciplinary decision, nor shall he/she be present when that decision is taken.
- 5.8 The Procedure does not normally require witnesses to be present and cross-examined at a disciplinary hearing and this shall only be considered in exceptional circumstances.

6. The Disciplinary Hearing

6.1 Notice of the meeting

- 6.1.1 Where practicable, a disciplinary hearing shall be held within ten working days of the alleged offence/s. The teacher should be told clearly in writing, what is being alleged, provided with a copy of the disciplinary procedure and all documentary evidence to be considered by the disciplinary authority. Where further offences have come to light in the course of the disciplinary proceedings and/or investigations these should be included. The teacher should be invited, in writing, to the hearing to discuss the issues and be advised of all rights under the procedure including

specifically the right to be accompanied by a teaching colleague or a trade union representative. **Legal representation is not permitted.**

- 6.1.2 Any teacher invited to attend a disciplinary hearing must be provided with a minimum of 5 working days notice of the proposed hearing date to enable reasonable time to prepare his/her case.
- 6.2 **Attendance of the Relevant Officer of the Employing Authority**
- 6.2.1 In the case of a controlled school, the Scheme of Management provides that the Chairperson of the Board and Chief Executive, or other officer(s) of the Board as the Chief Executive may nominate, may, upon giving notice to the secretary, attend any meeting of the Board of Governors or a committee thereof in an advisory capacity, but shall not vote on any question.
- 6.2.2 In the case of a catholic maintained school, the Scheme of Management provides that:
- i. The Chief Executive or other officer of the Council as the Chief Executive may nominate and the diocesan administrator; and
 - ii. the Chief Executive, or other officer of the board as the Chief Executive may nominate; and may, upon giving notice to the secretary, attend any meeting of the Board of Governors or a committee thereof in an advisory capacity, but shall not vote on any question.
- 6.2.3 Additionally, Schedule 2 of the Education (NI) Order 1998 provides that the relevant officer of the Employing Authority is entitled to attend all proceedings of the Board of Governors relating to any case which may lead to the dismissal of any person employed to work at the school for the purpose of giving advice and such advice must be considered by the Board of Governors before a determination to dismiss is made.
- 6.2.4 Where the nature of an alleged offence is such that it may lead to the dismissal, including summary dismissal, of the teacher, notice of the disciplinary hearing and relevant papers shall be sent to the relevant officer at least 5 working days before the date of the meeting.
- 6.3 **Absence of the teacher from the Disciplinary Hearing**
- 6.3.1 Where a teacher is unable to attend the disciplinary hearing, he/she shall advise the Disciplinary Authority, in advance, indicating the reasons for non-attendance. Where satisfactory reasons are provided, the hearing shall be adjourned and rescheduled.
- 6.3.2 In the absence of any explanation for non attendance, request for adjournment or where the explanation given is unsatisfactory, the disciplinary hearing shall proceed in the teacher's absence.
- 6.3.3 If the teacher subsequently satisfies the Disciplinary Authority that the failure to attend was for some unavoidable cause, the Disciplinary Authority may, at its absolute discretion, re-hear the matter.

6.3.4 Where the teacher indicates that he/she is unable to attend due to illness the Disciplinary Authority reserves the right to obtain an independent medical report and to progress the case, as appropriate, including conducting any hearings on the basis of written submissions.

6.4 **The Procedure at the Disciplinary Hearing**

6.4.1 At the start of the meeting the Chairperson shall introduce the panel and the role of any other person present eg. a note taker or the relevant officer of the Employing Authority.

6.4.2 The Chairperson shall explain clearly the purpose of the meeting and outline the procedure to be followed.

6.4.3 Where the teacher attends alone, the Chairperson shall remind the teacher of the right to be accompanied by a teaching colleague or trade union representative. If the teacher seeks to be accompanied, but the colleague/representative is unable to attend and a satisfactory reason is provided, the hearing should be postponed.

6.4.4 The Chairperson shall state clearly the allegations, referring, where appropriate, to any documentary evidence. Only those allegations stated in writing, in advance, shall be dealt with at the hearing

6.4.5 The teacher will be expected to respond directly to the Disciplinary Authority at the hearing and to answer the allegations. The teacher may confer with the teaching colleague or representative accompanying him/her and, in exceptional circumstances and with the agreement of Management, may be represented by this person.

6.4.6 The Chairperson, or through him/her, any member of the Disciplinary Authority, may ask questions of the teacher or the colleague/representative to ensure the issues are fully explored and the facts established.

6.4.7 The teacher shall be asked if there is any further information he or she wishes to have considered.

6.4.8 Where the Disciplinary Authority considers that points raised at the hearing require further investigation or clarification, or where further offences have come to light, the meeting shall be adjourned to enable investigations to be completed before a decision is made. Where possible, the teacher and representative shall be given an indication of the anticipated time required for such investigation.

6.4.9 Otherwise, the Chairperson shall explain that, following the Disciplinary Authority's deliberation, it will come to a decision which shall be sent to the teacher in writing. The teacher and his teaching colleague/ representative shall withdraw from the interview.

6.4.10 The Disciplinary Authority shall review all the evidence and decide what are the relevant facts. The Disciplinary Authority shall satisfy itself in respect of the allegations made and decide:

- i. have the allegations been substantiated
- ii. are there any mitigating circumstances
- iii. what penalty (if any) should be imposed.

In arriving at any conclusions or in making any decision the Disciplinary Authority shall take account of relevant factors, the previous record of the teacher and any admission/s made in the course of the disciplinary hearing.

- 6.4.11 Guidance on the classification of potential offences and the level of disciplinary action that may be appropriate can be obtained from Appendix 1 - "Disciplinary Rules". The list of examples given is not exhaustive and the degree of seriousness of the offence will determine the category under which it will be considered.
- 6.4.12 In arriving at its conclusions the Disciplinary Authority is required to act reasonably and to base its conclusions on the balance of probabilities.
- 6.4.13 The Disciplinary Authority shall inform the teacher, in writing, of its decision as expeditiously as possible. Where it is decided to issue a disciplinary warning, including an oral warning, or take further disciplinary action, other than dismissal, the teacher shall be informed in writing and of the consequences of a recurrence of the same or a similar offence or the occurrence of a further offence within the appropriate specified period. The letter shall advise the teacher of the appeals process in accordance with the Disciplinary Procedure and shall be copied to the Employing Authority. The teacher shall also be reminded of the provisions available under the employing authority's welfare arrangements.
- 6.4.14 A disciplinary warning will take effect either from the date on which it is issued or, where an appeal is lodged, from the date of the notification of the appeal decision.
- 6.4.15 Where the disciplinary decision is to dismiss the teacher the procedure in paragraph 7 must be followed.

7. **Dismissal Procedure**

- 7.1 A criminal conviction outside employment shall not be treated as an automatic reason for dismissal regardless of whether the offence has any relevance to the duties of the individual as a teacher. The main consideration shall be whether the offence is one that makes the individual unable and/or unsuitable to discharge their contractual duties as a teacher. Teachers shall not be dismissed solely because a charge against them is pending or because they are absent through having been held in custody.
- 7.2 Schedule 2 of the Education (N.I.) Order 1998 provides that a Board of Governors shall afford the teacher, whom it proposes to dismiss, an opportunity of making representations with respect to the proposal, to such person or persons as the Board of Governors may appoint for the purpose and have regard to any representations made. Such representations do not constitute an appeal.

- 7.3 It is recommended that the remaining governors, excluding those who constituted the Disciplinary Authority, should consider the representations.
- 7.4 **In the case of dismissal with notice the following procedure shall be applied.**
- 7.4.1 The teacher shall be informed in writing of the intention to make a determination to dismiss and of the proposed effective date of dismissal taking into account entitlement to statutory notice. He/she shall be informed of the right to make representations, either in writing or orally, to the Board of Governors and of the right to appeal the decision to an Independent Appeals Committee. The time limits should, where possible, be adhered to, but may be extended in exceptional circumstances and with the agreement of the parties.

Exercising Right to make Representations

- 7.4.2 Where the teacher chooses to make representations to the Board of Governors he/she shall write to the Chairperson, within 5 working days of the date of the letter indicating the intention to dismiss being received. The Chairperson shall convene a meeting, in accordance with paragraphs 7.2 and 7.3, to take place as soon as practicable and normally no later than 10 working days from the receipt of the request.
- 7.4.3 Having heard and considered the representations, the determination of the Board of Governors shall be notified to the teacher within 5 working days of the date of the meeting.
- 7.4.4 Where the decision of the Board of Governors is to confirm the intention to dismiss the teacher shall be advised in writing of his/her right to appeal to the Independent Appeals Committee in accordance with paragraph 7.5 of the Disciplinary Procedure.

Exercising Right to proceed directly to Independent Appeal

- 7.4.5 Where the teacher chooses not to make representations, but to proceed directly to Independent Appeal, he/she shall write to the Secretary of the Independent Appeal Committee at the Labour Relations Agency within 10 working days of the date of the disciplinary decision, setting out the grounds of the appeal. A copy of this letter should also be sent to the Chairperson of the Board of Governors and to the Employing Authority.

Notice of Dismissal

- 7.4.6 The Employing Authority must be kept informed of the progress of the case. Where the appeal is not upheld by the Independent Appeals Committee the Employing Authority will issue the formal notice of dismissal terminating the teacher's contract of employment.

In the case of summary dismissal the following procedure shall be applied.

- 7.5.1 Where, after investigation and a disciplinary hearing, a teacher is considered to have committed gross misconduct, the Board of Governors has the right to dismiss the teacher summarily. Summary dismissal means dismissal without notice and without payment in lieu of notice. Examples of gross misconduct

include offences such as theft, physically violent behaviour, obscene behaviour and fraud.

- 7.5.2 The Employing Authority must be consulted before a decision is made to summarily dismiss a teacher.
- 7.5.3 The Board of Governors shall inform the teacher in writing, of the intention to make a determination to summarily dismiss, advise of the right to make representations, either in writing or orally, to the Board of Governors and of the right of Appeal to the Independent Appeals Committee.
- 7.5.4 The Board of Governors shall advise the teacher in writing, that payment of salary shall cease with effect from the date of the intention to make a determination to summarily dismiss and that the dismissal shall stand, subject to the outcome of the Appeal process.
- 7.5.5 Where the appeal to the Independent Appeal Committee is upheld, salary, service and pension rights shall be reinstated from the date of the intention to make a determination to dismiss, subject to the nature and content of a lesser penalty substituted by the Appeals Committee.
- 7.5.6 The Employing Authority shall issue the formal letter of dismissal terminating the teacher's contract of employment.

8. Records

- 8.1 Disciplinary records shall be kept, detailing the nature of any breach of discipline, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent development. These records shall be carefully safe guarded and kept confidential and it is recommended that records of formal written warnings and above should be also sent to and retained by the Employing Authority. In the case of Catholic Maintained Schools this will apply only to final written warnings and above.
- 8.2 The warning/s shall expire as follows:
- i. verbal warnings on completion of six months satisfactory conduct
 - ii. written warnings on completion of one year's satisfactory conduct
 - iii. final written warnings normally on completion of one year's satisfactory conduct. In particularly serious cases, a final written warning may remain current for two years
 - iv. further disciplinary action, short of dismissal on completion of two year's satisfactory conduct
- 8.3 However, where disciplinary investigation or action is undertaken in the context of child protection, all details relating to the complaint and disciplinary sanction shall be retained on the teacher's file for a period of 5 years. Where a formal referral is made to Police or Social Services the record of the complaint and action taken shall be retained on the teacher's file indefinitely unless the teacher is subsequently totally exonerated in which case the record will be expunged.

- 8.4 Except as detailed in paragraph 8.3 disciplinary records will be expunged in accordance with paragraph 8.2.
- 8.5 If a teacher at any subsequent disciplinary hearing alleges to have no history of disciplinary action, any past disciplinary warnings may be cited.
- 8.6 A teacher's record may be made available for inspection by him/her or at the teacher's written request by a full time official of a recognised trade union.

Access to records relating to child protection matters is governed by the provisions outlined in the booklet "Pastoral Care in Schools: Child Protection."

Appendix I

DISCIPLINARY RULES

1. DEFINITIONS

1.1 Misconduct

Misconduct is an offence for which a warning shall normally be the appropriate disciplinary action.

1.2 Serious Misconduct

Can be repeated offences of the nature normally dealt with under 1.1 or an offence of a more serious nature which would normally warrant dismissal (with notice).

1.3 Gross Misconduct

Is an offence so serious it would normally warrant summary dismissal.

1.4 Summary Dismissal

Is the termination of the contract of employment without notice where the offence committed has been established, after investigation and disciplinary hearing, as gross misconduct.

1.5 Precautionary Suspension

Is with full pay pending investigation. It shall not be seen as a penalty, but a precautionary action.

2. DISCIPLINARY RULES/OFFENCES

It is not possible to define every circumstances which shall constitute misconduct and these disciplinary rules are provided as guidance only.

In considering the level of warning or other disciplinary action to be taken, the Disciplinary Authority shall consider the previous record of the teacher, any mitigating circumstances, any pattern of misconduct, the currency of any previous disciplinary warning, the recurrence of the same or similar offence/s or the occurrence of a further offence within the specified time period.

The following are examples of situations which constitute an offence under the rules and shall lead to disciplinary action. The list is not exhaustive and the degree of seriousness of the offence shall determine the category under which it shall be considered.

3. MISCONDUCT

Minor incidents of the following offences shall normally warrant a verbal or written warning or other disciplinary action short of dismissal. However, the degree of seriousness of the offence may warrant consideration under “serious or gross misconduct”.

- 3.1** Unsatisfactory time-keeping - arriving late or leaving early without permission.
- 3.2** Unauthorised absence from place of work - misuse of the school/employing authority's time.
- 3.3** Sickness absence - persistent failure to give proper notice in accordance with school/employing authority's instructions.
- 3.4** Absence - unacceptably high levels and frequencies.
- 3.5** Insubordination - bad language, bad behaviour, insolence or refusal to carry out reasonable and legitimate instructions.
- 3.6** Being an accessory to a disciplinary offence.
- 3.7** Unsafe working - refusal or neglect to observe security and safety regulations, including the proper use of safety clothing and equipment issued by the

school/employing authority, breaches of statutory requirements under Health and Safety legislation.

- 3.8 Carelessness - resulting in loss or damage to, or waste of, property entrusted to his/her care, including misuse of telephone or other unauthorised use of equipment.
- 3.9 Unprofessional conduct to pupils, staff, parents or visitors.
- 3.10 Participation in, support of or condoning of action/s without proper use of the Grievance Procedure or other agreed industrial relations procedure/s.
- 3.11 Vexatious use of the Grievance Procedure i.e. wilful and frequent pursuit of issues of no real substance.
- 3.12 Confidentiality - unauthorised disclosure of the school/employing authority's information which might prejudice the school/employing authority's interests.
- 3.13 Unauthorised collections of money.
- 3.14 Documentation - failure to complete required documentation correctly and on time.
- 3.15 Undertaking such other activities, without notice or approval, which may affect the proper performance of duties.

4. SERIOUS OR GROSS MISCONDUCT -

- 4.1 Physical violence - actual or threatened
- 4.2 Malicious damage - to property belonging to the school/employing authority, its clients or employees; unauthorised use, misuse, waste or removal of this property.
- 4.3 Harassment, including sexual harassment, of other staff, pupils, parents, visitors etc.
- 4.4
 - i. Attending school under the influence of alcohol or proscribed drugs.
 - ii. Consuming intoxicants during working hours or bringing intoxicants into the premises without permission.
 - iii. Alcohol/drug abuse - being in an unfit mental and/or physical state induced by these substances.

In considering a case of misconduct under any of the above, the teacher shall be advised of the provision available under the Employing Authority's welfare arrangements.

- 4.5 Working for another employer or self employed during hours contracted to work for the school/employing authority.

- 4.6 Abuse of the Sick Pay Scheme,
- 4.7 Unauthorised entry to school premises outside normal hours of use.
- 4.8 Falsification of records - examples include application forms, expense claims, etc.
- 4.9 Theft - or other indictable offences or Police charge on such an offence which renders the teacher unsuitable for continued employment by the school/employing authority.
- 4.10 Fraud
- 4.11 Consumption of alcohol - while in charge of or driving a school vehicle and/or while in charge of a group of young people.
- 4.12 Abuse of authority
- 4.13 Indecent conduct or obscene behaviour
- 4.14 Corrupt or improper practices.
- 4.15 Behaviour which brings the school into serious disrepute.

Appendix II

The Disciplinary Hearing: Checklist

1. Introduce the Disciplinary Authority
2. Explain the purpose of the hearing
3. If teacher is not accompanied - check
4. State the allegations and invite the teacher to respond
5. Disciplinary Authority members ask questions
6. Invite further comment from teacher

7. Advise decision will follow, in writing
8. Deliberate, decide and write to teacher detailing decision and where appropriate advise of the appeal process
9. Copy correspondence to the Employing Authority