Caister
Primary Federation

Disciplinary procedure

Formally adopted by the Governing Board:-	**Caister Primary Federation**
On:-	**17th September**
Chair of Governors:-	**Payal Patel**
Last updated:-	**October 2022**

Disciplinary procedure for schools P303

Contents

(Click on the headings below to jump to the relevant section)

1. Introduction and scope 2
2. Equalities and support 4
3. Authority to act 4
4. Covert recordings 5
5. Procedure 5
6. Cases involving child protection issues, financial irregularities or health and safety concerns 6
7. Suspension 7
8. Investigation 8
9. Disciplinary hearing 9
10. Result of hearing - disciplinary action 11
11. Time limits for warnings 12
12. Appeals 14
13. Further statutory requirements 16
14. Data protection 16

Appendix 1 – Table of changes 17

We, the Governing Board, have adopted this procedure.

1. Introduction and scope

1.1 This procedure forms part of our overall commitment to maintaining satisfactory standards of conduct. It applies to all employees whilst at work. It also applies to employees whilst off-duty if there is a detrimental effect on our, or the employee's reputation.

1.2 The purpose of this procedure is to ensure the Governing Board help and encourage all employees to achieve and maintain satisfactory standards of conduct, set out the procedures for when an employee's conduct falls below the expected standard, and ensure that all employees are treated fairly and consistently when a disciplinary issue is being dealt with. This will enable all employees to perform to their full potential in the workplace.

1.3 The Governing Board has overall responsibility for specifying the standards of behaviour required, enforcing the rules and ensuring that any breaches are tackled promptly. The Governing Board has adopted this procedure to ensure consistent and fair treatment for all when allegations of misconduct are raised.

1.4 This Disciplinary procedure supports the Governing Board's standards and rules (including the Guidelines on Conduct) and aims to ensure consistent and fair treatment for all. Separate procedures exist for addressing unsatisfactory work performance arising from an employee's lack of capability or medical issues.

1.5 The procedure applies to all employees, including support staff in their probationary period. Where this is the case, the Head of School should take into account paragraph 5.6 of this procedure. Additionally, any disciplinary action will be taken into account at the final assessment of the probationary period. Refer to the school's Probation policy for further considerations when this situation arises.

1.6 Any complaints from parents (or others associated with the school) concerning the conduct of employees should be dealt with under this disciplinary procedure and not the school's complaints procedure. The details of the investigation and any sanction given as an outcome will remain confidential.

1.7 Disciplinary issues relating to all employees must be handled in a fair and equitable manner. Each case must be looked at on its own merits and any relevant circumstances taken into account.

1.8 All parties involved in a disciplinary matter should treat the information which is the subject of the disciplinary investigation in strict confidence. Information should not be shared with anyone who is not directly involved in these procedures. Those involved can discuss these matters with their representatives or advisers and, in some cases, there will be a requirement for information to be shared with other bodies (for example, where allegations of abuse are made or suitability to work with children in the future may be a concern).

1.9 Not every act of misconduct will warrant the formal disciplinary procedure to be initiated. Low level acts of misconduct may result in an informal conversation with the Headteacher to ensure the employee understands their act of misconduct was not acceptable. The employee can be accompanied by a trade union representative or a work colleague if they wish. The employee may also be given a 'letter of expectation' to help them understand what is expected of them. Where low level acts of misconduct are repeated or are sufficiently serious the disciplinary process will be initiated.

1.10 The Executive Headteacher and Governors are advised to consult *Discipline guidance G303* for more detailed support in how to consider alleged disciplinary offences. Where alleged misconduct appears to warrant action under the procedure, advice should be sought from the school's HR provider. **EducationHR can be contacted by telephone on 01603 307760 or by emailing** EHRenquiries@norfolk.gov.uk**.**

1.11 Any employee who abuses this (or any other) procedure by making malicious or frivolous allegations may face disciplinary action.

1.12 This procedure supports our obligation to work in line with current legislation, ACAS best practice, contractual requirements and national/local terms and conditions relevant to this area of employment practice.

© 2024 Norfolk County Council

2. Equalities and support

2.1 The Governing Board expects employees to adhere to this policy in line with the school's obligations under equality legislation.

2.2 The Executive Headteacher will ensure that all reasonable adjustments or supportive measures are considered to allow equality of access and opportunity regardless of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation.

2.3 According to ACAS it is estimated one in seven people are neurodivergent, meaning that the brain functions, learns and processes information uniquely. Where an employee discloses neurodiversity, the Governing Board understands the employee may require extra support in relation to the application of this policy. Where reasonable adjustments are necessary and can be accommodated, the Headteacher will support these.

2.4 Throughout this procedure reference to companion means trade union representative or work colleague and through the formal procedure, the right exists for the employee to be supported in that way. Where an employee discloses a mental health issue, which could be a disability, reasonable adjustments will be made to the procedure. Where it is clear the process is causing repeated signs of distress to someone involved in the procedure the Head of School will ensure the individual is aware of the support offered by Norfolk Support Line or suggest the employee seeks advice from their GP. In some cases, help may need to be sought from Occupational Health, with the agreement of the employee, to determine how the procedure can continue fairly. Advice will be sought from the school's HR provider in these situations.

3. Authority to act

3.1 The Executive Headteacher (and/or governors when appropriate) is responsible for operating this procedure and is able to issue disciplinary *warnings*.

3.2 Legislation allows for *dismissal* decisions to be made in the federation by one or more governors with the Executive Headteacher.

The Governing Board should, on at least an annual basis, discuss and agree where responsibility for dismissal of staff (other than the Executive Headteacher) will fall and their decision must be formally recorded in the minutes of the full Governing Board meeting.

3.3 Where the conduct of the Executive Headteacher is the focus of this procedure, all references to "Executive Headteacher" in the text should be read "Chair of Governors or other nominated governor with advice and support from the Director of Children's Services or her representatives". At all stages in the process for maintained schools, the Chair of Governors should work with, and take advice from, the appointed representative(s) of the Director of Children's Services. Where there is a case to answer a panel of governors shall be convened to consider the allegations and take disciplinary action, including dismissal, where appropriate.

© 2024 Norfolk County Council

4. Covert recordings

4.1 The Governing Board believes that the covert recordings (audio or video) of workplace meetings undermines trust between individuals.

4.2 The covert recordings of any meetings or proceedings, including disciplinary and grievance hearings and appeals, by an employee potentially constitutes an act of gross misconduct. It features in the list of non-exhaustive acts of gross misconduct in the guidelines on conduct document. Without sufficient mitigation, the covert recording by an employee of colleagues in such a meeting may lead to the employee's summary dismissal.

4.3 Affected employees will be informed of this policy position before any disciplinary, grievance or capability meeting.

4.4 Similarly, no covert recording of the deliberations of a panel at the end of any hearing may be made. This would also potentially constitute an act of gross misconduct likely to lead to summary dismissal.

4.5 In some circumstances, it may be appropriate for a meeting to be recorded but in these cases, there must be written agreement between the manager leading the discussion and the affected employee. Consent will need to be obtained by all persons who will be included in the recording. The parties will then be under an obligation to ensure that all recordings are processed, securely stored and used in a manner consistent with the Data Protection Act 2018.

5. Procedure

5.1 An employee who is subject to this procedure has the right to be:

- accompanied by a trade union representative or work colleague at the investigation stage; and
- represented by a trade union representative or work colleague at a disciplinary/appeal hearing.

5.2 The employee is responsible for arranging to be accompanied or represented.

5.3 An employee can be offered transfer to alternative employment within the school (including demotion to a post with less responsibility on a lower grade) as an alternative to dismissal, either as a result of a disciplinary hearing or on appeal, if this is considered appropriate and the employee is in agreement. This would not be an option in cases of summary dismissal for gross misconduct and is unlikely to be deemed appropriate where the employee's misconduct was linked to working with children.

5.4 If the employee concerned is a trade union steward or officer, the Headteacher should, with the agreement of the employee, inform the full-time trade union officer prior to commencement of this procedure. Advice on this should be taken from the school's HR provider.

5.5 No employee will be dismissed for their first breach of discipline, unless it is a case of gross misconduct.

© 2024 Norfolk County Council

5.6 This procedure does not apply in respect of a dismissal that is:

- as a consequence of the expiry of temporary employment or a fixed term contract,
- as a consequence of redundancy (see separate arrangements in the Staffing Adjustment Policy),
- when less than 6 months of probationary service has been completed (support staff only) and dismissal arises from unsuitability for confirmation of employment (see the probationary policy and guidance for further information),
- as a consequence of ill health (either short or long-term sickness absence),
- as a consequence of the application of the capability procedure.

6. Cases involving child protection issues, financial irregularities or health and safety concerns

6.1 Any complaint involving allegations relating to child protection issues must, in accordance with Section 8.3 of the NSCB's policies and procedures manual, be discussed with the Local Authority Designated Officer (LADO) and their advice must be considered before any investigation takes place under this procedure. There is no discretion for Headteachers over whether or not to discuss such allegations with the LADO. All cases must be discussed where a child is involved and/or may be at risk or where the allegation is such that if judged to have foundation may bring into question the employee's suitability to work with children in the future. The LADO will determine whether a formal LADO referral needs to take place and will advise on the appropriate course of action in line with the statutory guidance on handling allegations against employees who work with children.

6.2 For schools, the Local Authority's Chief Internal Auditor must be notified without delay of any allegations or indications of financial irregularities. Normally, notification to the Chief Internal Auditor would be made (where the stated service is purchased) on the school's behalf, in consultation with the Headteacher, by advising the Education**HR** HR Consultant or by a member of the Education**Finance** Team. There is an obligation on the school to raise the concern with Education**HR** or Education**Finance** in the first instance or where the stated services are not purchased, with the HR Business Partner (Schools) from Norfolk County Council's (NCC) Children's Services. It is likely that NCC's internal Disciplinary Action Review Group (DARG) will be convened to ensure appropriate actions are taken and this could result in short delays at certain stages of the procedure to ensure the Executive Director of Finance and Commercial Service's statutory rights and responsibilities in relation to public funds can be exercised, as described in the Norfolk Finance Scheme for Schools. Advice will then be given on ensuring school finances are secure and appropriate steps to investigate are taken. In some situations, where fraud may have taken place and/or loss of money has potentially been incurred, a decision may need to be taken to consult with the Police. Such a decision will be taken by the DARG group where the issue relates to fraud or loss of public funds.

© 2024 Norfolk County Council

6.3 Where the allegations made raise questions about health and safety practice in the school, whether this is caused by an accident or incident, a “near miss” or is an apparent breach of health and safety requirements, there is a statutory requirement for the matter to be reported. For schools, the requirement is for the Headteacher to refer the matter to the Authority’s Health, Safety and Well-being Manager who will then consider whether the threshold for referral to the Health and Safety Executive has been met. The Health, Safety and Well-being Manager will then advise on appropriate investigation either alongside or as part of a disciplinary investigation. In some situations, the DARG arrangements referred to in 6.2 above may also be initiated.

7. Suspension

7.1 Under some circumstances, it might be necessary to temporarily suspend an employee while an investigation is conducted to address a particular concern or issue. The law delegates suspension to the Executive Headteacher or nominated governors. In the case of employees other than the Executive Headteacher, the Executive Headteacher would normally take the decision to suspend. In the case of suspension of the Executive Headteacher, the Chair of Governors (or other nominated governor) would normally take the decision.

7.2 Suspension will normally be considered only:
- When there is a reasonable belief that the employee's continued presence at work could pose a risk to themselves, others, or the employer's obligations to third parties.
- When there is a reasonable belief that the employee's presence at work could hinder or undermine the investigative process. The *Suspension checklist C303*, should be completed in scenarios, to support the decision of whether the suspension would be appropriate. The Headteacher or nominated governor should consult the employee before the decision to suspend is taken.

7.3 In every situation, it is important to explore alternatives to suspension. These alternatives may include providing extra supervision, assigning alternative or restricted duties, adjusting work arrangements, or offering agreed paid leave. It's crucial to remember that suspension can still be considered at any point during the investigation. If a case involves an alleged gross misconduct, and it is determined that suspension is not required, the school should document that, after careful consideration of the procedure and regular practices, the decision was made not to suspend.

7.4 When a decision to suspend is taken, it must be made clear that the suspension is neither a disciplinary penalty nor an assumption of guilt. The employee must be given the details of people or organisations they can contact for support whilst suspended (e.g. **Education Support, supporting teachers and education staff** or **Home - Wellbeing - Wellbeing**) and an internal point of contact (who should not be involved in the disciplinary investigation in any way) who will keep the employee informed of everyday developments in school in order to minimise any sense of isolation during the period of suspension and can be a conduit for the suspended employee’s requests for information that fall outside the remit of the investigation (e.g. information relating to their normal terms and conditions of employment).

© 2024 Norfolk County Council

7.5 Gross misconduct is generally defined as misconduct serious enough to fundamentally undermine (i.e. damage beyond repair) the employment contract between the employer and the employee and to make any future working relationship and trust impossible. Examples of gross misconduct are given in the school's Code of Conduct.

7.6 If a suspended employee is certificated by their GP as being unfit for work, they will be paid in accordance with their sick pay entitlement for that period of certification. This means that if a period of certificated sick leave continues beyond the employee's entitlement to full pay, they will receive pay in line with their sick pay entitlement which may be at half pay or no pay rate.

7.7 At frequent intervals, the Executive Headteacher and/or nominated governor should review whether an employee should remain suspended. Any suspension which extends beyond four working weeks must be reported to the Chair of Governors with details of how the investigation is progressing and when it is likely to end. Where any suspension continues for three months, the employee must be notified of the reasons for the suspension continuing and when it is likely to come to an end.

7.8 The responsibility for lifting suspension rests with the Governing Board although this can be delegated to the Chair of Governors.

7.9 Employees on suspension should be aware they have the right to informally raise a concern with their manager if they believe suspension is not appropriate. If this response to concern is not believed to be fair by employee, they should refer to the grievance policy.

8. Investigation

8.1 Disciplinary action must not be taken before there has been an investigation into the circumstances. Guidance will be available from **EducationHR, please contact by telephone on 01603 307760 or by emailing** EHRenquiries@norfolk.gov.uk**.**

8.2 Good practice suggests that the investigation should be undertaken by an appropriate individual other than the individual who will consider whether a sanction should be applied. The appointed person will be the Investigating Officer. Where allegations have been made against the Executive Headteacher of a maintained school, the Chair of Governors (or nominated governor) is advised to seek support for the investigation through the Director of Children's Services. Some circumstances may require that an external investigator with specialist expertise be commissioned to undertake the investigation (for example in cases of suspected financial fraud where NCC's DARG arrangements have been triggered, it is likely that an appropriately qualified auditor will need to be appointed in order that evidence can be gathered up to and including a level acceptable in a criminal investigation).

8.3 The employee may be required (and this would normally be the case) to attend a formal investigatory interview. The employee must receive at least five working days' notice, in writing, of the requirement for them to attend. The letter should give them information about the allegations and their opportunity to be accompanied by a trade union representative or work colleague. Witnesses may need to be interviewed, where this is the case, they do not require five working days' notice.

© 2024 Norfolk County Council

8.4 If the employee concerned is a trade union official (as statutorily defined) the matter will be discussed with their branch secretary or a full time official before an investigation is undertaken.

8.5 The investigation should be completed within four working weeks unless there are exceptional circumstances.

8.6 On completion of the investigation, the Executive Headteacher (or nominated Governor where allegations are against the Executive Headteacher) should review all the information available and decide which of the following is appropriate:

- no action*;
- informal advice and discussion;
- consideration under the formal disciplinary procedure (see 6 below).

Executive Headteachers should also decide that if an allegation is shown to be malicious or frivolous, whether any disciplinary action should be taken against the person who made it. If this person was not an employee (e.g. a pupil) the procedure for this is outside the scope of this policy.

*In some cases, specifically those where allegations are made by a pupil or relate to claimed abuse of a pupil, a “no action” decision is likely to be the outcome when the allegation was either substantiated but not serious enough to warrant disciplinary action, unsubstantiated or malicious. The child protection process overseen by the LADO will help in this determination and will ensure that a finding is made. The issue of whether an allegation is found to be unsubstantiated or even malicious is significant for the employee, particularly around what records are held on file and what is said in a reference.

9. Disciplinary hearing

9.1 If the Executive Headteacher (or nominated Governor) concludes, following investigation, that there is a case to answer at a disciplinary hearing, the employee will be notified in writing that a hearing will take place. The employee should be given at least five working days’ notice of the hearing. If the employee’s union representative is unable to make the specified date, the employee can propose a reasonable alternative date within five days. However, consideration will be given to allow more time for a re-arranged meeting, particularly in cases that might result in a dismissal, as long as the longer postponement will not cause unreasonable delay in the procedure. In these situations, the Executive Headteacher (or nominated Governor) will consider the facts of the case and decide what is fair and reasonable in the circumstances. Because of this the approach may be taken to consult the union representative on their availability before setting a date.

The following information should also be included in the letter:

- who will make the decision regarding disciplinary action;
- a copy of the disciplinary procedure;
- the date and time of the hearing;
- details of the allegations;

© 2024 Norfolk County Council

- reference to all documents that may form part of the evidence supporting the complaint or allegation and, where possible, a copy of these;
- the names of any witnesses to be called;
- the fact that the employee will have the opportunity to state their case and question any witnesses;
- the right to invite a trade union representative or work colleague to represent them;
- any previous warnings will be included where there is justification for doing so[1]. If they are included, they could be taken into account when deciding the level of any disciplinary action;
- the fact that, depending on its findings, the hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal;
- a statement that the employee must take all reasonable steps to attend the meeting.

A second copy of the documentation above should be provided to the employee for them to pass to their trade union representative or work colleague. If requested by the employee, this second set of papers can be issued direct to the trade union representative or work colleague.

9.2 Where the alleged misconduct is not likely to require a sanction beyond a Final Written Warning, the case will be heard by the Executive Headteacher (or a panel of governors where the Headteacher's conduct is in question).

9.3 Where the alleged misconduct has the potential to result in dismissal, the case will be heard by a panel of governors unless the authority to dismiss has been delegated to the Headteacher, in which case the Headteacher will hear the case. The exception to this is where the Executive Headteacher's conduct is in question.

9.4 At a disciplinary hearing in a Community or VC school which may result in dismissal, a representative of the Director of Children's Services (a senior member of the Education**HR** Team) must be present to advise the Governors' Disciplinary Panel. Where the Governing Board of a Foundation or VA school grants advisory rights to the Director of Children's Services, the same requirement will apply. In these situations, a full set of the papers detailed in 9.1 must be issued to the Director's representative at least five days in advance of the hearing. In most cases, and where the stated service is purchased, this role will be carried out by the senior HR adviser from Education**HR** who is providing wider support to the panel. Where the stated service is not purchased, this role may be carried out by the NCC HR Business Partner (Schools).

9.5 The hearing should follow the sequence of steps detailed at *Disciplinary, Dismissal and Appeal Committee hearings procedure P303b.*

9.6 Disciplinary action can be taken at any level from a recorded oral warning to dismissal, depending on the nature of the misconduct.

[1] HR advice will be sought where this is the case.

© 2024 Norfolk County Council

10. Result of hearing - disciplinary action

If, following an investigation and disciplinary hearing, the Headteacher (or nominated Governor) concludes that disciplinary action is required, the following options are available:

10.1 Recorded oral warning

If the conduct concerned is unacceptable but not serious in nature, a recorded warning will normally be appropriate. (See paragraph 10.4 about written confirmation.)

10.2 Written warning

If the offence is too serious for a recorded oral warning, or if there is further misconduct while a recorded oral warning remains in force, the Executive Headteacher/ governors may determine to give the employee a written warning. (See paragraph 10.4 about written confirmation).

10.3 Final written warning

If the misconduct is too serious for a written warning but not serious enough to warrant dismissal, or if there is further misconduct while a previous written warning remains in force, the Executive Headteacher/governors may determine to give the employee a final written warning. (See paragraph 10.4 about written confirmation).

10.4 Written confirmation of warnings

The Executive Headteacher/governors must give the employee written confirmation of any warning, within five working days together with an explanation of:

- the reason for the warning;
- whether it is a recorded, written or final warning;
- the employee's right of appeal (see paragraph 12);
- the fact that a permanent note will be kept on their personal file indicating that a warning has been given, the reasons for it and any required improvements in conduct which have been specified;
- the fact that further misconduct may lead to further disciplinary action which could, where appropriate, include dismissal;
- the fact that the warning will be disregarded for further disciplinary purposes after the expiry of the time period.

10.5 Dismissal with notice or other sanction

If, while a final written warning is still in force, the employee's conduct is still unsatisfactory, as determined by a subsequent investigation and disciplinary hearing, the Executive Headteacher/disciplinary panel will determine to dismiss with contractual notice. The Executive Headteacher/Chair of the Disciplinary Panel will confirm the dismissal recommendation in writing within five working days, explaining the reasons for the dismissal and the employee's right of appeal. (See paragraph 12). The employee will receive full pay during the notice period. Community Schools

© 2024 Norfolk County Council

must inform the LA of the panel's determination and recommend to the Authority that the employee is dismissed. The Local Authority will then action the dismissal and terminate the employee on payroll. Foundation and Voluntary Aided schools will themselves issue the formal confirmation of dismissal to bring employment to an end.

Where the misconduct warrants dismissal from the job but the school is in agreement that the employee could be moved into another job within the school this can be done with the agreement of the employee. Where there is active discussion between the employer and the employee such a move could potentially be achieved without dismissal. However, the judgement that the misconduct was significant enough that it warranted dismissal must be recorded. The alternative post should be identified when the employee is told the outcome of the disciplinary hearing and this may require the proceedings to be adjourned. The alternative post may mean demotion to a lower grade. No pay protection will apply. A final written warning will form part of such a disciplinary decision. If the employee refuses the offer of transfer/demotion, their dismissal will take place.

10.6 Summary dismissal

If, following an investigation and disciplinary hearing, the Executive Headteacher or panel of governors is satisfied that an employee is guilty of gross misconduct, the determination can be made to dismiss the employee. The Executive Headteacher or Chair of the Disciplinary Panel will confirm the determination to dismiss in writing, within five working days explaining the reasons for the dismissal and the employee's right of appeal. Community schools must inform the Local Authority of the panel's decision and recommend to the Local Authority that the employee is dismissed. The Local Authority will then action the dismissal and terminate the employee on payroll. Foundation and Voluntary Aided schools will themselves issue the formal confirmation of dismissal to bring employment to an end.

10.7 In Aided Schools and Foundation Schools, the Governing Board is the employer and therefore the decision to dismiss should be acted on by the school.

11. Time limits for warnings

11.1 Unless there are exceptional circumstances, disciplinary warnings will be disregarded for disciplinary purposes once the following periods of time have elapsed since the warning was given:

- recorded warnings - 6 months
- written warnings - 6 months
- final written warnings - normally 1 year (see paragraph 11.2 below).

However, in some circumstances the decision maker can exercise discretion in determining these periods of time.

See *Discipline guidance G303* for advice on record keeping.

© 2024 Norfolk County Council

11.2 Depending upon the nature of the misconduct, in exceptional circumstances the Executive Headteacher or Governors' Disciplinary Panel may impose a final written warning that will remain in force for a period greater than 1 year. It is advised that the warning should have a time limit of a minimum of 1 year and a maximum of 2. In considering an appropriate timescale the Headteacher or disciplinary panel will need to take into account the nature of the misconduct. The timeframe should not be dependent on the severity of the misconduct because the level of sanction reflects this. The timeframe should be enough that it gives time to see a positive change in behaviour. For example, if the warning relates to an event that only happens once a year or for a limited time each year (e.g. exams, SAT's, non-curriculum days), the decision may be for a two year timeframe to allow two annual cycles to be completed to ensure conduct has been adjusted. In other cases where it relates to regular events that happen every day (e.g. interaction with children or colleagues) a one year period may well be enough to see that conduct has been adjusted. In any event the employee must be told at the outset and in writing how long the warning will remain in force and the reason for the longer time period. There is no need for an employee to apply to request that the sanction is expired as it will automatically expire at the end of the time limit given, unless an extension is required. However, the record will remain on the employee's file.

11.3 In Aided Schools and Foundation Schools the Governing Board is the employer and therefore the decision to dismiss should be acted on by the school.

11.4 In exceptional circumstances (e.g. abuse against children), the written warning may be extended for as long as the employee concerned is employed in their current job or a similar job. If an employee considers that the extended time period is unreasonable, they may appeal to the Clerk to the Governors who will convene an Appeal Hearing.

11.5 Where disciplinary action relates to abuse against children, breaches of financial regulations or issues which relate to racial, sexual or disability discrimination, the relevant documentation will be retained on the employee's personal file until the employee reaches normal pension age or 10 years from the date of the allegation if that is longer. It will not form part of any subsequent disciplinary action if it is time-expired. A comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, will be kept on the file of the person accused and a copy provided to the person concerned. If the allegations are found to have been malicious, they will be removed from the employee's personal file.

The purpose of this record is to:

- enable accurate information to be given in response to future references
- prevent unnecessary re-investigation should an allegation re-surface
- provide clarification if a future DBS check revealed the allegation (which did not result in a criminal conviction).

11.6 In all other disciplinary actions the relevant documentation will be removed from the file and will be destroyed, with the exception of the letter to the employee which confirms the outcome of the disciplinary hearing. This letter will not, however, form part of any subsequent disciplinary action if it is time-expired.

© 2024 Norfolk County Council

12. Appeals

12.1 Where an employee appeals against formal disciplinary action taken against them, they must put their grounds of appeal in writing to the Clerk of Governors within five working days of receiving the decision in writing. They must state the reasons for the appeal which will normally be one or more of the following:

- there was a defect in the procedure
- there was insufficient evidence to support the finding
- the disciplinary sanction was too severe
- new key evidence, not taken into account at the hearing, has come to light since the hearing which may have an impact on the decision.

12.2 It is possible that, if new evidence has come to light since the hearing, the matter is referred back to the individual or panel who made the decision rather than proceeding directly to appeal.

12.3 The Appeal will normally be conducted as a 'Review Meeting' unless it is claimed:

- there was a procedural defect at the original hearing such that the hearing was unfair.
- new evidence has come to light which needs to be heard in full.
- there is a dispute about evidence given by one or more witnesses at the original hearing.

Note that this is not an exhaustive list.

In these cases, the appeal will normally be conducted as a re-hearing (in full or part). It may be necessary to re-hear the witness evidence at the appeal.

The decision as to whether the hearing will be conducted as a re-hearing or a review meeting rests ultimately with the Appeals Panel.

12.4 For all appeals.

The Appeals Panel will have available all the documents presented to the original hearing. They will also have a copy of the record of the hearing, the letter confirming the outcome of the original disciplinary hearing, the letter of appeal and all other relevant information. The Appeals Panel will reach findings based on the documentation and the submissions at the appeal hearing from the parties.

12.5 Procedure for Review Meetings

The procedure for a review meeting will be that the employee and/or their representative will first put their case by explaining the grounds of appeal and presenting any relevant evidence. The management case will then be put, responding to the grounds of appeal and presenting any relevant evidence. Opportunities for questioning will be included. Relevant witnesses may be brought by either side and may be questioned by all parties.

© 2024 Norfolk County Council

12.6 Procedure for Re-hearings

The procedure for a 'rehearing' will be:-

The procedure for a review meeting will be that the grounds for appeal will be clearly established. The management case will then be presented with relevant evidence followed by the employee and/or their representative presenting their response with relevant evidence. Opportunities for questioning will be included. Relevant witnesses may be brought by either side and may be questioned by all parties. The *Disciplinary, Dismissal and Appeal Committee hearings procedure P303b* may be used as a framework for a re-hearing

12.7 The employee will be given at least five days' notice of the appeal hearing and will be given the following information in a letter:

- who will hear the appeal,
- the procedure to be followed (i.e. a re-hearing or a review meeting)
- date, time and place of the appeal hearing,
- a reference to any key documents that may form part of the hearing and, if appropriate, copies of these,
- the right of the employee to be accompanied by a companion,
- a statement that the employee must take all reasonable steps to attend the meeting,
- the names of any witnesses to be called by those putting the case against the employee; similarly a statement that the employee may call witnesses,
- a statement of the range of possible outcomes of the hearing.

12.8 An appeal against any warning or dismissal will be heard by a panel of three governors who have not previously been involved in the case. The appeal will normally take place within six working weeks of the appeal request being received by the Clerk to the Governors.

12.9 At an appeal hearing against dismissal in a Community or VC School, a representative of the Local Authority (a senior member of the HR team) must be present to advise the Appeals Panel. In Foundation or Aided Schools, it is advised that a senior member of the Education**HR** Team is present to support the Appeals panel.

12.10 In cases of gross misconduct, dismissal will be summary following the first hearing and if the employee is reinstated on appeal, pay will be reinstated and backdated to the date of the first hearing. In other cases of dismissal, employees shall be given contractual notice of dismissal following the first hearing. Every effort will be made to conclude any appeal process within the notice period.

12.11 At an appeal hearing against dismissal in a Community or VC School, a representative of the Director of Children's Services (usually a senior member of the Education**HR** Team) must be present to advise the Governors' Appeals Panel. In Foundation or Aided Schools, it is advised that a senior member of the HR team is present to support the Appeals panel.

© 2024 Norfolk County Council

12.12 The outcome of the appeal with be either:-

- the case against the employee is upheld (in whole or part) in which case the sanction will then be the same or a lesser penalty.
- the case against the employee is not upheld (i.e. the appeal is successful) in which case any related sanction will be removed.

12.13 The Chair of the Appeals Panel must confirm the decision of the Panel in writing to the employee within five working days.

13. Further statutory requirements

13.1 Disclosure and Barring Service (DBS)

The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This is when an employer has **dismissed or removed** a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.) because the person has:

i. Been cautioned or convicted for a relevant offence; or
ii. Engaged in relevant conduct in relation to children and/or vulnerable adults [i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm]; or
iii. Satisfied the Harm Test in relation to children and/or vulnerable adults. [i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists].

13.2 Teacher Regulation Agency
Whether or not a teacher who has been dismissed for misconduct is referred to the DBS, they must be referred to the Teacher Regulation Agency.

13.3 Statutory guidance exists which requires employers to see through to a conclusion, disciplinary cases linked to child safeguarding. Even in situations where an employee resigns from the school when they could have been dismissed, the case should be heard in accordance with this procedure so that a decision is reached and referral made to the DBS and/or Teacher Regulation Agency can be made as appropriate.

13.4 There is a requirement for any post-dismissal referrals (DBS and/or Teacher Regulation Agency) to be completed within one month of employment ending.

14. Data protection

Personal data collected and processed for the purpose of this procedure will be handled in accordance with the data protection policy and applicable statutory obligations. Any personal data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of employee management or to comply with statutory reporting obligations. Inappropriate access to, or disclosure of, employee data constitutes a data breach and should be reported without delay, in accordance with the data protection policy. It may also constitute a disciplinary offence in which case it would be dealt with under the disciplinary policy and procedure.

© 2024 Norfolk County Council

Appendix 1 – Table of changes

Date of change	Paragraphs affected	Summary of update
24/04/2024	All	Review of whole document and terminology to ensure consistency across all policies and procedures.
06/07/2023	11.5	Review of whole document (no material change) and addition of equality of access and opportunity paragraph. Removal of reference to keeping documents for the duration of the Goddard Inquiry (IICSA) as the inquiry has now ended.
07/06/2023	All	Review of whole document and addition of equality of access and opportunity paragraph.
08/09/2022	3.2, 3.3, 6.2	Clarification on the role of the Disciplinary Action Review Group (DARG)
25/11/2021	1.1	Additional paragraph to include consideration for employees with mental health issues.
16/11/2020	4	Addition of a new paragraph to include covert recordings at meetings.
27/08/2020	8.1	Amended to change the time period for written warnings from 1 year to 6 months.
05/04/2019	1.12, 2.3, 2.4, 6.1, 7.5	Updated to reflect the changes made to the ACAS Discipline and grievance guidance. The policy has been updated to: • make it clear that low level acts of misconduct may not require the disciplinary process to be instigated • to include that where an employee who is involved in a disciplinary procedure, discloses a mental health issue, which could be a disability, employers should allow for reasonable adjustments. • make it clear that consideration will be given to allow more time for a re-arranged meeting, particularly in cases that might result in a dismissal
06/12/2018	1.2	Updated to clarify that where a support member of staff (who is in their probationary period) is the subject of a discipline issue, it will be dealt with by the school's disciplinary procedure.
22/11/2018		Updated to remove any references to academies as there is now a stand-alone academy Disciplinary procedure. References to NCTL updated to Teacher Regulation Agency and note added to para 8.5 regarding requirements of the Goddard Inquiry.
11/05/2018	11	New para added to take account of the General data protection regulations in force from 25 May 2018.

© 2024 Norfolk County Council

09/11/2017	4.2	Updated to make it clear that *Suspension Checklist C303* should be used when making the decision to suspend or not
01/03/2017	All	New formatting due to launch of new HR website, HR InfoSpace – no change to content
22/01/2018	6.5, 9.6, 11	Document title change, “Disciplinary, Dismissal and Appeal Committee hearings procedure P303b”

© 2024 Norfolk County Council