

ST. DAVID'S HIGH SCHOOL

GUIDANCE NOTES FOR HEADTEACHERS AND GOVERNING BODIES ON APPLYING THE SCHOOL'S DISCIPLINARY PROCEDURE

To be read in conjunction with the school's policy and procedure but does not form part of the policy/procedure.

**Reviewed by Governors
October 2023**



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1.0 WHEN TO SUSPEND?

(i) Where there is a criminal charge pending against the member of staff which would create difficulties in the member of staff carrying out his/her duties pending the outcome of the trial, or if his/her presence prejudices either disciplinary or police investigations, or pupils may be at risk, suspension may be necessary. Suspension is a neutral act without prejudice.

(ii) Where there is no criminal charge but where the allegations against the member of staff suggest that pupils may be at risk, or where the allegations are so serious that dismissal for gross misconduct is possible, then suspension may be necessary.

(iii) Where suspension of a member of staff is being considered, an interview should be arranged, normally outside pupil contact time. The headteacher or Chair of Governors should advise a member of staff called to an interview to seek the advice and assistance of a workplace colleague or union representative where suspension is a possible sanction that could be imposed.

(iv) The member of staff should be informed at the outset of the interview that an allegation has been made and that, at the conclusion of the interview, suspension might occur. It should also be made clear to the member of staff at the outset that the interview is not a formal disciplinary hearing, but is for the purpose of putting forward a serious matter, which may lead to suspension and further investigation.

(v) The member of staff should be given as much information as it is possible to disclose without interfering with an investigation about the allegation, including the reasons for the proposed suspension. The member of staff should be given an opportunity to make representations concerning the proposed suspension and offered a brief adjournment prior to responding.

(vi) If, as a result of the interview, the headteacher or Chair of Governors considers that suspension is necessary because the allegations relate to gross misconduct, the member of staff should be advised that he or she is suspended from duty. Written confirmation of the suspension should be sent to the member of staff within one working day of the interview being conducted, together with the reasons for the suspension.

(vii) Where a member of staff has been suspended, the headteacher should give formal written notice of the suspension to the Chair of Governors and the Director of Education. The headteacher or Chair of Governors should also report to the Governing Body that a member of staff has been suspended pending investigation. The delegated Committee should be advised of the nature of the allegations even where the investigation is an external one by the police or child protection agencies.

(viii) A suspension may only be ended by the Governing Body who shall, on ending such a suspension, immediately inform the LEA and the headteacher.

2.0 CHILD PROTECTION PROCEDURES

2.1 Where an allegation is made under Child Protection Procedures, suspension should not be automatic. Paragraph 48 of Welsh Office Circular 52/95 states that “suspension of the person concerned should not be automatic. The headteacher should consider carefully whether it is the appropriate action.....

The headteacher will need to take into account the seriousness and plausibility of the allegation, the risk of harm to the pupil concerned or to other pupils, and the possibilities of tampering with evidence, as well as the interests of the person concerned and the school”.

2.2 Under the Staffing of Maintained Schools (Wales) Regulations 2006 and the All Wales Child Protection Procedures 2008 (paras 4.3.6.3 and 4.3.6.6), the Governing Body are required to commission an independent investigation of allegations of gross misconduct after a child protection investigation is completed. (See Wales Assembly Government Documentation and seek LEA guidance)

3.0 CRIMINAL INVESTIGATIONS/PROCEEDINGS

3.1 Criminal charges or convictions outside employment should not be treated as automatic reasons for dismissal or suspension. The main consideration should be whether the offence is one that makes the member of staff unsuitable for their type of work. In all cases the headteacher, having considered the facts, needs to consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure. For example, the member of 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.

3.2 If an alleged act of indiscipline or misconduct appears to involve criminal activity, the Headteacher, or appropriate person, should report this at once to the Director of Education and the Chairperson of the Governors. Where allegations involve potential criminal activity, particularly those relating to physical or sexual abuse of pupils, the matter must immediately be brought to the attention of the statutory authorities i.e. the police and social services. The procedures laid down in the WAG Circular 52/95 "Teachers Facing Allegations of Physical/Sexual Abuse- Guidelines on Practice and Procedures, should be taken into account.

3.3 **Any investigation by the police or child protection agencies takes priority over an internal investigation by the school.** An internal investigation running alongside a police or child protection agency investigation does not accord with good practice and it should be held in abeyance pending the outcome of the external investigation. However, while a case is being dealt with by the statutory authorities, the governing body must not lose sight of it and a link Governor or LEA Officer should be assigned to maintain contact with the statutory authorities and to appropriately monitor progress.

3.4 As soon as the criminal proceedings are complete, the Governing Body must decide whether the allegations are of sufficient seriousness to warrant disciplinary consideration, bearing in mind the higher standard of proof required for criminal proceedings and the duty of care which the school has to pupils and others. The Governing Body may also have to consider other allegations, which were not the subject of consideration by the statutory authorities. The decision whether or not to proceed to disciplinary consideration must be taken expeditiously. The investigation phase of the procedures for gross misconduct may be shortened if information is available as a result of the statutory enquiries.

4.0 **INVESTIGATION OF ALLEGATIONS OF GROSS MISCONDUCT**

4.1 The decision to set up a disciplinary investigation on matters of gross misconduct rests with the Governing Body, or Chair or any group of governors to whom responsibility has been delegated and formally minuted.

4.2 A decision to investigate should be made within 5 working days of the matter being referred to the Governing Body.

4.3 The person investigating should

- > define the areas to be investigated;
- > draw up provisional lists of people to be interviewed and topics to be discussed – these lists can be amended as required during the investigation;
- > consider whether to use a note taker for the interviews and/or tape record interviews.

4.4 Undertakings of confidentiality should not be given to the persons making allegations or to those being interviewed as evidence compiled in the

investigations should be made available to the parties in any subsequent disciplinary proceedings. Those giving evidence should be informed of this prior to their giving evidence.

4.5 The point at which the member of staff is first interviewed will depend on the nature of the allegations made against him/her.

4.6 The member of staff has a right to be accompanied by a workplace colleague or trade union representative.

4.7 At the start of the interview the member of staff should be informed of the allegation and invited to respond. However, there may be instances where disclosure of detailed information at this stage might hamper the investigation and/or put vulnerable witnesses at risk of intimidation. In such situations, it may be appropriate to disclose only the gist of the allegations.

4.8 A complete, contemporaneous note should be taken of the interview and a copy provided to the member of staff.

4.9 The member of staff should be invited to identify any persons who may have information relevant to the investigation.

4.10 Interviews of witnesses should be carried out as soon as possible. A suitable venue and time should be selected to encourage co-operation and those people should be offered the opportunity to be accompanied.

4.11 A complete, contemporaneous note should be taken of the interview and a copy provided to the witness.

4.12 Once all the relevant persons have been interviewed and any evidence corroborated, the investigator completes a report for the Governing Body. The report should reach one of the following conclusions:

> that the allegations are unfounded and no action is necessary;

> that the allegations do not amount to gross misconduct, but to less serious misconduct which can be dealt with by management;

> that the investigation reveals, prima facie, that there is a case of potential gross misconduct to answer, and requires consideration by the Staff Disciplinary Committee.

4.13 The Staff Disciplinary Committee will consider the report. If they deem that the findings constitute a case of lesser misconduct, then the matter will be dealt with through procedures in Section **5.0 of the Policy**. If they deem that the findings are sufficiently serious and well founded to constitute a case of gross misconduct then a hearing will be convened before the Staff Disciplinary Committee.

4.14 If there is to be a hearing before the Staff Disciplinary Committee then the person investigating the report will usually present the case to the Committee and examine witnesses.

5.0 GUIDANCE AND HELP FROM THE OCCUPATIONAL HEALTH UNIT

5.1 It should be recognised that the disciplinary process will always be stressful for the employee who is the subject of it. This can give rise to symptoms of anxiety and depression which can be incapacitating. In addition, attendance at the hearing will invariably cause distress which may result in a temporary deterioration in those symptoms of anxiety and depression.

However, current medical opinion indicates that in the large majority of cases, a delay in the investigation of the hearing stages as a result of such stress related symptoms are likely to cause more harm by prolonging stress and uncertainty than would be caused by a prompt resolution of the process.

5.2 There must also be acknowledgement that a delay in the resolution of the case, for any reason, including 5.1 above, will lead to increased stress and anxiety among witnesses and other persons involved in the case. There should be a recognition of a duty of care to these persons as well as to the employee who is the subject of the disciplinary process.

5.3 An employee who may be the subject of discipline should always be given the opportunity to give evidence in any investigation and to attend the disciplinary hearing, the doctors certificate (Form Med 3) is a document certifying the patient's inability to work through sickness for the purposes of social security and statutory sick pay. It is not intended, and may not necessarily be accepted, as a valid reason for non-participation in the disciplinary process.

5.4 In circumstances where the employee chooses not to be interviewed or not to attend the hearing or feels unable to do so because of anxiety, depression, other stress related symptoms or some other condition of ill-health, it may be deemed that the investigation does take place or that any hearing is held if necessary in the absence of the employee and the employee notified in writing. In such cases his/her defence would be expected to be conducted by a workplace colleague or union representative.

5.5 The person investigating may consider a written request on the grounds of ill-health, for postponement of the investigatory interview or hearing in the following circumstances:

(i) The employee believes that he/she is, by virtue of state of ill-health, either unable to understand the nature of the disciplinary charges or unable to instruct a representative in his/her defence.

(ii) The employee believes that the holding of the investigation or the disciplinary hearing, in the presence or the absence of the employee, is likely

to cause serious and permanent deterioration in the employee's state of health.

5.6 Following any application under **5.5** above, there may be an independent medical assessment of the employee before making any judgement about postponement in relation to either the investigation or the hearing. The independent medical adviser will be asked to make a judgement of the level of risk in relation to 5.5 i and ii above and will advise accordingly.

6.0 **TRADE UNION OFFICIAL**

6.1 In accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures, where the member of staff is a trade union or safety representative, any disciplinary interviews should not be arranged without prior discussion with the relevant branch secretary or a full time official of the trade union concerned. From the outset, it should be established that the action being taken is not an attack on the functions of a trade union.

SUGGESTED TEMPLATE LETTERS

1/ Call to investigatory interview before headteacher

Dear M

.....I am writing to inform you of the outcomes following the conclusion of the statutory agency meetings:

- (i) it was determined that no criminal action is to be taken;
- (ii) that your actions did not constitute gross misconduct

or

Dear M

.....I am in receipt of certain information which causes me concern namely that you allegedly acted inappropriately with x on thex month..

I have decided that your actions are of sufficient seriousness to warrant consideration under the school's disciplinary procedure and accordingly I am writing to request your attendance at an interview under the School's Disciplinary procedure on ...day at pm. The interview will be before me and held in my office at the school.

I will be considering the following incidents on the February 2009, that you:

1/ used you used inappropriate restraint

2/ that you

I enclose a copy of the school's disciplinary procedure and draw to your attention that you are entitled to be accompanied by a colleague or union representative. The interview will be held in accordance with 5.0 of the procedure. So that appropriate arrangements can be made please let me know if you intend to call any witnesses in your defence.

At the end of the disciplinary interview, I will consider your response to the incidents and any further submissions made, and determine what disciplinary sanctions or other conditions if any, are to be made. I will then consider whether your conduct was consistent with the professionalism required of a teacher and required under the ethos of St. David's High School and I will make a decision as to whether these have been breached.

Yours sincerely

Headteacher

2/ Outcome of disciplinary hearing before headteacher

PRIVATE & CONFIDENTIAL

Dear Ms.

Re: Interview under the school's Disciplinary Procedure

I refer to the interview held under the School's Disciplinary Procedure, on Wednesday 28 Month. You were accompanied at that meeting by.....

I have duly considered your response to the matters along with your (as appropriate) submission/rebuttal/ mitigation statement, along with witness statements of x or having heard the evidence of witness x

In deliberation, I have concluded that the following allegation(s) were proven:

e.g. That you acted unprofessionally by using an inappropriate and excessive level of physical intervention when supervising pupil during a lesson etc etc

The decision found is that of misconduct/serious misconduct and the penalty to be awarded is an **oral/first/final written warning. This warning will stay on your personal record at the school for 6 months/ one year/two years.**

In addition, the following support/guidance/instruction is to be put in place.....etc etc.

You have a right to appeal against this decision. If you wish to appeal then you must notify the Chair of the Disciplinary Appeal Committee, stating your ground of appeal, within 5 working days of the receipt of this letter.

Yours sincerely

Headteacher

3/ Suspension meeting template

I have asked you to come to see me under the Disciplinary Procedure for School. I am in receipt of certain information relating to your professional/personal conduct.

The allegations, if found to be true, would cause me to be seriously concerned in the context of the Schools Model Disciplinary Procedure.

I take the view that it would be prejudicial for you to remain at school and I am advising you therefore, that you are to be suspended from school immediately. Such a suspension will be on full pay and is without prejudice.

You are reminded that the act of suspension is not disciplinary action and does not imply a presumption of guilt. It is a neutral act.

As part of the conditions of your suspension, I need to seek a number of undertakings on your part. These undertakings include that you will not during your period of suspension, discuss the issue with any other member of staff or pupils at the school or member of the Governing Body, or visit the school. I am obliged to advise you that failure to adhere to this undertaking would be a serious breach of the conditions of suspension. Will you give me that undertaking?

Response.

I am also confirming to you that, being mindful of the isolation suffered by members of staff who find themselves in such circumstances, I will make arrangements to contact the County Occupational Health Unit at Llwynegrin Hall, County Hall, Mold. They will contact you directly to offer you any support and help required and to make available an independent person, should you so wish.

Notwithstanding the above, I hope that matters can be concluded promptly under the provisions of the School's Disciplinary Procedure.

I will provide written confirmation of what I have said to you.

That concludes the meeting.

SUSPENSION LETTER TEMPLATE

Dear M

.....School

I refer to our meeting on.....at....., I arranged for you to be accompanied by.....

This letter is to confirm to you matters which were shared orally at the meeting namely: -

a) I am in receipt of certain information relating to your professional/personal conduct which warrant further investigation.

b) The allegations, if found to be true, would cause me to be seriously concerned in the context of the Schools Model Disciplinary Procedure.

c) I take the view that it would be prejudicial to such enquiries for you to remain at school whilst such matters are under investigation. I am advising you therefore, that you are to be suspended from school forthwith immediately and pending the completion of such enquiries. Such a suspension will be on full pay and is without prejudice.

d) You are reminded that the act of suspension is not disciplinary action and does not imply a presumption of guilt.

At our (this) meeting I sought from you and was given (am seeking from you), an undertaking that when reasonably practicable, you will not during your period of suspension, discuss the matter with any other member of staff or pupils at the school or member of the Governing Body, or visit the school. I am obliged to advise you that failure to adhere to this undertaking would be a serious breach of the conditions of suspension.

I am also confirming to you that, being mindful of the isolation suffered by members of staff who find themselves in such circumstances, I have contacted the County Occupational Health Unit at Llwynegryn Hall, County Hall, Mold. They will contact you directly to offer you any support and help required and to make available an independent person, should you so wish.

Notwithstanding the above, I hope that the necessary enquiries can be completed without undue delay so as to enable matters to be concluded as appropriate under the provisions of the School's Disciplinary Procedure.

I am forwarding a copy of this letter to your Professional Association's representative to advise them of the circumstances and of these arrangements.

Yours sincerely