



The Skinners' School

Staff Disciplinary (Misconduct) Policy

CONTENTS

PAGE NO

1.	INTRODUCTION.....	1
2.	SCOPE.....	1
3.	ROLES AND RESPONSIBILITIES.....	2
4.	REPRESENTATION.....	3
5.	INVESTIGATIONS.....	3
6.	SUSPENSION.....	3
7.	DISCIPLINARY HEARINGS.....	4
8.	POSSIBLE OUTCOMES OF HEARING.....	4
9.	NOTIFICATION OF OUTCOME OF DISCIPLINARY HEARING.....	5
10.	APPEALS.....	5
11.	RECORDS.....	6
12.	TIMING/LOCATION OF MEETINGS/HEARING.....	6
13.	GRIEVANCES.....	6
	Appendix A – Disciplinary Rules.....	7

Staff Disciplinary Procedure (Misconduct)

1. INTRODUCTION

- 1.1 The Governing Body is committed to being a fair and reasonable employer and it takes this commitment seriously. It recognises that instances may arise in which managers are dissatisfied with the conduct of an employee and that in such cases there is a need for a formal procedure through which the issues can be identified without delay and appropriate action taken in a consistent and non-discriminatory manner.
- 1.2 The day to day supervision of staff is part of the normal management process and is outside the formal procedure for dealing with breaches of discipline. There is likely to be less recourse to the formal procedure if deficiencies in an employee's conduct are brought to his/her attention at the earliest possible stage by his/her immediate supervisor in the course of that person's normal duties. The Governing Body intend that informal measures are adopted wherever possible.
- 1.3 The object of the formal procedure is to provide a framework to deal with employees whose standard of conduct continues to fall short of that required by the Governing Body after any informal action. It is also designed to encourage an employee whose standard of conduct is unsatisfactory to improve.
- 1.4 This procedure accords with employment and education legislation and takes due account of the ACAS Code of Practice on Disciplinary Procedures April 2009. In essence the Code requires that:
- employees and employers raise and deal with matters promptly and consistently
 - necessary investigation is carried out
 - employers inform employees and give them the opportunity to put their case before decisions are made
 - employees are able to be accompanied at all formal meetings

2. SCOPE

- 2.1 This Procedure is applicable to all staff (including the Headmaster), employed specifically for the purposes of the Skinners' School, except those staff who have not completed a probationary period, and where appropriate, those with less than one year's service. While the principles of reasonableness and natural justice reflected in the Procedure will apply to these staff, it may be necessary to foreshorten the Procedure, its processes and relevant timescales in keeping with the particular nature of their employment.
- 2.2 Where an employee's failure to perform satisfactorily relates to his/her capability, rather than conduct, this will be dealt with through the separate capability procedure.
- 2.3 Where misconduct relates to a child protection issue, appropriate child protection/safeguarding guidelines must be followed.

2.4 Disciplinary rules

The types of issue which could result in disciplinary action being taken are outlined in Appendix A.

2.5 Trade Union Officials

2.5.1 No formal disciplinary action will normally be taken against a recognised shop steward, or other accredited official of a trade union or professional association recognised by the Governing Body and/or the Authority, until the circumstances of the case have been discussed with a senior trade union representative or full-time official of the trade union concerned.

2.5.2 No disciplinary action will be taken against any employee in respect of alleged misconduct which arises from trade union duties or activities, until the matter has been discussed with a senior trade union representative or full-time official of the trade union concerned.

3. **ROLES AND RESPONSIBILITIES**

3.1 It is the responsibility of the Governing Body to:

- define and communicate disciplinary rules;
- ensure that systems are in place for the proper induction of new and promoted staff, day to day management and performance management of staff to ensure that minor deficiencies in conduct are dealt with effectively without recourse to the formal procedure;
- ensure that appropriate disciplinary procedures are in place, are monitored and reviewed regularly and are implemented in a fair and consistent manner;
- consult staff regarding these procedures prior to adoption;
- suspend staff where appropriate (Chair of governors);
- establish, where appropriate, disciplinary and disciplinary appeals committees.

3.2 It is the responsibility of the Headmaster and other managers to:

- ensure that appropriate pre-employment checks are carried out;
- ensure that staff are aware of disciplinary rules and procedures and deal with any minor deficiencies in conduct at the earliest stage through normal day to day supervision;
- ensure that, where necessary, disciplinary procedures are carried out promptly and fairly;
- suspend staff where appropriate (Headmaster only).

3.3 Where possible, and other than where it relates to the Headmaster, the disciplinary procedures will be operated by a manager other than the Headmaster.

3.3.1 Where the manager recommends a disciplinary sanction, including dismissal, a hearing will take place before the Headmaster who will adjudicate on the matter. The Headmaster may be accompanied by a governor(s), but the decision will rest with the Headmaster.

3.3.2 Where the Headmaster has been directly involved in procedures leading to a recommendation of a disciplinary sanction, has instigated the process or is a witness to particular conduct relevant to the action, a hearing will take place before the Governing Body Disciplinary/Dismissal Committee.

3.3.3 Where the conduct of the Headmaster is called into question, the governing body shall depute a governor to operate the disciplinary procedure. In this case, any formal hearing shall be heard by the Governing Body Disciplinary/Dismissal Committee.

3.3.4 All appeals will be heard by the Governing Body Disciplinary/Dismissal Appeals Committee.

3.3.5 In very exceptional circumstances, in the case of a dismissal, the Governing Body may collaborate with the Governing Body of another school to adjudicate on an individual case. This may be necessary where there are insufficient Governors at the employing school to hear the matter fairly.

3.6 It is the responsibility of all staff to:

- be aware of and comply with general rules and procedures referred to in their contract and conditions of service and the specific working rules and procedures related to their area of work;
- comply with the Skinners' School's disciplinary and other procedures and to co-operate with the processes contained therein.

4. REPRESENTATION

4.1 An employee is entitled to be accompanied by a trade union/professional association representative, colleague, friend or other appropriate person, at all formal meetings, hearings and appeals. The employee must make his/her own arrangements for this.

4.2 Such representatives should make themselves available to accompany the employee concerned within a reasonable period of time. If however, the employee's chosen companion is not available, for a reason that was not reasonably unforeseeable, at the time proposed for any meeting or hearing, one alternative date will be set, normally no later than five working days from the original date.

5. INVESTIGATIONS

5.1 Where an employee's conduct is called into question an appropriate manager (the 'investigating officer') will conduct such investigations as s/he may consider necessary. The purpose of the investigation is to gather sufficient information to determine whether or not the matter needs to be pursued formally at a disciplinary hearing. Where appropriate, the employee will be given ample opportunity to state his/her case and the investigation may involve interviewing witnesses, other relevant parties and taking statements.

5.2 All reasonable effort will be made to complete the investigation without delay.

5.3 If, following the investigation, the investigating officer considers that disciplinary action is necessary s/he shall arrange for this to be undertaken in accordance with 7. below, except where, by agreement between the parties, the matter is dealt with by other means (see 5.6).

5.4 Formal disciplinary action will not be taken against an employee without prior investigation, other than in exceptional circumstances.

5.5 Where an employee admits an allegation, it may not be necessary for the investigating officer to carry out a lengthy investigation. Any hearing in these circumstances would be to consider the allegation, the employee's admittance and any mitigation they wish to put forward.

5.6 It will be open to an employee to accept a proposed disciplinary sanction without being subject to the full normal Procedure. This is called an 'agreed outcome'.

5.7 In certain circumstances, the investigating officer may conclude that formal disciplinary action is not necessary but that professional advice should be given to the employee. This will be in the form of a letter of expectation which will be placed on the employee's file indefinitely.

6. SUSPENSION

6.1 Suspension may be effected normally only where:

- there is a risk to others within the Skinners' School;
- the allegations are so serious that dismissal for gross misconduct would be a possible outcome
- allowing the member of staff to remain at work could hinder the investigatory process.

6.2 Where appropriate, suspension will only be applied after alternative measures e.g. a temporary reallocation of duties or relocation have been carefully considered.

6.3 Only the Chair of governors and the Headmaster have the power to suspend a member of staff.

6.4 Suspension can only be ended by the Chair of governors or the governing body.

- 6.5 During a period of suspension, the employee will receive his/her contractual pay. Where an employee falls sick during a period of suspension, the normal contractual sick pay entitlements will apply.
- 6.6 A member of Skinners' School staff will be assigned as a contact point for suspended staff for Skinners' School business issues. Their role will not be to discuss or support the disciplinary process.

7. DISCIPLINARY HEARINGS

- 7.1 If after investigation, the investigating officer considers that a formal sanction or dismissal is appropriate, s/he will refer the matter to a formal hearing. Disciplinary hearings will be carried out without undue delay.
- 7.2 The employee will be given at least ten working days' notice, in writing, of the date, time and place of any disciplinary hearing. When given this notice, the employee will be:
- (i) informed of the nature and details of the alleged misconduct;
 - (ii) informed of his/her right to be accompanied at the hearing by a representative (see 4. above) and of his/her right to call witnesses;
 - (iii) supplied with a copy of the investigating officer's written report which is to be considered at the hearing, including any witness statements;
 - (iv) given an indication of the possible disciplinary penalty which could be imposed if the allegations were found to be substantiated, e.g. a formal warning or termination of employment by dismissal;
 - (v) informed who will conduct the hearing and the name of the presenting officer, including any advisers either may have and the names of any witnesses* to be called;
 - (vi) given a copy of the Skinners' School's disciplinary procedure..
- 7.3 Not later than three working days before the hearing the employee:
- (i) must supply the name and status of his/her representative;
 - (ii) must supply the names of any witnesses* s/he intends to call and an outline the evidence they will give;
 - (iii) may submit a written statement or other supporting written evidence if s/he wishes, either direct or through his/her representative.

* Both the presenting officer and the employee should give careful consideration to whom they call as witnesses, limiting the numbers to the minimum necessary to support their case.

- 7.4 At the hearing the employee and/or his/her representative and the person presenting the case may:
- (i) address those conducting the hearing;
 - (ii) be questioned by the other party and by those hearing the case, on the statements made by them and on any evidence they have submitted;
 - (iii) question the other party on any relevant aspect of his/her evidence;
- 7.5 Witnesses called by either party may be questioned by the other party and by those hearing the case.
- 7.6 An opportunity will be given at the end of the process for both parties to make a summary statement of their case. The employee or his/her representative will have the right to speak last.
- 7.7 Employees are required to take all reasonable steps to attend hearings. Hearings may be re-arranged once where either party or their representatives are unable to attend for a reason that was not reasonably foreseeable. Where an employee fails to provide a good reason for non-attendance, those hearing the case will make a decision about whether or not to proceed.

8. POSSIBLE OUTCOMES OF HEARING

- 8.1 Where those hearing a formal disciplinary case conclude that there is sufficient evidence to support the allegation(s), they may apply an appropriate sanction, including dismissal. Any decision of the hearing will satisfy the test of reasonableness in all the circumstances and any sanctions will be proportionate to the nature of the misconduct. The following mitigating circumstances will be considered:
- the employee's disciplinary and general record, position and length of service;

- any explanation or mitigation put forward by the employee;
- any action taken in similar situations;
- any other relevant factors.

8.2 Depending on the circumstances, disciplinary action could take the following forms:

- i) Written warning e.g. where there has been a failure to conform to standards
- ii) Final written warning e.g. where there is further misconduct or the misconduct is considered to be sufficiently serious.
- iii) Dismissal with notice e.g. where conduct has failed to improve following previous warning(s).
- iv) Summary dismissal e.g. where an act of gross misconduct has been committed.

Warnings will set out the:

- nature of the misconduct and expectations of future conduct
- length of the warning
- consequences of future misconduct.

8.3 Time limits for disciplinary warnings

8.3.1 Normally, the validity of disciplinary warnings will be considered to have expired after one year provided that no further warnings have been issued and no disciplinary action has been taken against the employee during that period. Exceptions are set out below. Expired warnings will generally be disregarded in the event of any future disciplinary action (although a record of the warning will not be removed from the personal file) but the fact that there is an expired warning may explain why the employer does not substitute a lesser sanction.

8.3.2 There may be occasions, however, where the nature or pattern of misconduct and the post concerned do not make it desirable and appropriate for the one year time limit to apply. In these circumstances the employee will be notified in writing of the period applicable to the warning, which will not normally exceed 5 years. Exceptionally, there may be circumstances where the misconduct is so serious, relating for example to the care of vulnerable people, that it cannot be disregarded for future disciplinary purposes. In such circumstances, the written warning can never be disregarded and any recurrence may lead to dismissal.

9. NOTIFICATION OF OUTCOME OF DISCIPLINARY HEARING

9.1 Where possible the decision of the hearing will be notified verbally to the employee at the end of the hearing. In any case the employee will be issued with a written notification of the outcome within five working days of the hearing.

9.2 In case of dismissal, this letter will contain notice, where appropriate, of dismissal. This may be rescinded subsequently on appeal.

9.3 Employees will be asked to sign a copy of such notifications to confirm that they have received and understood them.

10. APPEALS

10.1 An employee has a right of appeal against any disciplinary sanction reached at a disciplinary hearing, including an extension of the time limit for written warnings. An employee may forego his/her right to appeal.

10.2 Notice of any appeal must be given in writing to the Chair of Governors within five working days of the written notification to the employee of the outcome of the disciplinary hearing, clearly stating the grounds upon which the appeal is made. These may be, for example:

- on procedural grounds,
- against the severity of the disciplinary action, or
- where the employee considers that there has been an error of judgement on a point of fact.

- 10.3 All appeals will be heard by the Governing Body Disciplinary/Dismissal Appeal Committee. The decision of this Committee is final, subject to the employee's rights at law.
- 10.4 The appellant will be given at least five working days' notice of the appeal hearing in writing. An appeal hearing will normally be a rehearing and the procedure will be as for the original hearing.
- 10.5 New evidence, provided it is relevant to the original allegation(s), can be introduced at the appeal stage by either party. All parties' papers must be submitted to the other party and the Appeals Committee at least 3 working days before the appeal hearing.
- 10.6 The outcome of the appeal will be notified as for the original hearing, except in that there is no further right of appeal within these procedures (see 10.3).

11. RECORDS

- 11.1 Notes of hearings and meetings with the employee will be taken and shared with him/her.
- 11.2 Details of any formal disciplinary action, including any warnings will be retained on the employee's personal file. Sanctions will be disregarded after the expiry of their life. (see also 8.3)
- 11.3 Letters of expectation are not disciplinary sanctions and will remain on the employee's personal file indefinitely.
- 11.4 If an investigation or hearing concludes that an allegation is totally unsubstantiated, all records will be removed from the employee's personal file. The only exception would be where the allegation relates to safeguarding issues.
- 11.5 Details of any ongoing disciplinary action and/or sanctions, and in the case of safeguarding matters, expired warnings, will be referred to in an employee reference requested of the Skinners' School. Only such information as has been discussed with the employee will be referred to.

12. TIMING/LOCATION OF MEETINGS/HEARING

- 12.1 Where possible and appropriate, timings of meetings and hearings will be agreed with the employee and his/her representative and will normally take place during the working day.
- 12.2 Where possible meetings and hearings will be held at a mutually convenient location, which meet any special needs of attendees, which may sometimes be away from the Skinners' School where this is considered to be appropriate.
- 12.2 Reasonable time off with pay will be granted to employees of the Skinners' School who are acting as a witness or representative for an employee who is subject to the disciplinary process.

13. GRIEVANCES

If an employee raises a grievance during the course of the disciplinary procedure, related to the case, the grievance will normally be dealt with as part of the formal disciplinary hearing/appeal process. If appropriate, given the nature of the grievance, the disciplinary process may be temporarily suspended in order to deal with the grievance.

Appendix A – Disciplinary Rules

Employees need to be aware of the standards required from them in the course of their normal day to day duties and the possible consequences of any failure to adhere to maintain these standards. Listed below are the types of issues which could result in disciplinary action being taken.

Misconduct of a minor or serious nature may result in a written warning being issued. Acts of gross negligence or cumulative or repeated acts of misconduct may lead to dismissal with notice.

Gross Misconduct is defined as misconduct of such a serious nature that the Skinners' School is justified in no longer tolerating the employee's continued presence at the place of work. An allegation of gross misconduct will normally lead to suspension, pending an investigation and to summary dismissal (i.e. dismissal without notice) where the allegations are substantiated. There may be situations where misconduct which would normally lead to summary dismissal may warrant less serious action. Similarly, there may be situations in which misconduct which would not normally lead to summary dismissal warrants such action.

Misconduct

Examples of misconduct where a form of warning may be issued, or where cumulative or repeated acts could lead to dismissal are as follows:

- Attendance and Time-keeping
 - continuing failure to comply with attendance and time-keeping requirements
 - continuing failure to follow procedures for booking and returning from leave
 - absenteeism and unauthorised absence from the workplace
- Behaviour
 - refusal or failure to follow a legitimate management instruction
 - inappropriate behaviour or abuse of authority towards a colleague or member of the public or person in the care of the Skinners' School
 - insubordination
 - failure to comply with the Skinners' School's equal opportunities policy
 - conduct at work which is likely to offend decency
 - conduct which could bring the Skinners' School into disrepute
 - refusal to comply with the Skinners' School's no-smoking policy
 - negligence in the performance of duties
 - misuse of Skinners' School facilities
 - abuse of the Skinners' School's policies e.g. parental leave
- Poor Working Practices
 - failure to maintain proper records
 - failure to follow Skinners' School procedures e.g. financial regulations, standing orders
 - failure to comply with health and safety requirements
- General
 - misconduct in relation to official documents e.g. destroying or mutilating records kept or required for the purposes of the Skinners' School or altering/erasing or adding to entries in any such document without legitimate reason
 - neglect of health e.g. committing an act or adopting conduct which may impede recovery and return to work whilst absent from work due to sickness
 - engaging in paid employment outside the hours contracted to work for the Skinners' School if scp 28 or above and without the express permission of the Skinners' School
- Any other act of misconduct of a similar gravity

Gross misconduct

Examples of misconduct which will normally be regarded as gross misconduct are:

- Unauthorised removal of the Skinners' School's property
- Stealing from the Skinners' School, its governors, its employees or the public and other offences of dishonesty
- Sexual offences
- Breaches of the Skinners' School's Equal Opportunities policy, including serious acts of harassment, discrimination or verbal abuse against employees, clients or members of the public on grounds of race, sex, disability or religious belief or any other grounds
- Fighting / Physical assault
- Harming students in breach of child protection/safeguarding regulation and policy and Abuse of Trust

- Falsification of time sheets, flexible working hours data or subsistence and expenses claims, sickness self-certification sickness forms, etc.
- Offences which seriously threaten the security of the Skinners' School's clients, members of the public, employees or property or which seriously damages public confidence in the Skinners' School
- Deliberate misuse of data protection information and/or deliberate interference with computerised information
- Falsification of qualifications which are a stated requirement of employment and which result in financial gain
- Malicious damage to the Skinners' School's property
- Serious breaches of Health and Safety legislation and/or the Skinners' School's Health and Safety Policy e.g. intentional or reckless interference with or misuse of anything provided by the Skinners' School in the interests of health and safety.
- Serious drug/alcohol related offences
- Serious breaches of the Skinners' School's policy on use/misuse of the internet/data records
- Serious breaches of the Skinners' School's Code of Conduct
- Failure to disclose any relevant criminal offences prior to employment and any criminal convictions which occur during employment
- Any other act of misconduct of a similar gravity

The above lists are neither exclusive nor exhaustive and there may be actions which do not appear above but may nevertheless be the subject of disciplinary action.

In determining the seriousness of the misconduct, particular regard will be given to the circumstances of the individual case. Factors which can influence a decision as to the seriousness of the offence may include:

- the type, degree and frequency of the misconduct
- the consequences arising from the misconduct, and
- the level of responsibility of the employee concerned

Careful consideration will be given to the above factors in each case. What is regarded as misconduct in some cases may, in others, depending on the circumstances, be regarded as gross misconduct.

It is impossible to list every type of action which would result in disciplinary action being taken. The above lists are to give employees an understanding of the type of act which would result in disciplinary action and of the consequences of such acts.

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