

BISHOP WORDSWORTH'S SCHOOL
STAFF DISCIPLINARY PROCEDURE & CODE OF CONDUCT
(Including Capability Procedure)

A Statutory Policy

***Definition:** 'Is to', 'are to' and 'must' are obligatory. 'Should' is not obligatory but is good practice and is to be adhered to unless non-compliance can be justified.*

INTRODUCTION

1. This Procedure accords with employment and education legislation and takes due account of the ACAS Code of Practice on Disciplinary Procedures March 2015. In summary the Code requires that:
 - a. Employees and employers raise and deal with matters promptly and consistently.
 - b. Necessary investigation is carried out.
 - c. Employers inform employees and give them the opportunity to put their case before decisions are made.
 - d. Employees are able to be accompanied at all formal meetings by a single companion who may be a fellow worker, a trade union representative or an official employed by a trade union.
2. It is important in any organisation to operate suitable rules and procedures which will promote order, fairness and standard practice in the treatment of individual employees and the setting of standards of conduct and safety. This Procedure has been written so that employees who may become subject to disciplinary action are dealt with in a fair and equitable manner. All stages of the formal procedure are to be carried out as promptly as possible.
3. The Procedure is not intended to replace the normal responsibilities of the Head who supports, advises and encourages those employed at Bishop Wordsworth's School (the School) but is to be used when normal professional and managerial approaches have failed.
4. This document is available to on the School website.
5. **Capability Procedure.** Relevant elements of this Policy are to be used for a formal Capability Procedure in particular Annex A, the procedure for the conduct of a governors' panel.
6. **Qualifying Period.** Nothing in this Policy shall prevent the School from exercising its rights during the qualifying period as defined by the Employment Rights Act 1996.

INFORMAL ADVICE OR VERBAL REPRIMANDS

7. Informal advice or verbal reprimands may be given by the relevant senior line manager but the Head is to be kept informed and is to advise if appropriate.
8. Where there is concern regarding an employee's conduct, the Head is to satisfy himself that any shortfall in conduct is not due to a lack of understanding by the employee of the reasonable standards of behaviour/conduct required. If the Head is satisfied that this is not the case, the employee is to be informed privately of the nature of the concerns regarding their behaviour/conduct and given the opportunity to reply. If the reply dispels the concern, the employee is to be made aware of this. However, where specific improvements are sought, the employee is to be counselled as to how best these can be achieved (in writing if appropriate) and the timescale over which their response will be

monitored.

9. A verbal reprimand or advice is normally to be noted on the employee's file with details of the circumstances.

GENERAL PRINCIPLES

10. The Procedure is designed to ensure that, when a complaint or allegation is made against an employee, he/she is given every opportunity to respond before it is decided whether any disciplinary action is appropriate.

11. The Procedure does not prejudge the outcome of any particular hearing or case but indicates how to proceed if disciplinary action is considered necessary. The use of one stage of the Procedure does not mean that the next stage follows automatically.

12. Employees have a statutory right to be accompanied by a companion where the disciplinary meeting could result in any of the following circumstances:

- a. A formal warning being issued.
- b. The taking of some other disciplinary action.
- c. The confirmation of a warning or some other disciplinary action.

13. There is no entitlement to representation during an investigation.

14. Nothing in these procedures shall be construed as preventing the Governing Body from giving notice to an employee in circumstances which do not involve disciplinary considerations.

15. **First Breach of Discipline.** No employee is to be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice. Examples of offences that would be considered as gross misconduct are at Annex B; the list is not exhaustive.

16. **Time Limits.** The time limits referred to in the document may be varied provided that all parties agree.

17. **Expiry of Warnings.** Normally, the validity of disciplinary warnings will expire 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 are generally to be disregarded in the event of any future disciplinary action (although a record of the warning is not to 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. 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 is to be notified in writing of the period applicable to the warning, which should 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. Where, following investigations, a case is withdrawn or not upheld, any reference to the alleged disciplinary offence is to be expunged from the employee's personal file except where this conflicts with Statutory Regulations.

18. **Trade Union Officials.** No disciplinary action beyond a verbal warning is to be taken against a trade union official until the circumstances of the case have been discussed with a senior trade union representative or full-time official.

DUTIES RESPONSIBILITIES AND POWERS OF THE GOVERNING BODY

19. The Governing Body has the power to dismiss a member of staff. This power is delegated jointly to the Head and the Chair of the Pay & Staffing Committee for staff with less than two years' continuous service and to a Discipline Panel for all other staff. An appeal against the decision of the Head or of the Panel is delegated to an Appeals Panel. Compositions of the panels are at Paragraph 21 below.

20. The Governing Body must provide a means by which staff whom it proposes to dismiss from the School are able to make representations and, where such a determination for dismissal is made, to appeal against it. It will also be answerable before an employment tribunal for any deficiencies in complying with statutory requirements in the handling of any dismissal.

21. Discipline and appeals panels are to consist of at least three non-staff governors nominated by the Chair or Vice Chair of the Governing Body. The Chair of the Governing Body may not be a member of the panels. Additionally, the Appeals Panel may not consist of fewer members than the Discipline Panel which made the decision which is the subject of the appeal and may not include any member of that Discipline Panel. A non-voting HR professional may attend both panels to advise on the Law and procedures and a secretary may be appointed to take notes.

22. The Head (except where he or she is the person concerned) is entitled to attend, in an advisory capacity, all proceedings of the Governing Body in relation to a decision to dismiss a member of staff. The Governing Body must consider any advice given by the Head.

23. Care is to be taken at meetings of the Governing Body (or of any committees or panels) where the dismissal, promotion, retirement, suspension or transfer from one post to another of an employee at the School requires consideration. If a person present at such a meeting has a pecuniary interest, direct or indirect, in the matter in question they must take no part in its consideration or discussion (and are to withdraw from the meeting during its consideration or discussion) and are not to vote on any question about it. Persons are to be regarded as having a direct interest if they or their relatives (including partners) are also employees at the School and could be a candidate for any vacant post resulting from a decision on the matters under consideration.

SUSPENSION

24. The Governing Body has the power to suspend School staff including the Head. This power is delegated to a Discipline Panel but the Head may suspend staff if the Head considers immediate suspension appropriate. The Head is to report such action to the Chair of the Pay & Staffing Committee for ratification by that Committee and copy the report to the Chair of Governors.

25. Suspension may take place at any time before or during the course of investigations into an employee's conduct, work or performance and must be confirmed in writing. Guidance notes are also to be issued to ensure the employee understands their position.

26. Suspension is a neutral act and is not a disciplinary penalty. It is a power which may be exercised in particular cases where it is considered that an employee should not remain on the premises whilst investigations are proceeding.

27. Suspension of any member of staff can only be ended by the Governing Body and is delegated to a Discipline Panel.

28. Suspension should normally be on full pay. However, where the employee is certified as unfit to attend work owing to ill health or takes maternity leave, payments are to be made in accordance with the relevant conditions of service.

THE PROCEDURE

29. The Procedure is described below and consists of the following elements:

- Investigation
- Hearing
- Outcome, Sanctions & Notification
- Further Breaches of Discipline
- Appeals

30. Investigation.

a. Where there is a suspected breach of discipline an investigation is to be carried out by the Head, (unless it is likely that the Head will conduct any Disciplinary Hearing) a senior member of staff appointed by the Head or the Governing Body's nominee (the Investigator). An employee being investigated is to be informed of the investigation which may comprise, among other things:

- (1) Interviewing witnesses and preparing witness statements.
- (2) Checking information provided by witnesses.
- (3) Interviewing the employee to obtain an initial response.
- (4) Collating relevant documents.

b. The Investigator is to investigate the complaint and collect any evidence. Note that CCTV imagery may be used as evidence, if appropriate. The employee has the right to be accompanied by a trade union representative or work colleague and an HR advisor may be requested if appropriate to support the Investigator. Notes are to be made of these interviews and signed by the relevant parties as an accurate record.

c. Where the suspected breach of discipline is an allegation of abuse of a child then Paragraphs 39 to 41 below apply.

d. If at the end of the investigation the Investigator finds that there is a case to answer, the Head and the Chair of Governors are to consider whether a Disciplinary Hearing should be convened.

31. **Disciplinary Hearing.** A Disciplinary Hearing is to be conducted by the Head except that in the following circumstances it is to be heard by a Discipline Panel:

- a. The allegation is after an unexpired (defined at Paragraph 17) final written warning.
- b. The allegation is for gross misconduct.
- c. The Head has been involved in the investigation or otherwise thinks it appropriate for the case to be heard by a Discipline Panel.

32. **Notification of a Disciplinary Hearing.** The employee is to be informed by letter or email at least 7 days before the Hearing if a Disciplinary Panel is to be convened, of the possible consequences, that the employee may be accompanied by a companion and that the Disciplinary Procedure is available on the website. The employee is also to be sent all the evidence. A request by the employee for a delay in the Hearing to gather evidence in his/her defence, so that his companion may attend or for any other relevant reason, is to be considered on its merits. A rearranged date should not be later than 7 days after the original date. Failure to attend the Disciplinary Hearing without a satisfactory reason could result in a decision being taken on the evidence available in the employee's absence.

33. **Conduct of a Disciplinary Hearing.** The procedure for a disciplinary panel hearing is at Annex A.

34. Outcome & Sanctions of a Disciplinary Hearing. The range of outcomes are as follows:

- a. **Hearings Conducted by the Head.** Following the Hearing the Head may:
 - (1) Dismiss the case.
 - (2) Issue a first written warning.
 - (3) Issue a first and final written warning.
 - (4) Issue a final written warning (where a first warning is already in force).
 - (5) For staff with less than 2 years' continuous service and with the agreement of the Chair of the Pay & Staffing Committee, terminate the employment.
- b. **Hearings Conducted by a Discipline Panel.** The Governors' Discipline Panel has the range of options as at Sub-Paragraph 34.a above but also has the power to dismiss the employee or, for a case of serious misconduct, refer the finding to the Teaching Regulation Agency (see Paragraph 38).

35. Notification of Outcome of a Disciplinary Hearing. The outcome of the Hearing is to be confirmed in writing to the employee, copy to the Chair of Governors, within seven days by the Head/Chair of the Panel giving details of the nature of the sanction, the nature of the complaint and where appropriate the improvement required.

36. Further Breaches of Discipline. Where there is a further suspected breach of discipline following a formal written warning, the stages at Paragraphs 30 to 32 are to be repeated.

37. Appeals. An employee who has been issued with a formal written warning or a final written warning or who has been informed by the Discipline Panel that he/she is to be dismissed has the right to appeal to the Appeals Panel of the Governing Body. The procedure is as follows:

- a. An appeal is to be lodged by email to the Company Secretary, copy to the Head, within 14 days of receipt of the letter informing the employee of the decision and is to include the ground for appeal.
- b. The Company Secretary in conjunction with the Chair of Governors is to form an Appeals panel and plan a convenient date.
- c. The Appeal hearing is to take the form of a review of the disciplinary sanction or a rehearing depending on the grounds of the appeal.
- d. The employee may be accompanied by a companion at the Appeal Hearing.
- e. The Hearing is to follow the procedure for a discipline panel hearing (see Annex A) except that normally, at the discretion of the Panel Chair, the employee will present the grounds for appeal immediately after the introductions.
- f. When hearing an Appeal against a warning, the Appeals Panel may take one of the following decisions:
 - (1) Dismiss the Appeal.
 - (2) Allow the Appeal.
 - (3) Substitute a different sanction (greater or lesser).
 - (4) Dismiss the employee.
- g. When hearing an appeal against dismissal, the Appeals Panel may take one of the following decisions:

- (1) Dismiss the appeal.
 - (2) Dismiss the appeal but offer to re-engage the employee in the same or another post with effect from a date to be decided.
 - (3) Allow the appeal and reinstate.
 - (4) Reinstate with a written or final written warning.
- h. The decision at appeal is final, and must be notified in writing within seven days.
- i. Where an Appeals Panel hears an appeal against a decision other than a decision to dismiss and, during the Appeal, considers that it may determine that dismissal is a possible outcome to the Appeal, it is to advise the appellant of this possibility and invite the appellant to present her/his case giving due consideration to this possibility. The appellant may at this stage request an adjournment in order to prepare further to make representations against the possibility of dismissal.

38. Referral to the Teaching Regulation Agency (TRA). If a Discipline or Appeal Panel has agreed that an offence amounted to serious misconduct then referral to the TRA should be considered which may result in an Interim Prohibition Order being issued and, after an investigation by the TRA, a Prohibition Order (for teaching) being applied.

ALLEGATIONS OF ABUSE AGAINST CHILDREN

39. If the allegation is made by or concerns a child, the Procedure in the Child Protection Policy is to be followed.

40. If an allegation concerning a child is against a member of staff, it is likely that Social Services or the Police will lead any investigation and the appropriate elements of the procedure above are to be followed after that investigation.

41. Where an external investigation is to be carried out, suspension of the employee against whom the allegations are being made is to be considered.

RELATIONSHIP WITH CAPABILITY PROCEDURE

42. Concerns about an employee raised under this procedure may be progressed under the Capability Procedure if it is established at any stage that the real problem is the employee's performance in post. Action taken within this procedure has equal status to action taken under the Capability Procedure.

MISCONDUCT BY THE HEAD

43. Where the Head is to be the subject of a disciplinary investigation, the investigation is to be carried out by a nominee of the Governing Body with professional HR assistance if necessary.

44. Where it is decided that there is a case to answer the Head will be required to attend a disciplinary hearing where the investigator is to present the case to a Discipline Panel.

CHANGES IN LEGISLATION

45. If, during the currency of this Policy, any statute or statutory instrument is enacted that adds to, modifies or is in conflict with any provisions of the Policy, then the Policy will be deemed to include any such statutory provision to the extent necessary to make the Policy compliant with that provision.

MONITORING AND EVALUATION

46. This Procedure is to be reviewed annually by the Governors. The most recent 3 years' review history is below:

23 rd March 2021	No changes
15 th November 2022	Minor changes
6 th June 2024	Minor changes
10 th October 2024	Removal of Code of Conduct annex

Annexes:

- A. Conduct of a Disciplinary Panel Hearing.
- B. Examples of Gross Misconduct.

PROCEDURE FOR CONDUCT OF A DISCIPLINARY PANEL HEARING

GENERAL

1. The case for the School is to be presented by the Head or the Investigator (defined at Main Body Subparagraph 30). The Head, the employee and the employee's representative should be present during the hearing and the last may speak on behalf of the employee.
2. Reference in this procedure to the Head includes the Investigator and reference to the employee/appellant includes his/her companion. It is the responsibility of the employee to ensure that their companion is adequately briefed.

HEARING PROCEDURE

3. The Chair of the Panel is to introduce the Panel members and anybody else present, state the function of the Panel and establish who is to present the case for each party, whether they are to call witnesses and if so, how many.
4. The Head presents the case and may call witnesses.
5. The employee/appellant may ask questions of the Head and/or witnesses.
6. The Chair and members of the Panel may ask questions of the Head and/or any of the witnesses.
7. The employee/appellant may make a submission in the presence of the Head, produce evidence and call witnesses.
8. The Head will have the opportunity to ask questions of the employee/appellant and/or his/her witnesses.
9. The Chair and members of the Panel may ask questions of the employee/appellant and/or his/her witnesses.
10. The Head and the employee/appellant are to be asked if they have any further comments.
11. All except panel members and the Secretary to the Panel (if appointed) are to withdraw.
12. The Panel deliberates. Note that, if the Panel wishes to ask either party any supplementary questions, both parties are to return.
13. The Panel may communicate its decision verbally to the parties immediately but is to confirm in writing to the employee/appellant within seven days of the Hearing.
14. If there is an aggrieved third party to the case, the Chair of the Panel is responsible for notifying that party of the Panel's decision.
15. If all parties are present throughout then they may make their own notes. If a Secretary to the Panel is appointed, the Secretary is to take notes and circulate copies to all parties.

EXAMPLES OF OFFENCE THAT WOULD BE CONSIDERED GROSS MISCONDUCT

1. Certain breaches of the disciplinary rules are so serious that they constitute gross misconduct which gives rise to summary dismissal (without notice).
2. The following represents some examples of misconduct that might lead to an employee being immediately dismissed; this list is not exhaustive:
 - a. Extreme violation of safety regulations, e.g. smoking in restricted areas, failure to report a serious accident/injury, etc.
 - b. Intoxication from alcohol/non-prescribed drugs resulting in incapacity for work.
 - c. Being in possession of illegal drugs.
 - d. Fighting or causing a disturbance.
 - e. Malicious damage or destruction of the School's, employees' or student's property.
 - f. Serious bullying, harassment or abuse of a student, employee or visitor to the School.
 - g. Serious transgressions under the School's Equality Policy such as discrimination, racial abuse etc.
 - h. Dishonesty, including asking for or accepting a bribe, theft, fraud or misuse of School property including malicious damage to School property. Property includes intellectual property owned by the school and includes any intellectual property that has been produced as part of a staff member's work in school.
 - i. Theft from, or violence towards, other members of the School, students or members of the public, including malicious damage to their property.
 - j. Obscene or indecent behaviour or sexual misconduct or the circulation of offensive material.
 - k. Accessing or downloading unauthorised images via the internet.
 - l. Serious misuse of any hardware, software, intranet, internet, email, social media or other electronic means.
 - m. Serious breach of security or of financial regulations and/or procedures.
 - n. Serious breach of confidentiality or misuse of information including disclosure of confidential/personal information to unauthorised persons. This may include breach of the Data Protection Act 1998.
 - o. Dishonest or fraudulent use of the School's name, time, facilities, services and/or suppliers for private use whether or not for financial gain.
 - p. Extreme cases of unauthorised absenteeism.
 - q. Gross negligence in duties resulting in any of the above.
 - r. Gross dereliction of duty for example in not following Child Protection procedures.