



RIKKYO SCHOOL IN ENGLAND

Disciplinary Procedure

| Date | Review Date | Coordinator | Headmaster |
|------------|-------------|-------------|------------|
| 29/10/2019 | 29/10/2020 | Ms.K.Amann | Dr.T.Okano |

We believe this policy relates to the following legislation:

- Employment Rights Act 1996
- School Standards and Framework Act 1996
- Human Rights Act 1998
- Teaching and Higher Education 1998
- Employment Relations Act 1999
- Employment Act 2002
- Education Act 2002
- Safeguarding Vulnerable Groups Act 2006
- Employment Act 2008
- School Staffing (England) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Religion or Belief) Regulations 2003
- Education (Prohibition from Teaching or Working with Children) Regulations 2003
- Employment Equality (Age) Regulations 2006
- Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Regulations 2008
- Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations 2008
- Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008
- School Staffing (England) Regulations 2015
- Equality Act 2010

The following documentation is also related to this policy:

- Acas Code of Practice 1 - Disciplinary and Grievance
- Discipline and Grievance at Work - The Acas Guide
- Equality Act 2010: Advice for Schools (DfE)

We understand that the law requires all employees of the school to conduct themselves appropriately, to obey the directions of the Headmaster, to be loyal to the school, to take care over the work assigned to them and to work hard to maintain a good employment relationship.

The school has worked hard to build and maintain a good employment relationship and believes that the rules, policies and procedures as stated in the Staff Handbook are reasonable and fair.



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Therefore, we believe we have clearly defined the standard of behaviour expected of all personnel working in this school. However, the school will deal with any form of misconduct, gross misconduct or poor performance by an employee by following a fair and effective disciplinary procedure. We will treat everyone equally irrespective of age, disability, race, religion or belief, sex and sexual orientation, marriage and civil partnership, pregnancy and maternity and gender reassignment.

Introduction

There are a number of situations where dismissal is not a disciplinary sanction, but a consequence of other circumstance. Obvious examples of this are:

- Ill health
- Redundancy
- Non renewal of a fixed term contract
- Other substantial reasons relating to the operation of the business
- Retirement

The discipline procedure here does not relate to circumstances such as these for which a different procedure may be used. This discipline and grievance procedure is referred to in your contract of employment but is not contractual.

Principles

In line with the ACAS Code of Practice, the School believes in the following key principles when dealing with discipline and grievance matters:

- Informal resolution will be considered where appropriate to resolve problems.
- Both the School and staff should act consistently.
- The School should carry out any necessary investigations to establish the facts of any case.
- The School or staff should clearly state the concerns and the other party should be given the opportunity of a response before any decisions are made.

Discipline Procedure

Discipline situations include misconduct and/or poor performance. This procedure is intended to ensure that all staff are treated fairly and are aware of the steps that will be followed in the event that they fail to achieve and maintain the standards of conduct and performance expected by the School.

Informal Resolution

Many potential discipline or performance issues can be resolved informally. Where possible, minor concerns related to discipline or performance matters should be dealt with by the



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appropriate member of the Senior Management Team, Head of Department or Supervisor in an informal meeting or at an appraisal.

Formal Resolution

If the matter cannot be dealt with informally or is of a more serious nature, then the formal discipline procedure is to be followed:

a) **Step 1 – Investigation**

On receipt of a complaint of unsatisfactory performance or alleged misconduct, the Headmaster or Bursar will ask an appropriate member of staff to carry out the necessary investigation to establish the facts of the case. This investigation will be undertaken by a different individual from the person who might lead any disciplinary hearing. As part of the process, it may be necessary to hold an investigatory meeting with the member of staff concerned. This investigation process should normally be completed within 5 working days. At the end of this process an investigation report will be produced and the employee informed if there is no case to answer.

b) **Step 2 – Employee Notification**

If the investigation suggests that there is a discipline or performance case to answer, then the School will notify the member of staff in writing with the following information:

- The nature and basis of the alleged misconduct or poor performance.
- The possible consequences to the member of staff.
- Details or copies of any written evidence/documents to be used for the case.
- Details of the time and venue for the disciplinary meeting.
- Advice on the right to be accompanied at the meeting.

The member of staff will normally be given a minimum of 5 working days' notice of any disciplinary meeting.

c) **Step 3 – Disciplinary Meeting**

The member of staff has a statutory right to be accompanied at a formal disciplinary meeting. The chosen companion may be a fellow member of staff, a trade union representative (certified by their union as being competent to accompany a worker) or an official employed by a trade union. The member of staff is to provide the School with the name of the chosen companion at least 24 hours before the meeting. If the companion cannot attend on the date the School has set for the meeting, then the School can postpone the meeting for up to five days and may (at its discretion) postpone it for longer.

If the member of staff feels there is a relevant witness who has not provided a witness statement he/she should inform those dealing with the matter immediately and list the information he/she considers the witness would be able to comment upon. The School representative will usually interview the person and obtain a written statement from the witness before the meeting takes place.



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In addition, the School will normally notify the member of staff 48 hours in advance of any witnesses to be called to the meeting. If he/she feels there is a good reason why a relevant witness should attend the meeting in person he/she should notify the School representative 48 hours in advance.

At the meeting:

- The School representative, normally the Headmaster or Bursar, will explain the complaint against the member of staff and go through the evidence that has been gathered. This may require the calling of relevant witnesses though the use of witnesses' statements would normally be appropriate.
- The member of staff will be allowed to set out their case and answer any allegations. The member of staff will be able to ask questions, present evidence and call any relevant witnesses as set out above.
- The member of staff may raise points about any information provided by witnesses but will not be allowed to cross-examine witnesses.
- The member of staff's companion may address the meeting to respond on behalf of the member of staff to views expressed at the meeting, confer with the member of staff during the hearing and put and/or summarise the member of staff's case. They may not answer questions on behalf of the member of staff nor address the hearing if the member of staff does not want them to and the companion must not prevent the School from explaining its case.

Both the School and the member of staff (and companion) should make every effort to attend on the date given in the notification letter. Should the member of staff persistently be unable or unwilling to attend a disciplinary meeting without good cause then the School will make a decision based on the evidence available.

d) **Step 4 – Decision on Appropriate Action**

After the disciplinary meeting the School will decide whether or not disciplinary or any other actions are justified and inform the member of staff accordingly in writing normally within 5 working days. If the case is unfounded then no further action will be taken. However, if misconduct is confirmed or the member of staff is found to be performing unsatisfactorily then the following actions may result (and any of the actions outlined below may be imposed at any stage if the alleged misconduct or performance warrants such action, and the School is not bound to impose disciplinary sanctions in any sequential order):

- First Written Warning
For minor offences, the usual action will be a First Written Warning. This warning will set out the nature of the misconduct or poor performance as well as the change in behavior or improvement in performance required (with timescales).



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This warning will remain in place for 6 months (unless there are exceptional reasons for making this period longer than 6 months) and a copy will be placed on the member of staff's file and will usually remain current for disciplinary purposes for a period of 6 months (unless longer in exceptional circumstances.) Further misconduct or continued poor performance may result in a Final Written Warning.

- Final Written Warning
If further complaints about the member of staff's performance or conduct arise, or there is a further offence even of a different nature, or in cases or more serious alleged misconduct or unsatisfactory performance, then a member of staff may be given a Final Written Warning. This warning will set out the nature of the misconduct or poor performance as well as the change of behavior or improvement in performance required (with timescales). This warning will remain in place for 12 months (unless there are exceptional circumstances for making this period longer than 12 months) and a copy will be placed on the member of staff's file and remain current for disciplinary purposes for 12 months (unless longer in exceptional circumstances). Further misconduct or continued poor performance may result in dismissal.
- Dismissal
If further complaints about the member of staff's performance or conduct arise, or in cases of gross misconduct or sufficiently serious cases, then a member of staff may be dismissed. The notice of dismissal will inform the member of staff of the reasons for the dismissal, when his/her employment will come to an end and will inform the member of staff of the right to appeal.
- Gross Misconduct
If on completion of these procedures, the School is satisfied that the member of staff's conduct has amounted to gross misconduct, then the member of staff will usually be dismissed without any notice or payment in lieu of notice.

Gross Misconduct

Gross misconduct is misconduct so serious that it would justify dismissal without previous warnings and without notice or payment in lieu of notice. The following list of serious offences is an example of conduct regarded by the School as gross misconduct and summary dismissal could follow any such offence. The list is not exhaustive:

- Fighting, physical assault or dangerous horseplay;
- Harassment, victimisation, bullying or discrimination;
- Willful failure to carry out a reasonable direct instruction given by the Headmaster, Bursar or immediate superior;
- Gross insubordination or the use of aggressive behavior or excessive bad language on School premises;



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- Lack of care or supervision or gross negligence that threatens the health or safety of a student or colleague or others;
- Theft, willful damage or gross negligence that leads to School property or the property of pupils or School employees or others being lost, damaged or destroyed;
- Unauthorized absence;
- Being under the influence of alcohol or drugs whilst on duty;
- Fraud or any offence committed against the School which would be a criminal offence or conviction of an offence which may affect the job performance;
- Offences relating to drug abuse, sexual conduct, abuse of children or conduct of a similar nature;
- Activities which bring the School into serious disrepute;
- Serious breaches of Data Protection Act 2018 or misuse or disclosure of confidential information.

Procedure in Case of Allegations of Abuse of a Child

The Local Authority Designated Officer (LADO) has overall responsibility for the management of allegations of abuse by adults who work with children.

If it is alleged that a staff member has:

- Behaved in a way that has harmed a child or may have harmed a child;
- Possibly committed a criminal offence against or related to a child;
- Behaved towards a child or children in a way that indicates he/she would pose a risk of harm to children

then the employer should contact the LADO within one day of the incident happening or the allegation being made. The employer must NOT commence an internal investigation before consulting with the LADO but should gather basic details such as was the employee actually working that day, did they potentially come into contact with the child(ren) and have any other potential witnesses come forward to corroborate or discount the alleged incident?

The LADO will consider the information and whether it meets the threshold for further consultation with Children's Services and the Police

Policy No 16 "Dealing with Allegations against School Personnel" is applicable.

Suspension

If it is suspected that an act of gross misconduct may have been committed, or in any other situation the School considers appropriate or necessary, then the member of staff may be suspended from work, on full pay, normally for no more than 5 working days (but longer if necessary) whilst the alleged offence is investigated and disciplinary procedures followed. Suspension is not a disciplinary penalty and the member of staff will not suffer any loss of salary while he/she is suspended.

Opportunity for Appeal

Should a member of staff feel that the disciplinary action taken is unjust or wrong then the member of staff has the right to appeal against the decision. Any such appeal must be requested in writing within two weeks of notification of the decision and should set out the grounds of the appeal. The appeal will be dealt with by a panel, none of whom will have previously been involved in the disciplinary case. The appeal hearing will normally be held



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within 14 working days of receipt of the appeal notification. An appropriate person, normally the Bursar, will be requested to organise and minute the appeal hearing. The member of staff will normally be given at least 5 working days' notice of the appeal hearing. The member of staff will normally be given at least 5 working days' notice of the appeal hearing and will be informed of the right to be accompanied by a companion, as set out above. At the appeal hearing the panel will reconsider the case and the disciplinary decision. Following the hearing, the member of staff will be informed of the panel's decision normally within 5 working days.

The outcome of any appeal will take one of three forms:

- The original decision may be upheld, in which case any dismissal or other disciplinary sanction will be confirmed;
- The original decision may be overruled, in which case any dismissal or other disciplinary sanction will be rescinded;
- The original decision may be substantially confirmed, but an alternative outcome substituted for that originally imposed. For example, a Final Written Warning may be reduced to a First Written Warning. Any disciplinary sanction cannot be increased.

This decision is final and there is no further right of internal appeal.

GRIEVANCE PROCEDURES

Grievances are concerns, problems or complaints that members of staff raise with the School. This procedure sets out how the School will deal with such matters. This is designed to encourage free communication between employees and the School to ensure questions and problems are resolved quickly and to the satisfaction of all concerned. Unless otherwise agreed, details of grievances will be kept confidential as far as possible.

In some circumstances the School may consider whether it is appropriate for the matter to be dealt with by a third party mediator. Mediation can only be undertaken if the School and the member of staff agree to that course of action. The School emphasises that mediation can only proceed if there is an agreement for that course of action to be taken. Any mediation procedure will be confidential to the parties with the expenses of an agreed mediator met by the School. Ongoing internal procedures will be postponed for the purpose of the mediation. This will mean that if mediation fails to achieve a satisfactory resolution between the parties then the postponed internal procedures will be resumed after the completion of the mediation.

Informal Resolution

Misunderstandings and employment disagreements are likely to occur in any organisation. In the first instance, it is recommended that members of staff should try to deal with such matters



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informally with the individual concerned or with the Head of Department or Line Manager. In many cases, matters can be resolved in this way.

Formal Resolution

If the matter cannot be dealt with informally, or the member of staff is dissatisfied with the result of the informal resolution, then the following procedure should be taken:

Step 1 – Raise a Formal Grievance

The member of staff should raise the matter formally by writing to the Line Manager without reasonable delay. The letter should set out the nature of the grievance.

Step 2 – Formal Meeting

Following receipt of the grievance letter, a formal meeting will be arranged normally within 5 working days to discuss the grievance. The member of staff has a statutory right to be accompanied by a fellow member of staff, a trade union representative (certified by their union as being competent to accompany a worker) or an official employed by the trade union. The meeting will be held to listen to the member of staff's grievance and how they think it should be resolved. At the meeting the companion is allowed to put, and sum up, the case and respond on behalf of the member of staff to any views expressed at the meeting, and confer with the staff member during the meeting. However, the companion does not have the right to ask questions on the member of staff's behalf or address the hearing if the member of staff does not want the companion to and the companion must not prevent the School from explaining its case. If necessary the meeting may need to be adjourned to allow any further investigation to take place. In such cases the meeting will normally be reconvened within 14 working days.

Step 3 – Decision on Appropriate Action

Following the meeting the School will decide what action, if any, to take. The member of staff will be informed of this decision, normally within 5 working days. If there should be a delay, then the member of staff will be informed and told when a response can be expected.

Opportunity for Appeal

Should a member of staff feel that the grievance has not been dealt with satisfactorily then there is a right to appeal against the decision and have an appeal hearing with a panel:

- Any such appeal must be requested in writing within two weeks of notification of the decision, with a statement setting out why the appeal is being made and what outcome the member of staff is seeking.
- Within 14 days, the School will prepare a statement giving the School's perspective on the ground of appeal.
- Both statements will be sent to the panel and copied to the member of staff concerned.
- The appeal will then be dealt with by a panel, none of whom will have previously been involved in the grievance case.



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- The appeal hearing will normally be held within 14 days of the circulation of the statements. An appropriate person will be requested to organise and minute the appeal hearing. The member of staff will be given at least 5 working days' notice of the appeal hearing and will be informed of the right to be accompanied as set out above.
- At the appeal hearing the panel will review the case and the decision taken.
- Following the hearing, the member of staff will be informed of the panel's decision normally within 5 working days. This decision is final and there is no further right of internal appeal.

OVERLAPPING DISCIPLINE AND GRIEVANCE CASES

If, during the course of a disciplinary process, a grievance is raised which relates to the disciplinary process or disciplinary action, or constitutes an appeal against a disciplinary decision, this will usually be dealt with concurrently in the context of the disciplinary proceedings or appeal. In some exceptional cases, the disciplinary process may be temporarily suspended in order to deal with a grievance.

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