



PROSPECT HOUSE
SCHOOL

DISCIPLINARY, CAPABILITY AND DISMISSAL PROCEDURES

SEPTEMBER 2023

DISCIPLINARY, CAPABILITY AND DISMISSAL PROCEDURES

In these procedures:

- references to “the school” are to the school by which the employee is employed
- the expression “procedure(s)” is used throughout to refer to the disciplinary, capability and dismissal procedures set out in this document.

1. Introduction

These are the disciplinary, capability and dismissal procedures referred to in the school’s standard terms and conditions of employment for teachers. They do not form part of the employee’s contract of employment and may be amended from time to time. The disciplinary procedures will apply to disciplinary situations and the capability procedures to problems with performance which may arise in relation to all employees (except those with less than two years’ continuous employment). They do not apply to:

- termination of employment by reason of redundancy; or
- resignation; or
- termination by mutual consent; or
- the non-renewal of a fixed term contract upon its expiry.

Employees in their first year of employment (which is their probationary period) who, for whatever reason, do not fulfil the school’s requirements will be given notice of termination in accordance with the terms and conditions of their employment and the full procedures set out in this document will not be applied to them. Disciplinary situations include misconduct and will also include poor performance if, following the school’s capability procedure, there is no improvement or the improvement has not been sustained. Performance issues will first be dealt with under the school’s capability procedure.

2. Purpose of these procedures

All employees are required to carry out their duties faithfully, competently and in the best interests of the school.

The purpose of these procedures is to:

- clarify the rights and responsibilities of the school and its employees;
- ensure fair treatment and a common approach to all employees;
- establish order in a disciplinary situation.

3. Rules and standards of conduct

The staff handbook contains details of the school’s rules and what is expected of employees by the school. It is available to employees both within the shared Google drive folder within the school’s information system. The school’s rules and expectations of employees are added to and amended from time to time to ensure that the school and its employees are reaching the very highest standards of educational practice and complying with statutory requirements. It is important that all employees read the staff handbook thoroughly and keep themselves up to date with any changes to which they will be alerted from time to time. Employees are encouraged to refer to the index of matters covered by the staff handbook regularly. Ignorance of matters which are contained in the staff handbook will not be regarded as sufficient explanation or justification for breach of any of the rules or the conduct expected of an employee or a failure to reach the standards expected of a member of staff.

4. Informal procedure

It is hoped that it will not be necessary to resort to the procedures other than very rarely and that any problems can be resolved promptly.

Minor issues will be dealt with by drawing the matter to the employee’s attention at a one-to-one meeting and by counselling of the employee as to what is required in future. It will not be appropriate for an employee to be accompanied at such a meeting in the first instance. A written note of the meeting will be kept on the employee’s file for reference purposes but after twelve months it will be removed if no further action is taken under these procedures within that time.

5. General principles

The principles of the procedure are as follows:

- The procedure may be implemented at any stage if the employee's conduct or performance warrants such action;
- No disciplinary action will be taken until a case has been sufficiently investigated to enable a clear view of the facts to emerge;
- The employee will be informed in writing of the nature of the complaint together with any supporting evidence;
- The employee will be given the opportunity to state his or her case at a meeting before any disciplinary action is taken;
- The employee has the right to be accompanied at the meeting (see further below);
- The employee will have the right of appeal against any disciplinary sanction imposed upon him or her.

6. Procedure

6.1 Right to be accompanied

An employee has the right, if he or she so wishes, to be accompanied at a disciplinary or capability meeting by a work colleague or appropriate trade union official. The employee's companion will be permitted to address the disciplinary hearing, respond on the employee's behalf to views expressed and confer (privately, if necessary) with the employee during the hearing. The companion may not answer questions on the employee's behalf. It is the employee's responsibility to ensure that his or her chosen companion is willing to act as such. If the companion works for the school he or she will be permitted to take paid time off to accompany the employee at a disciplinary hearing.

The school will reschedule a disciplinary hearing if the employee's chosen companion would not be available at the time proposed by the school for the hearing and the employee proposes an alternative time which is reasonable and which falls before the end of the period of five staff days beginning with the first staff day after the day proposed by the school.

6.2 Investigation

Where an investigation is necessary, the employee will usually be informed in writing of the nature of the complaint against him or her. The employee will be given the opportunity (normally at a meeting with the investigator(s)) to put forward his or her version of events. In cases of serious misconduct or where it is felt that a proper investigation cannot be carried out while the employee continues to perform his or her duties, the employee may be suspended on full pay while the case is investigated. If the employee is suspended, he or she will be required to remain away from the school premises and not to make contact with any of the school's employees (save for the purposes of arranging for a work colleague to be his or her companion) or pupils or parents save with the prior written consent of the school. Suspension in such circumstances carries no presumption of guilt and is not a disciplinary action.

The school will expect to receive full cooperation from all employees in any investigation it undertakes and this may include obtaining a written statement (on request) from any person with relevant knowledge of the matters under investigation.

The investigator(s) will decide who should be involved in any investigation and how it should be carried out.

Without first obtaining the written consent of the head or a governor, an employee under investigation may not approach parents or pupils of the school or colleagues for the purpose of obtaining evidence.

6.3 Authority to invoke the procedures and to take disciplinary action

The persons with authority to invoke the procedures and take disciplinary action are the governors, the head and the deputy head.

7. Disciplinary action

7.1 Introduction

Where the employee's performance is considered to be unsatisfactory or the employee commits an act of misconduct, he or she will be subject to such disciplinary action as may be appropriate according to the seriousness of the situation. The normal pattern will be:

- Stage 1: oral warning
- Stage 2: written warning
- Stage 3: final written warning
- Stage 4: dismissal with or without notice

There may however be occasions when a written warning, a final written warning or dismissal is immediately justified depending on the overall circumstances. Other disciplinary action which the school may consider will include:

- Suspension for a period without pay
- Demotion
- Loss of seniority
- Reduction of paid holiday entitlement in the event of excessive absenteeism
- Deduction of pay in the event of persistent tardiness
- Change of duties.

7.2 Stage 1 – oral warning

If the employee has committed a minor act of misconduct the normal action in the first instance will be a formal oral warning. The misconduct will be specified. Any further misconduct may lead to a written warning. The employee will be informed of the right of appeal. A note of the oral warning will be placed on the employee's personal file.

7.3 Stage 2 – written warning

If:

- The employee commits a further act of misconduct; or
- The employee commits an act of misconduct which is anything other than minor (whether or not an oral warning has been previously given),
- Following the capability procedure, the employee's performance does not improve as required

a written warning may be given.

If the warning is for misconduct the misconduct will be specified. If the warning is for unsatisfactory performance, the employee will be told what improvement is necessary, what steps should be taken to achieve that improvement and the time allowed. Any further misconduct or continued unsatisfactory performance may lead to a final written warning. The employee will be informed of the right of appeal. The written warning will be given in duplicate to the employee and the employee will be required to sign and return one copy of the written warning. A copy of the written warning will be placed on the employee's personal file.

7.4 Stage 3 – final written warning

If:

- Following the capability procedure the employee's performance does not improve as required or any improvement is not sustained or the employee is incapable or unwilling to improve; or
- The employee's performance has been sufficiently poor; or
- The employee commits a further act of misconduct; or
- The employee commits a serious act of misconduct (whether or not an oral or written warning has been previously given),

a final written warning may be given.

If the warning is for misconduct the misconduct will be specified. If the warning is for unsatisfactory performance, the employee will be told what improvement is necessary, what steps should be taken to achieve that improvement and the time allowed. Any further misconduct or continued unsatisfactory performance may lead to dismissal. The employee will be informed of the right of appeal.

The final written warning will be given in duplicate to the employee and the employee will be required to sign and return one copy of the final written warning. A copy of the final written warning will be placed on the employee's personal file.

7.5 Stage 4 – dismissal

If:

- The employee's performance does not improve as required; or
- The employee commits a further act of misconduct; or
- The employee commits an act of sufficiently serious or gross misconduct (whether or not an oral, written or final written warning has been previously given),

the employee may be dismissed.

The employee will be issued with a letter terminating his or her employment which will also inform the employee of the reasons for dismissal and the effective date. The employee will be informed of the right of appeal.

In the event of gross misconduct referred to in paragraph 1.2 below, the termination of employment may be without notice or compensation in lieu of notice and without making any further payment beyond the amount of any remuneration actually accrued due to the date of such termination.

7.6 Duration of warnings

Warnings will be effective for the following periods (unless a different period is specified when the warning is given).

Oral warning:	12 months
Written warning:	12 months
Final written warning (without gross misconduct):	2 years
Final written warning where there is gross misconduct: but summary dismissal has not taken place:	5 years

8. Gross misconduct

In the event of gross misconduct the school may terminate employment without notice or compensation in lieu of notice and without making any further payment beyond the amount of any remuneration actually accrued due to the date of such termination. Listed below are examples of gross misconduct (although the list is not exhaustive):

- Being convicted of any criminal offence other than an offence which does not in the opinion of the school affect the employee's position
- Theft, fraud or any form of dishonesty (including action calculated to assist others in such activity) and unauthorised possession of any property belonging to the School or any employee or pupil
- Falsification of expense claims or self-certification forms or any other data or information required to be given to the school
- Giving deliberately misleading or incorrect information prior to employment by or on joining the school or upon later obtaining any new qualification
- Breaching the employee's obligation of confidentiality
- Making any comment or statement to the press or other media outlets without the express authority of the head or a governor
- Using any social or professional networking website or any other media to publish any matter disparaging the school
- Lack of competence or judgement such as might seriously prejudice the school's reputation and interests
- Refusal to carry out a reasonable request given by a person authorised to give such instructions or lack of timeliness in the proper and complete execution of such a request
- Failure to cooperate with other employees of the school or otherwise disrupting the proper conduct of the school's business
- Conduct or behaviour either during or outside normal hours of work such that the interests and reputation of the school, its governors, its employees or any of its pupils or pupils' parents might be jeopardised or adversely affected including (but not limited to) being charged with a criminal offence
- Any serious case of misuse of the school's technology and telecommunications systems
- Alcohol, controlled drug or substance abuse whether during or outside working hours (and any test showing alcohol in excess of the limit allowed for driving a motor car or showing any trace of controlled drugs or solvents used for abuse will lead to immediate disciplinary proceedings and the likelihood of suspension of the employee while the matter is being investigated is high)
- Serious infringement of health and safety rules such as to put the employee or others at risk
- Committing any serious or repeated or continual breach of the terms and conditions of employment or the school's rules and procedures or failing to act materially in accordance with the school's policies
- Unlawful discrimination, harassment or bullying
- Serious negligence which causes unacceptable loss, damage or injury
- Violent, dangerous or intimidatory conduct
- Accessing without authority personal data of other employees or children
- Accessing without authority any material or data confidential to the school,
- Giving deliberately false, misleading or incorrect information or making deliberately false or misleading representations with regard to the performance of the employee's duties or the performance of pupils
- Failure forthwith within half a working day to hand in to the school's office any written note, email or letter (or if a communication is received orally to bring an account to the attention of the head) or any other material communication received from (but not limited to) a child's parent or guardian or a court official, medical practitioner or educational psychologist
- Entering into unusual communications with a parent or parents where such communication is unknown to or unauthorised by the head
- Any other gross neglect of duty.

9. Appeal

If the employee wishes to appeal against a disciplinary penalty, in the case of a disciplinary penalty at any of Stages 1-3 inclusive the employee should lodge written notice of intention to appeal (and the grounds of the appeal) with the head and in the case of a disciplinary penalty in Stage 4 with one of the governors in any case no later than five staff days after the imposition of the disciplinary penalty concerned.

The appeal will be heard by the head of one the other schools of Dukes Education or one of the governors or an appropriate person nominated by the chair of the governors (who may be the chairman of the governors himself). The appeal will normally be heard within five staff days of receipt of the grounds of appeal. The decision of the person hearing the appeal will be final. The employee will be informed of the decision in writing, which will either:

- a) Confirm the decision against which the appeal was brought and uphold the disciplinary penalty; or
- b) Confirm the decision against which the appeal was brought but impose another disciplinary penalty; or
- c) Uphold the appeal, thereby rescinding the disciplinary penalty against which the employee is appealing.

In any event, details of the disciplinary procedure (including, of course, the appeal) will be retained on the employee's personal file.

10. Capability Procedure

10.1 Introduction

Performance issues will be dealt with in the first instance in accordance with these procedures but if following stages 2 and 3 of the capability procedure there is no improvement or any improvement has not been sustained or the employee appears incapable or unwilling to improve, the disciplinary procedure will be invoked. It is likely that the stage at which the disciplinary procedure will then be invoked is a disciplinary meeting leading to the giving of a final written warning.

10.2 Standards Required

The standards required of employees at the school are set out in their job description, in the staff handbook and in policies promulgated by the school from time to time as set out in the staff handbook and in other notes and memoranda communicated to employees from time to time.

Employees should ensure that they are familiar with what is required of them and in case of any doubt should raise the issue with the head or deputy head of the school who will be supportive and ready to offer help and guidance. Further training may be offered. Employees should note that ignorance of what is required will not be regarded as sufficient explanation or justification for any failure to reach the standards expected of them. In particular employees should ensure that they are familiar with the policies laid down by the school, and ensure that they are up to date with what is required of them.

10.3

(A) Stage 1 – Informal Procedure

Where there are concerns about an employee's performance of his or her duties, an informal meeting will be held with the employee as referred to at paragraph 4.

(B) Stage 2 – Investigation

If performance issues are not resolved by an informal procedure, the school will cause an investigation to be undertaken by a person within the school of sufficient seniority and knowledge and experience of teaching practice and professional standards to be appointed by the head. The investigator will investigate the nature of the alleged shortcomings and any underlying reasons for them. The investigator may, if the investigator considers that it would be helpful, obtain from a person qualified to carry out inspections in schools or expert in the subject taught by the employee a report on the competence of the employee. A copy of any such report will be provided to the employee. Following the investigation, the investigator will discuss the findings of the investigation with the employee at a meeting. The investigator will also consider with the employee at the meeting whether any of the following will help the employee to meet the required standards:

- Counselling or medical advice
- Mentoring
- A review of commitments and responsibilities
- The availability of additional training (whether or not at the school's expense)
- The obtaining of a teaching or other appropriate qualification (whether or not at the school's expense)
- The opportunity to see good practice in other schools.



(C) Stage 3 – Improvement Plan

Following the meeting, the investigator will advise the employee in writing of the following:

- What action the employee must take to improve to the required standard
- What the required standard is and what the indicators of reaching the standard are
- Over what period of time the employee must seek to improve (“the first review period”)

The arrangements for review of the employee’s performance at regular intervals during the first review period, which may include observations of lessons, checking of marking of pupils’ books, checking of lessons plans, checking the setting of homework and such other methods as may be appropriate.

The employee will be required to agree in writing to the plan for improvement and cooperate fully in what is required of him or her. In this connection, recent years have seen a step change in the use of technology in the classroom, with computers, electronic whiteboards and the internet now being tools upon which a teacher relies routinely. Each employee should note that teaching is a demanding profession at the forefront of technical innovation in the delivery of the curriculum: it is the duty of each employee to make every reasonable effort to attend the school’s own or contracted training and to become familiar with and confident in using new technology and software relevant to his or her professional role within the school. If despite training an employee were to continue to seek to avoid using new technology required by the school, this would be determined as poor performance undoubtedly requiring an improvement plan and necessary advances by the employee in his or her capability.

(D) Stage 4 – Disciplinary Procedure

In the event that the employee does not agree in writing to the plan for improvement and/or does not co-operate fully with the improvement plan, the matter will be referred by the investigator to the head for consideration of the invoking of the disciplinary procedure. It is likely that the disciplinary procedure would be invoked at Stage 3 – the giving of a final written warning.

If the employee has not improved to the required standard by the end of the first review period or improvement has not been maintained by the final review meeting, the investigator will refer the matter to the head for consideration of the invoking of the disciplinary procedure. It is likely that the disciplinary procedure will be invoked at Stage 2 -the giving of a written warning.

11. Dismissal procedure – dismissals on other grounds

11.1 General principles

This procedure will be applied in relation to dismissals where the school’s disciplinary and capability procedures do not apply.

11.2 Dismissal

Prior to any dismissal to which this procedure applies, the school will:

- a) set out in a written statement the reasons why the school is considering dismissal and provide the employee with any relevant documents;
- b) give the employee reasonable time to consider his or her response to that written statement; and
- c) Invite the employee to attend a meeting where he or she will have the opportunity to discuss the written statement.

If as a result of the meeting it is decided to dismiss the employee (whether on notice or without notice), the employee will be informed in writing of the reason for the dismissal and the effective date of termination. The employee will also in that case be notified in writing of his or her right to appeal against the decision.

12. Appeal against dismissal

- a) Any appeal must normally be made within five staff days of the date on which the employee was notified of the decision. The notice of appeal must give the grounds for the appeal.
- b) The appeal will be heard by the head of one the other schools of Dukes Education or one of the governors or an appropriate person nominated by the chairman of the governors (who may be the chairman of the governors himself)
- c) The decision at the conclusion of the appeal meeting will be notified to the employee in person and confirmed in writing.