

EAST AYRSHIRE COUNCIL

JOINT NEGOTIATING COMMITTEE FOR TEACHERS – 4 DECEMBER 2003

JNCT CIRCULAR 8 – ANNEX TO SNCT 18

DISCIPLINARY FRAMEWORK FOR TEACHERS

1. Introduction

- 1.1 Where a teacher's performance or conduct is such as to give rise to serious concern, disciplinary action may be taken by East Ayrshire Council in accordance with its locally agreed disciplinary procedures. As the aim of the disciplinary process is to seek improvement in performance or conduct, assistance to enable improvement to occur is essential.

2. Principles

- 2.1 Disciplinary rules and procedures are necessary for promoting orderly employment relations as well as fairness and consistency in the treatment of individuals. They enable organisations to influence the conduct of workers and deal with problems of poor performance and attendance thereby assisting organisations to operate effectively. Rules set standards of conduct and performance at work; procedures help ensure that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them.
- 2.2 All teachers should be made aware of the standards of conduct and performance expected of them. In particular teachers should be made aware of what constitutes gross misconduct for example sexual offences, assault or dishonesty. All problems involving minor misconduct and poor performance should be dealt with, at least in the early stages, through the use of informal advice, guidance and counselling. It is essential that all problems of this nature are fully discussed and that support is provided with the objective of encouraging and helping teachers to improve. It is essential also that teachers are aware that support and counselling are available at all times even where it has been necessary to take disciplinary action under the procedures.
- 2.3 Disciplinary procedures must comply with Advisory Conciliation and Arbitration Services (ACAS) Code of Practice (No 1) "Disciplinary and Grievance Procedures". Where the concern relates to the performance of an individual's teaching the procedures must comply with the General Teaching Council Scotland (GTCS) Code of Practice on Competence. Where the concern relates to the performance of an administrative or managerial function of a promoted post the procedures must comply with similar principles and processes as contained in the current GTCS Code of

Practice of Teacher Competence (copy attached as an appendix to this framework).

2.4 If formal disciplinary process is considered necessary, the agreed procedure will comply with the following principles.

- (a) The initiation of disciplinary actions/sanctions should be accompanied by appropriate support mechanisms
- (b) No disciplinary action will be taken until the matter has been fully investigated and any decision, thereafter, to impose a disciplinary sanction must not be taken by the person who conducted the initial investigation. In addition any appeal should not be heard by the same person who issued the disciplinary sanction.
- (c) Apart from gross misconduct, no teacher shall be dismissed for the first breach of discipline.
- (d) There shall be a right of appeal against all disciplinary sanctions.
- (e) No disciplinary action will be initiated against a trade union representative until the matter has been discussed with a full-time official of the union concerned.
- (f) A teacher shall have the right to be represented at all stages of the disciplinary process, including investigatory meetings.

3. **The Investigatory Stage**

- 3.1 In situations where either a complaint has been received or where a teacher's conduct or performance has given cause for concern, the employer should appoint an investigating officer. The investigating officer should, if possible, interview all of the parties involved (including the teacher in question) and, if appropriate, prepare signed and dated statements from all of these witnesses. The investigating officer should then produce a report which will enable another representative of the employer to decide whether the matter should be further progressed through the formal disciplinary process. It is preferable that this decision is not taken by the investigating officer and the investigating officer must not have any function at a future disciplinary hearing other than presenting the facts of the investigation to that hearing. The teacher involved must be advised at an early stage that a complaint or concern has been lodged, of the nature of any complaint, of the process which will be followed and of the right to be either accompanied by their union representative or other suitable person of their choosing.
- 3.2 The investigatory process should be conducted as speedily as possible consistent with the principles of fairness and natural justice and to ensure that, in most cases, the investigation takes no longer than, e.g. 15 working days.

- 3.3 All teachers should be entitled to be represented at all hearings and meetings as part of the disciplinary process including investigatory hearings. In addition, in most cases, the teacher whose conduct or performance has given rise to the investigation will be interviewed and must be given a clear indication of the nature and purpose of the investigation and the procedures that will be followed at the interview well in advance of any meeting with the investigating officer
- 3.4 Once the investigation is completed the teacher should be advised of the outcome of the investigation. Where following an investigation no further action is to be taken in terms of the disciplinary procedures then all references to the investigation should be removed from the teacher's personal file and destroyed.
- 3.5 Precautionary Suspension

The Director of Educational and Social Services (or his nominee) has the power to apply precautionary suspension to a teacher. Precautionary suspension should only be used in the most serious cases of misconduct, or performance, where the teachers presence at the normal place of work would prejudice the investigation or where a teacher is considered to be creating a situation whereby he or she is either a danger to either him/herself or other employees. If a head teacher/head of establishment encounters the situation whereby a teacher is a danger to themselves or others, is involved in serious misconduct or where the teachers presence at the workplace would prejudice the investigation they must refer this immediately to the Director of Educational and Social Services (or his nominee). If the decision is to suspend, this entails the teacher being sent from the workplace with full pay continuing and reporting to the Director of Educational and Social Services (or nominated officer) when required but in any event not later than the next working day. The teacher should be advised of the possibility of hearing arrangements, be given reasonable time to prepare his/her case and be given copies of any relevant reports, documentation etc. – (see paragraph 3.1 above).

All precautionary suspension should be reviewed regularly and consideration should be given to a temporary transfer pending the conclusion of the investigation and any subsequent disciplinary process if it is appropriate.

4. **The Disciplinary Hearing**

- 4.1 A decision to proceed with a disciplinary hearing should be based on the evidence secured during the investigatory stage but should not be taken by the person who conducted the investigation.

- 4.2 Once a decision has been taken to proceed to a disciplinary hearing, the teacher should be informed, in writing, about:

details of the allegations
the date for the hearing,
the procedures to be followed at the hearing
any rights under the disciplinary procedure, and

provided with copies of the evidence that will be used during the disciplinary hearing including any written evidence and the names of any witnesses that will be called. The teacher should also provide the employer with similar evidence that will be led in his or her defence within a reasonable time before any hearing.

- 4.3 The teacher (and/or representative) must be given every opportunity to present his/her case, to provide additional documents for the hearing, to call and question witnesses and to sum up his/her case.
- 4.4 At the conclusion of the hearing, the disciplinary officer (see 5.3 and 5.4 below) shall either announce his/her decision (to be confirmed in writing thereafter) or indicate that the decision will be communicated in writing within the agreed time limits (see 7.1 below).
- 4.5 If it is decided that no disciplinary action is to be taken, all references to the case shall be removed from the teacher's personal file and destroyed.

4.6 Consideration

After establishing the facts and before deciding whether disciplinary action is appropriate and the form any such action should take, consideration shall be given to the following:-

- (a) the teacher's disciplinary record.
- (b) the teacher's awareness of the standard of behaviour and performance and conduct.
- (c) any mitigating circumstances, e.g. health or domestic problems.
- (d) the teacher's position, length of service, general performance and conduct.
- (e) the disciplinary action taken in similar cases in the past.
- (f) whether the proposed action is reasonable having taken account of all the circumstances.

4.7 Format of Disciplinary Hearing

The appropriate nominated officer shall convene and chair the disciplinary hearing at which the allegations can be examined. The nominated officer should be accompanied by an appropriate colleague who will act as a witness to the proceedings, taking notes as appropriate. If appropriate, the officer with designated responsibility for teachers' personnel matters may play that role or also be in attendance. A record of the meeting shall be made. The procedure to be adopted shall be as follows:-

- a) the investigatory officer will be present and will state the case giving rise to the allegations supporting this with witnesses if possible.
- b) the teacher and/or his/her representative will have the opportunity to ask questions of the investigatory officer and the witness (es).
- c) the Chairperson will also have the opportunity to ask questions of the investigatory officer and the witness (es).
- d) the investigatory officer will have the opportunity to ask further questions of the witness (es) if necessary to clarify points arising from questions from the teacher and /or his/her representative and the Chairperson.
- e) the teacher and/or his/her representative will respond to the allegations and call witnesses as appropriate.
- f) the investigatory officer will have the opportunity to ask questions of the teacher and/or his/her representative and the witness(es).
- g) the Chairperson will also have the opportunity to ask questions of the teacher and/or his/her representative.
- h) the teacher and/or his/her representative will have the opportunity to ask further questions of the witness (es) if necessary to clarify points arising from questions from the investigatory officer and the Chairperson.
- i) the investigatory officer followed by the teacher will sum up their case if they wish introducing no new material.
- j) the investigatory officer, the teacher and his/her representative will leave the hearing.
- k) the Chairperson should come to a clear view of the facts, bearing in mind all the available information before any decision is taken about disciplinary action.
- l) when the Chairperson has reached a decision the investigatory officer and the teacher's and his/her representative should return to

the hearing to be informed of the outcome which will be confirmed in writing.

- m) if more time is needed for the Chairperson to consider the matter or further investigations are necessary, the hearing should be adjourned and resumed as soon as is practically possible.
- n) in those situations where a teacher does not, or is unable, to attend a scheduled disciplinary hearing, the disciplinary officer will consider the relevant circumstances and determine whether it is reasonable to proceed with the disciplinary hearing in the teachers absence, with or without the teachers representative acting on his/her behalf. If a teacher is unable to attend a disciplinary hearing this will postponed at least once.

5. **Disciplinary Sanctions**

5.1 All disciplinary sanctions shall be recorded in writing and shall remain in the teacher's personal file during the period of currency of the warning (see 7.2 below). In being advised of the disciplinary sanction which is being applied, the teacher should be advised also of the improvements which will be expected of them and the availability of appropriate support to allow them to achieve and maintain the improvement.

5.2 The following disciplinary sanctions shall be available.

- (a) Formal Oral Warning.- For minor breaches of discipline, misconduct or continued poor performance, the warning must include reference to the fact that any further breach may render the teacher open to further disciplinary action.
- (b) Written Warning.- For more serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a formal oral warning, the teacher must be informed that a further breach may result in further disciplinary action being taken.
- (c) Final Written Warning.- For serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a written warning. The teacher must be warned that any further breach may result in dismissal.
- (d) Dismissal.-
 - (i) For serious repeated misconduct or poor performance during the currency of a final written warning or for gross misconduct for which no previous warning exists. The teacher must be informed in writing of the effective date of dismissal and whether the dismissal is summary or with notice.

- (ii) The following punitive sanctions are available in conjunction with a final written warning as an alternative to dismissal: demotion, transfer or suspension of an increment. Where a teacher does not agree to the application of the punitive sanction then the council will have no alternative but to dismiss the teacher.

- 5.3 The Headteacher will have overall responsibility for the management of teachers within their school and will have the power to issue oral and written warnings.
- 5.4 The Director of Educational and Social Services will have the power to apply all forms of disciplinary sanction described in this section and to dismiss a teacher under the agreed disciplinary procedures of the authority.
- 5.5 In cases involving performance issues the GTCS Code of Practice on Competence should be followed at all times. Before taking action for dismissal, the Director of Educational and Social Services will ensure that the Code has been followed.

6. **Appeals**

- 6.1 Teachers will have the right of appeal against all disciplinary sanctions imposed by the authority. The table below outlines the appropriate level at which appeals should be heard.

Nature of Warning	Issued By	Appeal Heard By
Oral warning	Headteacher or nominee (ie Depute or Headteacher from another school)	Director of Educational and Social Services or nominee (ie Head of Service)
Written warning	Headteacher or nominee (ie Depute or Headteacher from another school)	Director of Educational and Social Services or nominee (ie Head of Service)
Final written warning	Director of Educational and Social Services or nominee (ie Head of Service)	Education Appeals Sub-Committee

- 6.2 Appeals against dismissal will be to the Education Appeals sub-committee of the Council set up for that purpose.

7. **Time Limits**

- 7.1 The time limits set out below do not prejudice a teacher's rights in cases of dismissal to submit a claim to an Employment Tribunal.

Aspects of Disciplinary Procedure	Suggested Time Limit (Working Days)
Precautionary suspension	5 days until each review
Notification of decision to proceed to disciplinary hearing	10 days notice (minimum) but could be shorter by agreement in individual cases
Notification of decision of disciplinary hearing	5 days (maximum)
Time limit to lodge appeal	10 days (maximum) from date of notification of decision of disciplinary hearing
Date of notification of appeal hearing	No later than 20 days from receipt of notice of appeal
Notification of outcome of appeal hearing	5 days (maximum)

7.2 Warnings will be disregarded after an appropriate length of time.

Level of Warning	Time Limit (Months)
Verbal warning	6 months
Written warning	6 months
Final written warning*	12 months

*A final written warning may be extended beyond 12 months should a further minor breach of discipline occur within the duration of the initial warning limit. The extension will be for a maximum period of 6 months.

7.3 If an appeal is successful and the original disciplinary sanction withdrawn, any written reference shall be removed from the teacher's personal file and the teacher notified accordingly.