



DATED:

06/08/2018

PREMIER EDUCATION LTD

DISCIPLINARY AND CAPABILITY PROCEDURE

REVIEW DATE AUGUST 2019

1. ABOUT THIS PROCEDURE

- 1.1 The aims of this Disciplinary and Capability Procedure are to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and performance and to encourage improvement where necessary. The standards of conduct expected of all employees are contained in the Staff Handbook.
- 1.2 It is our policy to ensure that any disciplinary or capability matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.
- 1.3 The procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.
- 1.4 This procedure is used to deal with misconduct and poor performance. It does not apply to cases involving genuine sickness absence or proposed redundancies. In those cases reference should be made to the appropriate policy or procedure in the Staff Handbook.
- 1.5 This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.
- 1.6 Our Disciplinary Procedure is set out at Paragraphs 3-11. Our Capability Procedure is set out at Paragraphs 12-18. The Appeal Procedure for both is set out at Paragraph 19.

2. CONFIDENTIALITY

- 2.1 Our aim is to deal with disciplinary and performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a performance or disciplinary matter.
- 2.2 You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

- 2.3 You will normally be told the names of any witnesses whose evidence is relevant to proceedings, unless we believe that a witness's identity should remain confidential.

DISCIPLINARY PROCEDURE

3. MINOR CONDUCT ISSUES

- 3.1 Minor conduct issues can often be resolved informally between you and your line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future disciplinary hearings. In some cases an informal verbal warning may be given, which will not form part of your disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 3.2 If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with a director as soon as possible.

4. INVESTIGATIONS

- 4.1 The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.
- 4.2 You do not normally have the right to bring a companion to an investigative interview. However, we may allow you to bring a companion if it helps you to overcome any disability, or any difficulty in understanding English.
- 4.3 You must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.

5. CRIMINAL ALLEGATIONS

- 5.1 Where your conduct is the subject of a criminal investigation, charge or conviction we will investigate the facts before deciding whether to take formal disciplinary action.
- 5.2 We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the available evidence.
- 5.3 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to your employment.

6. SUSPENSION

- 6.1 In some circumstances we may need to suspend you from work. The suspension will be for no longer than is necessary to investigate the allegations and we will confirm the arrangements to you in writing. While suspended you should not visit our premises or contact any of our clients, customers, suppliers, contractors or staff, unless you have been authorised to do so by a Director or senior Manager.
- 6.2 Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. Pay and benefits during suspension will be calculated as set out in your contract.

7. NOTIFICATION OF A HEARING

- 7.1 Following any investigation, if we consider there are grounds for disciplinary action, you will be required to attend a disciplinary hearing. We will inform you in writing of the allegations against you, the basis for those allegations, and what the likely range of consequences will be if we decide after the hearing that the allegations are true. We will also include the following where appropriate:
- (a) a summary of relevant information gathered during the investigation;
 - (b) a copy of any relevant documents which will be used at the disciplinary hearing; and
 - (c) a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

7.2 We will give you written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time usually two to five days, to prepare your case based on the information we have given you.

8. THE RIGHT TO BE ACCOMPANIED

8.1 You may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. You must tell a *Director* who your chosen companion is, in good time before the hearing.

8.2 A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

8.3 If your companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards, we may ask you to choose someone else.

8.4 We may, at our discretion, allow you to bring a companion who is not a colleague or union representative if this will help overcome a disability, or if you have difficulty understanding English.

9. PROCEDURE AT DISCIPLINARY HEARINGS

9.1 If you or your companion cannot attend the hearing you should inform us immediately and we will arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason, or are persistently unable to do so (for example for health reasons), we may have to take a decision based on the available evidence.

9.2 The hearing will be chaired by an appropriate manager or director. A member of the Human Resources Department or another independent note taker will also be present. You may bring a companion with you to the disciplinary hearing (see *paragraph 8*).

9.3 At the disciplinary hearing we will go through the allegations against you and the evidence that has been gathered. You will be able to respond and present any evidence of your own. Your companion may make representations to us and ask questions, but should not answer questions on your behalf. You may confer privately with your companion at any time during the hearing.

- 9.4 You may ask relevant witnesses to appear at the hearing, provided you give us sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness.
- 9.5 We may adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 9.6 We will inform you in writing of our decision and our reasons for it, usually within one week of the disciplinary hearing. Where possible we will also explain this information to you in person.
- 9.7 If you feel that disciplinary action taken against you is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to a Director within one week of the date on which you were informed of the decision. The Appeal Procedure is set out below in Paragraph 19.

10. DISCIPLINARY PENALTIES

- 10.1 The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. We aim to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.
- 10.2 You will not normally be dismissed for a first act of misconduct, unless we decide it amounts to gross misconduct or you have not yet completed your probationary period.
- 10.3 **Stage 1 - First written warning** It will usually be appropriate for a first act of misconduct where there are no other active written warnings on your disciplinary record.
- 10.4 **Stage 2 - Final written warning** It will usually be appropriate for:
- (a) misconduct where there is already an active written warning on your record; or
 - (b) misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.
- 10.5 **Stage 3 - Dismissal.** It will usually only be appropriate for:

- (a) any misconduct during your probationary period;
- (b) further misconduct where there is an active final written warning on your record; or
- (c) any gross misconduct regardless of whether there are active warnings on your record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are set out in our Disciplinary Rules.

10.6 **Alternative to dismissal.** In some cases we may at our discretion consider an alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

- (a) Demotion.
- (b) Transfer to another department or job.
- (c) A period of suspension without pay.
- (d) Loss of seniority.
- (e) Reduction in pay or commission.
- (f) Loss of future pay increment, commission or bonus.
- (g) Loss of overtime.

11. THE EFFECT OF A WARNING

11.1 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.

11.2 A first written warning will usually remain active for six months and a final written warning will usually remain active for 12 months. In exceptional cases verging on gross misconduct a final written warning may state that it will remain active indefinitely. Your conduct may be reviewed at the end of a warning's active period and if it has not improved sufficiently we may decide to extend the active period.

11.3 After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

CAPABILITY PROCEDURE

12. INFORMAL DISCUSSIONS

12.1 Informal discussions may help:

- (a) clarify the required standards;
- (b) identify areas of concern;
- (c) establish the likely causes of poor performance and identify any training needs; and/or
- (d) set targets for improvement and a time-scale for review.

12.2 If we have concerns about your performance, we will undertake an assessment to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve reviewing your personnel file including any appraisal records, gathering any relevant documents, monitoring your work and, if appropriate, interviewing you and/or other individuals confidentially regarding your work.

13. DISABILITIES

13.1 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to your working arrangements, including changing your duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases.

13.2 If you wish to discuss this or inform us of any medical condition you consider relevant, you should contact your line manager or a Director.

14. NOTIFICATION OF A CAPABILITY HEARING

14.1 If we consider that there are grounds for taking formal action over alleged poor performance, you will be required to attend a capability hearing. We will notify you in writing of our concerns over your performance, the reasons for those concerns, and the likely outcome if we decide after the hearing that your performance has been unsatisfactory. We will also include the following where appropriate:

- (a) A summary of relevant information gathered as part of any investigation.
- (b) A copy of any relevant documents which will be used at the capability hearing.

- (c) A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

14.2 We will give you written notice of the date, time and place of the capability hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time usually between two to seven days, to prepare your case based on the information we have given you.

15. PROCEDURE AT CAPABILITY HEARINGS

15.1 The aims of a capability hearing will usually include:

- (a) Setting out the required standards that we believe you may have failed to meet, and going through any relevant evidence that we have gathered.
- (b) Allowing you to ask questions, present evidence, call witnesses, respond to evidence and make representations.
- (c) Establishing the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement.
- (d) Identifying whether there are further measures, such as additional training or supervision, which may improve performance.
- (e) Where appropriate, discussing targets for improvement and a time-scale for review.
- (f) If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.

15.2 A hearing may be adjourned if we need to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

16. STAGE 1 HEARING: [FIRST WRITTEN WARNING OR IMPROVEMENT NOTE]

16.1 Following a Stage 1 capability hearing, if we decide that your performance is unsatisfactory, we will give you [a first written warning **OR** an improvement note], setting out:

- (a) The areas in which you have not met the required performance standards.

- (b) Targets for improvement.
 - (c) Any measures, such as additional training or supervision, which will be taken with a view to improving performance.
 - (d) A period for review.
 - (e) The consequences of failing to improve within the review period, or of further unsatisfactory performance.
- 16.2 The [warning **OR** improvement note] will normally remain active for six months [from the end of the review period]. After the active period the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of any future capability proceedings.
- 16.3 Your performance will be monitored during the review period and we will write to inform you of the outcome:
- (a) if your line manager is satisfied with your performance, no further action will be taken;
 - (b) if your line manager is not satisfied, the matter may be progressed to a Stage 2 capability hearing; or
 - (c) if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

17. STAGE 2 HEARING: FINAL WRITTEN WARNING

- 17.1 If your performance does not improve within the review period set out in [a first written warning **OR** an improvement note], or if there is further evidence of poor performance while your [first written warning **OR** improvement note] is still active, we may decide to hold a Stage 2 capability hearing. We will send you written notification as set out in paragraph 7.
- 17.2 Following a Stage 2 capability hearing, if we decide that your performance is unsatisfactory, we will give you a final written warning, setting out:
- (a) the areas in which you have not met the required performance standards;
 - (b) targets for improvement;
 - (c) any measures, such as additional training or supervision, which will be taken with a view to improving performance;
 - (d) a period for review; and
 - (e) the consequences of failing to improve within the review period, or of further unsatisfactory performance.

- 17.3 A final written warning will normally remain active for [six **OR** 12] months [from the end of the review period]. After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future capability proceedings.
- 17.4 Your performance will be monitored during the review period and we will write to inform you of the outcome:
- (a) if your line manager is satisfied with your performance, no further action will be taken;
 - (b) if your line manager is not satisfied, the matter may be progressed to a Stage 3 capability hearing; or
 - (c) if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

18. STAGE 3 HEARING: DISMISSAL OR REDEPLOYMENT

- 18.1 We may decide to hold a Stage 3 capability hearing if we have reason to believe:
- (a) your performance has not improved sufficiently within the review period set out in a final written warning;
 - (b) your performance is unsatisfactory while a final written warning is still active; or
 - (c) your performance has been grossly negligent such as to warrant dismissal without the need for a final written warning.

We will send you written notification of the hearing as set out in paragraph 7.

- 18.2 Following the hearing, if we find that your performance is unsatisfactory, we may consider a range of options including:
- (a) Dismissing you.
 - (b) Redeploying you into another suitable job at the same or [(if your contract permits)] a lower grade.
 - (c) Extending an active final written warning and setting a further review period (in exceptional cases where we believe a substantial improvement is likely within the review period).
 - (d) Giving a final written warning (where no final written warning is currently active).

- 18.3 Dismissal will normally be with full notice or payment in lieu of notice, unless your performance has been so negligent as to amount to gross misconduct, in which case we may dismiss you without notice or any pay in lieu.
- 18.4 Following the appeal hearing we may:
- (a) confirm the original decision;
 - (b) revoke the original decision; or
 - (c) substitute a different penalty.

19. APPEALS

- 19.1 If you feel that disciplinary action taken against you is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to *a Director* within one week of the date on which you were informed of the decision.
- 19.2 If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.
- 19.3 If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing, and you or your companion may comment on any new evidence arising during the appeal before any decision is taken.
- 19.4 We will give you written notice of the date, time and place of the appeal hearing. This will normally be two to five days after you receive the written notice.
- 19.5 The appeal hearing will be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. In rare cases where significant new evidence is available it may be a complete re-hearing of the matter. This will be at our sole discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.
- 19.6 Where possible, the appeal hearing will be conducted impartially by a more senior manager or director who has not been previously involved in the case. A member of the Human Resources Department or suitable alternative will

also usually be present. You may bring a companion with you to the appeal hearing (see Paragraph 8).

- 19.7 We may adjourn the appeal hearing if we need to carry out any further investigations in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 19.8 Following the appeal hearing we may:
- (a) confirm the original decision;
 - (b) revoke the original decision; or
 - (c) substitute a different penalty.
- 19.9 We will inform you in writing of our final decision as soon as possible, usually within one week of the appeal hearing. Where possible we will also explain this to you in person. There will be no further right of appeal.