

Felixstowe Nursery School

Safeguarding and Welfare Requirement: Suitable people

Providers must ensure that people looking after children are suitable to fulfil the requirements

Disciplinary Procedures

Policy Statement Introduction

Our setting ensures all staff are suitable and appropriate for their roles. If at any time we have reason to believe that they are not behaving in a suitable or appropriate manner for their roles the setting will not hesitate to implement our staff disciplinary policy.

Categories of gross misconduct

Gross misconduct is a category which can include:

- Serious failure to comply with policies, procedures and legal requirements that safeguard children.
- A serious breach of the confidentiality policy (subject to the Public Interest (Disclosure Act 1998).
- Indecent or immoral behaviour
- Theft, fraud and deliberate falsification of records, expenses, qualifications and other offences of dishonesty.
- Intoxication, either caused by alcohol or drugs, dangerous behavior, fighting or physical assault.
- Infringement of health and safety rules, including smoking on the premises
- Serious bullying, discrimination or harassment of employees, customers, clients or suppliers.
- Deliberate damage to property.
- Any criminal conduct that affects the ability or suitability for your continued employment
- Gross negligence.
- Any act of dishonesty.
- Serious insubordination. Misuse of the setting's property or name.

- Misuse of electronic communications which defames individuals or brings the setting into disrepute, has disparaging or derogatory comments or contains confidential information concerning the setting
- Bringing the setting into serious disrepute.
- Serious negligence which causes or might cause unacceptable loss, damage or injury.
- Serious breach of the early years setting's and statutory policies.
- Serious breach of confidentiality (subject to the Public Interest (Disclosure) Act 1998).
- Serious breaches of the Data Protection Act.
- Bribery and corruption.

This is not an exhaustive list of examples.

Key principles

- Employees are expected to know the standard of conduct or work performance expected of them.
- Employees will be provided with a management statement of the case prior to any disciplinary meeting and will be allowed to respond to any alleged fault or failing at the meeting.
- An employee is entitled to be accompanied by a trade union representative or work colleague employed by the setting, to a disciplinary meeting and appeal. Other external representatives may not accompany an employee.
- For minor or isolated infringements of rules or expected behaviour, managers and supervisors should give employees informal advice, coaching and counselling as part of their supervisory duties.
- Where an employee's conduct or performance fails to improve as a result of advice, coaching or counselling, or where the offence is more serious, then the disciplinary procedure will be applied.
- A prompt and thorough investigation into the concerns will take place prior to a disciplinary meeting taking place. The employee will be informed that an investigation is taking place as soon as possible. The setting reserves the right to dispense with an investigation interview with the employee (suspected of contravening policies or rules), and to proceed directly to a formal disciplinary meeting.

- The employee must take all reasonable steps to attend the disciplinary meeting and any appeal.
- Except in cases of gross misconduct, no employee will be dismissed for a first offence.

The disciplinary Procedure

Stage 1- The investigation

- At the earliest opportunity the manager must inform the employee that an allegation/incident has occurred and that an investigation is to take place
- When any incident of misconduct or negligence or poor performance is alleged to have occurred, the manager must investigate to establish the facts. This will take into account statements of any witnesses, along with other evidence. The investigation will be carried out by the manager or deputy where appropriate and the chair person.
- Where appropriate/possible, signed written statements should be obtained as quickly as possible from the individual(s) concerned and should include where possible, dates, times, details of those present and the issues of concern.
- Sometimes it may be necessary to suspend a member of staff on full pay during the investigation to avoid a potential difficult situation or to allow for a full investigation to take place or where the facts, if proved, may result in dismissal. Suspension with pay is a temporary situation and is not a disciplinary action and will not affect the staff rights and is not seen as a presumption of guilt

Stage 2 –The meeting

- Following an appropriate investigation, the member of staff in question will be invited to attend a disciplinary meeting to discuss the allegations. The manager will give them written notice of the meeting and provide them with any witness statements including any evidence that will be relied upon at the meeting and, invite her/him to attend a disciplinary meeting to discuss the matter.
- The employee will be told what the possible sanctions could be e.g. dismissal first written warning etc. They should also be informed of their right to be accompanied at the meeting; this may be another member of staff.

- Employees should be given an appropriate amount of notice of the meeting in order to prepare their response and to contact any witnesses that he/she wishes to call to the meeting to give evidence.
- Employees are required to take all reasonable steps to attend the hearing. However, should, for a reasonably unforeseen reason, either the employee, the line manager or their companions is unable to attend the meeting, it must be rearranged.
- Should an employee's companion be unable to attend then the employee should make contact to arrange an alternative date and time to re-schedule the meeting.
- A disciplinary meeting must take place before any disciplinary action is taken, (except where the action in question consists of suspension pending a disciplinary meeting). At the meeting, the manager and chair person should ensure that the circumstances of the complaint against the employee are fully discussed and that the employee is provided with an opportunity to respond to the management case.
- The manager and chair person will then decide whether or not to issue a disciplinary penalty. The outcome of the disciplinary meeting must be confirmed in writing within 10 working days, to include the right of appeal

Disciplinary penalties

Managers should not issue any disciplinary penalties without a formal meeting.

There are five disciplinary penalties, which may result from misconduct:

- Formal verbal warning (first formal warning).
- Written warning.
- Final written warning.
- Dismissal with notice.
- Summary dismissal.

Formal verbal warning

Minor breaches of organisational discipline, misconduct or time keeping, or failure to meet performance criteria, may result in a formal verbal warning given by the manager. The manager may give this at a disciplinary meeting with the employee. This warning should be confirmed in writing. If the warning relates to unsatisfactory performance then it should set out:

- The employee will be given a verbal warning and will be told of the reason for it
- The performance required.

- The improvement required.
- The timescale for improvement.
- Any review date.
- Any support that can be offered to assist the employee to improve their performance.

If the warning relates to conduct then the nature of the misconduct and the change in behaviour required should be set out in the warning letter.

The employee may be accompanied at the meeting by a work colleague or a trade union representative.

The warning will be placed on the employee's personnel file. After a period of six months, if no further disciplinary action has been found necessary and the minor breach has been resolved, the warning will expire.

Written warnings

If, after further investigation or further incidents have occurred and the improvements have not materialized a second meeting will take place.

The employee will be informed of the nature of the complaint and such evidence as may exist, and will be given an opportunity to respond. The employee will be told of the decision and given a letter of confirmation within 10 working days of the disciplinary meeting. The written confirmation will state:

- The date of the disciplinary meeting and those present.
- Details of the misconduct, that has taken place
- The improvements required
- The timescales for performance improvement, where appropriate.
- Details of any necessary action to remedy the situation, any period of review, extra training or supervision etc., or the possibility for redeployment/demotion.
- The consequence of a further offence or failure to improve.
- That there is a right of appeal.

The employee will be made aware that this warning forms the second stage of the disciplinary procedure. For more serious offences, a written warning may be given as the first step in the disciplinary process.

After a period of 12 months if no further disciplinary action has been found necessary and the minor breach has been resolved, the warning will expire. They will also be informed if further offences result in disciplinary action being escalated and could lead to dismissal.

Final written warning

If after a further investigation or further incidents have occurred, it is decided the improvements specified have not improved a third meeting will take place.

If the employee's work or conduct fails to improve, or where the infringement is sufficiently serious, the manager will follow the same procedures as for issuing a written warning. If proven, a final warning, which will be in writing, will be given to the employee warning that any further misconduct or failure to reach and maintain the requirements discussed it will result in dismissal with appropriate notice.

A letter confirming the Final written warning will be placed on the employee record.

After a period 12months if no further disciplinary action has been found necessary and the breach has been resolved, the warning will expire.

Normal proceedings will involve all three warnings but in some cases where the offence is thought to be serious enough the first and second warnings may be omitted. Typical examples of this would be breaches of the settings safeguarding and child protection policies and procedures, unlawful discrimination or breaches of health and safety, dependant on circumstances these may also be classed as gross misconduct.

Gross misconduct

Employees dismissed with notice will be paid for this notice period. An employee may be dismissed without notice if there has been an act of gross misconduct, or a major breach of duty or conduct that brings the organisation into disrepute. The employee will be suspended with pay while the circumstances of the alleged gross misconduct are investigated.

Suspension

Suspension should be used sparingly in circumstances where the manager needs to conduct an investigation prior to a hearing where it is felt that the impact of not suspending the employee during the period would be likely to be more detrimental than suspending them.

Cases which involve potential gross misconduct will usually result in suspension - particularly when relationships have broken down or where the setting's property or responsibilities to other parties are involved, or where the employee's presence may prejudice the inquiry.

Suspension should be kept brief and reviewed to ensure that it is not unnecessarily protracted.

Where a member of staff is suspended because of alleged misconduct relating to a child, we inform Ofsted, social services and we may also contact the Police. We may also contact other relevant agencies.

Dismissal

A dismissal must be confirmed in writing within 10 working days of the date of the disciplinary interview. As well as covering the points in previous paragraphs, the letter should also include details of any outstanding money owed to the employee, how and when it will be paid and the final date of employment.

In certain cases, where a member of staff is dismissed from the organisation or internally disciplined because of misconduct relating to a child, we inform the Independent Safeguarding Authority.

Summary dismissal

While it is envisaged that the warning procedure will apply to staff not achieving the required standard of work or conducting themselves professionally, provided a full and proper investigation has taken place, it may be possible to dismiss a member of staff in cases of gross misconduct or gross incompetence.

After investigation into the circumstances and allowing employee to explain their actions at a meeting, the nursery reserves the right to summarily dismiss them.

In cases of summary dismissal, the employee will be dismissed without notice or pay in lieu of notice.

Alternative Penalties

Disciplinary action may also include suspension without pay or less than full pay, demotion or new duties.

In certain circumstances, an informal reprimand or warning may be more appropriate, where only a minor infringement has occurred.

Legal framework

- .Employment Rights Act 1996 as amended
- Employment Rights Dispute Resolution Act 1998
- Employment Relations Act 1999
- Employment Act 2002(Disputes Resolution) Regulations 2004

This policy was adopted at a meeting of Felixstowe Nursery School.

Held on

Date to be reviewed.....

Signed by Chairperson.....

Signed by Manager.....