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Disciplinary Procedure for Staff employed by Education and Training Boards

**Disciplinary Procedure nationally agreed on 14 December 2011
Amended 1 July 2013 in line with the provisions of the Education and
Training Boards Act, 2013**

Clarification

The *Disciplinary Procedure for Staff employed by Education and Training Boards* has been amended in line with the commencement of the Education and Training Boards Act, 2013, on 1 July 2013. It replaces the nationally agreed disciplinary procedure dated 14 December 2011 and continues to supersede all existing local procedures.

A disciplinary matter that has commenced prior to the 1st July 2013 under the Nationally Agreed Procedure dated 14 December 2011 should continue to be processed in line with this amended procedure.

AGREEMENT

This Disciplinary Procedure for staff employed by Education and Training Boards (ETBs) (formerly Vocational Education Committees/VECs) was originally developed and agreed following discussions between Education and Training Boards Ireland/ETBI (formally the Irish Vocational Education Association/IVEA) representing management, and the trade unions (TUI, ASTI, IMPACT, SIPTU, UNITE and CDETIB Craft Unions) representing staff, in the vocational education sector.

The procedure was prepared taking account of relevant employment legislation and the *Labour Relations Commission's Code of Practice on Grievance and Disciplinary Procedures*¹ and was formally agreed by the parties at national level on 14 December 2011.

¹ <http://www.lrc.ie/documents/publications/codes/5GrievanceDisciplinary.pdf>

INTRODUCTION

Disciplinary procedures are necessary to ensure that fair discipline is maintained in ETB schools/colleges/centres/offices and that disciplinary measures can be applied in a fair and consistent manner. Inclusive of considerations of equity and natural justice, the maintenance of a good industrial relations atmosphere requires that acceptable procedures be in place and observed.

Having a disciplinary procedure serves a dual purpose in that it provides a framework which enables management to maintain satisfactory standards and employees to have access to a procedure whereby alleged failures to comply with standards may be fairly and sensitively addressed.

Scope - The provisions of this disciplinary procedure:

- Deal solely with issues of employment and supersede all existing local and national disciplinary procedure/s prior to this procedure (save for those provided in law) operating in the education and training board sector.
- Apply to **all ETB staff members** with the following exceptions:
 - Teachers, Deputy Principals and Principals covered by the Department of Education and Skills' circular letter 59/2009 *Procedures for Suspension and Dismissal of Teachers and Principals*
 - ETB staff members serving in a probationary capacity (where separate probationary procedures apply). However, in cases where allegations of gross misconduct are made against a probationary staff member, the matter will be investigated directly in accordance with the provisions for gross misconduct (*contained herein*) and if proven, lodge directly at stage 4 of this disciplinary procedure.

GENERAL PRINCIPLES

The main purpose of this procedure is to set out for the guidance of ETB management, staff and their representatives, the minimum general principals which should apply in the operation of disciplinary procedures.

1. The right to representation at all stages of this procedure is recognised. For the purposes of this discipline procedure, the reference in the procedures to ‘staff representative’ shall be understood to include a colleague of the staff member’s choice or representation by an authorised trade union but not any other person or body unconnected with the particular school/college/centre/office where the staff member is employed. The nature of disciplinary meetings/hearings is such that legal representation is not required.
2. It is essential that staff be managed appropriately, fairly, and consistently in all aspects of their work. Many problems relating to underperformance and conduct can be dealt with before reaching the point at which disciplinary action is contemplated by management. Failure to deal with problems of underperformance or misconduct may place an unfair burden on other staff. Management must take responsibility, in the interests of the school/college/centre/office and all their staff and students, for dealing in an appropriate way with underperformance or misconduct. Nothing however shall prevent management from holding a disciplinary meeting/hearing and imposing a disciplinary sanction/s at a more advanced stage of the procedure appropriate to the nature of the alleged offence.
3. Matters of discipline shall be dealt with by management in accordance with the general principles of natural justice and fairness and in a manner that protects the dignity of the staff member concerned. In this regard, the following principles shall apply:
 - Details of any allegations or complaints are put to the staff member concerned.
 - A complaint should be in writing. The staff member will be advised in writing, in advance of a disciplinary meeting, of the precise nature of the matters concerned and will be given copies of all relevant documentation. In the case of a complaint, this detail will include the source and text of the complaint as received.
 - The staff member concerned is given the opportunity to respond fully to any such allegations or complaints.
 - That the staff member concerned has the right to examine and challenge all evidence available and to call witnesses on his/her behalf.
 - The staff member concerned is given the opportunity to avail of representation during the procedure by a work colleague or representation by an authorised trade union (but not any other person or body unconnected with the particular school/college/centre/office where the staff member is employed). Again, the nature of disciplinary meetings/hearings is such that legal representation is not required.
 - The staff member concerned has the right to a fair and impartial determination of the issues concerned, taking into account any representations made by, or on behalf of, the staff member and any other relevant or appropriate evidence, factors, or circumstances.
 - Any disciplinary action arising should be reasonable and proportionate.
 - There may be occasions where a staff member’s work, conduct or other such issue is satisfactory throughout the review period only to lapse soon thereafter. Where such a pattern emerges, the staff member’s previous conduct and pattern of behaviour may be considered as a whole in a future disciplinary procedure.
 - Access to personal information held by an ETB will be made in accordance with the ETB’s data protection policy (specifically with respect to the ETB’s access procedure) and with the principles and requirements of the Data Protection Acts, 1998 and 2003.
 - That all matters relating to the disciplinary procedure are strictly confidential to the parties and their representatives.

- Nothing however shall prevent management from holding a disciplinary meeting/hearing and imposing a disciplinary sanction/s at a more advanced stage of the procedure appropriate to the nature of the alleged offence.
4. **Failure by a staff member to attend a disciplinary meeting/hearing:**
Whilst it is anticipated that the staff member concerned will co-operate fully with this disciplinary procedure, any failure to co-operate will **not** prevent the processing of a complaint under this procedure to conclusion.
 5. In the case of suspected or alleged gross misconduct, immediate precautionary suspension (with pay) may apply pending an immediate investigation. Serious offences are those where, in the opinion of the Chief Executive Officer (CEO) of the ETB, the person constitutes a potential or actual danger to themselves or to others or causes wilful damage to ETB property.
 6. In the event that any line manager referenced in the procedure is the subject of the disciplinary procedure, another person at a more senior level will be nominated for the purpose/s of conducting the formal disciplinary meeting. An appropriate person from another ETB may, where circumstances would warrant, conduct the disciplinary meeting on behalf of a particular ETB.
 7. ***“Notice” of proposed meetings/hearings under this procedure:*** Notice counts from the next working day directly after the date the notice is sent/posted.
 8. The procedure shall not operate during periods of approved leave unless by mutual agreement of the parties.

THE PROCEDURE

INFORMAL STAGE

It is intended that problems relating to work and conduct are resolved, where possible, through informal means without invoking the formal procedure. The objective of this stage is to inform the staff member of any complaint or criticism at the earliest opportunity and give him/her the opportunity to respond.

At this meeting:

The staff member should be verbally informed that this discussion/s is taking place within the informal stage of the disciplinary procedure. The Principal/Co-ordinator/Immediate Supervisor will discuss with the staff member:

- Any unsatisfactory performance or conduct and inform him/her of the improvements required.
- Possible methods of correction and an indication of acceptable time scale for such correction.
- Any support which might be provided by the school/college/centre/office.
- That that unless the necessary improvement is made within a reasonable period so defined by the Principal/Co-ordinator/Immediate Supervisor, the matter will proceed to the formal disciplinary procedure.

FORMAL DISCIPLINARY PROCEDURE

Where a staff member's work performance or conduct does not meet the required standards despite informal intervention as set out above, the matter will be dealt with under the following formal disciplinary procedure.

STAGE 1 MEETING - VERBAL WARNING

- 1.1 A formal disciplinary meeting with the staff member concerned should be conducted by the **Principal/Co-ordinator/Immediate Supervisor² in the school/college/centre/office.**
- 1.2 If not already provided, the staff member concerned should be given a copy of the ETB disciplinary procedure and be advised to familiarise him/herself with the various stages of the procedure that may be invoked and the range of sanctions available. The staff member concerned should be given **at least seven working days' notice** of the meeting in writing. The notice should state the purpose of the meeting and the nature of the alleged offence together with copies of any supporting documentation.
- 1.3 In the event that any line manager referenced in the procedure is the subject of the disciplinary procedure, another person at a more senior level will be nominated for the purpose/s of conducting the formal disciplinary meeting. An appropriate person from another ETB may, where circumstances would warrant, conduct the disciplinary meeting on behalf of a particular ETB.
- 1.4 The stage 1 meeting will deal with the following:
 - Why work performance or conduct appears to be unsatisfactory.
 - Possible methods of correction and an indication of acceptable timescale for such correction.
 - Appropriate support which might be provided by the employer
 - The seriousness of the issue and possible consequences if there is no improvement or if offence is repeated.
 - That work performance and/or conduct will be monitored and that a review period of up to but not in excess of **six calendar months** will apply.
 - The staff member concerned will have the right to place on record any comments/observations he or she may wish in regard to the discussion.
- 1.5 A formal record of the stage 1 meeting will be prepared and retained by the Principal/Co-ordinator/Immediate Supervisor. A copy should be given to the individual concerned **within five working days** of the meeting. The staff member concerned will have the right to place on record, any comments/observations s/he may wish in regard to the formal record of the meeting. Such comments/observations must be remitted to the Principal/Co-ordinator/Immediate Supervisor within **twelve working days** of the stage 1 meeting.
- 1.6 Having considered all matters, the Principal/Co-ordinator/Immediate Supervisor will decide on whether or not a verbal warning is warranted. **Correspondence confirming the decision (whether to issue a verbal warning or not), should be advised to the staff member within a total of twenty working days from the stage 1 meeting.**
- 1.7 Where the Principal/Co-ordinator/Immediate Supervisor issues a verbal warning, it should state the improvement required, the timescale for improvement and the consequences of failure to improve. The staff member will be advised in writing, that the warning constitutes

² The Principal/Co-ordinator/Immediate Supervisor may be accompanied by another colleague at stage 1 meeting/s.

the first stage of the disciplinary procedure and failure to improve may result in progression to stage 2 (or a higher stage as may be appropriate), of the disciplinary procedure.

- 1.8 **Retention of records:** A copy of the verbal warning will be placed on the staff member's file in the ETB Human Resources' (HR) Department. The record will be removed from the file after **six calendar months** subject to sustained satisfactory improvement during the period.
- 1.9 If in the opinion of the Principal/Co-ordinator/Immediate Supervisor that following the holding of the stage 1 meeting there is no basis for the issuance of a verbal warning, then s/he may decide that no further action should be taken in relation to the issue.

STAGE 2 MEETING - WRITTEN WARNING

- 2.1 If having received a verbal warning the staff member fails to make the necessary improvement within the agreed review period (*i.e. up to but not in excess of six calendar months*) and it is proposed to proceed to stage 2, the HR Department of the ETB should be consulted before further steps are taken. Where it is decided to proceed, a stage 2 disciplinary meeting with the staff member concerned should be convened **by the Principal/Co-ordinator/Head of Centre/Head of Department³ and a senior officer nominated by the CEO of the ETB.** The staff member concerned should be given **at least seven working days' notice** of the meeting in writing. The notice should state the purpose of the meeting and the nature of the alleged offence together with copies of any supporting documentation.
- 2.2 In the event that any line manager referenced in the procedure is the subject of the disciplinary procedure, another person at a more senior level will be nominated for the purpose/s of conducting the formal disciplinary meeting. An appropriate person from another ETB may, where circumstances would warrant, conduct the disciplinary meeting on behalf of a particular ETB.
- 2.3 At the meeting, the staff member should be given a clear statement of the areas where his/her work performance or conduct is unsatisfactory and given an opportunity to respond.
- 2.4 The stage 2 meeting will deal with the following:
- The gravity of the issue and possible consequences if there is no improvement or if offence is repeated.
 - Possible methods of correction and an indication of an acceptable timescale for such correction.
 - Appropriate support which might be provided by the employer
 - The staff member will be made aware that if there is no acceptable improvement within this review period, that the outcome of a stage 2 meeting may lead to a first written warning and/or referral to a stage 3 meeting (or a higher stage as may be appropriate) of the disciplinary procedure.
 - That work performance and/or conduct will be monitored and that a review period of up to but not in excess of **six calendar months** will apply.
 - The staff member concerned will have the right to place on record any comments/observations s/he may wish in regard to the discussion.
- 2.5 A formal record of the stage 2 meeting will be prepared and retained by the Principal/Co-ordinator/Head of Centre/Head of Department. A copy should be given to the individual concerned **within five working days** of the meeting. The staff member concerned will have

³ The Principal/Co-ordinator/Head of Centre/Head of Department may be accompanied by another colleague at stage 2 meeting/s.

the right to place on record, any comments/observations s/he may wish with regard to the formal record of the meeting. Such comments/observations must be remitted to the Principal/Co-ordinator/Head of Centre/Head of Department within **twelve working days** of the stage 2 meeting.

- 2.6 Having considered all matters, the Principal/Co-ordinator/Head of Centre/Head of Department and a senior officer nominated by the CEO of the ETB will decide on whether or not a first written warning is warranted. **Correspondence confirming the decision (whether to issue a first written warning or not), should be advised to the staff member within a total of twenty working days from the stage 2 meeting.**
- 2.7 Where a first written warning is given it should state the improvement required, the timescale for improvement (*i.e. up to but not exceeding calendar six months*) and the consequences of failure to improve. The staff member will be advised in writing, that the warning constitutes the second stage of the disciplinary procedure and failure to improve may result in progression to stage 3 (or a higher stage as may be appropriate), of the disciplinary procedure.
- 2.8 **Retention of records:** A copy of the first written warning will be placed on the staff member's file in the ETB HR Department. The record will be removed from the file after **six calendar months** subject to sustained satisfactory improvement during the period.
- 2.9 If in the opinion of the Principal/Co-ordinator/Head of Centre/Head of Department and a senior officer nominated by the CEO of the ETB that following the holding of the stage 2 meeting there is no basis for the issuance of a first written warning, then they may decide that no further action should be taken in relation to the issue or that the warnings previously issued should be withdrawn.

STAGE 3 MEETING: FINAL WRITTEN WARNING

- 3.1 In the event of a further recurrence of the same or similar offences or the occurrence of a more serious offence, a stage 3 disciplinary meeting with the staff member should be conducted. The disciplinary meeting with the staff member should be convened by the **Principal/Co-ordinator/Head of Centre/Head of Department⁴ and a senior officer of the ETB** (e.g. Education Officer, Adult Education Officer, Section Head) as nominated by the CEO of the ETB. The staff member concerned should be given **at least seven working days' notice** of the meeting in writing. The notice should state the purpose of the meeting and the nature of the alleged offence together with copies of any supporting documentation.
- 3.2 In the event that any line manager referenced in the procedure is the subject of the disciplinary procedure, another person at a more senior level will be nominated for the purpose/s of conducting the formal disciplinary meeting. An appropriate person from another ETB may, where circumstances would warrant, conduct the disciplinary meeting on behalf of a particular ETB.
- 3.3 At the meeting, the staff member should be given a clear statement of the areas where his/her work performance or conduct is unsatisfactory and given an opportunity to respond.
- 3.4 The stage 3 meeting will deal with the following;
 - The gravity of the issue and possible consequences if there is no improvement or if offence is repeated.

⁴ The Principal/Co-ordinator/Head of Centre/Head of Department may be accompanied by another colleague at stage 3 meeting/s.

- Possible methods of correction and an indication of an acceptable timescale for such correction.
 - Appropriate support which might be provided by the employer
 - The staff member will be made aware that if there is no acceptable improvement within this review period, that the outcome of a stage 3 meeting may lead to a final written warning and/or referral to a stage 4 meeting under the procedure which could result in dismissal or some other appropriate disciplinary action (e.g. withholding/deferral of increments, demotion, transfer, suspension).
 - That work performance and/or conduct will be monitored and that a review period of up to but not in excess of **twelve calendar months** will apply.
 - The staff member concerned will have the right to place on record any comments/observations he or she may wish in regard to the discussion.
- 3.5 A formal record of the stage 3 meeting will be prepared and retained by the CEO's nominee. A copy should be given to the individual concerned **within five working days** of the stage 3 meeting. The staff member concerned will have the right to place on record, any comments/observations s/he may wish with regard to the formal record of the meeting. Such comments/observations must be remitted to the CEO's nominee within **twelve working days** of the stage 3 meeting.
- 3.6 Having considered all matters, the Principal/Co-ordinator/Head of Centre/Head of Department and the senior officer of the ETB nominated by the CEO, will decide on whether or not a final written warning is warranted. **Correspondence confirming the decision (whether to issue a final written warning or not), should be advised to the staff member within a total of twenty working days from the stage 3 meeting.**
- 3.7 Where a final written warning is given it should state the improvement required, timescale for improvement, consequences of a failure to improve and full details of the unsatisfactory work performance or conduct. It should inform the staff member that failure to modify his/her work performance or conduct will lead to further disciplinary action up to and including dismissal in accordance with the procedure set out herein.
- 3.8 **Retention of records:** A copy of the final written warning will be placed on the staff member's file in the ETB HR Department. The record will be removed from the file after **twelve calendar months** subject to sustained satisfactory improvement during the period.
- 3.9 If in the opinion of the Principal/Co-ordinator/Head of Centre/Department Head and a senior officer of the ETB (e.g. Education Officer, Adult Education Officer, Section Head) as nominated by the CEO of the ETB), that following the holding of the stage 3 meeting there is no basis for the issuance of a final written warning, then they may decide that no further action should be taken in relation to the issue or that the warnings previously issued should be withdrawn.

STAGE 4: FINAL DISCIPLINARY HEARING

- 4.1. If the staff member's work performance or conduct does not improve to a sustained satisfactory level during the review period set out in the final written warning, s/he will be requested to attend a **disciplinary hearing** with the Chief Executive Officer of the ETB⁵. The staff member concerned should be given **at least seven working days' notice** of the meeting in writing. The notice should state the purpose of the meeting and the nature of the alleged offence together with copies of any supporting documentation.

⁵ The CEO may be accompanied by another colleague/s at a stage 4 meetings.

- 4.2 At this hearing, the staff member (who should be accompanied by a colleague of choice or represented by a trade union/branch representative) should be given a clear statement of the areas where his/her work performance or conduct is unsatisfactory and given an opportunity to respond to the allegations made to explain why he s/he considers the CEO of the ETB should not impose a disciplinary sanction up to and including dismissal. A recording secretary should also be in attendance.
- 4.3 The stage 4 meeting will deal with such matters as the following;
- The gravity of the issue
 - A review of staff member's work performance and conduct which has given rise to referrals through the disciplinary procedure up to stage 4
 - A review of matters undertaken to date e.g. interventions, methods of correction, supports provided etc.
 - The staff member will be made aware the outcome of the stage 4 meeting may result in dismissal or some other appropriate disciplinary action (e.g. withholding/deferral of increments, demotion, transfer, suspension).
 - That where a review period is determined and permitted by the CEO, work performance and/or conduct will be monitored.
 - The staff member concerned will have the right to place on record any comments/observations he or she may wish in regard to the discussion.
- 4.4 A formal record of the stage 4 hearing will be prepared and retained by the CEO. A copy should be given to the individual concerned within **fifteen working days of the hearing**. The staff member concerned will have the right to place on record any comments/observations s/he may wish in regard to the formal record of the discussions. Such comments/observations must be remitted to the CEO within **twenty-two working days** of the stage 4 hearing.
- 4.5 The CEO, having considered submissions made at the disciplinary hearing, may then decide:
- In the case of **all ETB staff**, and in accordance with the CEO's executive authority, to impose a disciplinary sanction/s which may include the following:
- Deferral of an increment
 - Withholding of an increment
 - Demotion
 - Transfer
 - Suspension
 - Dismissal.
- 4.6 Correspondence confirming the CEO's decision and options available (e.g. appeal provisions as appropriate) should be advised to the staff member within a total of **thirty working days** from the stage 4 meeting.
- 4.7 Where a disciplinary sanction is given arising from a stage 4 hearing, the staff member will be given a statement in writing, detailing the disciplinary sanction being imposed.
- 4.8 **Retention of records:** A copy of this statement (recording the sanction) will be held on the staff member's personnel file in the ETB HR Department and will remain there permanently.
- 4.9 No disciplinary sanction arising from a stage 4 hearing shall be confirmed pending the outcome of an appeal in accordance with the appeal procedure.
- Appeals of sanctions up to and including suspension, are covered by the appeal provision advised herein at Appendix 2.

- Appeals of the decision to dismiss an ETB staff member are covered by the provisions of the Unfair Dismissals Acts, 1977-2001.
- 4.10 If in the opinion of the CEO that following the holding of the stage 4 disciplinary hearing there is no basis for the issuance of a disciplinary sanction, then s/he may decide that no further action should be taken in relation to the issue or that the warnings previously issued should be withdrawn.
- 4.11 Save in the case of an appeal **against a disciplinary sanction imposed following stage 4** (*other than dismissal in the case of an ETB staff member*), this concludes the ETB internal disciplinary process.

ALLEGED GROSS MISCONDUCT: DETERMINATION OF CASE TO BE ANSWERED

Gross misconduct is a serious breach of ETB rules and procedures or of recognised and accepted standards and behaviour which results in a breakdown of the relationship of trust and confidence between the management and the member of staff concerned. Gross misconduct if proven, will justify disciplinary action set out in this document including where appropriate, dismissal, without recourse to giving a verbal, first written or final written warning.

Examples of gross misconduct include, but are not limited to:

- Breach of the terms of Child Protection Guidelines/Procedures
- Theft, fraud, embezzlement, misappropriation of funds, bribery or corruption
- Deliberate falsification of data (manual or automated)
- Serious/gross negligence which causes unacceptable loss, damage or injury
- Gross dereliction of duties
- Refusal to comply with legitimate instructions resulting in serious consequences
- Incapability through alcohol or being under the influence of illegal drugs or misuse of prescribed medication; possession and/or sale of illegal drugs.
- Serious breach of health & safety rules
- Serious abuse/misuse of the ETB's property/equipment/materials
- Deliberate damage to ETB property
- Serious breaches of confidentiality
- Failure to disclose conflicts of interest in conducting ETB business
- Serious bullying, inappropriate behaviour, sexual harassment or harassment against a staff member, student/learner, parent/guardian or party with whom the ETB conducts business
- Violent/threatening/disruptive behaviour
- Serious breaches of ETB email, internet, ICT telephone policies
- Manual or automated posting or circulation of offensive, obscene or indecent messages whether by email, text, social networking sites or any other form of communications' device; downloading/disseminating pornographic material
- Serious abuse of sick leave regulations
- Persistent unauthorised absences

Gross misconduct may also relate to an act which took place or allegedly took place outside the school/college/centre/office where such act, or alleged act, gives rise to a serious concern on the part of those investigating in relation to the health and safety of students, staff, management of the ETB, those contracted by the ETB or where a threat presents to the general public.

In all cases of alleged gross misconduct an investigation will be carried out. **The investigation to determine if there is a case to be answered will be conducted by a minimum of two persons, nominated by the CEO of the ETB.** A recording secretary should also be in attendance.

The staff member may be suspended with pay, pending the outcome of such an investigation. Suspension with pay is a precautionary measure and not a disciplinary sanction.

On completion of the investigation, the investigation team, will submit a written report of the findings of fact to the CEO of the ETB arising from the investigation undertaken. The CEO⁶ will provide a copy of the investigation report to the parties concerned to the investigation. If the outcome of the investigation is such that the investigation team considers there is a case to be answered, then a disciplinary hearing will be convened under stage 4 of the disciplinary procedure.

⁶ The administration of this function may be undertaken by a nominee of the CEO employed by the ETB.

APPEALS

Appeal against a disciplinary sanction imposed following a stage 4 hearing (*other than dismissal in the case of an ETB staff member*)

A staff member who wishes to appeal against a disciplinary sanction imposed arising from a stage 4 disciplinary hearing may do so to a third party agreed by the parties for the purpose.

The appeal must be lodged **within seven working days** of the notification of the decision. The appeal must be in writing and state the ground(s) on which the appeal is being made. Any supporting documentation must also be supplied. Simultaneously a copy of the appeal and any supporting documentation should also be provided to the Chief Executive Officer of the ETB.

All correspondence should be sent marked “private and confidential to the addressee only”.

An appeal hearing is **not intended to repeat the investigation/disciplinary process** but to address **specific issues** which the staff member feels have received insufficient consideration such as:

Breach of procedure which results in a serious flaw in the outcome. Examples include:

- (a) *The provisions of the agreed procedures were not adhered to*
- (b) *At the time, all the relevant facts were not ascertained*
- (c) *At the time, all the relevant facts were not considered or were not considered reasonably*
- (d) *The appellant concerned was not afforded a reasonable opportunity to answer the allegation*
- (e) *The finding is not supported by the evidence*
- (f) *The general principles of procedural fairness were not applied.*
- (g) *The sanction recommended is disproportionate to the underperformance or misconduct alleged.*

The format for appeal will entail the attendance of the staff member with his/her representative and a representative of the ETB (which similarly may be accompanied/represented) with the third party agreed by the parties. The third party agreed by the parties to this procedure at national level for the purpose will be authorised to adjudicate and to issue a decision on the appeal citing the specifics of the basis for that decision. The adjudicator’s decision will be binding on all parties, be conveyed in writing to the CEO of the ETB for implementation and, copied to the appellant.

This concludes the appeals’ process and internal disciplinary process in such circumstances.

Appeal against a dismissal/termination of employment:

In the case of an ETB staff member wishing to appeal a dismissal/termination of employment, a case may be referred in accordance with the provisions of the Unfair Dismissals Acts, 1977-2001.

NOTICE OF TERMINATION

Except in circumstances justifying immediate termination of a staff member's employment from the ETB, the staff member will be entitled to receive the appropriate period of notice set down in the Minimum Notice and Terms of Employment Act, 1973 to 2001.

ETB ADOPTION AND REVIEW

ETB ADOPTION DATE:

This Disciplinary Procedure has been formally adopted by Dublin and Dun Laoghaire Education and Training Board on 21st October 2013.

REVIEW:

Procedures should be reviewed and updated periodically so that they are consistent with changed circumstances, development in employment legislation and case law and good industrial relations practice generally. In this context, this Procedure will arise for review by the parties to this agreement at national level no later than **four** years from the official implementation date or where legislation determines change is warranted.

APPENDIX 1 –

Guidelines on the Conduct of a Disciplinary Meeting/Hearing

Decisions regarding disciplinary sanction will only be taken following a disciplinary hearing at which the staff member is afforded the opportunity to respond to the allegation and make representations.

The following guidelines apply to disciplinary hearings under the:

- Oral warning stage
- Written warning stage
- Final written warning stage
- Disciplinary sanction/Dismissal stage

Notification Requirements

The staff member should be informed that s/he is required to attend a disciplinary hearing under the formal disciplinary procedure. The staff member should be advised of:

- The reason for the hearing
- The right to representation
- The staff member should be given sufficient notice of the hearing to enable him/her to arrange for representation and prepare a response.
- The following information should be confirmed in writing:
 - The time and place of the hearing
 - The status of the meeting (i.e. that it is a formal disciplinary hearing under the disciplinary procedure)
 - The precise nature of the complaint
 - A copy of relevant documentation (e.g. timekeeping/attendance record) should be attached.
 - The staff member concerned is given the opportunity to avail of representation during the procedure by a work colleague or representation by an authorised trade union (but not any other person or body unconnected with the particular school/college/centre/office where the staff member is employed). Again, the nature of disciplinary meetings/hearings is such that legal representation is not required.

Role of the Employee Representative

The employee representative has an important role to play in supporting the staff member and is entitled to assist the staff member in presenting his/her case and to make representations on his/her behalf. The staff member may confer privately with his/her representative if requested.

Conducting the Disciplinary Meeting/Hearing

The purpose of the disciplinary meeting/hearing is to allow the staff member to respond to the complaints before deciding whether disciplinary action is warranted. The management person/s conducting the meeting/hearing must maintain an open mind and is required to assess each case on its merits prior to reaching a decision regarding disciplinary action.

The disciplinary meeting/hearing should follow a structured format as follows:

- Introduce those present and confirm that this is a hearing under the formal disciplinary procedure.
- Outline the precise nature of the allegation and refer to any supporting evidence.
- Allow the staff member respond to the allegation and give an explanation for his/her unsatisfactory work standards or conduct.
- Invite representations on the staff member's behalf.
- In the course of any meeting, it may be necessary to adjourn/reconvene immediately after or later. Such recesses/adjournments may frequently facilitate a mediated outcome.

- Close the meeting/hearing by summarising the key points raised and allow the staff member and his/her representative to have a final say.
- Adjourn the meeting/hearing to allow for careful consideration of the facts and any explanations put forward by the staff member or his/her representative.
- Reconvene the meeting/hearing and advise the staff member of the decision which may include the following:
 - A formal warning (and other disciplinary sanction where appropriate);
 - No further action on the grounds that the employee has given a satisfactory explanation of events or there were strong mitigating circumstances;
 - Non-disciplinary action e.g. arrange for the staff member to receive coaching/training and establish targets for improvement.
- The outcome of the meeting/hearing should be confirmed to the staff member in writing.
- A record of the meeting/hearing and the outcome should be retained on the staff member's personnel file appropriate to the timeframes advised in the procedural stages.

Issuing Warnings under the Disciplinary Procedure

The primary purpose of a warning under the disciplinary procedure is to give the staff member an opportunity to make the required improvements whilst making clear the consequences of failing to do so.

A warning (including an oral warning) should contain the following information:

- the stage of the disciplinary procedure which has been invoked
- details of the unsatisfactory work performance or conduct
- details of the improvements required and timescale for improvement
- measures to assist the staff member (e.g. training or coaching)
- duration of the warning
- what further action will be taken if the staff member does not make the necessary improvements or if there are further instances of unsatisfactory work performance or conduct during this period

A record will be kept on the staff member's personnel file of warnings issued under the disciplinary procedure and retained in accordance with the timeframes and guidelines specified in this procedure and in line with the ETB's data protection (and retention) policy.



& CDETB Craft Unions (e.g. TEEU, INPDU, UCATT and BATU)

To all Chief Executive Officers & Education Officers in ETBs

RE: Nationally agreed Disciplinary Procedure for Staff Employed by Education and Training Boards (ETBs).

Agreement has been reached with the Labour Relations' Commission whereby the Commission has confirmed its willingness to undertake the role of the agreed third party for the purpose of appeals against a disciplinary sanction imposed following Stage 4 of the Procedure (other than dismissal in the case of ETB staff).

The procedure states:

"The appeal must be lodged **within seven working days** of the notification of the decision. The appeal must be in writing and state the ground(s) on which the appeal is being made. Any supporting documentation must also be supplied. Simultaneously a copy of the appeal and any supporting documentation should also be provided to the Chief Executive Officer of the ETB.

All correspondence should be sent marked 'private and confidential' to the addressee only'.

An appeal hearing is **not intended to repeat the investigation/disciplinary process**, but to address **specific issues** which the staff member feels has received insufficient consideration such as:

Breach of procedure which results in a serious flaw in the outcome. Examples include:

- (a) The provisions of the agreed procedures were not adhered to
- (b) At the time, all the relevant facts were not ascertained
- (c) At the time, all the relevant facts were not considered or were not considered reasonably
- (d) The appellant concerned was not afforded a reasonable opportunity to answer the allegation
- (e) The finding is not supported by the evidence
- (f) The general principles of procedural fairness were not applied

- (g) The sanction recommended is disproportionate to the underperformance or misconduct alleged.

The format for appeal will entail the attendance of the staff member with his/her representative and a representative of the ETB (which similarly may be accompanied/represented) with the third party agreed by the parties. The third party agreed by the parties to this procedure at national level for the purpose will be authorised to adjudicate and to issue a decision on the appeal citing the specifics of the basis for that decision. The adjudicator's decision will be binding on all parties, be conveyed in writing to the CEO of the ETB for implementation and copied to the appellant.

This concludes the appeals process and internal disciplinary process in such circumstances".

General Guiding Principles on appeals under Formal Procedure Stage 4

1. Contact details for the Appeal Officer

The agreed Appeal Officer for the purpose of appeals under stage 4 is:

Mr Brian McGinn
Regional Manager
Conciliation Service
Labour Relations Commission
Tom Johnson House, Haddington Road Dublin 4
Direct Line: 6136719
Fax: 6136742
Email: brian.mcgin@djei.ie

2. Activating an appeal

An appeal should be clearly stated and specific. Supporting examples should be provided under the appeal grounds and where more than one appeal ground is specified, supporting examples should be provided for each appeal ground. The appeal should be sent to the Appeal Officer by registered post together with any supporting documentation, marked "**Private and Confidential to the Addressee only**", in sufficient time to arrive no later than seven working days after the notification of the disciplinary decision.

Simultaneously, a copy of the appeal and supporting documentation if any, should be sent by registered post, marked "**Private & Confidential to the Addressee only**", to the Chief Executive Officer of the VEC concerned.

3. Responding to appeal documentation

On receipt of a copy of an appeal, the VEC should:

(1) Submit its response to the appeal (as far as possible set out under each of the stated grounds of appeal), and any supporting documentation, to the Appeal Officer no later than 15 working days from the postal date receipt by the VEC of the appellant's appeal.

(2) Simultaneously provide a copy of its response and any supporting documentation to the appellant.

All documentation should be sent by registered post, and marked "*Private and Confidential to the Addressee only*".

4. Appeal Hearing

Having reviewed the documentation provided, the Appeal Officer will arrange an appeal hearing at which the appellant (and his/her representative if any) and the VEC (which may similarly be accompanied/represented), and others as may be determined by the Appeal Officer, will be requested to attend.

The Appeal Officer will deal directly with a nominated person in the administrative offices of the VEC (e.g. the HR Manager/senior VEC management official) to arrange a date, time and venue for the appeal hearing. It will be the responsibility of this nominated person (in the ETB), having consulted with the Appeal Officer, to make all necessary practical arrangements for the hearing on the specified date including advising the parties to the appeal in writing of the details of the date, time and venue arranged.

5. How an appeal hearing generally operates

The appeal hearing will not be a repeat of the investigation/disciplinary process; it will address only the specific grounds of appeal.

The overall objective is to hear the appeal against the Stage 4 sanction. The appeal hearing process is informal and non-legalistic in practice. The parties are free to represent themselves or be represented by a trade union or employer organisation but not any person/body unconnected with the enterprise. The nature of appeal hearings is such that legal representation is not required.

The appellant (and his/her representative/s) are provided with an opportunity to speak in relation to the written grounds of appeal.

The ETB (and representative/s) are provided with an opportunity to speak in relation to the VEC's written response to the grounds of appeal.

Both parties are provided with an opportunity to comment on, and ask questions on, each other's statements in relation to the grounds of appeal.

The Appeal Officer, acting as Chairperson, may also wish to ask some questions of one or both parties.

The Appeal Officer may adjourn a hearing to a later date if necessary for the proper conduct of the appeal.

6. Decision arising from an appeal

The Appeal Officer will deliver his decision in writing as soon as possible after the conclusion of the appeal hearing and ideally **within a maximum of 20 working days**. The decision will be conveyed in writing to the CEO of the VEC for implementation, and copied simultaneously to the appellant. This will conclude the provision for appeal of Stage 4 sanctions under the disciplinary procedure.

Issued by the Consultative Forum of ETBI and sector trade unions, in consultation with Mr Brian McGinn, Appeal Officer.