

Title	LWETB Procedure for Suspension & Dismissal of Teachers
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LWETB

Procedure for Suspension & Dismissal of Teachers

APPENDIX 1 - TEACHERS

Revised Procedures for Suspension and Dismissal of Teachers

1. Background

Under the terms of Towards 2016 the parties undertook to review and revise existing procedures for the suspension and dismissal of teachers comprehended by Section 24(3) of the Education Act 1998. Since the parties noted that the provisions of Section 24 of the Education Act 1998 did not apply to teachers in schools operated by vocational education committees (VECs) further discussions ensued involving the DES, the IVEA, the TUI and the ASTI in order to adapt the provisions agreed in relation to other teachers to accommodate the specific management structures and processes operating in VEC schools. These discussions concluded in procedures for the suspension and dismissal of teachers in VEC schools being agreed between the parties.

Subsequently, following the commencement of the Education and Training Boards Act 2013 and the Education (Amendment) Act 2012, the parties met again to align the procedures with the provisions of these Acts.

The following procedures have now been issued in that context.

ETBs and Principals have a responsibility for the quality and effectiveness of education and the management of staff in a school as set out in the Education Act 1998.

While no procedures can be definitive about the range of circumstances which might give rise to the initiation of disciplinary procedures in general these are likely to be related to misconduct, a threat to the health and safety of students and/or sustained failure to perform adequately the professional duties and responsibilities expected of a teacher.

The following procedures provide for two separate and independent strands which should be utilised in appropriate circumstances;

- Procedure relating to professional competence issues
- Procedure relating to work, conduct and matters other than professional competence

The procedures apply to all teachers other than those teachers serving in a probationary capacity. In relation to teachers serving in a probationary capacity the existing probation arrangements will continue to apply.

The procedures are designed to deal solely with issues of employment and supersede all prior existing disciplinary procedures in existence save for those provided in law. Issues relating to registration are a matter for the Teaching Council.

It will be open to any of the parties to seek a review of these procedures.

2. General Principles underpinning these procedures

Apart from considerations of equity and justice, the maintenance of a good industrial relations atmosphere at workplace level requires that acceptable procedures be in place and be observed. Disciplinary procedures are necessary to ensure both that discipline is maintained in the workplace and that disciplinary measures can be applied in a fair and consistent manner.

Such procedures serve a dual purpose in that they provide a framework which enables management to maintain satisfactory standards and employees to have access to procedures whereby alleged failures to comply with these standards may be fairly and sensitively addressed.

The essential elements of any procedures for dealing with disciplinary issues are that they be rational and fair, that the basis for disciplinary action is clear, that the range of penalties that can be imposed is well-defined and that an internal appeal mechanism is available.

Every teacher is personally accountable for his/her own behaviour and work performance. Early intervention at the appropriate level to address perceived inappropriate behaviour is desirable for all parties so as to minimise the risk of having to escalate sanctions as provided for in these procedures.

Every effort will be made by the Principal to address alleged or perceived shortcomings in work and conduct through informal means without invoking the formal disciplinary procedure.

Where circumstances warrant, a teacher may be placed on administrative leave with full pay pending an investigation, or pending the outcome of an investigation, a disciplinary hearing/meeting or the outcome of a disciplinary hearing/meeting.

The procedures are intended to comply with the general principles of natural justice and provide:

- that there will be a presumption of innocence. No decision regarding disciplinary action can be made until a formal disciplinary meeting has been convened and the employee has been afforded the opportunity to respond to the allegations raised.
- that the employee 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. A complaint should be in writing.

- that details of the allegations, complaints or issues of professional competence be put to the teacher concerned
- that the right of a teacher concerned to have access to and to view his/her personnel file (to include all records in relation to the teacher in hardcopy or electronic format, held by the school/ETB) will be fully respected
- that the teacher concerned is given the opportunity to avail of representation, normally by a work colleague or trade union representative/s
- that the teacher concerned be given the opportunity to respond fully to any such allegations, complaints or issues of professional competence
- that the teacher concerned has the right to examine and challenge all evidence available and to call witnesses or persons providing such evidence for questioning.
- that the teacher concerned has the right to a fair and impartial examination of the issues being investigated, taking into account the allegations or complaints themselves, the response of the teacher concerned to them, any representations made by or on behalf of the teacher concerned and any other relevant or appropriate evidence, factors or circumstances
- that the ETB, as employer, has a duty to act reasonably and fairly in all interactions with staff and to deal with issues relating to conduct or professional competence in a confidential manner which protects the dignity of the teacher
- that all matters relating to the disciplinary procedure are strictly confidential to the parties and their representatives
- that it will be considered a disciplinary offence for any person to intimidate or exert inappropriate pressure on any person who may be required to attend as a witness.
- that where a decision is taken to impose a disciplinary sanction, the sanction imposed will be in proportion to the nature of the conduct/behaviour/performance that has resulted in the sanction being imposed
- that these procedures are without prejudice to the right of a teacher to have recourse to the law to protect his/her employment.

Reasonable and appropriate support, training and assistance will be provided. In this context, a major focus of the work of the Support Services at Primary and Post Primary level will be the provision of appropriate advice and assistance to schools and teachers in the formulation of improvement plans and, where relevant, in their implementation. Arrangements will also be put in place to provide for the timely accessing of those services as required.

Procedure relating to teachers experiencing professional Competence

issues

Preamble

As is the norm with any profession it is a matter for the individual teacher, in the first instance, to maintain appropriate standards of teaching and to personally address competence issues if and when they arise. Furthermore, it is a teacher's responsibility and obligation to ensure that he or she avails fully of all opportunities of assistance towards remediation of professional competence issues.

In this context it is fully accepted that a significant majority of teachers discharge their duties in a competent and efficient way and provide a service in line with the best traditions of teaching. Accordingly, any process geared to address matters of professional competence is aimed at a minority of individuals within a profession. It is also the case that any such process must recognise the reality that professional competence issues are often of a transient nature and may have their origin in issues of a personal or professional nature which are of relatively short time duration.

There may also be instances where concerns are raised regarding a teacher's professional competence through parental complaints. In such cases the concerns will be addressed by the Principal in the first instance in accordance with agreed parental complaint procedures. The Principal will consider the nature of the complaint before determining whether the issue falls to be considered under the procedures relating to professional competence. If the procedures relating to professional competence are subsequently invoked the parent who made the complaint will be so advised and informed of the final outcome of the process.

It follows that the approach to dealing with matters of professional competence should involve a number of stages moving from informal stages to formal stages which may at the end of the process have recourse to disciplinary action (up to and including dismissal). This must of course have regard to the right and duty of the ETB to act immediately in matters of serious misconduct or where it considers that a threat exists to the health, safety and welfare of students and/or staff.

Stage 1 Informal

Stage

- 1.1 As outlined in sections 22 and 23 of the Education Act 1998 (as amended by the Education Act 2012), the Principal, as part of his/her day-to-day responsibility for the management of the school, has responsibility for the guidance and direction of teachers, the provision of leadership to teachers and students and the creation, together with the board of management, of

an environment which is supportive of learning among the students and which promotes the professional development of teachers. The Education Act provides also that the Principal shall have all and such powers as are necessary or expedient in that regard. The Principal is, therefore, in the best position to identify when professional competence issues arise in a teacher's work.

- 1.2 Where the Principal has concerns that there may be issues of professional competence in a teacher's work s/he will advise the teacher, orally, of the specific nature and extent of these concerns and furnish the teacher with any relevant documentation relating to the issue.
- 1.3 At this stage the teacher should be given a copy of these procedures and be advised to familiarise himself/herself with the various stages of the procedures that may be invoked and the range of sanctions available to the Chief Executive of the ETB (hereinafter referred to as the CE) in the event of sustained underperformance.
- 1.4 The Principal will seek to explore with the teacher the underlying cause(s) and where possible agree the steps that need to be taken to address the matter. In this context the Principal will advise the teacher of available internal and/or external supports and endeavour to assist the teacher in accessing those supports. These may include the Employee Assistance Service, the Professional Development Services for Teachers (PDST) and /or other external agencies that are relevant and/or appropriate in the circumstances having regard to the nature of the particular issues.
- 1.5 It is intended that through dialogue between the Principal and the teacher the issues are resolved to the satisfaction of the Principal and that both agree that no further action is necessary.
- 1.6 It is intended that professional competence issues of a transient nature should be resolved through informal mechanisms, normally within a three-month period excluding holiday periods.
- 1.7 Where a teacher has failed to engage positively with the process and the Principal continues to have concerns that there are professional competence issues of a sustained nature, the Principal will notify the teacher of his/her intent to refer the matter to the relevant Director/ETB staff member delegated by the CE, with a view to the initiation of the formal process.

Stage 2

Initiation of the formal process

- 2.1 The Principal will advise the relevant Director/ETB staff member delegated by the CE of his/her concerns and provide a written report to him/her. The teacher will be given a copy of the report simultaneously, and will be afforded an opportunity to provide a written response as part of the process of consideration of the matter.
- 2.2 At this stage it is open to the teacher to invoke Stage 3 of this procedure within 10 school days of receipt of the report. Where the teacher adopts this course of action it is on the strict understanding that he/she cannot then seek to revert to any earlier stage of the process and that the Principal and relevant Director/ETB staff member delegated by the CE will proceed to the next stage as appropriate.
- 2.3 Alternatively where the teacher does not take up this option the relevant Director/ETB staff member delegated by the CE will consider the report of the Principal and any written response provided by the teacher. At this stage the teacher will be provided with an opportunity to address the relevant Director/ETB staff member delegated by the CE on the matter if he/she so wishes. The relevant Director/ETB staff member delegated by the CE will then make a decision on how to proceed. This decision may involve the relevant Director/ETB staff member delegated by the CE finding that:
 - There are insufficient grounds to conclude that there is an issue of professional competence,
 - There are sufficient grounds as to warrant the initiation of the formal process.
- 2.4 Where the relevant Director/ETB staff member delegated by the CE is of the view that there are sufficient grounds, he/she will charge the Principal with defining the required improvement plan for the teacher in question.
- 2.5 The Principal will meet with the teacher concerned to discuss the improvement plan.
- 2.6 The plan will specify the perceived deficiencies in the teacher's performance and the required improvement expected of that teacher. It will also set out the range of supports and training available to the teacher and suggestions as to which should be availed of by the teacher in the context of improving his or her performance. The improvement plan will also set out a timeframe within which the required improvement should be put into effect. Appropriate supports will be made available to the Principal in drawing up the improvement plan.

- 2.7 While bringing about the improvement in his or her performance is the primary responsibility of the individual teacher, the Principal/relevant Director/ETB staff member delegated by the CE, will support and facilitate that teacher in bringing about the required improvement.
- 2.8 Normally, it would be expected that the required remediation of professional competence issues would take place within the timeframe set down in the improvement plan which should be no less than a three-month period excluding holiday periods. This period may be extended by the Principal, subject to the agreement of the relevant Director/ETB staff member delegated by the CE, to allow the teacher further time to fully implement the improvement plan.
- 2.9 Following the conclusion of the time period provided for improvement, the Principal will furnish a written report to the relevant Director/ETB staff member delegated by the CE and the teacher setting out his/her views on the outcome.
- 2.10 Where the Principal reports that the required improvement has been brought about the relevant Director/ETB staff member delegated by the CE will inform the teacher in writing confirming his/her intention to conclude the formal process.
- 2.11 Where the Principal reports to the relevant Director/ETB staff member delegated by the CE that the required improvement in teaching performance has not been brought about following the conclusion of the period allowed for this process, the relevant Director/ETB staff member delegated by the CE will consider the matter, as provided for below.
- 2.12 The teacher will be given an opportunity to provide an oral and written response to the Principal's report as part of the process of consideration of the matter.
- 2.13 Following consideration of the teacher's response the relevant Director/ETB staff member delegated by the CE may decide that:
- Sufficient progress has been made by the teacher and that the procedure is being brought to a conclusion;
 - The improvement plan should be modified;
 - The required improvement has not been brought about by the teacher.

Stage 3

External Review

- 3.1 Where the relevant Director/ETB staff member delegated by the CE decides that the required improvement has not been brought about, the relevant Director/ETB staff member delegated by the CE will request the Chief Inspector to arrange for a review of the work of the individual teacher. The teacher will be so informed by the relevant Director/ETB staff member delegated by the CE in such instances. The request for the review should include details of the nature of the concerns of the relevant Director/ETB staff member delegated by the CE the supports offered to the teacher, the extent to which these supports were availed of by the teacher and the outcomes.
- 3.2 Before approving the review the Chief Inspector* will satisfy himself/herself that the appropriate support has been offered to the teacher and that, despite this, the teacher's work is still considered to be unsatisfactory. The Chief Inspector may seek further information from the relevant Director/ETB staff member delegated by the CE as s/he deems necessary. Where a teacher has availed of the option at Stage 2 to invoke Stage 3 of the process the Chief Inspector will satisfy himself/herself of this fact before initiating the review.
- 3.3 All documentation provided to the Chief Inspector will be furnished to the teacher.
- 3.4 The function of carrying out an external review, which is vested in the Chief Inspector in consequence of these procedures, is separate from and without prejudice to the statutory function of the Chief Inspector as set out in Section 13 of the Education Act 1998.
- 3.5 Where the Chief Inspector agrees to the request he/she may assign such and so many personnel to conduct the review as appears to him/her to be necessary. In assigning a person or persons to the conduct of this task the Chief Inspector will have regard to the requirement that any individual/s so assigned have a competence which is relevant to the review.
- 3.6 The review may involve a series of visits to the teaching and learning situation and will normally be carried out by a member/members of the Inspectorate. The person/persons assigned by the Chief Inspector will have whatever access to the teaching and learning situation as is necessary by them in order to provide a professional view on the competence of the teacher. There may be instances, having regard to the nature of a particular case, where the member/members of the Inspectorate may be accompanied by a person

with particular expertise relevant to the issues of concern raised by the relevant Director/ETB staff member delegated by the CE. In all instances the review process will be led by a member of the Inspectorate.

- 3.7 The teacher, who is the subject of the external review, shall co-operate in full with the review process and any failure to so co-operate will in itself be a disciplinary matter. Any such lack of co-operation may also be taken into account by the person/persons assigned by the Chief Inspector in formulating their conclusions.
- 3.8 The person/persons assigned by the Chief Inspector will present a report to the Chief Inspector who, in turn, will make this report available to the relevant Director/ETB staff member delegated by the CE and the teacher. The report will set out the conclusions reached in relation to the concerns raised.
- 3.9 The relevant Director/ETB staff member delegated by the CE will provide the teacher with an opportunity to make a written response to the Chief Inspector's report within 15 school days of receipt of the report by the teacher.
- 3.10 The relevant Director/ETB staff member delegated by the CE will consider the report of the Chief Inspector and the written response from the teacher, within 10 school days of receipt of the written response from the teacher. The relevant Director/ETB staff member delegated by the CE may decide:
 - That no further action is warranted
 - To proceed to a disciplinary process within the remit of the CE

Where it is decided that no action is warranted, the teacher will be so informed in writing within 5 school days.

*The reference to the Chief Inspector includes members of the Inspectorate to whom this function is delegated by the Chief Inspector.

Stage 4

Hearing

- 4.1 In accordance with the provisions of the Education and Training Boards Act, 2013, employment matters including the suspension and dismissal of staff are executive functions. Consequently the following procedures will apply:

The teacher will be provided with an opportunity to attend at a meeting with the CE, accompanied by a representative/s, normally his/her trade union

representative/s or a colleague/s, subject to an overall maximum of two.

The teacher will be given at least 7 school days' notice of the meeting. The notice should state the purpose of the hearing and the fact that disciplinary action may be considered.

At the meeting the teacher will be given an opportunity to make his/her case in full and to challenge any evidence that is being relied upon for a decision.

Following the hearing the CE shall make his/her judgement on the matter. In formulating his/her judgement the CE will take account of the conclusions set out in the report of the Chief Inspector, any other evidence and the teacher's representation (if any) thereon.

The CE shall notify the teacher of his/her decision and any intended disciplinary action if that be the outcome of his/her deliberations. If it is decided to take disciplinary action, the CE may avail of any of the following range of sanctions:

- Final written censure
- Deferral of an increment
- Withdrawal of an increment or increments
- Suspension (for a limited period and/or specific purpose) with pay
- Suspension (for a limited period and/or specific purpose) without pay
- Dismissal

Where disciplinary action short of dismissal is proposed, the case will be reviewed by the CE within a specified time period to consider whether further disciplinary action, if any, is required.

The CE will act reasonably in all cases when deciding on the appropriate disciplinary action. The nature of the disciplinary action should be proportionate to the issue of professional competence.

Stage 5

Appeal

- 5.1 It will be open to the teacher to appeal against the proposed disciplinary action of the CE. Such an appeal will be heard by an independent appeal panel appointed by the CE as set out in Appendix 1 A.
- 5.2 The procedures for appealing to the independent appeal panel are as set out

in Appendix 1 A.

Notification to Department of Education and Skills and the Teaching Council

The CE will inform the Department of Education and Skills of the nature of the disciplinary action and will comply with any requirements of the Teaching Council in accordance with the provisions of Section 37 of the Teaching Council Act 2001.