



## Disciplinary Procedure



**Department:** Schools' HR Advisory Team

**Date of issue:** June 2014

**Review date:** 09/11/2016



This procedure has been negotiated with the Professional Associations/Trade Unions and is recommended for adoption.

<b>Date:</b>	09/11/2016	<b>Last Reviewed Date:</b>	Nov 2016
--------------	------------	----------------------------	----------

<b>Headteacher:</b>		<b>Date:</b>	14 <sup>th</sup> November 2016
<b>Chair of Governors:</b>		<b>Date:</b>	14 <sup>th</sup> November 2016

<b>Date of Next Review:</b>	September 2018
-----------------------------	----------------

**C O N T E N T S**

<b>1</b>	<b>Objective and Scope</b>
<b>2</b>	<b>Disciplinary Rules</b>
<b>3</b>	<b>Principles</b>
<b>4</b>	<b>Effects of ill health or disability</b>
<b>5</b>	<b>Management Advice</b>
<b>6</b>	<b>Allegations about Safeguarding Children (Child Protection)</b>
<b>7</b>	<b>Financial Irregularity</b>
<b>8</b>	<b>Misuse of School Computers and Allied Equipment and software</b>
<b>9</b>	<b>Criminal Activity</b>
<b>10</b>	<b>Disciplinary Action Involving a Professional Association/Trade Union Representative or Relating to Trade Union Activities</b>
<b>11</b>	<b>Overlapping Disciplinary and Grievance Issues</b>
<b>12</b>	<b>Suspension</b>
<b>13</b>	<b>Definition and Separation of Roles</b>
<b>14</b>	<b>Right to be accompanied</b>
<b>15</b>	<b>The Investigation</b>
<b>16</b>	<b>Ill Health</b>
<b>17</b>	<b>Arranging a Disciplinary Hearing</b>
<b>18</b>	<b>The Note-Taker at a Disciplinary Hearing</b>



<b>19</b>	<b>The Disciplinary Hearing</b>
<b>20</b>	<b>Disciplinary sanctions</b>
<b>21</b>	<b>Appeals</b>
<b>22</b>	<b>Procedure for the Appeal Hearing</b>
<b>23</b>	<b>Difficulties that may arise during Disciplinary Hearings</b>
<b>24</b>	<b>Disciplinary Records</b>
<b>25</b>	<b>Resignations and Settlement Agreements</b>
<b>26</b>	<b>Referrals to Statutory Bodies</b>
<b>27</b>	<b>Appendix 1 – Disciplinary Procedure Flowchart</b>

## 1. Objective and Scope

The school's procedures are designed to clarify the rights and responsibilities of the school and employees and to promote fairness and order in any disciplinary action.

The policy and procedure applies to all employees of the school. This policy and procedure does not form part of any employees' contract of employment.

The school reserves the right to invoke any stage of the disciplinary procedures according to the seriousness of any unsatisfactory conduct regardless of any management warnings.

Actions taken by employees outside working hours may also fall within the scope of this policy if there is an impact on the employee's ability and/or suitability to do his/her job, or the actions may bring the school or employee into disrepute.

Where an employee is subject to more than one allegation relating to their conduct, these issues may be dealt with together, if appropriate.

Statutory requirements make it necessary for the Authority to draw the attention of the Disclosure and Barring Service (DBS) and National College for Teaching and Leadership to certain cases involving teachers and other school-based employees (see section 26).

Depending on the circumstances, other policies may be followed in place of, or in parallel with, the Disciplinary Procedure. For example, absence and incapability due to ill health will not normally be addressed under this policy (exceptions may be where the school believe the



absence is not for a genuine reason). In these cases reference should be made to the Health and Attendance Policy. Concerns about performance will be considered under the Capability Procedure.

## 2. Disciplinary Rules

The normally accepted rules of behaviour, which apply in society as a whole, will apply equally in the work situation. Any breach of an employee's Terms and Conditions of Employment, any conduct, which the school considers unsatisfactory or prejudicial to its interests, or any failure to meet the required standards of work, may render an employee liable to disciplinary action.

The lists below are not exhaustive and only serve as a guide to matters that the school may deem (depending upon the nature, circumstances and severity of the incident) to be a breach of general discipline or gross misconduct.

It is accepted that to differentiate between general and serious breaches of discipline is difficult, therefore each case must be treated on its own merits. Since the examples are only guidelines, discretion will have to be exercised by the school in categorising breaches of discipline having regard to all the circumstances under which the breach of discipline occurred.

Some examples are (but not limited to):

### 2.1 Examples of Misconduct

- Poor timekeeping (i.e. lateness / leaving early) and attendance standards
- Work not of the required standard (where capability is not in question)
- Disruptive behaviour
- Minor breaches of policies

### 2.2 Examples of Gross Misconduct

- Behaviour prejudicial to the good name or interests of the school or which may bring the employee or the school into disrepute
- Unauthorised and unreasonable absence from the place of work
- Wilful refusal to carry out a reasonable instruction or series of reasonable instructions
- Breach of confidentiality
- Breach of trust and confidence
- Theft, misuse or abuse of the property of the school or any other employee;
- Assault upon another employee or person
- Being under the influence of excessive (in the employer's opinion) alcohol on the school's premises, in working time or at a school event
- Fraudulent practices
- Falsification of any school records
- Violent or threatening behaviour towards people or property on the school's premises or at a school related event
- Gross negligence or insubordination
- Covertly recording hearings, meetings or colleagues



- Smoking on the school's premises
- Serious breach of health and safety procedures or regulations
- Making any sexual or other inappropriate contact with any pupil whatever the age of the pupil
- Using, handling or possessing illegal drugs or substances irrespective of whether it is on the school's premises, in working time, at a school event or whilst acting on behalf of the school
- Discrimination, harassment or victimisation on the grounds of protected characteristics as defined in the Equality Act of 2010
- Bullying, harassment or victimisation, whether verbal, written, photographic, pictorial or physical, whether inside or outside of the workplace.
- Inappropriate use of the school's Information Technology systems and passwords including email or internet abuse or misuse
- Using social media whether inside or outside of working time (e.g. blogs, Facebook, Twitter etc) to post derogatory or offensive comments about the school, work colleagues, or third parties with which the school has an operational relationship
- Any misappropriation of files or documents belonging to the school of any kind or making copies, duplicates or excerpts of these for private or any other purposes unrelated to an employee's employment and without consent
- Material breach of contract or of the school's policies and procedures
- Criminal offences, including those committed outside the workplace, which impact on the employee's ability or suitability to do his or her job

### 3. Principles

This procedure is a statement of the principles and practices that the school will generally follow in formal disciplinary cases to which this procedure applies. The following principles will apply:

- No disciplinary action will be taken against an employee until the case has been investigated
- At every stage in the procedure the nature of the complaint against an employee will be notified to them in writing
- Employees will be given no less than 10 working days' notice of any disciplinary hearing; unless agreed by both parties
- Employees and the employer may call witnesses as part of any hearing under the formal stages of this procedure
- Employees will not normally be dismissed for the first breach of discipline except in the case of gross misconduct when the sanction could be dismissal without notice
- Employees will have the right to appeal the outcome at each formal stage of the procedure
- The procedure may be implemented at any stage if an employee's misconduct warrants such action. There will be occasions when a final written warning or dismissal is justified for a first offence, so it should not be assumed that the first stage is always a first written warning
- The notice of the hearing will include the possible outcomes
- Breaches of discipline need not necessarily be of the same nature to permit progression to the next stage of the procedure



- At any formal disciplinary investigation or hearing, employees may be accompanied by a work colleague, with their agreement, or by an accredited Professional Association/Trade Union Representative and no-one else
- Each step and action taken will be taken without unreasonable delay
- The timing and duration of hearings will be reasonable
- Employees must take all reasonable steps to attend the disciplinary hearing. Failure to attend without a reasonable explanation could result in the hearing continuing in the employee's absence and a decision taken on the evidence available
- Reasonable consideration will be given to facilitating adjustments required in accordance with the Equality Act 2010, for example allowing an interpreter at a formal meeting

#### 4. Effects of ill health or disability

Before implementing the procedure, the school must consider whether ill health or disability factors may be contributing to the employee's conduct. If so, advice must be sought from Occupational Health to decide the best approach to assessing and resolving such contributing factors.

#### 5. Management Advice

It may be appropriate for minor conduct issues to be dealt with through management advice/letter of expectation rather than a formal process, in which case advice should be sought from the Schools' HR Advisory Team.

Notes of an informal discussion will be kept on the employee's file and the employee will be provided with a copy of these notes, together with an outcome letter. Any response given by the employee should be attached to the notes and also kept on their file.

Management advice/letters of expectation should not be directly mentioned when providing employment references, as it does not form part of an employee's disciplinary record.

#### 6. Allegations about Safeguarding Children (Child Protection)

Allegations about the safeguarding and protection of children must be handled in accordance with statutory guidance and the procedures of the Hertfordshire Safeguarding Children Board (HSCB), published in March 2007. The relevant statutory guidance is in part four: Allegations of abuse made against teachers and other staff (pages 30-40) of 'Keeping Children Safe in education' (DfE, April 2014), and sections 2.6 and 2.7 (for schools) of 'Working Together to Safeguard Children' (DFE, 2014). These documents can be accessed, respectively, at:

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300309/KCSIE\\_gdnce\\_FINAL.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300309/KCSIE_gdnce_FINAL.pdf)

<http://www.workingtogetheronline.co.uk/>

<https://www.gov.uk/government/publications/working-together-to-safeguard-children>

These procedures are no longer limited to allegations involving "significant harm/risk of significant harm". Any allegation that an employee or volunteer has:

- behaved in a way that has, or may have, harmed a child



- possibly committed a criminal offence against or related to a child
- behaved towards a child in a way that indicates that he/she is unsuitable to work with children must be dealt with in accordance with HSCB procedures

The role of the Local Authority Designated Officer (LADO) is crucial in handling all allegations of this kind (not just in relation to schools). The LADO has a statutory duty to ensure that allegations about safeguarding are handled properly and expeditiously.

The key points for a responsible individual (typically the Headteacher, Chair of Governors or DSP) to follow when made aware of an allegation of this nature are:

- a) Read and understand section 10 “Allegations against those working with children” of the HSCB Child Protection Procedures – March 2007 (a copy is held in every school)
- b) Inform the LADO **within 1 working day** of any allegation that comes to the school’s attention and that meet the criteria above, the information to include the name of the employee and the name, address and date of birth of the pupil(s)/student(s), where relevant
- c) Whilst a preliminary assessment of the available evidence can be made in order to inform the referral in b) no attempt should be made to carry out an investigation
- d) A strategy meeting, normally arranged within 2 working days of the allegation, will determine whether the allegation should be investigated by the Police or by some other agency or by the school under its disciplinary procedure
- e) If the matter is handed back to the school, whether at the first strategy meeting or at some later stage, consideration should be given to any recommendations from the strategy meeting

## 7. Financial Irregularity

- a) If a case in a school maintained by the Local Authority involves alleged financial irregularity, corruption or fraud, Internal Audit **must** be contacted at the earliest possible opportunity and kept informed, without alerting the employee at this stage. At this stage, consideration will be given to Police involvement and Internal Audit must be consulted before a decision is made
- b) Internal Audit will determine whether the matter should be referred to the Police
- c) Similar principles apply to Academies where the funding agency must be informed

## 8. Misuse of School Computers and Allied Equipment and software

Computers and allied equipment and software (e.g. emails) are the property of the school; therefore examination of such equipment or software can take place without permission of the individual.

- a) If there are suspicions that an employee is misusing school equipment (e.g. by accessing or downloading inappropriate material), the Headteacher will carry out an



initial assessment of the circumstances, without alerting the employee at this stage. An HR Adviser from the Schools' HR Advisory Team can advise on how to get equipment removed and examined for evidence

- b) Where suspicions are that the misuse of equipment relates to the accessing or downloading of inappropriate material, the LADO must be informed without delay. They will determine whether the matter should be referred to the Police

**9. Criminal Activity**

No internal disciplinary investigation should be initiated whilst the matter is being investigated by the Police/Internal Audit, without authorisation being given to do so.

**10. Disciplinary Action Involving a Professional Association/Trade Union Representative or Relating to Trade Union Activities**

If the employee is a trade union representative or if the allegation relates to trade union activity, no action under the disciplinary procedure will be taken until the matter has been discussed with a full time official of the relevant union.

**11. Overlapping Disciplinary and Grievance Issues**

An employee may raise a grievance after disciplinary proceedings have been initiated. The Commissioning Manager (see section 13.1) should consider suspending the disciplinary for a short period, not usually more than a week to consider the implications, if any, upon the disciplinary process. If the grievance concerns matters that are unrelated to the disciplinary a separate investigation under the Grievance procedure will take place, but this will normally be after the completion of the disciplinary procedure unless there is a long delay when, for example the outcome of Police proceedings are awaited. If the allegation involves matters which relate to the disciplinary process the grievance will be investigated but it may be appropriate to deal with both issues concurrently. A grievance will not be accepted if it is a complaint about dismissal or disciplinary action which should be submitted as an appeal against the disciplinary decision within the time period stipulated.

Following the completion of the disciplinary process, the employee will not be able to pursue the matters under the Grievance Procedure.

**12. Suspension**

An employee may be suspended on full pay in the following circumstances:

- (a) Where there is an allegation which if proven may be deemed gross misconduct
- (b) For the protection of students, colleagues, property, or the employee
- (c) Where it is believed that the continuing presence of the employee in the workplace could interfere with the conduct of the investigation, including the taking of statements
- (d) Relationships have broken down
- (e) There are concerns regarding Health and Safety

Suspension is a neutral act and does not imply that any decision about the veracity of the allegations has been made. The decision to suspend may be made by the Headteacher or



the Governing Body, but as it will have a serious impact on the employee, advice should first be sought from the Schools' HR Advisory Team.

Consideration should also be given to the following short term alternatives to suspension:

- Working from home
- Paid leave of absence
- Working in a different location
- Working in a more closely supervised environment

Such alternatives should not normally be used for more than one week to allow time for a preliminary assessment of the evidence that is readily available.

Where the allegation concerns the safeguarding of children, a risk assessment must be discussed with the LADO. Once this assessment has been made, a decision about suspension can be taken.

Wherever possible, a meeting with the employee and his/her accredited Professional Association/Trade Union representative should be held, at which the allegations and reasons for considering suspension will be discussed. Discussion should include the arrangements for keeping in contact with the employee. The decision will be confirmed in writing as soon as possible.

During suspension a named contact will be assigned to keep in touch with the employee.

Suspension will be reviewed periodically (normally every 4 weeks) by the Commissioning Manager (see section 13.1) to consider whether circumstances surrounding the suspension have changed. If circumstances require, the Commissioning Manager will make a recommendation to the Governing Body that the suspension be lifted.

Where it is not possible to review the suspension within the normal review period (e.g. where it falls during a period of school closure such as the summer holidays) a longer period of review should be set and the reason for this is communicated in writing to the employee.

Where the reason(s) for suspension is considered to no longer be relevant, and no new information has come to light to otherwise justify such a measure, the review should be brought forward and steps taken to reintegrate the employee back into the workplace as soon as is reasonably practical.

### 13. Definition and Separation of Roles

There are several distinct roles to be taken during disciplinary proceedings. It is essential that they are clearly defined and that the person carrying out the role is clearly identified.

#### 13.1 The Commissioning Manager

The Commissioning Manager, normally the Headteacher or the Chair of Governors, will decide whether an allegation is sufficiently serious to warrant a formal investigation under this procedure. If so, s/he will appoint an Investigating Officer to carry out an investigation. If the Headteacher faces an allegation or has had any prior involvement in the matter under investigation, including as a witness, the role of Commissioning Manager will be assumed by



the Chair of Governors. Before embarking on the formal procedure it is strongly advised that advice is sought from the Schools' HR Advisory Team.

### **13.2 The Investigating Officer**

The Investigating Officer will normally be an appropriate member of the School's Leadership Team or other manager. Care must be taken to ensure that the Investigating Officer is able to carry out the investigation impartially. If the Headteacher conducts the investigation, the role of Commissioning Manager must be assumed by the Chair of Governors, and any disciplinary hearing conducted by a Panel of other Governors. If appropriate, advice should be sought from the Schools' HR Advisory Team about appointing an Investigating Officer from outside the school.

On receipt of the allegation, the Investigating Officer will carry out an investigation to establish the facts, which will include interviewing any witnesses. This will be followed by an interview with the employee against whom allegations have been made, giving reasonable notice of such a meeting. The employee will be invited to put forward any additional witnesses who have not yet been interviewed.

When the investigation is complete, the Investigating Officer will submit a report to the Commissioning Manager presenting all the evidence, including signed statements from the witnesses (see section 15.1).

### **13.3 The Person or Panel who conducts the Hearing**

Where dismissal is a possible outcome, the case will normally be heard by a Panel of three Governors. According to statutory guidance, this will also apply in the following circumstances:

- a) where the Headteacher is unwilling to perform the function and was appointed to the Headship of the school before 1 April 2004
- b) where the Headteacher has been directly involved in the case, either as Investigating Officer or witness
- c) where the Governing Body of a school with a religious character has agreed policies and procedures that provide for Governor involvement in the interests of preserving the school's religious character
- d) where the Headteacher is suspended or subject to disciplinary or capability procedures
- e) where the Authority has made formal representations to the Chair of Governors on the grounds of serious concerns about the performance of the Headteacher

It may be necessary to co-opt Governors from other schools where it is not possible to form a Panel from the school's own Governing Body. The Governance Team should be contacted for advice.

In all other cases the Headteacher, including where they fulfil the role of Commissioning Manager, may hear the case. Advice should be sought from the Schools' HR Advisory Team.



### 13.4 The Presenting Officer

The case will normally be presented at the hearing by either the Commissioning Manager or the Investigating Officer. The Commissioning Manager may jointly present the case with the Investigating Officer. It is ultimately for the Commissioning Manager to determine which person(s) shall present the case on behalf of the school.

### 13.5 Expert Advice at the Hearing

At any disciplinary hearing, including during the subsequent deliberations leading to a judgement, the Panel may be advised by a member of the Schools' HR Advisory Team.

At any hearing where dismissal is to be considered, the following provisions apply:

- a) At any Community or Voluntary Controlled school the Local Authority must be invited to send an adviser. The school must send all of the papers for the hearing to the HR Adviser no later than the date on which they are sent to the employee
- b) In Voluntary Aided, Foundation schools and Academies it is recommended that an HR Adviser is invited to attend. Papers for the hearing should be sent to the HR Adviser no later than the date on which the papers are sent to the employee

## 14. Right to be accompanied

An employee has the right to be accompanied and supported, during the investigation and at each formal stage of the procedure where action may be taken (including appeal), by a fellow employee or an accredited Professional Association/Trade Union Representative and no-one else.

The role of the Professional Association/Trade Union representative or work colleague is to:

- familiarise him/herself with the case
- assist the employee in preparing for the case
- confer with the employee before and after the hearing
- present and sum up the employee's case, as agreed with the employee
- address the hearing and ask appropriate questions, as agreed with the employee
- respond on the employee's behalf to any view expressed at the hearing and
- ask for adjournment if necessary

The Professional Association/Trade Union representative or work colleague is not permitted to:

- (i) answer questions on behalf of the employee
- (ii) address the hearing if the employee indicates that he/she does not wish them to do so
- (iii) prevent the school from explaining the case
- (iv) prevent any other person at the hearing from making his/her contribution



Internal school Professional Association/Trade Union representatives or a work colleague are entitled to paid time off during normal working time to fulfil this responsibility, which includes time for preparation of the case as well as to attend the hearing. This should be agreed with the Headteacher.

The employee should provide the name of their representative in advance. If the chosen representative is unavailable at the time of the hearing, the employee may request a postponement (once) to a time that is convenient to all parties within a reasonable timescale not normally exceeding 5 working days.

An employee will not be subject to any detriment by the employer for having acted as a companion in disciplinary proceedings.

## 15. The Investigation

Alleged instances of misconduct should be acted upon promptly.

Following a complaint or allegation, it may be clear that a formal investigation is required, but in some cases, a preliminary assessment of the available evidence will be appropriate to determine whether the allegation could have occurred. Once a decision has been made that a formal investigation is needed, the employee should be informed in writing of the nature of the complaint.

Where the complaint or allegation concerns the Headteacher, the Chair of Governors should seek support from the school's HR Adviser.

The Investigating Officer will investigate the matter thoroughly and impartially, which will include interviewing the employee. The employee will be informed that they have the right to be accompanied by his/her accredited Professional Association/Trade Union Representative, or a work colleague and no one else. The employee will be given a copy of the record of their investigatory meeting to sign, and the provision to make any amendments. Amendments should be clearly stated on the record of the meeting. This document will form part of the evidence presented at any subsequent hearing.

The investigation should be completed as quickly as is reasonably possible in the circumstances.

In cases involving sexual misconduct or harassment, it may be appropriate to appoint an investigator of the same gender as the complainant, who could be from outside the school, to assist with any investigation.

### 15.1. Witnesses

A 'witness' is someone who is not the subject of the allegation, but can provide an account of the alleged incident(s).

During the investigation factual witness statements will be taken from all relevant witnesses, which must be signed and dated. If allegations result in a disciplinary hearing, pupil names will be redacted. If on the rare occasion no signature can be obtained the statement may still be presented. Only information that is directly relevant to the allegation(s) will be included. The questions that the witnesses were asked should be included in the statements to



demonstrate that the witnesses have not been led by the interviewer. When statements are taken, the dates and any names quoted should be written out in full and the date of the interview should be included. Testimonials regarding an employee's character will not be accepted as witness statements, nor may witnesses be called to attend a hearing for this purpose.

A witness should be informed that:

- Any evidence provided may be included in their statement, so they should not disclose information that is irrelevant or prejudicial; He/she will be given one opportunity to review and amend their statement. If this involves substantial changes to the facts both versions of the statement will be included in the investigation report
- His/her statement may be presented at any subsequent disciplinary hearing and s/he may be called to give evidence at the hearing and to be cross examined by the employee or their representative
- A copy of his/her statement will be provided to the employee once it has been signed and agreed if, following the investigation, a formal disciplinary hearing is held

A witness who is not a school employee may provide a witness statement (not a testimonial) but would not usually attend the disciplinary hearing.

It may not be necessary for witnesses be present at a disciplinary hearing to answer questions as the Disciplinary Panel may take statements as read. Any witness to be called at a hearing must have submitted a written statement of their knowledge of the case in advance of the hearing which has been exchanged with all parties in accordance with the normal rules for exchanging paperwork set out in section 17.

Employees of the school may be instructed by the Commissioning Manager to attend a disciplinary hearing on behalf of the school.

If the employee wishes to call witnesses from the school, requests must be made in writing in good time through the Commissioning Manager. It is a decision for the employee whether to attend.

The employee must provide the Commissioning Manager with the names of any witnesses they intend to call not later than 4 working days before the hearing.

## 15.2. Statements from Pupils

- (i) This is a delicate area where the search for truth needs to be conducted in such a way as to avoid causing emotional harm to the pupil whose evidence is required
- (ii) As a general principle, **children should not be interviewed more than once**. If a child has already been interviewed by the Police or by a social care agency in the course of an investigation into the same or similar allegations, the interview statements should be requested from the other agency and used in the school's investigation



- (iii) Care needs to be taken to ensure that the pupil does not, as far as possible, feel intimidated by the process. This is particularly true for a pupil who might themselves have been the subject of the alleged misconduct. Where a formal investigation is underway, the parent/carer of the pupil should always be informed and invited to attend the interview with their child. The parent/carer should be told that an incident is being investigated and that the pupil's evidence may be used if it proves necessary to hold a formal disciplinary hearing. The pupil will not be required to attend the hearing to give evidence in person

Statements must be taken as soon as possible after the alleged incident has occurred when recollections are likely to be clearest, and in order to minimise the opportunity for collusion and rumour

- (iv) Where the Investigating Officer is not well-known to the pupil, for example, if they are from outside the school, consideration should be given to asking the school's Designated Senior Person (DSP) for Child Protection to carry out this part of the investigation. The pupil should feel able to speak frankly and, as far as is possible, in a situation that is not intimidating
- (v) In any event, when interviewing pupils, the Investigating Officer should be accompanied by a second adult, whose role is to ensure that a complete and accurate record is taken
- (vi) The Investigating Officer, taking into account the age and capabilities of the pupil, should ask the pupil to write down an account of what happened. Where this is not practicable, the Investigating Officer must write down the pupil's account and check carefully that they have recorded accurately what the pupil has said. It will be helpful for the Investigating Officer to prepare questions in advance
- (vii) The Investigating Officer should seek clarification of what the pupil saw and experienced. Leading questions must be avoided, but it is important to record the pupil's account of what happened, where and when and who else might have been present during the incident under investigation
- (viii) The pupil's account should, like any witness statement, indicate the time, date and place at which the account was written, the questions asked, plus the names and roles of all those present at the interview
- (ix) Pupils/students under 18 must never attend a disciplinary hearing

### **15.3 Conclusion of the Investigation**

On receipt of the investigation report the Commissioning Manager will consider whether there is a case to answer.

If s/he concludes that the allegation is without foundation no further formal action will be taken and the employee will be informed of this in writing. Management advice may be issued in such circumstances (see section 5), which may include, where appropriate, advice to reduce the risk of similar allegations being made in the future.



If the Commissioning Manager believes that there is a case to answer, s/he will arrange a disciplinary hearing.

Having considered the report and the nature of the allegation, it will be for the Commissioning Manager to decide what the possible outcomes of the hearing could be and the employee will be advised of this in the letter inviting them to the hearing.

The range of possible outcomes available under this policy is:

- No further action (there may be management advice or training given where appropriate)
- First written warning
- Final written warning
- Dismissal with notice or
- Dismissal without notice (gross misconduct)

## 16. Ill Health

### 16.1 Ill health and absence during an investigation

Sickness absence will not necessarily prevent an employee from attending a meeting. Clarification may be requested from the employee's doctor and/or occupational health about whether s/he is fit to attend a meeting. An employee will be given up to 2 opportunities to attend an investigatory meeting. If this is not possible, the Investigating Officer may send the employee a list of questions to respond to by post or email, either directly or through their Professional Association/Trade Union Representative. Should this prove to be unsuccessful, the investigation may need to be concluded without the employee's input. The employee should be advised of this on the second attempt to invite them to an investigatory interview. If the employee's absence results from a disability as defined in the Equality Act, appropriate adjustments to the timescales in the procedure should be considered.

### 16.2 Ill health and absence at a hearing

Employees should make every effort to attend the hearing. The Commissioning Manager may choose to arrange another date (once) if the employee has given prior notice that they will be unable to attend a hearing through ill health. In this circumstance there will only be one opportunity for the employee to request another date for the hearing. A second hearing date will be arranged through consultation with the employee and his/her representative, where there is one, this will be within a reasonable timescale not resulting in any significant delay to the convening of the hearing. Advice should be sought from the Schools' HR Advisory Team to ensure that appropriate account is taken of any disability. If the employee is still unable to attend they may provide a written statement to be considered at the hearing.

## 17. Arranging a Disciplinary Hearing

The hearing room should be large enough to accommodate the Panel, both parties and a witness (if any). Tables are needed so that all present can write comfortably. The room should be quiet and not overlooked. Two other rooms or quiet areas should be available for the two parties during adjournments.

Hearings should normally be held during normal working hours, but, where this is not possible, the hearing should begin as soon as possible after the end of the school day.



Where it is known that the employee wishes to be accompanied at the hearing, their representative should be consulted when arranging a date in order to avoid delays.

The employee must receive a minimum of 10 working days' notice in writing by recorded delivery or delivery by hand, stating:

- the purpose of the hearing
- the allegations
- the possible outcomes of the hearing
- when and where the hearing will be conducted
- who will be attending, including witnesses to be called
- the right to be accompanied by an accredited Professional Association/Trade Union Representative or a work colleague and no-one else
- the requirement for confidentiality
- the requirement for the employee to provide, at least 4 working days before the hearing, all documents that he/she intends to present at the hearing and to indicate whether he/she intends to call any witnesses. The employee must provide to the Commissioning Manager, 6 hard copies of their documents to be presented at the hearing
- a copy of all evidence/documentation that is to be presented at the hearing in support of the allegation

Those hearing the case must be impartial and must not have any prior knowledge of the case.

Panel members should receive the papers to be presented, including a copy of the letter inviting the employee to the hearing, not earlier than 3 working days before the hearing. Panel members must not discuss any aspect of the case with anyone, including other Panel members, before the hearing.

## 18. The Note-Taker at a Disciplinary Hearing

A written record of the proceedings must be taken. The notetaker may be the Clerk to the Governors or a member of staff at the school. The note-taker will make a record of the hearing, but not of the confidential deliberations of the Panel.

The school does not support the audio recording of disciplinary hearings unless there are exceptional circumstances for doing so. Where exceptional circumstances exist, the agreement of all parties must be obtained. Covert recording is considered gross misconduct.

## 19. The Disciplinary Hearing

### 19.1 Pre-Agreement

It is a perfectly acceptable part of disciplinary hearings for an agreement to be arrived at prior to the hearing between both parties. Where the facts are not in dispute and both parties agree on the sanction, it will not be necessary to hold a hearing. In such circumstances a formal meeting should be held to discuss the key findings of the investigation and issue the pre-agreed sanction. This approach will **NOT** apply to allegations of gross misconduct or where dismissal is a possible outcome.



## 19.2 Procedure for the Hearing

- a) The Chair of the Panel will ensure that those present are introduced to one another and remind them of the purpose of the hearing and procedure to be followed.

The Chair of the Panel may challenge the relevance of any evidence if it is not apparent. If no justification can be given or it is tenuous the chair may instruct the person presenting to make their point and/or move on.

- b) The Presenting Officer(s) will present the case against the employee, including calling any witnesses. The witness will read their statement and the Presenting Officer may ask questions.

The employee and/or their representative may subsequently question the witness, followed by questions from members of the Panel. The Presenting Officer will be offered the opportunity to re-examine their witness.

Following questioning witnesses will leave the room allowing the employer to continue with the rest of their presentation or otherwise confirm that they have concluded their presentation.

When all the witnesses in support of the allegation(s) have been called, the employee and/or their representative may ask questions of the Presenting Officer and then finally the Panel may ask questions.

- c) The employee and/or their representative will be invited to present their case, including the calling of any witnesses.

The employee and/or their representative will invite the witness to read their statement, and then they may ask questions.

The Presenting Officer(s) will subsequently be invited to cross-examine the witness, followed by any questions from the Panel. Finally, the employee and/or their representative will be offered the opportunity to re-examine their witness.

Following questioning witnesses will leave the room allowing the employee and/or their representative to continue with the rest of their presentation or otherwise confirm that they have concluded their presentation.

The Presenting Officer(s) may ask questions of the employee and then finally the Panel may ask questions.

- d) When all the evidence has been heard, the Presenting Officer sums up, without introducing any new evidence
- e) The employee or representative sums up without introducing any new evidence
- f) Both parties withdraw to enable the Panel to discuss the case
- g) The Panel will deliberate and reach a conclusion on:
- (i) whether on the balance of probabilities each of the allegations is proven



- (ii) what sanction, if any, is appropriate, bearing in mind that this will be limited by the possible outcomes listed in the hearing letter

The Panel's decision is normally conveyed orally by the Chair of the Panel in the presence of both parties and will be confirmed in writing within 3 working days. The Panel may, particularly after a lengthy hearing, adjourn and reconvene at another time to consider its decision. In such cases it may be agreed to communicate the outcome by telephone before confirming the decision in writing.

## **20. Disciplinary sanctions**

### **20.1 Written warning**

If an employee's conduct does not meet acceptable standards and informal discussions have not led to sufficient improvement or are not considered appropriate a formal written warning may be issued. A first written warning will be placed on the employee's personal file normally for a period of 6-12 months, unless the employee is notified to the contrary. The employee will be advised of their right of appeal.

The outcome letter will set out the improvement required and may recommend a meeting with the Headteacher as soon as possible after the hearing to discuss the outcome and recommendations and any support that may be appropriate. The letter will make it clear that failure to improve may lead to further disciplinary action.

In order that the employee has a reasonable opportunity to demonstrate the required improvement in conduct, the employee will need to be at work throughout the relevant warning period. If they should be absent from work for any reason, e.g. sickness, this period will not count for the purposes of the warning period.

### **20.2 Final written warning**

If the misconduct is sufficiently serious, or if further misconduct occurs during the period that a first written warning is live, a final written warning may be issued. The employee will be advised of their right of appeal.

A final written warning will normally remain live for a period of 12 months or in exceptional circumstances up to 24 months where the circumstances warrant this.

The outcome letter will set out the improvement required and may recommend a meeting with the Headteacher as soon as possible after the hearing to discuss the outcome and recommendations and any support that may be appropriate. The letter will make it clear that failure to improve may lead to further disciplinary action.

In order that the employee has a reasonable opportunity to demonstrate the required improvement in conduct, the employee will need to be at work throughout the relevant warning period. If they should be absent from work for any reason, e.g. sickness, this period will not count for the purposes of the warning period.

### **20.3 Dismissal (including summary dismissal for gross misconduct)**



Where there is further misconduct during the life of a final written warning, the employee may be dismissed with notice or payment in lieu of notice. If an allegation of gross misconduct is upheld, the employee will be summarily dismissed without notice.

For a Community or Voluntary Controlled school (whose staff are employed by the County Council), a copy of the dismissal letter will be sent to the Director of Children's Services. The Director of Children's Services will then formally confirm dismissal by letter to the employee.

## 21. Appeals

Employees have the right to one appeal against any disciplinary sanction. The appeal will take the form of a rehearing.

The appeal is a re-hearing of the original case, new evidence is however permissible. At an appeal any disciplinary penalty will be reconsidered, but it cannot be increased.

Any employee who wishes to appeal a sanction should do so in writing **within 7 calendar days of the receipt of a decision letter** to the person named in the letter. The employee's letter to lodge the appeal should include the grounds for appeal.

If an appeal is not received within 7 calendar days the school will assume the employee accepts the decision.

The arrangements for an appeal hearing are intended to mirror those for a disciplinary hearing as prescribed in sections 17, 18 and 19. Regard should be given to section 20, which concerns outcomes, during the Panel's deliberations.

All paperwork must be reissued by each party in accordance with the prescribed timescales. The Panel should be provided with a copy of the letter convening the Appeal Hearing.

It is important to note that because the appeal is a rehearing, the decision letter and notes of the original disciplinary hearing should not be presented to the Appeal Panel by either party.

The appeal will be heard by a Panel of 3 Governors not previously involved in the disciplinary hearing, who have no prior knowledge of the case.

To be quorate the Appeal Panel must consist of at least the same number of Governors as at the previous hearing.

Where an appeal against dismissal is not upheld, the date of termination will be the date on which the employee was originally dismissed. During the appeal stage the employee will remain dismissed from the school. If an employee is reinstated following dismissal, he/she will be treated as being continuously employed for the whole period, including the period between dismissal and reinstatement.

The decision of the Appeal Panel will be final and must be reported to the Governing Body.

## 22. Procedure for the Appeal Hearing

The procedure for the appeal hearing will be as set out in section 19.2.



There will be no further right of appeal following the appeal hearing and the matter may not be pursued through any other procedure, such as the Grievance or Harassment and Bullying procedure.

### 23. Difficulties that may arise during Disciplinary Hearings

Listed below are some examples, with suggestions on how they might be handled:

#### a) Failure to attend by the employee

If no adequate reason is given, consider whether the case can be heard in the employee's absence.

#### b) New evidence presented at the hearing

- (i) One of the parties presents new evidence at the start of or during the hearing. The Panel should accept new evidence only if there are compelling reasons that prevented the exchange of evidence in the normal timescale. If the evidence is admitted, depending on the complexity, then it might be necessary to allow an adjournment (possibly to another day) for the other party to consider and prepare a response
- (ii) A witness reveals a crucial piece of evidence that is not known to anyone else present. The Panel should adjourn the hearing in order to consider whether to admit the new evidence. If the new evidence is so significant as to affect the likely fairness of the outcome of the hearing, then the Panel may adjourn the hearing to another day in order to allow the Investigating Officer to extend his/her investigation and/or to enable the employee to prepare their response

### 24. Disciplinary Records

While potential disciplinary action outlined in the formal warning will expire at the end of the specified period, a copy of the 'spent' disciplinary warning will be retained on the employee's personal file for reference but will usually be disregarded for future disciplinary purposes.

There may, however be exceptional occasions when the warning cannot be disregarded, such as where the conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and there is evidence of abuse, an employee's disciplinary record will be borne in mind in deciding how long any new warning will last.

In exceptional circumstances where an employee commits an act of potential gross misconduct, but having considered mitigating circumstances the school decides to issue a final written warning, this may be referred to at any time in the future should the employee commit a similar act, when deciding upon a sanction. This will be solely for the purpose of showing that the employee was aware of the severity of the act. This applies irrespective of whether the final written warning would otherwise be spent.

All schools are required to follow the statutory guidance in "Safeguarding Children and Safer Recruitment in Education" which came into force in January 2007. Paragraph 4.34 sets out the disclosure requirements when employment references are required and they include:



- details of any disciplinary procedures the applicant has been subject to in which the disciplinary sanction is current
- details of any disciplinary procedures the applicant has been subject to involving issues related to the safety and welfare of children or young people, including any in which the disciplinary sanction has expired, and the outcome of those and
- details of any allegations or concerns that have been raised about the applicant that relate to the safety and welfare of children or young people or behaviour towards children or young people, and the outcomes of those concerns, e.g. whether the allegations or concerns are investigated, the conclusion reached and how the matter was resolved

Spent disciplinary sanctions must only be declared to a prospective employer if the reason for the sanction concerns safeguarding children. Sanctions for other reasons will not be declared to prospective employers after they are spent.

Records will be kept securely and only be made available to employees whose duties require access to this information.

## 25. Resignations and Settlement Agreements

Paragraphs 129,130,131 of “Keeping children safe in Education”(statutory guidance for schools and colleges March 2015) set out specific requirements in relation to handling allegations concerning the safety and welfare of children and young people. In summary these are:

- a) Allegations concerning the safety and welfare of children must be investigated and heard **even if the employee has resigned**. The ex-employee will be given the same opportunity to participate in the investigation as he/she would have been as an employee, but the school must reach a conclusion whether or not the ex-employee co-operates in the proceedings
- b) “Settlement Agreement” is a legal device to terminate the employee’s contract in which an employer agrees not to pursue a disciplinary process and an employee agrees not to pursue any legal claim against the employer. Where there are allegations concerning the safety and welfare of children, a Settlement Agreement must not be used. A settlement agreement which prevents the school from making a DBS referral when the criteria are met would likely result in a criminal offence being committed as the school would not be complying with its legal duty to make the referral

## 26. Referrals to Statutory Bodies

Ref 25b there is a legal requirement for employers to make a referral to the DBS where they think that an individual has engaged in conduct that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child



There are statutory duties on employers to refer individual cases to national bodies in the event of a dismissal or resignation when dismissal was a likely outcome. These are:

### **26.1 Disclosure and Barring Service (DBS)**

The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This is when an employer has **dismissed or removed** a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.) because the person has:

1. Been cautioned or convicted for a relevant offence; or
2. Engaged in relevant conduct in relation to children and/or vulnerable adults (i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm); or
3. Satisfied the Harm Test in relation to children and/or vulnerable adults. (i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists).

Further guidance on DBS referrals can be found at:

<https://www.gov.uk/government/publications/dbs-referrals-form-and-guidance> and;  
<https://www.gov.uk/government/publications/dbs-referrals-factsheets>

Once referred and having followed their process the DBS will make decisions as to whether it is appropriate for a person to be placed on a barred list preventing them from working with children, vulnerable adults or both in England, Wales and Northern Ireland.

Your HR Adviser will assist and advise with this referral and in the case of a Community school where HCC is the employer, make the referral on behalf of the LA

### **26.2 Referrals for teachers to The National College for Teaching and Leadership:**

The Education Act 2011 gives responsibility, from 1 April 2012, to the Secretary of State to regulate the teaching profession and to hold a list of teachers who have been prohibited from teaching.

The Teachers' Disciplinary (England) Regulations 2012 provide information about the arrangements. The National College for Teaching and Leadership operates the arrangements on behalf of the Secretary of State.

The regulatory arrangements cover cases of serious misconduct, where it is appropriate to make a decision about whether a teacher should be prohibited from teaching.

If a teacher has been dismissed for serious misconduct, or would have been dismissed for that reason if they had not resigned, the employer must consider whether to refer the case to the Secretary of State. Referrals may also be made by the Police, the Disclosure and Barring Service (DBS), other regulators or members of the public. Before a referral is made by a member of the public, all local procedures for complaint resolution should have been exhausted. More information about making a referral can be found at:  
<https://www.gov.uk/teacher-misconduct-referring-a-case>.



The regulatory arrangements apply to anyone undertaking teaching work in all schools, including independent schools and sixth form colleges, youth custody settings and children's homes, in England. This includes Headteachers and their assistants and deputies.



**27. Appendix 1 – T Disciplinary Procedure Flowchart**

