

School:	
	Non-contractual
Date Adopted:	

Disciplinary Procedure

For School/Academy Managed Staff and Centrally Employed Teachers

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N.B For the purposes of clarity, references to;

- Governing Body may mean Board of Directors
- Governors may mean Directors and/or Local Academy Representatives (In accordance with the relevant Scheme of Delegation of Authority).

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1 **INTRODUCTION**

1.1 The purpose of this policy and procedure is to encourage and support all employees working in schools, and centrally employed teachers, to achieve and maintain acceptable standards of conduct and behaviour.

1.2 This procedure has been adopted by the Governing Body of _____ School on _____ (date).

2 **PRINCIPLES**

2.1 In following this procedure schools are seeking to address issues relating to conduct or behaviour. It is intended to encourage employees to improve rather than be a means of imposing a punishment.

2.2 It is essential that staff are aware of the high standards of conduct expected of them. Individual staff members should also be mindful of the standards of their own professions e.g. the DFE Teacher's Standards, as well as relevant national guidance.

2.3 All employees have a personal responsibility to maintain appropriate standards of professional conduct.

2.4 All employees should be treated fairly, reasonably and consistently under this policy.

2.5 Where disciplinary action is being considered employees should be encouraged to consult with their trade union or professional association.

2.6 Action taken under this policy must be prompt; it is important to recognise that matters left unaddressed may escalate, potentially resulting in a need for more serious disciplinary action.

2.7 It is important that disciplinary investigations and hearings are conducted in a fair, transparent and consistent manner, and must not discriminate on any grounds.

2.8 Headteachers / Principals should be aware that informal action may often be a more satisfactory method of resolving problems than formal disciplinary action.

2.9 Headteachers / Principals are empowered to issue disciplinary sanctions up to the level of a formal written warning without the involvement of governors or senior managers.

2.10 Headteachers, principals, line managers, governors, and LA Officers, have a duty to ensure confidentiality as far as is practicably possible when dealing with issues of conduct.

2.11 This procedure does not form part of employees' contracts of employment.

2.12 To ensure fairness:

- No disciplinary action will be taken against an employee until the case has been fully investigated
- At each stage of the formal process the employee will be advised, in writing, of the nature of the complaint made against them and will be given the opportunity to state their case before any decision is made.

- At investigatory meetings and every formal stage in the process the employee will have the right to be accompanied by a trade union representative or work colleague.
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty could be dismissal without either notice or payment in lieu of notice.
- An employee has the right of appeal against any disciplinary sanction imposed on them.

3 **SCOPE OF PROCEDURE**

- 3.1 The procedure applies to all academy / school managed employees, including Headteachers, Principals, and centrally employed teachers working within schools. (These staff will hereon be referred to as 'employees'.) For new employees in a probationary period, any allegations of misconduct may be dealt with as part of the probationary review, where appropriate. In these circumstances please contact HR for further advice. All other contractual entitlements applicable to employees during probationary periods will be fully respected.
- 3.2 In the case of a disciplinary matter regarding the Headteacher / Academy Principal, the Chair of Governors/Directors will investigate or will nominate an appropriate Investigating Officer.
- 3.3 This procedure will not apply in circumstances where there is a failure to meet the standards of the post due to lack of capability (except where the underlying reason for poor performance is judged to be wilful). In these circumstances the relevant Capability Procedure may be more appropriate. If it is agreed an employee's lack of performance is due to health reasons or sickness absence, the Supporting Attendance Policy should be used, except, in the event of abuse of the sickness payments scheme or failure to adhere to the Supporting Attendance Policy. Advice should be sought from HR in relation to individual cases.

4 **INFORMAL ACTION**

- 4.1 Informal action is an effective means of addressing minor disciplinary offences or misdemeanours and may be used to correct a situation and prevent it from getting worse, without using the disciplinary procedure. The bullet points below are intended as guidance only for Headteachers / Principals, or line managers when adopting an informal approach to matters of misconduct:
- Gather the facts and summarise these in a document.
 - Promptly discuss the matter with the employee in an informal and confidential one-to-one meeting, ensuring the employee has the opportunity to respond and give their version of events. The aim of this discussion is to encourage the employee to resolve any perceived problem(s): it is very important that this discussion does not turn into a disciplinary interview or hearing.
 - Ensure that the required standards of conduct and behaviour are made clear to the employee, and that they are offered appropriate support and advice to help them achieve these.
 - Make the employee aware that the matter is being dealt with informally at this stage, but that failure to address any perceived conduct problem(s) may result in formal disciplinary action.

- Keep a record of the discussion and any agreed action points on the employee's personal file for reference purposes, including any support measures offered to the employee.
 - The discussion, action points, support measures offered and standards of behaviour expected going forwards (if appropriate), should be confirmed in writing to the employee, as soon as is practicably possible after the meeting.
 - Support measures may include a referral to Occupational Health, signposting the individual to the employee counselling service or the Teacher Support Network, or other services as appropriate.
 - If an employee wishes to be accompanied at an informal meeting by a work colleague or a trade union representative, this request should not normally be refused.
- 4.2 A Headteacher / Principal may issue an informal warning in cases of very minor misconduct, where a full disciplinary hearing is not necessary. Informal warnings should be recorded on the employee's personnel file or on their supervision records etc., but they do not count as a formal disciplinary sanction recorded against an employee.
- 4.3 If, during informal action, it becomes apparent that the matter is more serious, the discussion should be adjourned, and the Headteacher / Principal should make it clear that the matter will be pursued under the formal disciplinary procedure.

5 INVESTIGATIONS BY EXTERNAL AGENCIES (E.G. POLICE OR SOCIAL CARE)

- 5.1 Where an employee is subject to an allegation being investigated by an external body they should be encouraged to consult their professional association/trade union for support. They should also be offered support of the employee counselling service, Occupational Health and other services as appropriate.
- 5.2 If an employee is either charged, awaiting trial for an offence or under investigation by an external statutory body, e.g. Police, Social Care etc., consideration must be given as to whether the allegations (if true) would affect the suitability of the employee to continue to work at the school. If the allegations would seriously undermine the employee's suitability to work at the school, suspension may be appropriate. (See section 7 – Suspension.)
- 5.3 If the allegations involve Child Protection issues advice should be sought immediately from the Local Authority Designated Officer (LADO). No attempt should be made to investigate Child Protection allegations without seeking advice from the LADO and HR.
- 5.4 If an employee is in custody or imprisoned and unable to attend work, there is no entitlement to pay for their absence, and if this is likely to continue for a significant period of time, consideration may have to be given to whether the contract of employment should be terminated. Advice should be sought from HR in these cases.
- 5.5 Upon conclusion of an external investigation it may be necessary for a full and thorough internal disciplinary investigation to take place before a decision can be made as to whether there is a disciplinary case to answer.
- 5.6 There is no requirement to wait until a case is heard by the external body before a formal disciplinary meeting can take place. It may still be proceeded with before the conclusion of any external investigation if this is deemed practical and appropriate. Likewise, even if no action is taken against the employee as a result

of an external investigation, an internal disciplinary investigation may still be undertaken into the allegations. Advice should be sought from HR in these cases.

5.7 What is important is that:

- There has been an attempt to investigate the allegations as fully as possible in the circumstances.
- There is reasonable evidence that the allegations are probably true, based on the findings of the investigation.
- The allegations justify any action under consideration (e.g. that they constitute gross misconduct if the employee is faced with dismissal without previously having received a final written warning).

6 CRIMINAL OFFENCES OR OTHER MISCONDUCT OUTSIDE OF WORK

6.1 If a complaint is made regarding an employee's conduct outside of work, or if the employee is suspected of, charged with or convicted of a criminal offence outside work and / or issues of concern come to light following an application for a Disclosure and Barring Service (DBS) report, this may be a disciplinary matter if it affects the suitability of the employee to continue working in the school. This requires individual consideration in each case, and as such advice should be sought from HR in these circumstances. If the alleged misconduct would affect the employee's suitability, suspension would allow time for further investigation to determine if there is a disciplinary case to answer.

7 6.2 THE FACT THAT AN EMPLOYEE HAS BEEN CHARGED WITH OR CONVICTED OF AN OFFENCE IS, NOT IN ITSELF, A REASON TO TAKE FORMAL ACTION IF IT DOES NOT IMPACT ON THE EMPLOYEE'S SUITABILITY TO WORK AT THE SCHOOL OR ABILITY TO DO THEIR JOB. HR ADVICE SHOULD BE SOUGHT IN THESE CASES. SUSPENSION OR RELOCATION

7.1 An employee should only be suspended or relocated after careful consideration and on one of the following grounds:

- The allegations against an employee are such that (if true) it would impair the school's functions if the employee remains at work;
- There is a risk that the employee may tamper with evidence or interfere with witnesses;
- The employee remaining at work would otherwise hamper the investigation; or
- If the allegations are true, the employee remaining in work may present a risk to the health, safety and security of pupils, staff, parents / carers, and / or school resources and / or property

7.2 If suspension or relocation is necessary for the reasons above, the Headteacher/Principal may either:

- Where appropriate, temporarily relocate the employee to an alternative role / department / school; or, if necessary
- Suspend the employee from duty

7.3 If the Headteacher/Principal is considering suspending or relocating an employee, advice should be sought from HR prior to taking any action.

- 7.4 The Headteacher / Principal is empowered to relocate or suspend an employee from duty in the above circumstances. In the case of the Headteacher's / Principal's absence, a formally nominated member of the Senior Leadership Team may suspend in the above circumstances. A suspension risk assessment should be carried out to consider if suspension is appropriate and necessary. Where the decision has been made to suspend, this will be subject to continuous review.
- 7.5 Suspension or relocation is not a penalty and does, not, in itself constitute disciplinary action but does allow for a thorough and proper investigation to be conducted.
- 7.6 Suspension does not prejudice the outcome of any disciplinary hearing that may take place after the investigation has concluded.
- 7.7 In the event that the employee is absent from work and is unable to attend the suspension meeting the suspension may still take place but must be confirmed in writing to the employee. Advice should be sought from HR in these circumstances.
- 7.8 The Headteacher / Principal should meet with the employee to explain the situation and inform the employee of the suspension or relocation. The employee will have the right to have a trade union / professional association representative or work colleague present to witness the suspension. The meeting to suspend must not involve questioning of the employee; this must take place in an investigatory interview, as part of a disciplinary investigation. In the event that an employee's trade union/professional association is unable to provide representation this must not delay the suspension. The employee must be advised of their other option i.e. to be accompanied by a work colleague if they wish.
- 7.9 If, despite concerted efforts, it is not possible for a trade union or employee representative to be present at the meeting, the employee should be offered a further meeting as soon as practicable, after the suspension has commenced at which, the employee can be represented and the arrangements for suspension discussed.
- 7.10 An employee suspended or relocated as part of the disciplinary process should be written to within three working days of the suspension meeting, explaining the terms of the suspension. More detailed advice, including templates for letters can be obtained from HR.
- 7.11 During suspension the employee will continue to receive their ordinary contractual pay including any contractual allowances. For the purposes of this policy ordinary pay is the standard contractual pay the employee would have received from the employer if they were still working.
- 7.12 If the allegation against the staff member is one involving Child Protection issues advice should be sought immediately from the Local Authority Designated Officer (LADO). No attempt should be made to investigate Child Protection allegations without seeking advice from the Local Authority Designated Officer and HR.
- 7.13 It must be recognised that being suspended can give rise to great anxiety in an employee and potentially also in the investigating officer. The employee should be encouraged to consult with their professional association/trade union for support, as well as being offered support from the employee counselling service and other services as appropriate. This may include a referral to Occupational Health. It is advisable to carry out a stress risk assessment to ensure that appropriate measures are put in place to minimise the risk. Please refer to the

generic risk assessment (appendix 6). The investigating officer may also seek support through HR.

- 7.14 Employees on suspension are expected to be contactable and available for attendance at investigatory meetings during normal school hours.
- 7.15 The employee should be provided with a named contact to direct any queries towards during their suspension. It is good practice to keep in touch with a suspended employee, e.g. to keep them informed as to the progress of the investigation.
- 7.16 If suspension results from investigations by an external body (which may or may not relate to actions at work), it is important to maintain contact with the investigating officers.
- 7.17 Suspension will be kept under review by the Headteacher / Principal and if at any point during the investigation it becomes clear that a return to work would not jeopardise the investigation, pose any risk to the pupils, staff, school or the LA, or present no risk of further offences being committed, the suspension should be lifted. In cases where the employee is supported by a trade union representative it is good practice to keep the trade union representative informed of progress regarding the period of suspension.
- 7.18 Suspension should be for as short a period as possible. If it is agreed that the employee should return to work following the suspension, or following a hearing where dismissal is not the outcome, careful planning is necessary to ensure this is managed as sensitively as possible. A return to work meeting is recommended and should the individual wish to be accompanied this should not normally be refused.

8 INVESTIGATION

- 8.1 Investigations must be carried out promptly to establish the facts. Investigations are necessary, to enable Headteachers / Principals to determine if there is a disciplinary case to answer. When Headteachers / Principals feel a disciplinary investigation is necessary they should contact HR for support.
- 8.2 An Investigating Officer must be appointed by the Headteacher / Principal. Where allegations involve the Headteacher / Principal of a maintained school, the Investigating Officer will be appointed by Assistant Director Learning Services, or by the appropriate person as per the Scheme of Delegation in the case of academies.
- 8.3 The Investigating Officer must be free from prejudice and able to establish and report the facts in an objective manner.
- 8.4 The terms of reference should be agreed with the Investigating Officer at the commencement of the investigation. For example, these will usually include the requirement to interview persons in relation to the allegation or incident, to obtain and scrutinise documentary evidence and to produce a written report.
- 8.5 The Investigating Officer should write to the employee inviting them to any investigatory meeting. (Template letters are available from HR).

The letter should:

- Inform the employee that the meeting is an investigatory meeting, including the date, time and location of the meeting.
- Detail as far as possible the allegations and matters to be discussed;

- Enclose, where appropriate, copies of any documentary evidence the investigating officer will be expecting the employee to comment on;
 - Inform the employee of their right to be accompanied at the meeting; and
 - Clearly state that although the meeting is investigatory, it may lead to disciplinary proceedings.
 - Enclose a copy of this procedure.
- 8.6 The employee against whom allegations are made should be interviewed at an early stage in the investigation wherever appropriate to obtain their account of the situation. It may be necessary to interview them again at a later stage should additional information come to light during the investigation. The employee should be encouraged to contact their Trade Union representative for support.
- 8.7 The investigation must be thorough, balanced and as objective as possible. The Investigating Officer should keep an open mind, and not prejudge the issues being investigated.
- 8.8 The employee alleged to have committed a disciplinary offence should be given the opportunity to advise the Investigating Officer if there are witnesses they feel should be interviewed as part of the investigation, or other evidence they feel should be gathered. Witnesses should be interviewed and asked to make a statement. Care must be taken not to 'lead' witnesses in terms of the content of their statements.
- 8.9 Note that witness statements should not normally be anonymised unless there is genuine fear of intimidation or reprisals. If the Investigating Officer considers that statements should be anonymised, advice must be sought from HR.
- 8.10 Investigations should be conducted within a reasonable time period. Where an employee is suspended pending the outcome of the investigation it should be completed in no longer than four weeks, wherever possible. If the investigation is likely to take longer than four weeks this should be reported to HR as well as the employee.
- 8.11 Where appropriate to the disciplinary investigation, the investigator may seek assistance from bodies external to the school for evidence, e.g. Audit, when investigating allegations of financial irregularities.
- 8.12 There are specific procedures and guidelines for investigating particular types of allegations e.g. Child Protection. Investigating Officers should seek guidance from HR in these circumstances. Where an allegation raises concerns regarding Child Protection no attempt should be made to investigate the allegation without reference to the Local Authority Designated Officer. Relevant national guidance must also be adhered to.
- 8.13 An investigatory meeting is not a formal disciplinary hearing but could lead to such a course of action and the employee must be informed of this fact.
- 8.14 Once all the facts have been gathered, the investigating officer, in conjunction with HR, should consider whether to:
- Drop the matter – if there is no case to answer then the employee should be informed of this, in writing, explaining the reasons why;
 - Take informal action – this is an attempt to correct a situation and prevent it from getting worse without using the disciplinary procedure. A Headteacher / Principal may take informal action as outlined in section 4.

- Refer the matter for a disciplinary hearing – this will be necessary when the matter is considered serious enough to require disciplinary action.

9 **DISCIPLINARY HEARINGS**

- 9.1 Upon the conclusion of the investigation a decision must be taken by the appointed Investigating Officer, with advice from HR, as to whether there is a disciplinary case to answer.
- 9.2 The disciplinary hearing should be conducted by a Headteacher or relevant Governors / Directors committee. The Headteacher / Governors may at their discretion if they do not think that the matter is sufficiently serious or the evidence is insufficient, drop the matter or take informal action.
- 9.3 No formal disciplinary action can be taken unless an authorised person / committee has conducted a disciplinary hearing. The recommended procedure for a disciplinary hearing can be seen in appendix I. The employee will be given a minimum of five working days written notice of the hearing, in order to prepare for the hearing and arrange representation. In cases of alleged gross misconduct, 10 days' notice should be given if possible.
- 9.4 Copies of documents to be presented at the hearing, together with details of any witnesses to be called, should be sent to the employee at least 5 working days in advance of the hearing, ensuring they have reasonable time to prepare a response. A copy of this information should also be forwarded to the employee's representative if they have one, and the person / committee conducting the hearing. More detailed advice, including template letters, can be obtained through HR.
- 9.5 The person / committee conducting the hearing must have had no prior involvement in the investigation of the allegations.
- 9.6 If it is known in advance that the employee will be represented, that representative should be consulted about a mutually convenient date for the hearing. It is important for all parties that the disciplinary hearing takes place in a timely fashion, however, the timing of the hearing may be adjusted within reasonable limits to allow the employee's representative to be present.
- 9.7 If the employee wishes to call witnesses or present evidence to assist their case, they should notify the Investigating Officer of the witnesses and evidence concerned at least two working days in advance of the hearing. If the employee presents witnesses and / or evidence with less than two days' notice, then the panel may decide either to continue with the hearing, postpone the hearing to a later date to enable the new evidence to be considered, or, in exceptional circumstances, decline to allow this evidence to be presented.
- 9.8 If the employee (or their representative) considers that the person(s) who will conduct the hearing is not impartial the person conducting the hearing should be notified, along with HR, as a matter of urgency.
- 9.9 The person arranging the hearing should ensure that arrangements are made for any of the following to be present:
- A representative from HR to act as advisor to the person/committee conducting the hearing.
 - The Investigating Officer to make a formal presentation of the complaint against the employee.

- Any other employee(s) of the school (or LA if applicable) being called as witnesses.
 - Any other supporting documentation to be presented as evidence.
 - Note-taker
- 9.10 The purpose of the hearing is to:
- Allow the Investigating Officer to present their report (supported by a member of HR);
 - Allow the employee to respond to the allegations; and
 - Determine on conclusion of the hearing, whether there are proper grounds to impose a disciplinary sanction against the employee.
- 9.11 The recommended procedure for a disciplinary hearing is outlined in appendix I. The recommended procedure is intended to allow all factors considered relevant to be given due consideration. It may be varied by the person (or chair of the committee) conducting the hearing in consultation with the employee (or their representative) to meet the circumstances of the individual case.
- 9.12 The person / committee conducting the hearing should consider whether any reasonable adjustments are necessary to accommodate employees, witnesses etc. who may be disabled or whether an interpreter is required.
- 9.13 Witnesses should only be present giving their information and being questioned on it. A person assisting in presenting a case may be present throughout the presentation of evidence even though s/he may also be acting as a witness.
- 9.14 When the person / committee conducting the hearing has heard all the evidence submitted, all others present will withdraw from the hearing, except any specialist advisor present. Once the hearing is complete, the person / committee should carefully consider all the evidence presented and decide:
- Firstly, in relation to each alleged act of misconduct, whether on the balance of probabilities, the employee has in fact done what it is alleged they have done;
 - Secondly, if so, whether the employee's conduct amounts to misconduct on the part of the employee; and
 - Finally, if so, what is the appropriate sanction, if any, to apply.
- 9.15 If the person/committee conducting the hearing concludes that misconduct has occurred, in deciding what sanction (if any) to apply, they must take into account any mitigating circumstances including the employee's length of service and employment record.
- 9.16 After due consideration the person / committee conducting the hearing will convey the decision to the employee. Normally the decision will be given verbally as soon as it has been taken and any formal disciplinary warning will be given at the same time. The decision and any formal disciplinary warning will be confirmed in writing within five working days. Exceptionally, the decision may be deferred and given in writing later, together with any formal disciplinary warning. The letter confirming or giving a formal warning will set out the right of appeal.

10 **DELIBERATIONS**

- 10.1 Once the section of a hearing where the parties are present has concluded and deliberations have commenced, no person involved with the matter, including the employee or their representatives, the investigating officer, witnesses or the former Hearing Officer hearing (in the case of appeals) should be involved in those deliberations, or have any communication with the person/committee deciding the case until they are called back in to hear the decision.
- 10.2 Any personal possessions of the employee or their representative, the investigating officer and any witnesses must be removed when parties leave the room.
- 10.3 If the person/committee hearing the case wish to clarify matters with either of the parties, or hear more from any witnesses etc. they may do so, but must ensure that **all** parties are included in any such discussions and they do not hear from witnesses or discuss the matter with e.g. the investigating officer, without the employee being present.
- 10.4 This does not apply to the hearing person/committee requesting the attendance of legal or HR representatives to give advice as appropriate.

11 **RECORDING OF HEARINGS**

- 11.1 It is not normal practice to record hearings: the notes of the hearing are considered to constitute a perfectly adequate record. .
- 11.2 The covert recording of any part of a disciplinary hearing is strictly forbidden and will be regarded as potential gross misconduct: any employee found doing so may face dismissal.

12 **LEVELS OF DISCIPLINARY ACTION**

- 12.1 No formal disciplinary action can be taken unless an appropriately authorised person/committee has conducted a disciplinary hearing. The levels of disciplinary action which may be taken are, in increasing order of seriousness:
- No action
 - Informal action (including informal verbal warning if appropriate)
 - Formal verbal warning
 - Formal written warning
 - Final formal written warning
 - Dismissal
 - Action short of dismissal
- 12.2 Further information on each level of warning is outlined below. A table summarising the levels of sanction with details of warning durations etc. can be seen in appendix 5.
- 12.3 No employee will normally be dismissed for a first breach of discipline except in the case of gross misconduct.
- 12.4 In certain cases the school / academy is also required to notify other agencies e.g. NCTL (National College for Teaching & Leadership) and/or the DBS as well as applying any appropriate internal sanctions.
- 12.5 The level of action taken will depend on the seriousness of the misconduct, any mitigating factors, and the circumstances in which the misconduct occurred (See appendices II and III for examples of misconduct and gross misconduct). Where an employee has previously been the subject of disciplinary action and

subsequently commits a further breach of discipline whilst the warning is still in force, the normal response will be to progress to the next, more serious level of action. Advice should be sought from HR when considering any formal disciplinary action.

12.6 The duration of warnings may be extended if the warning related to matters of Health and Safety or Child Protection. In these cases advice should be sought from HR. If a warning given is to have a longer duration than is normal, this will be stated when it is imposed.

i. NO ACTION

- The person/committee conducting the hearing may decide that no formal disciplinary action is necessary, but recommend that training; support or other informal action is to be taken as appropriate.

ii. INFORMAL ACTION (INC. INFORMAL VERBAL WARNING IF APPROPRIATE)

- The person/committee conducting the hearing may decide to pursue informal action and/or issue an informal verbal warning as outlined in section 4.

iii. FORMAL VERBAL WARNINGS

- Formal verbal warnings can be issued by the Headteacher/Principal, or other formally nominated member of SLT/Governing Body or equivalent.
- A formal verbal warning would normally be issued for a minor offence, or repeated misdemeanours e.g. lateness.
- If a formal verbal warning is issued, a letter should be sent to the employee confirming this, and the right of appeal. A copy of the letter should also be placed on the employee's personal file. More detailed advice, including templates for letters, can be obtained from HR.
- Formal verbal warnings will lapse automatically after six months.

iv. FORMAL WRITTEN WARNING

- Formal written warnings can be issued in cases of minor misconduct, but for which the person/committee conducting the disciplinary hearing deems formal disciplinary is nevertheless necessary. Formal written warnings can also be issued in cases where informal action has been tried but has not been successful in changing the employee's behaviour.
- Formal written warnings can be issued by the Headteacher/Principal, or other formally nominated member of the SLT or by a member of the Governing Body (normally Chair or Vice Chair) or equivalent, if the Headteacher/Principal is absent or likely to be absent for one week or more.
- A letter should be sent to the employee confirming the formal written warning issued and briefly summarising the reasons why, and confirming the right of appeal. A copy of this letter should be placed on the employee's personal file. More detailed advice, including template letters, can be obtained through HR.
- Formal written warnings will lapse automatically after 12 months.

v. FINAL FORMAL WRITTEN WARNING

- Final formal written warnings can be issued for more serious offences but not so serious as to justify dismissal or where sufficient mitigating factors have been

presented. An employee may be given a final formal written warning where further misconduct occurs and there is a current written warning with respect to the employee.

- Final formal written warnings can be issued by a member of the committee (the Governing Body) / Senior Manager following a disciplinary hearing.
- A letter should be sent to the employee confirming the final formal written warning issued and briefly summarising the reasons why, and confirming the right of appeal. A copy of this letter should be placed on the employee's personal file. More detailed advice, including template letters, can be obtained through HR.
- Final formal written warnings will lapse automatically after 24 months.

vi. **DISMISSAL**

- If further misconduct occurs within the currency of a final written warning, or if the offence is so serious so as to be regarded as gross misconduct, this may result in the contract of employment being terminated.
- In cases of dismissal for gross misconduct (see appendix 3 for examples of gross misconduct) dismissal will be summary, that is, without notice or pay in lieu of notice. In cases of dismissal other than in gross misconduct cases, i.e. where further misconduct occurs whilst a final written warning is current, the employee's normal contractual notice period will apply, although they may be paid in lieu of notice.
- For allegations where dismissal is a possible outcome, the disciplinary hearing must be heard by a committee of the Governing Body or equivalent. For centrally employed teachers the allegations must be heard by a Strategic Manager or above. The procedure for the disciplinary hearing can be seen in appendix 1.
- The decision of the hearing should be confirmed in writing with the right of appeal. The letter must contain a written statement of reasons for dismissal, and must be sent to the employee within ten working days of the meeting. More detailed advice, including template letters, can be obtained through HR.

vii. **ACTION SHORT OF DISMISSAL**

- Demotion may be offered as an alternative to dismissal where in the light of the misconduct found, dismissal might otherwise be an appropriate sanction. Action short of dismissal should not be used in cases where there is insufficient evidence of gross misconduct.
- The decision of the hearing should be confirmed in writing with the right of appeal. The letter must contain a written statement of reasons for action short of dismissal, and must be sent within ten working days of the meeting. More detailed advice, including template letters, can be obtained through HR.

13 **APPEAL**

13.1 An employee has the right of appeal against any formal disciplinary action.

13.2 The grounds of appeal may be for example, that:

- The disciplinary hearing was unfairly conducted, or the conclusions of the person / committee conducting the hearing were unreasonable or unfair;

- The person/committee conducting the hearing did not properly consider the evidence presented at the hearing;
- There is new evidence not previously available which casts doubt on the original decision;
- The disciplinary action taken was excessively harsh or unreasonable; and / or
- Any other matters that cast doubt on the correctness or fairness of the original decision.

13.3 Appeals must be in writing within 10 working days of receipt of the written notification of disciplinary action, clearly stating the grounds for appeal as described above, together with details of any new evidence/witnesses they wish to present.

13.4 In maintained schools appeals will be heard by Governors' Appeals Committee or equivalent for Academies.

13.5 Members of the Appeals committee should not have had any involvement with the original investigation or hearing.

13.6 Additional information which comes to light between the first hearing and the appeal hearing may be taken into consideration at the appeal hearing.

13.7 The outcome of the appeal is final in relation to the Disciplinary procedure.

13.8 The appeal will be conducted in accordance with the procedure in appendix 4.

13.9 The employee will be informed verbally of their decision at the hearing, and written confirmation sent within 5 working days of the hearing being held: alternatively, the appeal committee may decide to defer their decision and confirm the result in writing.

13.10 The letter responding to the appeal will set out in writing the reasons why each ground of appeal has been accepted or rejected, and either:

- Rescind any disciplinary action taken;
- Substitute alternative lesser disciplinary action for that originally imposed; or
- Confirm the original decision.

13.11 Where the decision is to substitute alternative disciplinary action for that originally taken, the appeal letter must set out the details of the substituted disciplinary action.

14 **DISCIPLINARY ACTION AGAINST A TRADE UNION OFFICIAL**

14.1 No hearing or committee meeting will be arranged to consider disciplinary action against a trade union lay official, elected via the committee or through school based membership, until the Schools HR Business Manager has discussed the complaint(s) with the City/Branch Secretary of the trade union/professional association (or the Regional Officer if the complaint involves the City Secretary).

15 **MISCELLANEOUS PROVISIONS**

15.1 **Representation**

15.1.1 Employees have the right to be accompanied to formal disciplinary hearings by a Trade Union representative or a work colleague.

15.1.2 Employees do not have the right to be accompanied by a lawyer to formal disciplinary hearings. The employer may, at their discretion, allow an employee to be accompanied by a lawyer to a formal hearing. HR advice should be sought in advance.

15.1.3 Where a Trade Union representative is prevented from attending (e.g. through them being ill) consideration should be given to a short delay in order for him / her to be present, providing the absence is not prolonged.

15.1.4 If a Trade Union representative is unavailable for a scheduled meeting and/or hearing, it may be postponed for up to 5 working days to enable the representative to attend. If there is no reasonable time within that period when the employee's representative is available, the employee may be asked to seek alternative representation for the meeting and/or hearing. If all attempts to allow the employee to attend the meeting/hearing with their representative have been unsuccessful, then the meeting/hearing may proceed in the employee's absence.

15.2 **Sickness Absence during the Disciplinary Process**

15.2.1 If an individual becomes ill and is unable to attend an investigatory meeting or disciplinary hearing then a postponement of the meeting/hearing may be made.

15.2.2 Advice from the Occupational Health Unit may be obtained as to whether the employee is likely to be fit to attend a disciplinary hearing in the reasonably near future. If an individual is not deemed likely to be fit to attend a hearing in person within a reasonable timescale then the matter should be referred to the person / committee conducting the hearing for a decision on whether to continue in the individual's absence.

15.2.3 Where an employee who has been suspended notifies the school that they are ill and unable to attend work, they will then instead be treated as being on sick leave. The situation will be reviewed, and a decision taken as to whether suspension needs to be reinstated, on the employee notifying the school they are fit for work.

15.2.4 If a hearing is to be held in an individual's absence and the employee has notified the school of their absence (due to the employee being ill), the employee should be allowed to send a representative to present their case on their behalf, and / or to submit written representations to the hearing instead.

15.3 **Failure to Attend Meetings or Hearings**

15.3.1 If an employee fails to attend any investigatory meeting without notifying the school of any legitimate reason for not doing so, the investigation may be concluded without an investigatory meeting being held.

15.3.2 If an employee fails to attend a disciplinary hearing without notifying the school of any legitimate reason for not doing so, the school will make every effort to ensure that the individual has received notification of the hearing, and consider the reason for the employee's non-attendance (if known) but may proceed in the employee's absence, if there is no justified reason for their absence.

15.3.3 Under such circumstances the Investigating Officer can present their report and the person / committee hearing the case will make their decision based on the information available to them.

16 **REVIEW OF THIS PROCEDURE**

16.1 This procedure will be reviewed at regular intervals and any changes deemed necessary will be made following full consultation with Trade Unions.

- Appendix 1 Recommended Disciplinary Hearing Procedure
- Appendix 2 Examples of Misconduct
- Appendix 3 Examples of Gross Misconduct
- Appendix 4 Recommended Procedure for an Appeal Hearing
- Appendix 5 Disciplinary Action Summary Table
- Appendix 6 Generic Risk Assessment – Disciplinary Procedures
- Appendix 7 Suspension Risk Assessment – Child Protection

APPENDIX 1

Recommended Disciplinary Hearing Procedure

1. Introduction by Chairperson; explanation of procedure.
2. The Principal/Investigating Officer should present the case for disciplinary action, including setting out the terms of reference in the Investigating Officer's report.
3. Employee (or representative) may ask questions of Principal/Investigating Officer.
4. The Chairperson/Committee members and HR representative may ask questions of the Principal/designated manager.
5. Investigating Officer to call witness(es) if applicable.
6. Employee (or representative) may ask questions of Principal/Investigating Officer's witness(es).
7. The Chairperson/Committee members and HR representative may ask questions of the Principal/Investigating Officer's witness(es).
8. Employee (or representative) should present his/her case.
9. The Principal/Investigating Officer may ask questions of the employee (or representative).
10. The Chairperson/Committee members and HR representative may ask questions of the employee (or representative) and ask further questions of the Principal/Investigating Officer regarding the case made on behalf of the employee.
11. Employee (or representative) to call witness(es) if applicable.
12. The Principal/Investigating Officer may ask questions of the employee's witness(es).
13. The Chairperson/Committee members and HR representative may ask questions of the employee's witness(es).
14. Principal/Investigating Officer to sum up case.
15. The employee (or representative) to sum up case.
16. Parties to retire; the HR representative may remain with the Chairperson/Committee to offer advice. The Chairperson/committee to consider the cases presented. The Chairperson will notify the parties of their decision. This may be conveyed at the conclusion of the hearing but will in any case be confirmed in writing, with information on any further appeal rights where appropriate.

This procedure may be varied by the person (or chair of the committee) conducting the hearing in consultation with the employee (or their representative).

EXAMPLES OF MISCONDUCT

Detailed below are examples of misconduct which will normally justify the use of the disciplinary procedure. This list is **not** exhaustive and further advice can be obtained from HR. (Depending on the severity or degree, these could also constitute gross misconduct.)

Failure to follow recognised procedures either of the school, academy, the Local Authority or other relevant body e.g. the Dfe.

Minor breaches of policy / procedures either of the school, academy, the Local Authority or other relevant body e.g. the Dfe and including **minor breaches of Health and Safety requirements**

Misuse of facilities such as telephones, mobile phones, email or the internet

Failure to take proper care of school or LA property

Poor timekeeping

Bad language or other rude and offensive behaviour

Bullying and harassment

Unauthorised absence

Absenteeism e.g. leaving work early, arriving late, leaving work to go home or run an errand without prior permission

Minor acts of insubordination or failing to follow instructions

Failing to obey a lawful and reasonable instruction

Oppressive or abusive conduct towards a fellow employee or a member of the public

Being an accessory to a disciplinary offence i.e. when an employee is knowingly an accessory to any misconduct carried out by another employee.

Engaging in private work or personal business without authority during contracted working hours

Engaging without permission in other employment which conflicts with or is detrimental to the interests of the school / academy / LA.

Engaging without permission in outside activities which damage or could or could have damaged damage the school/academy/LA's reputation or undermine public confidence in the school / academy / LA e.g. blogging about the school / academy / LA or its management, staff, pupils or parents.

Sleeping on duty

Criminal conduct– when an employee has been found guilty by a Court of Law of a criminal offence, having regard to the nature of the offence

Negligence or lack of care in the performance of an employee's duties

Failing to attend a medical appointments if reasonably asked to attend.

EXAMPLES OF GROSS MISCONDUCT

Detailed below are examples of gross misconduct, which will normally justify the use of the disciplinary procedure. This list is **not** exhaustive and further advice can be obtained from HR.

Any form of abuse of children

Theft or dishonesty

Fraud or deliberate falsification of records

Assault (including threatened assault) fighting or physical violence

Deliberate, wilful or malicious damage or misuse of property

Serious breaches of school, LA or other relevant procedures or regulations

Being under the influence of alcohol or drugs at work

Serious bullying and harassment

Serious breaches of Health and Safety rules

Serious negligence (e.g. extreme carelessness causing, or potentially causing, unacceptable loss, damage or injury)

Making malicious allegations

Serious misuse of facilities such as telephones, mobile phones, email or the internet

Criminal or other misconduct outside work where this impacts on the employee's suitability for their position or the reputation or public confidence in the school, academy or LA. **Refusal to comply with a request for a disclosure and barring service (DBS) check** where post is subject to holding a satisfactory DBS check

Failure to disclose to the employer any criminal conviction, caution or reprimand, warning or bind-over received whilst employed (if employed in a post subject to a DBS check)

Deliberate refusal to maintain membership of a professional body where such membership is a requirement of the post

Misconduct in relation to official documents – when an employee without sufficient cause destroys or mutilates any record or document made, kept or required by the school, makes any false entries or otherwise dishonestly or improperly erases or adds to any entry in such a record or document

Improper Disclosure of Information – when an employee without proper authority communicates to any person information which was given to the employee in confidence in the course of their employment with the school or LA

Corrupt or Improper Practice – when an employee improperly uses, or attempts to use, their position for their own private advantage or for the private advantage of some other person

Discrimination – against another employee or member of the public on the grounds of disability, age, sex, including sexual harassment), sexual orientation, colour, race, creed, nationality or ethnic origin

Falsification of professional status, qualifications or experience

Conduct at work likely to offend decency – including sexual misconduct or harassment

**Deliberate and
persistent refusal to carry
out duties and / or obey
reasonable management
instructions** APPENDIX 4

RECOMMENDED PROCEDURE FOR AN APPEAL HEARING

1. Introductions by Chairperson: explanation of procedure.
2. Appellant or representative to state his/her grounds for appeal.
3. Disciplinary panel representative may ask questions of appellant.
4. Appeals Committee members/HR representative may ask questions of the appellant.
5. Appellant to call witness(es) if applicable
6. Disciplinary panel representative may ask questions of appellant's witness(es)
7. Appeals Committee members/HR representative may ask questions of the appellant's witness (es).
8. Disciplinary panel representative to state the school's case.
9. Appellant (or representative) may ask questions of Disciplinary panel representative.
10. Appeals Committee members/HR representative may ask questions of Disciplinary panel representative.
11. Disciplinary panel representative to call witness(es) if applicable
12. Appellant (or representative) may ask questions of Disciplinary panel representative witness(es) if applicable
13. Appeals Committee members/HR representative may ask questions of school's witness(es) if applicable.
14. Disciplinary panel representative to sum up case. *
15. Appellant (or representative) to sum up case. *
16. Parties to retire. HR representative may remain with the Appeals Committee to offer advice.

* N.B. New evidence or material must not be allowed at this stage.

Appeals Committee to consider the case and notify the parties of their decision. This may be conveyed at the conclusion of the Appeal hearing and then confirmed in writing or confirmed in writing at a later date by the Committee.

This procedure may be varied by the chair of the appeal committee in consultation with the appellant (or their representative)

APPENDIX 5**DISCIPLINARY ACTION SUMMARY TABLE**

Level	Investigation	Written invite to hearing	Representation	Hearing conducted/warning issued by	Outcome in writing	Appeal heard by	Duration of warning
Informal action	Informal, gather facts	No	Not considered necessary	No hearing	Letter sent summarising discussion and agreed actions	No appeal	No warning issued
Formal verbal warning	Nominated by Headteacher / Principal	Yes	Recommended	Principal / Section Head	Yes	Governors / Next level mgmt or equivalent	6 months
Formal written warning	Nominated by Headteacher/ Principal	Yes	Recommended	Principal / Section Head	Yes	Governors / Next level mgmt or equivalent	12 months
Final formal written warning	Headteacher / Principal	Yes	Highly recommended	Governors / Senior Manager or equivalent	Yes	Governors / Next level mgmt or equivalent	24 months
Dismissal / Action short of dismissal	Headteacher / Principal	Yes	Highly recommended	Governors /Senior Manager or equivalent	Yes	Governors / Next level mgmt or equivalent	Not applicable

MANAGEMENT OF HEALTH & SAFETY AT WORK REGULATIONS
GENERIC RISK ASSESSMENT – DISCIPLINARY PROCEDURES

SCHOOL/ACADEMY: EMPLOYEE: JOB TITLE:	ASSESSOR/LINE MGR: DATE OF ASSESSMENT: SIGNATURE:	
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No	Potential Hazards	Who is affected?	A x B		C	Control Measures to Eliminate / Minimise the Risk	Further Action Required?
			Hazard Rating	Like-lihood			
	Allegation made Lack of understanding of allegation Potentially stressful for employee Potential conflict situation	Employee				Risk assessment Offer employee counselling services and Occ Health if appropriate Advise to contact union for support Ensure confidentiality for all concerned Communication throughout process Explain allegation, policy, process and timescales Provide documentation – disciplinary policy Regular updates regarding progress of investigation Timely investigation and hearing (if necessary) Signpost to Teaching Alliance if Teacher Referral to Occupational Health	

	<p>Suspension Feelings of; isolation, presumed guilty before the hearing, career in jeopardy, etc. Could lead to mental distress. Unsure about progress of investigation. Lack of clarity from colleagues about contact with suspended staff member</p>	Employee				<p>Nominate member of staff to maintain regular contact during suspension. Offer employee counselling services. Advise to contact union for support. Ensure confidentiality for all concerned. Establish parameters of what can/not be discussed and what contact can/not be made/locations visited etc.</p>	
	<p>Additional workload due to suspended staff absence</p>	Colleagues				<p>Management review of workload Timely investigation and hearing (if necessary)</p>	
	<p>Return to work following suspension Potentially stressful for employee. Potential conflict situation.</p>	<p>Employee Investigating Officer</p> <p>Person/people who made allegations</p> <p>Person/people present at hearing as witnesses</p>				<p>Involve employee and representative in planning for reintegration. Consistent and sensitive communication to staff. Communication to person/people who made allegations. Communication to person/people who were witnesses at hearing. A specific risk assessment may be required. Mediated solution.</p>	
	<p>Involvement of witnesses Potentially stressful</p>	witnesses				<p>Explain process Offer employee counselling services Management support to discuss concerns Exploration of whether anonymity required Timely progression of case Ensure confidentiality of all concerned.</p>	

	<p>High Profile/Sensitive Nature Investigations (Including Child Protection Allegations) Concern about reputation, impact on life outside work, story getting into the press,</p>	Employee Investigating Officer				<p>Ensure confidentiality for all concerned. Offer support of employee counselling service Advise to contact union. Signpost to Teaching Alliance if Teacher Advise of the process as soon as able after allegation is made (i.e. LADO process releasing information on progress) Keep advised of progress of investigation. Ensure any press communication is through the LA Press Office</p>	
	<p>False/Malicious allegations Staff member may feel vulnerable at work.</p>	Employee				<p>Involve staff member in planning to minimise risk. Consider temporary relocation/changing timetable etc. Ensure system in place for immediate reporting/documenting of incidents. Minimise situations where allegations could be made, e.g. when two people are alone. Where this situation cannot be avoided, consider having additional staff member present. Potential disciplinary action against alleged. Apology to employee alleged against if unfounded.</p>	
	<p>Stress resulting from disciplinary action</p>	Employee				<p>Ensure required standards of future behaviour are clearly understood. Ensure rationale behind action taken is clearly understood. Offer support of employee counselling service, Encourage to contact union. Signpost to Teaching Alliance if Teacher</p>	

SUSPENSION RISK ASSESSMENT – CHILD PROTECTION

SCHOOL/ACADEMY:	ASSESSOR/LINE MGR:
EMPLOYEE:	DATE OF ASSESSMENT:
JOB TITLE:	SIGNATURE:

Suspension should only be considered if one or more of the following apply: a child or children are at risk of significant harm.

- The allegation warrants investigation by the police
- The allegation is so serious that dismissal / gross misconduct is possible
- The allegations (if true) against an employee are such that it would impair the school's functions if the employee remains at work;
- The employee may tamper with evidence or interfere with witnesses;
- The employee remaining at work would otherwise hamper the investigation; or
- The employee remaining in work presents a risk to the health, safety and security of pupils, staff, parents/carers, and/or school resources and/or property

<p><i>Detail as appropriate</i></p> <p>CONTENT OF INCIDENT:</p> <p>Duration and frequency of abuse Degree of threat or cohesion Extent of premeditation Degree and nature of harm</p>	
<p>INFORMATION RE STAFF MEMBER:</p> <p>Previous concerns Previous allegations Attitude to allegation Contact with pupil Teaching duties</p>	
<p>INFORMATION RE CHILD:</p> <p>Age and level of understanding Special needs and vulnerability Impact on health and development Previous allegations</p>	
<p>INFORMATION RE PARENT / CARER:</p> <p>Attitude to allegation Previous allegations Experience Training</p>	

SCHOOL PROCEDURES AND POLICY: Policy / Procedure in place? Degree of compliance Training	
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Risk identified:

Action plan:

- ...
- ...
- ...
- ...

Decision to suspend: YES/NO

Date of decision:

Name and signature of responsible manager:

NB If suspension exceeds 4 weeks contact HR for further advice.