



## Atherstone & Bedworth Heath Maintained Nursery Schools and Warwickshire Early Years Hub

# Disciplinary Procedure

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# Disciplinary Procedure

(applicable to all Teaching & Support Staff)

Applicable to all community and voluntary controlled schools (where WCC is the employer) and voluntary aided, foundation and academy schools participating in the Warwickshire Consultation Framework.

December 2014



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*This procedure has been consulted and agreed with all of the recognised trades unions and teacher associations that represent their members within schools participating in the Warwickshire Consultation Framework.*

## **1. Objective and Scope**

These procedures are primarily designed to help and encourage employees to improve performance and behaviour rather than just being a way of imposing punitive measures. It aims to clarify the rights and responsibilities of the school and employees and to promote fairness and order in any disciplinary action and for this to be applied in a consistent, constructive and reasonable fashion.

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. In the case of actions taken by employees outside of working hours, all cases must be referred to your HR provider and/or legal for advice.

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 school/academy 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.

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 Sickness Absence Management Policy. Concerns about performance will be considered under the Capability Procedure and/or the Appraisal Policy (for teachers).

## **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)
- Failure to follow reasonable management instructions
- Inappropriate behaviour e.g. not cooperating with work colleagues to fulfil their job role.
- 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 alcohol or drugs 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
- 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 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
- Serious breaches of the schools IT user and social media and internet related policies
- Using social media (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 allegation against an employee will be notified to them in writing (within 5 working days in all instances other than below)
- Employees will be given no less than 5 working days' notice of any disciplinary hearing (10 for gross misconduct allegations); 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 of the 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
- 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
- Each step and action taken will be taken without unreasonable delay
- The timing and duration of hearings will be reasonable for all parties involved
- 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 should be sought from Occupational Health and their HR provider to determine the best approach to assessing and resolving such contributing factors.

#### **5. Management Advice (Informal Resolution)**

The informal approach should be used where formal disciplinary action may be disproportionate to the alleged misconduct.

In these instances the manager/ Head teacher (or Chair in the case of allegations against the Head teacher) should arrange to meet with the employee to discuss the conduct. Consideration may be given to the following points:

- Explain that the meeting is informal
- Outline that it is not formal disciplinary action and therefore not part of the formal disciplinary procedure. Whilst there is no entitlement to representation under the informal resolution, there may be instances when both parties agree it would be helpful for the employee to have the support of a trades unions representative or work colleague. However, if the employee considers that the matter being discussed requires representation and would prefer for the

matter to be dealt with under the formal procedure, it may be reasonable to agree this request. An adjournment may assist HR advice to be sought if required.

- Outline the conduct under review
- Ask the employee for an explanation
- Explain why the conduct was considered inappropriate
- Confirm the expectations and required standards
- In certain circumstances, it may be appropriate to agree with the employee an action plan (if applicable) that provides a framework setting out the improvement required. It may be appropriate to set objectives and timescales.
- Whether counselling, training or any other help or support is appropriate.
- Confirm when the matter will be reviewed (if applicable)
- Explain that formal disciplinary action may be taken if the improvement is not achieved or sustained.
- Informal resolution does not constitute formal action and will not be referred to in employment references.

The manager should record a brief note of the conversation and any action points (copy for the employee), and ensure a follow up discussion is held after an appropriate period to provide an opportunity for review (where this is required) and where the desired outcomes have been achieved and to encourage a sustained improvement.

Where this process has not led to the desired outcome, such as in cases of repeated occurrences of minor misconduct, or where the matter is more serious (and this recommended practice is not appropriate) then progression to the formal part of the policy may be required.

**Advice should be sought from the school's HR Advisory Service before moving into the investigatory stage of the formal procedure.**

## **6. 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.

### **6.1 The Commissioning Manager**

The Commissioning Manager, normally the Head teacher or Senior School Leader/Manager (e.g. Business Manager) 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. The Commissioning Manager will receive the report and determine the next steps. If the Head teacher 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 School's HR Advisory Service.

### **6.2 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 Head teacher 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 School's HR Advisory Service about appointing an Investigating Officer from outside the school.

On receipt of the allegation(s), 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 including the outline allegation(s). 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 (together with evidence collected during the investigation) and will recommend whether there is a case to answer.

### **6.3 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 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
- b) where the Head teacher is suspended or subject to disciplinary or capability procedures
- c) where the Authority has made formal representations to the Chair of Governors on the grounds of serious concerns about the performance of the Head teacher

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.

In all other cases the Head teacher/Senior School Leader/Manager, including where they fulfil the role of Commissioning Manager, may hear the case. Advice should be sought from the School's HR Advisory Service.

### **6.4 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.

### **6.5 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 School's HR Advisory Service.

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

## **7. 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 for managing allegations against staff . The relevant statutory guidance of 'Keeping Children Safe in education' (DfE, April 2021), and sections 2.6 and 2.7 (for schools) of 'Working Together to Safeguard Children' (DFE, 2018). These documents can be accessed, respectively, at:

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

<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 the Managing Allegations against Staff Policy

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 Head teacher or Chair of Governors) to follow when made aware of an allegation of this nature are:

- a) Read and understand the Managing Allegations against Staff Policy
- 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/position of trust (POT) 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 POT meeting or at some later stage, consideration should be given to any recommendations from the meeting

## **8. 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

## **9. Misuse of School Computers and Allied Equipment and software**

Any allegations of a misuse of the school's IT equipment shall be considered under the relevant school policies covering IT users, social media and internet use. Computers and allied equipment and software 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. inappropriate communications or accessing or downloading inappropriate material), the Head teacher will carry out an initial assessment of the circumstances, without alerting the employee at this stage.
- 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

## **10. 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.

## **11. 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 (i.e. Regional Officer) of the relevant union. Advice should be sought from the school's HR Advisory Service when such a scenario arises.

## **12. The Investigation (The start of the formal stage)**

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 allegation.

Where the allegation concerns the Head teacher, the Chair of Governors should seek support from the school's HR Advisory Service.

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.

### **12.1 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 Head teacher.

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.

### **12.2 Suspension**

Suspension should not be an automatic act when an allegation is reported and should be risk assessed and appropriate advice sought (see below re: allegations relating to children). However an employee may potentially be suspended on full pay in the following circumstances:

- (a) Where a child or children are at risk of harm
- (b) Where there is an allegation which if proven may be deemed gross misconduct
- (c) For the protection of colleagues, property, or the employee
- (d) 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
- (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 Head teacher 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 Service.

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.

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 to consider whether circumstances surrounding the suspension have changed. If circumstances require, the Commissioning Manager will make a recommendation to the Chair 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. See also paragraphs 135-140 of Keeping Children Safe in Education for further information on suspension.

### **12.3 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.

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.

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 would be contained in the disciplinary investigation bundle provided to all parties.

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

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. All witness statements will have already been provided to the employee as part of the bundle that will have been provided at the same time as they were invited to the hearing (i.e. 5 working days before or 10 working days for gross misconduct allegations).

## 12.4 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. Pupils need to be aware that making false or malicious statements could be subject to action against them

- (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

### **13. 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)

## **14. III Health**

### **14.1 III 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.

### **14.2 III 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 School's HR Advisory Service to ensure that appropriate account is taken of any disability or other possible equalities issues. If the employee is still unable to attend they may provide a written statement to be considered at the hearing.

## **15. Arranging a Disciplinary Hearing**

The hearing room should be large enough to accommodate the Panel, both parties and a witnesses (if any). Tables are needed so that all present can write comfortably. Two other rooms or quiet areas should be available for the two parties during adjournments. The rooms used should not place the employee feeling uncomfortable/intimidated e.g. glass windows with no blinds in full view of passers-by.

Hearings should normally be held during normal working hours.

The employee must receive a minimum of 5 working days' (10 days for gross misconduct allegations) 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
- 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, no less than 3 working days before the hearing. Panel members must not discuss any aspect of the case with anyone before the hearing.

## **16. The Note-Taker at a Disciplinary Hearing**

A written record of the proceedings must be taken. The note taker may be the Clerk to the Governors or a member of staff at the school. However any member of staff at the school who takes the notes must have no conflict of interests or prior involvement/knowledge of the case and must treat all records of meetings in the strictest of confidences. 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.

## **17. The Disciplinary Hearing**

### **17.1 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 safeguarding related allegations. .

### **17.2 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.

After having sought advice from the HR provider the Chair of the Panel may challenge the relevance of any evidence if it is not apparent. Wherever possible this should be looked into prior to the hearing. 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.

## **18. Disciplinary sanctions**

### **18.1 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 after a formal investigation and hearing. A first written warning will be placed on the employee's personal file normally for a period of 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 Head teacher 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.

The warning will, as a minimum, be reviewed after 1 calendar year or intended duration of the warning, interim reviews may also take place. If a satisfactory standard of conduct has been maintained, the disciplinary record will be spent and the employee will be informed in writing.

## **18.2 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 following a formal investigation and hearing. The employee will be advised of their right of appeal.

A final written warning will remain live for a period of 24 months.

The outcome letter will set out the improvement required and may recommend a meeting with the Head teacher 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.

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

Where there is further misconduct during the life of a final written warning, or where the misconduct is sufficiently serious, the employee may be dismissed with 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 must be sent to the WES HR Advisory Service within 3 working days of the Panels' decision. The Local Authority will then serve notice of termination of the employees contract in writing within 14 calendar days of such notification, in accordance with the School Staffing (England) Regulations 2009 (Section 20).

## **19. Appeals**

Where employees are dissatisfied with the outcome of the disciplinary hearing they can appeal in writing against the decision within five working days of receiving written notification of the decision, using the form in appendix 1. The employee's appeal, must clearly state their grounds for appealing.

An employee may choose to appeal, for example, because:

- They believe a finding or sanction is unreasonable

- New evidence has come to light
- They believe the disciplinary process was procedurally flawed

The appeal hearing will not be in the nature of a re-hearing but will be before a new panel.

If, having heard the relevant parties at the appeal, the chair of the appeal hearing /panel decides to uphold the appeal he/she may withdraw the warning, replace it with a different warning or ask the chair of the original panel to review their decision in the light of new evidence.

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.

## **20. Procedure for the Appeal Hearing**

The procedure for the appeal hearing will be as set out as follows, although this list is not exhaustive:

1. The appellant (or their representative) will outline the grounds of their appeal.
2. The Chair person of the Disciplinary Hearing and the appeal hearing panel will have the opportunity to question the appellant or their representative.
3. The Disciplinary Hearing Chair person who issued the warning shall outline the details of the allegation and explain the reasons behind their decision.
4. The appellant (or their representative) and the appeal hearing panel will have the opportunity to question the Chair person of the Disciplinary Hearing.
5. The Chair of the appeal hearing will then invite the Chair person of the Disciplinary Hearing and the appellant to each make a concluding statement.
6. Both parties will then withdraw whilst the panel considers the evidence.

The decision will be confirmed in writing to the employee within 3 working days. 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.

## **21. 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 (to reconvene later that day or possibly another day) to allow time to read and 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.

**22. Disciplinary Records**

While potential disciplinary action outlined in the formal warning will expire at the end of the specified period, 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, an employee's disciplinary record will be borne in mind in deciding how long any new warning will last.

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.

Details of allegations that are found to have been malicious should be removed from personnel records. However, for all other allegations, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on the confidential personnel file of the accused, and a copy provided to the person concerned.

The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time. The record should be retained at least until the accused has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.

The Information Commissioner has published guidance on employment records in its Employment Practices Code and supplementary guidance, which provides some practical advice on employment retention.

**23. Resignations and Settlement Agreements**

Paragraphs 5.8 and 5.9 of “Safeguarding Children and Safer Recruitment in Education” 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 school must reach a conclusion of the investigation (for making a referral see 24.1 and 24.2) 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

## **24. Referrals to Statutory Bodies**

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:

### **24.1 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.

### **24.2 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 Head teachers and their assistants and deputies.

## Appendix 1

### **Disciplinary Appeal Form**

#### **Section 1: Your details**

1. Your name	
2. Your job-title	
3. Your workplace address	
4. Your address	
5. Your e-mail address	

#### **Section 2: Grounds of appeal**

Please indicate your grounds for appeal for sections A to D and provide further detail in the section at the end.

##### **A) Breach of procedure**

I am appealing on the grounds that the procedure was applied unfairly. YES      NO

If you ticked "yes", please explain:

- how and where the procedure was not followed
- what effect this had on the outcome of the disciplinary process
- any evidence not available at the original hearing that supports this aspect of your appeal, and
- what prevented you from presenting it

##### **B) The facts of the case**

I am appealing on the grounds that the findings at the hearing were unfair. YES      NO

If you ticked "yes", please explain:

- the parts or facts you dispute
- the evidence that you believe was given too much or too little weight (would they know?)
- if you are disputing the conclusions that were arrived at by the chair/panel, please details these.
- any evidence not available at the original hearing that supports your appeal

##### **C) The action taken was disproportionate**

I am appealing on the grounds that the action taken was disproportionate to the circumstances of the case: YES      NO

If you ticked yes, please explain:

- the sanction or warning that was applied
- the aspect of the sanction or warning that you believe is disproportionate
- the reason why you believe it is disproportionate
- any evidence not available at the original hearing that supports this aspect of your appeal; and
- what prevented you from presenting it

**D) Any other substantial grounds of appeal**

I am appealing for another substantial reason:

YES      NO

If you ticked yes, please explain:

- the grounds on which you are appealing
- its effect on the procedure followed
- its effect on the findings of fact at the original hearing
- its effect on the sanction applied
- any evidence not available at the original hearing that supports this aspect of your appeal; and
- what prevented you from presenting it

**PLEASE PROVIDE FURTHER DETAIL FOR YOUR GROUNDS OF APPEAL**  
(continue on another sheet if necessary)

**Signature of appellant**

Your signature \_\_\_\_\_ Print Name \_\_\_\_\_

Date of signature \_\_\_\_\_

**Section 3: Administration**

This section is to be completed by the person the appeal has been sent to (Chair person of the School

Governing Body or a nominated Senior Manager where applicable).

Date the appeal was lodged

Was the appeal lodged in time?

YES      NO

## Appendix 2

### Disciplinary Process Flowcharts

