

# Oakfield Lodge School



# Disciplinary Procedure

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## 1.0 Scope

1.1 This procedure is recommended to all Community and Voluntary Controlled, Voluntary Aided, Foundation schools and Academies who buy back the Education HR Consultancy Package through ChESS.

1.2 Disciplinary hearings where the range of possible outcomes does not include dismissal will normally be chaired by the Head teacher, or an appropriate Designated Officer. Additionally, where the Management Committee has delegated the initial dismissal decision (IDD) to the Head teacher, the Head teacher may chair a Disciplinary Hearing where dismissal is a possible outcome, unless:

- the head teacher has been directly involved in the disciplinary procedures leading to dismissal, or
- the head teacher is the Investigating officer
- the head teacher has instigated a proposal to dismiss, or
- the head teacher is a witness of particular conduct giving grounds for the dismissal in question, or
- the Local Authority has made representations to the Chair of the Management Committee on grounds of serious concerns about the performance of the head teacher, or
- the head teacher is the subject of the disciplinary action
- the Management Committee has not delegated the initial dismissal decision (IDD) to the Head teacher

In these circumstances potential dismissal cases will be heard by a panel of the Management Committee.

1.3 Where a head teacher is on long term absence (e.g. sickness, secondment), the Management Committee should consider whether it is appropriate to pass delegated responsibility to the person acting as head teacher. The head teacher should have the opportunity to make representations on any decision to discontinue delegated responsibility.

1.4 Where the head teacher is exercising delegated responsibility, this cannot be delegated on to another person by the head teacher.

1.5 This procedure does not apply to the following;

- issues related to alleged capability, except where it is considered to be a wilful refusal by the employee to carry out their duties.
- Support staff within their probation period.

1.6 It is not possible to define all acts of misconduct or unacceptable behaviour that could lead to disciplinary action. However, [Appendix 1- Disciplinary Rules](#) sets out some examples of misconduct and gross misconduct, and managers/head teachers will ensure that all employees are informed of these examples during induction.

## **2.0 Aims**

- 2.1 To provide a framework which enables managers/head teachers to deal with breaches of discipline.
- 2.2 To ensure that all employees are aware of the standards required of them and the procedures which may be applied where there are concerns.

## **3.0 Roles and responsibilities**

### **3.1 Management Committee**

- 3.1.1 The Management Committee has a statutory obligation to establish procedures relating to the conduct and discipline of staff under the School Staffing (England) Regulations 2003, including dealing with disciplinary matters, and is responsible for ensuring that all staff are made aware of the procedure.
- 3.1.2 The Management Committee has the statutory authority to decide to dismiss staff. However under the School Staffing (England) Regulations 2009, it is expected to delegate dismissal decisions for all staff (apart from the head teacher) to the head teacher unless this is considered inappropriate.
- 3.1.3 The Chair of Management Committee is ultimately responsible for the application of this procedure within the school.

### **3.2 Manager/Head Teacher's Responsibilities**

- 3.2.1 The manager/head teacher is responsible for managing the conduct and behaviour of employees on a day to day basis in accordance with this agreed procedure, and ensuring that employees are aware of the expected standards of conduct and disciplinary rules.
- 3.2.2 The manager /head teacher should ensure that employees are made aware of this procedure, the rules contained within it and how it can be accessed.
- 3.2.3 Managers/head teachers will be expected to deal sensitively, appropriately, confidentially and in line with Equality legislation, with any issues brought to their attention by employees that may raise cause for concern or interfere with their ability to do their job.

### **3.3 Employee's responsibilities**

- 3.3.1 It is an employee's responsibility to be aware of the standards of conduct and performance expected of them and to discuss promptly with their manager/head teacher any circumstances, either personal or work related, that would interfere with their ability to do their job.
- 3.3.2 Employees should ensure that their private life does not interfere with the proper performance of their duties and responsibilities with the School.
- 3.3.3 Where an employee is the subject of a disciplinary investigation it is their responsibility to comply fully with this procedure.

## **4.0 Informal action**

- 4.1 Not all conduct issues need to be dealt with through formal disciplinary procedures. Managers are encouraged, where it is appropriate, to informally discuss concerns regarding

conduct and agree where improvements can be made. A record of the informal discussion should be kept and the manager may issue an instruction, confirmed in writing, setting the standards of expected behaviour or conduct. This management instruction will be retained on the employee's file but is not part of the formal process. Further advice on this can be obtained from Education HR Consultancy

- 4.2 Employees with concerns or questions about a management instruction may want to discuss this with their union representative but as this is part of the informal process there is no right to be accompanied at this stage.

## **5.0 Initial steps of formal disciplinary action**

- 5.1 Formal disciplinary action may be necessary when informal mechanisms to address misconduct are ineffective, or where they are judged inappropriate given the nature of the issue arising. For example, where there has been an incident which, if substantiated, is considered serious enough to deal with the matter formally or may constitute gross misconduct.

- 5.2 Where a concern is raised which may potentially be dealt with under the disciplinary procedure, there needs to be some preliminary fact finding to establish the basic details and it may be appropriate to seek an explanation from the employee before deciding to proceed with a formal investigation. This preliminary assessment should also include consideration of whether the individual has a protected characteristic (e.g. a disability) that needs to be taken into account.

## **6.0 Safeguarding**

- 6.1 Where the allegations are of a safeguarding nature and the alleged behaviour might be criminal, involve harm to a child or put a child at risk of harm, the case must be referred to the Local Authority Designated Officer (LADO). If criteria for LADO involvement are met and there is a need for further investigation, the LADO will advise on the need for a LADO strategy meeting or discussion.

- 6.2 No disciplinary investigation should be started by the school until the strategy meeting has met and made its recommendations with regard to next steps.

- 6.3 Where it is decided to proceed with a formal disciplinary investigation, the school does not have to await the outcome of any criminal proceedings. However, the Investigating Officer may need to exercise caution so that it does not impede the police inquiries. In these cases further advice should be sought from the Education HR Consultancy.

- 6.4 If there is insufficient evidence to establish an honest and reasonable belief in the employee's guilt, the employer may decide to wait for the outcome of the criminal proceedings. The employee could be suspended on normal pay during this period.

## **7.0 Disciplinary investigation**

- 7.1 Assuming the preliminary fact finding shows that the formal disciplinary procedure is the most appropriate mechanism to use, a formal investigation will be carried out as soon as reasonably practicable. The Investigating Officer should normally be a senior member of staff (other than the head teacher) or a governor or an independent investigator commissioned for this purpose. If the headteacher takes this role he/she would not be able to chair a disciplinary hearing at a later stage.

- 7.2 An investigation must establish the seriousness of the alleged misconduct and be proportionate to it. The response may range from a brief discussion with the employee to establish the facts, to a full-scale investigation involving other agencies such as the police. The objective should be to provide sound evidence to decide on whether the case should proceed.
- 7.3 At the earliest possible opportunity the employee should be informed of the issue, asked for an account of their behaviour and informed that an investigation will take place. It should be made clear that this meeting is not a disciplinary hearing but that during investigatory meetings and any subsequent disciplinary hearing they will be entitled to be accompanied by a trade union representative or a work colleague. Fellow workers do not have to accept a request to accompany an employee.
- 7.4 The Investigating Officer will establish all of the relevant facts. This may involve the collation of all relevant documents and/or a number of investigatory interviews with witnesses where statements will be taken, signed and dated by all parties.
- 7.5 Witnesses should be made aware of confidentiality issues and advised that they may be asked to attend a disciplinary hearing.
- 7.6 The Investigating Officer will also interview the employee against whom the allegation has been made, making clear the relevant facts in order that he/she has the opportunity to respond and identifying any other potential witnesses that the employee may wish to be interviewed in the interests of his/her case.
- 7.7 Information gathered during the investigation will be presented in the [Disciplinary Report Format - Appendix 2](#). The report will contain clear recommendations for further action.

## **8.0 Courses of action following an investigation**

- 8.1 At the end of the investigation there are a number of possible courses of action. The Investigating Officer will present their report to the commissioning manager, this would normally be the Head teacher. Based upon the information within the report, a decision will be made as to what action will be taken.
- 8.2 Where there is insufficient evidence or the employee provides a satisfactory response, no further action will be taken. In such cases the employee should be informed that no further action is to be taken at the earliest opportunity.
- 8.3 Where the evidence suggests that there are some minor matters to address, a management instruction could be issued and recorded in writing.
- 8.4 Where the evidence suggests that the allegation is supported and a formal hearing is appropriate then a formal disciplinary hearing will be arranged. If an outcome of the disciplinary hearing could be dismissal and the Head teacher does not have delegated authority for dismissal then the report will be considered by a panel of governors nominated/appointed by the Management Committee.

## **9.0 Suspension**

- 9.1 In cases where it is believed that there has been an incident which, if substantiated may constitute gross misconduct, the employee will normally be suspended from duty. In very exceptional circumstances the employee may be allowed to continue at work or may be temporarily redeployed to another job. Both the Management Committee and headteacher can suspend an employee but only the Management Committee can lift a suspension.

- 9.2 It may also be necessary to suspend the employee in other cases where their continued presence at work would impede the investigation, where this is in the best interests of the employee, or where it is deemed necessary for the protection of other employees or pupils.
- 9.3 During a period of suspension the employee will continue to receive their normal pay i.e. the pay that they would have received if not suspended (which may for example be sick pay if they are off sick),
- 9.4 If an accredited official of a recognised trade union is to be suspended, the case will be discussed, after obtaining the employee's agreement, with a senior trade union representative or paid union official. Suspension should not be delayed in order to have this discussion.
- 9.5 The reasons for suspension will be confirmed in writing to the employee as soon as is possible after the suspension takes place. It will be made clear to the employee that the suspension is considered a neutral act and should not be seen as prejudicing the outcome of any proceedings. The need for the employee to remain suspended will be reviewed periodically and lengthy periods of suspension should be avoided. It should not normally extend beyond three months.
- 9.6 The employee will be offered the provision of an independent person who will provide personal and confidential support during the suspension. This person will either be a school based employee (with no involvement in the case) or a member of staff from Education HR Consultancy (with no involvement in the case).
- 9.7 During the period of suspension the employee must adhere to any conditions set out in the letter of suspension. Any breach of those conditions may result in pay being stopped immediately, and may of itself be a ground for disciplinary action. The conditions of suspension are as follows:
- The employee must be contactable by management during normal school hours;
  - The employee must not attend their workplace, contact or discuss the allegations with other employees or parents without the permission of the head teacher/Chair of Governors;
  - They may contact their trade union representative or work colleague, and their support officer if one has been allocated; and
  - If appropriate, they must return keys, and collect any personal belongings, under supervision.

## **10.0 Setting up a disciplinary hearing**

- 10.1 Where the outcome of the investigation suggests that a disciplinary hearing is necessary, the head teacher/Chair of Governors should provide the employee with a copy of this procedure and notify him/her in writing of:
- the requirement to attend a disciplinary hearing, specifying date, time and venue;
  - full details of the alleged misconduct, and its possible consequences;
  - copies of written supporting evidence (e.g. witness statements/investigation notes);
  - the right to be accompanied by a trade union representative or a work colleague. Consideration may be given to allow an employee to be accompanied by legal representation but only in exceptional circumstances where, as a result of disciplinary

proceedings or action, the employee is 'at risk' of being barred from working in their profession. The decision on such representation will be made at the hearing managers' discretion;

- the right to submit documentation or a written statement of their case Any additional evidence must be submitted to the hearing manager/panel in advance of the disciplinary hearing;
- the names of any witnesses attending and the right to call any other witnesses (whose attendance the employee is responsible for arranging);
- details of the chair of the hearing/panel members who will hear the case

10.2 The letter will be handed to the employee or sent by recorded delivery giving a minimum of 5 working days notice. In cases where dismissal is a possible outcome of the hearing employees should be given 10 working days notice.

### **11.0 Postponing a disciplinary hearing**

11.1 If the employee's representative cannot attend on the proposed date, the employee can suggest an alternative time and date so long as it is reasonable and is not normally more than 5 working days later than the original date. This time limit may be extended by mutual agreement. Where the representative does not work full time hours this should be taken into account in considering a time limit extension

11.2 If an employee is unable to attend a meeting for a reason outside their control and unforeseeable at the time the meeting was arranged, including illness, a further date will be arranged. Where absence due to illness continues the Occupational Health Provider will be asked for advice on whether or not the employee is fit to attend a hearing.

11.3 If the employee fails to attend the hearing without good reason, or is persistently unwilling to agree to a date for the hearing, the hearing may take place in the absence of the employee based on the information available. In these cases the employee will be given the opportunity to make a written submission which will be taken into consideration before a final decision is made.

### **12.0 Disciplinary hearing**

12.1 The conduct of the hearing will be as set out in [Appendix 3](#) of this procedure.

12.2 The head teacher/panel conducting the hearing will be empowered to determine the extent of any disciplinary action including dismissal. They will consider whether the employee's conduct justifies formal disciplinary action having regard to all the circumstances of the case including the gravity of any misconduct and any mitigating circumstances, including the employee's previous record.

12.3 Those present at the hearing will normally be:

- The head teacher/panel hearing the case (an independent person who has not previously been involved with the case).
- An Education HR representative will also attend in an advisory capacity to the head teacher.
- Investigating Officer to present the employer's case or other such officer with sufficient knowledge of the case.
- The employee and their trade union representative or work colleague.



- Any relevant witnesses (when called).
- A person nominated from the employer's side to take notes and record the proceedings. NB. care should be taken to consider confidentiality and potentially sensitive issues when nominating a note taker.

12.4 After the case has been heard, the head teacher/panel will decide whether or not disciplinary action or any other action is justified. This decision will usually be reached immediately, following an adjournment to consider all the evidence. If it is not possible to make a decision immediately the parties should be informed of this. In any event a decision must be made and communicated to the employee within 5 working days of the hearing.

### **13.0 Disciplinary actions**

13.1 Potential outcomes of a formal disciplinary hearing are:-

- Case dismissed
- Written warning
- Dismissal
- Other outcome, for example demotion or informal action

13.2 There are four levels of disciplinary sanctions:

- First written warning
- Final written warning
- Dismissal with notice
- Summary dismissal (dismissal without notice)

13.3 In some circumstances, demotion to a lower graded post or permanent redeployment with no pay protection/salary safeguarding, may be used as an alternative to dismissal. In addition the employee will receive a final warning.

13.4 Employees will not ordinarily be dismissed for a first offence. However, some acts of gross misconduct are so serious in themselves or have such serious consequences that they may call for dismissal without notice for the first offence.

### **14.0 First and final written warnings**

14.1 Warnings must be confirmed to the employee, in writing, signed by the head teacher/Chair of the Hearing Panel who conducted the hearing, and will either be handed to the employee or sent recorded delivery within 5 working days of the date of the disciplinary hearing.

14.2 The letter will confirm:

- The date of the disciplinary and the names of those in attendance
- The nature of the offence together with a brief summary of the facts presented plus any mitigating circumstances
- The type of warning to be issued and the time limit
- The standard of conduct/behaviour expected in the future
- Any assistance to be given and/or timescales in which the improvement is to be achieved
- The consequences of further misconduct, i.e. in the case of a final written warning, the letter will clearly indicate the possibility of dismissal in the event of any further breach of discipline

- The employee's right to appeal; the means of exercising that right; and the need to do so within 10 working days of receiving the warning letter.

14.3 Warnings will remain 'live' on the employee's personal file for up to 12 months for first written warnings and 24 months for final written warnings, from the date of the disciplinary hearing.

14.4 Provided the employee's conduct is satisfactory throughout the period of the warning, the letter will ordinarily be disregarded for future disciplinary purposes. However, there may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to lapse thereafter. Where this happens it may be reasonable to use expired warnings as part of the employee's objective work history when considering future disciplinary sanctions. However expired warnings will not be used as part of a totting up process, i.e. added together to create a sequence of events.

## **15.0 Dismissal**

15.1 In cases where a final written warning is in force, or where gross misconduct has occurred, the decision to dismiss may be taken.

15.2 A dismissal must be confirmed to the employee, in writing, signed by the head teacher/chair of the hearing panel who conducted the hearing, and will either be handed to the employee or sent recorded delivery within 5 working days of the date of the disciplinary hearing.

15.3 The letter will confirm:

- The date of the disciplinary hearing and the names of those in attendance
- The nature of the offence together with a brief summary of the facts presented
- The disciplinary action taken
- The individual's right to any money due to them (or not); and how it will be paid
- The final date of employment
- The employee's right to appeal; the means of exercising that right; and the need to do so within 10 working days of the date of the dismissal letter.

15.4 The relevant period of notice will be given. However, at the discretion of the manager and depending on the reason for dismissal; the employee may not be required to attend work during the notice period.

15.5 Instruction will be given regarding the return of all school property and that failure to do so will result in investigation and redress sought.

## **16.0 Summary dismissal**

16.1 Employees dismissed on the grounds of gross misconduct may be summarily dismissed, i.e. dismissed without notice. All other steps will be as per the requirements for dismissal with notice, as set out above.

## **17.0 Alternative sanctions**

17.1 In the case of alternative sanctions being agreed, this must be confirmed to the employee, in writing, signed by the head teacher/Chair of the Hearing Panel who conducted the hearing, and will either be handed to the employee or sent recorded delivery within 5 working days of the date of the disciplinary hearing.

17.2 The letter will confirm:

- The date of the disciplinary and the names of those in attendance
- The nature of the offence together with a brief summary of the facts presented plus any mitigating circumstances
- The details of the alternative sanction been agreed, i.e. lower graded post
- The standard of conduct/behaviour expected in the future
- Any assistance to be given and/or timescales in which the improvement is to be achieved
- The consequences of further misconduct, i.e. the letter will clearly indicate the possibility of dismissal in the event of any further breach of discipline
- The employee's right to appeal; the means of exercising that right; and the need to do so within 10 working days of receiving the warning letter.

## 18.0 The right of appeal

18.1 Employees have the right to appeal against any disciplinary action under this procedure. Employees who wish to appeal should do so, in writing, stipulating the reasons for the appeal, and including any supporting evidence, within 10 working days of receiving the outcome of the formal disciplinary hearing. The letter should stipulate the grounds of the appeal, whether:

- the employee considers a finding or penalty to be unfair (including the reasons why);
- new evidence has come to light (and details of the evidence); or
- the employee considers that the disciplinary procedure was not correctly applied (explaining the reasons why).

If the appeal is unclear, the employee may be asked to clarify their complaint before the appeal hearing takes place.

18.2 Appeal hearings will normally take place within 20 working days of the appeal being lodged.

18.3 The employee will be given a minimum of 5 working days notice of the time and place of the hearing, and will be allowed to be accompanied by either a trade union official or work colleague.

18.4 Appeals may be raised by employees on any number of grounds, for instance, new evidence, undue severity or inconsistency of the penalty. The appeal in normal circumstances will be a review of the disciplinary sanction. The conduct of the appeal hearing will be as set out in [Appendix 5](#) to this procedure. In exceptional circumstances, the appeal may be a re-hearing of the case (this would be depending on the grounds for the appeal). For example, if it was discovered the decision was made by someone not impartial or if substantive new evidence was presented. In the situation of new evidence coming to light, this will be provided first to the Chair of the original hearing so that the Chair can have the new evidence investigated if appropriate, and consider whether it means the outcome of the hearing will be changed, without the case proceeding to an appeal.

Possible outcomes of the appeal panel are:

- uphold the appeal;
- reject the appeal in full;
- partly uphold the appeal which may result in a lesser sanction; or
- reject the appeal and impose a higher level of sanction.

- 18.5. Appeals will be heard by an Appeal Panel of the Management Committee with full delegated power. An appeal panel will consist of at least three governors who have not previously been involved with the case (i.e. it must exclude members of the Hearing Panel). Where insufficient such governors are available, the appeal may be heard by two governors, but there will be no fewer than the number that made the initial decision.
- 18.6 If as a result of an appeal, or for any other reason, disciplinary action is withdrawn, any written record of the matter will be expunged from the employee's personal file. Any resulting reinstatement will be backdated to the final date of employment, pay will be reinstated and continuity of service will be preserved.
- 18.7 As a result of an appeal hearing, the disciplinary action taken may be varied, increasing or decreasing the severity of the action taken. In this instance, a written record of the variation will be retained on the employee's personal file.
- 18.8 The person or group hearing the appeal will announce their decision to the parties personally. This may not be immediately at the end of the appeal hearing as they may need time to consider. The decision will then be confirmed in writing as soon as possible. The decision of the person or group will be final and binding.

## **19.0 Referring misconduct cases to regulatory bodies**

### **19.1 Referring Teachers to the National College for Teaching and Leadership (NCTL).**

19.1.1 The school has a statutory requirement to refer cases to the National College for Teaching and Leadership (NCTL) where a teacher has been dismissed for misconduct, or would have dismissed them had they not resigned first. (The National College for Teaching and Leadership (NCTL), an executive agency of the Department for Education, operates as the regulator of the teaching profession on behalf of the Secretary of State).

19.1.2 A referral to the National College for Teaching and Leadership (NCTL) is appropriate if the alleged misconduct is so serious that it warrants a decision on whether the teacher or head teacher should be prevented from teaching again.

### **19.2 Referring employees to the Disclosure and Barring Service (DBS)**

19.2.1 There is also statutory requirement for the school to apply the provisions of the Safeguarding Vulnerable Groups Act (SVGA) 2006 when dismissing a member of staff working with children or vulnerable adults, where dismissal has occurred on grounds of misconduct which harmed, or placed at risk of harm, a child or vulnerable adults.

19.2.2 Where an individual is dismissed in the above circumstances (or would have been dismissed had they not resigned, retired, been made redundant or transferred to a post not involving regulated activity) and where the circumstances of the case meet the relevant thresholds, the details of the case must be referred to the Disclosure and Barring Service (DBS).

19.3 Governing Bodies of Academies, Foundation and Voluntary Aided schools are responsible for making such referrals as the direct employers.

19.4 Please refer to the [A26 Prohibition from Teaching or Working with Children](#) for guidance on how to make referrals. Further advice can also be found on the Department for Education website, DBS website and the Education Consultancy site.

## **20.0 Notes and records**

20.1 Copies of meeting records will be given to the employee. In certain circumstances (for example to protect a witness) the school reserves the right to withhold or amend some information in accordance with Data Protection Legislation.

20.2 The following written records will be kept on the employee's personal file:

- The complaint against the employee
- The employee's defence
- Findings made and actions taken
- The reason for the actions taken
- Whether an appeal was lodged
- The outcome of the appeal
- Any grievances raised during the disciplinary procedure and their outcome
- Subsequent developments, i.e. any further issues during the period of a live warning.

NB: These records should not be kept in any other filing system.

## **21.0 Role of the accompanying person**

21.1 The person accompanying the employee can only attend a hearing in a trade union capacity if they are either a full time official or accredited by their union as having the necessary experience or training to perform such a role. Work colleagues may also act as the accompanying person.

21.2 The accompanying person may address the meeting and put the employee's case on their behalf; sum up the employee's case; respond on the employee's behalf to any view expressed at the hearing and sum up on behalf of the employee at the end of the hearing.

21.3 The accompanying person is not entitled to answer any questions put directly to the employee; these should be answered by the employee themselves, although the accompanying person may add to any response given. Neither must the accompanying person participate in any way that the employee has specifically requested them not to, or disrupt the meeting or its progress.

## **22.0 Criminal convictions**

22.1 Criminal charges or convictions for offences of dishonesty or violence committed outside of working hours may result in disciplinary action being taken against the employee, up to and including summary dismissal. The school will carefully consider the circumstances in each case and whether or not the charge or conviction will affect or is likely to affect the suitability of the employee for their position or the reputation of the school or whether the charge or conviction could seriously undermine the trust and confidence that the school has in the employee. In these circumstances the same procedures will apply.

## **23.0 Relationship with grievance and capability/attendance procedures**

23.1 If at any stage in the procedure it becomes apparent that the matter is actually one of capability rather than discipline, it is appropriate to switch to the application of the appropriate Capability Procedure.

- 23.2 If an employee raises a grievance related to a disciplinary case, there is no requirement for the disciplinary process to be postponed in order to deal with the grievance, although this could be one option. Consideration should be given to whether a complaint about the disciplinary process or the lead up to the process can be dealt with as part of the disciplinary hearing. However, if the complaint is that the action taken or contemplated is or would be unlawfully discriminatory, or that it is being taken for other reasons than that which has been alleged, the Grievance Procedure should apply.
- 23.3 Where the grievance is unrelated to the disciplinary action, the two procedures should be run in parallel.
- 23.4 Where an employee goes off sick during a disciplinary process as much of the disciplinary investigation should be completed as possible. Where the absence is short term the process can be completed on the employee's return to work, otherwise the Occupational Health Provider should be contacted to determine whether the employee is well enough to take part in the process.
- 23.5 Alternatively the hearing could take place at a neutral venue or the employee could be invited to make a written submission or to nominate a representative to attend the hearing in his or her place.

#### **24.0 Malicious allegations**

- 24.1 If an individual makes an allegation in good faith but it is not confirmed by the investigation, no action will be taken against them. If, however, an employee makes an allegation frivolously, maliciously or for personal gain, disciplinary action may be taken against them.

#### **25.0 Anonymous allegations**

- 25.1 The school does not encourage the making of anonymous allegations and will only consider these in exceptional circumstances. Any decision to consider anonymous allegations will be at the absolute discretion of the school. In exercising this discretion the following factors will be considered:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of being able to confirm the allegation.

#### **26.0 Equality and diversity**

- 26.1 The Management Committee should ensure that, when implementing the disciplinary procedure, no employee will be disadvantaged on the basis of their gender, transgender, marital status or civil partnership, racial group, religion or belief, sexual orientation, age, disability, pregnancy or maternity, social or economic status or caring responsibility. This means that the procedure may need to be adjusted to cater for the specific needs of an individual including the provision of information in alternative formats where necessary.

#### **27.0 Monitoring**

- 27.1 Data relating to disciplinary cases will be collated and monitored regularly by the Management Committee to ensure that the procedure is operating fairly, consistently and effectively. Issues that are identified from the data will be dealt with appropriately.

#### **28.0 Review**

28.1 The procedure will be reviewed in the light of operating experience and/or changes in legislation.

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## APPENDIX 1 – DISCIPLINARY RULES

Misconduct usually applies where such breaches of discipline do not normally result in dismissal for a first offence but may result in dismissal if repeated or if the misconduct is considered sufficiently serious in the first instance. This list is neither exclusive nor exhaustive. Examples of misconduct may include:

- Persistent poor timekeeping;
- Unauthorised absence
- Failure to comply with the school's sickness absence procedures;
- Improper disclosure of confidential information
- Breach of the School's guidelines on e-mail/internet use;
- Disregard of safety instructions
- Negligence causing minor damage to property;
- Unsatisfactory standards in performance of duties;
- Offensive behaviour or using abusive language;
- Breach of the School's approach to equality
- Failure to carry out a reasonable management instruction, whether in writing or not, including failure to observe operational regulations and policies

### Gross Misconduct

This is an act of misconduct, which may include any of the above, and that is serious enough to destroy the employment contract between the employee and employer, breaking down the relationship based on trust and confidence and making the future working relationship impossible. Below are specific examples of misconduct which could be considered gross misconduct but this list should not be considered to be either exclusive or exhaustive:

- Serious Safeguarding issues or inappropriate professional conduct involving a child or young person under 19 years of age
- Violence or threat of violence to another employee/pupil
- Theft of School or another employee's property
- Harassment and bullying
- Deliberate falsification of any document
- Criminal conduct at work
- Corrupt or improper practice in breach of the Code of Conduct
- Discrimination against another employee, an applicant for employment or any other person on the grounds of gender, transgender, marital status or civil partnership, racial group, religion or belief, sexual orientation, age, disability, pregnancy or maternity, social or economic status or caring responsibility
- Breach of the School Health and Safety rules including negligence which causes unacceptable loss, damage or injury
- Breaches of the School Safeguarding Principles or where the action impacts adversely on the health and well being of children and vulnerable adults
- Reporting for, or being at work whilst adversely affected by drink or non prescribed drugs
- Unauthorised use, misuse or damage to a School owned vehicle, School equipment, property or facilities, including communication and information technology
- Knowingly disclosing confidential information in breach of the [Data Protection Act 1998 or the Confidential Reporting Procedure \( Whistleblowing\)](#)
- Sleeping on duty
- Claiming sickness for any other reason than your personal illness
- Neglect of duty or behaviour liable to bring the School into disrepute



- Breaching standards of professional conduct
- Public criticism of the School's decisions and/or activities connected with the employee's own work
- Blatant and/or persistent refusal to carry out a reasonable management instruction.
- Unauthorised employment (either engaging in other employment whilst contracted to work for the School or employment outside of office hours which is detrimental to the School's interests)
- Smoking within designated non smoking areas including premises or vehicles
- Conviction of or under investigation for a criminal offence related to, or liable to have an adverse effect on the work of the employee, other employees or on the credibility of the School
- Breaches of the School's IT and Acceptable Use Policies

## APPENDIX 2 – MODEL INVESTIGATION REPORT

Report Author

Date:

Employee Name:

Job Title

School:

### Introduction

- Outline service delivered, employment history etc

### Incident

- Outline what has happened; what the allegation/issue is and which procedure it comes under; outline how the allegation/issue was raised

### Investigation:

- Outline what action the Investigating Officer has taken
- Refer to witness statements, and clarify why these are relevant
- What other sources of information were accessed

### Detail of Key Issues:

- Sub sections should be used to detail background information, contextual information etc

### Consideration:

- Summary of critical issues and supporting evidence in determining prima facie case

### Conclusion:

- Recommendation of whether the case should proceed

### Appendices:

- All documentary evidence that supports your investigation (e.g. witness statements, training records) should be included as appendices and cross referenced through out the report

N.B. It is not the responsibility of the Investigating Officer to recommend sanctions or to uphold allegations.

## **APPENDIX 3 – CONDUCT OF A DISCIPLINARY HEARING**

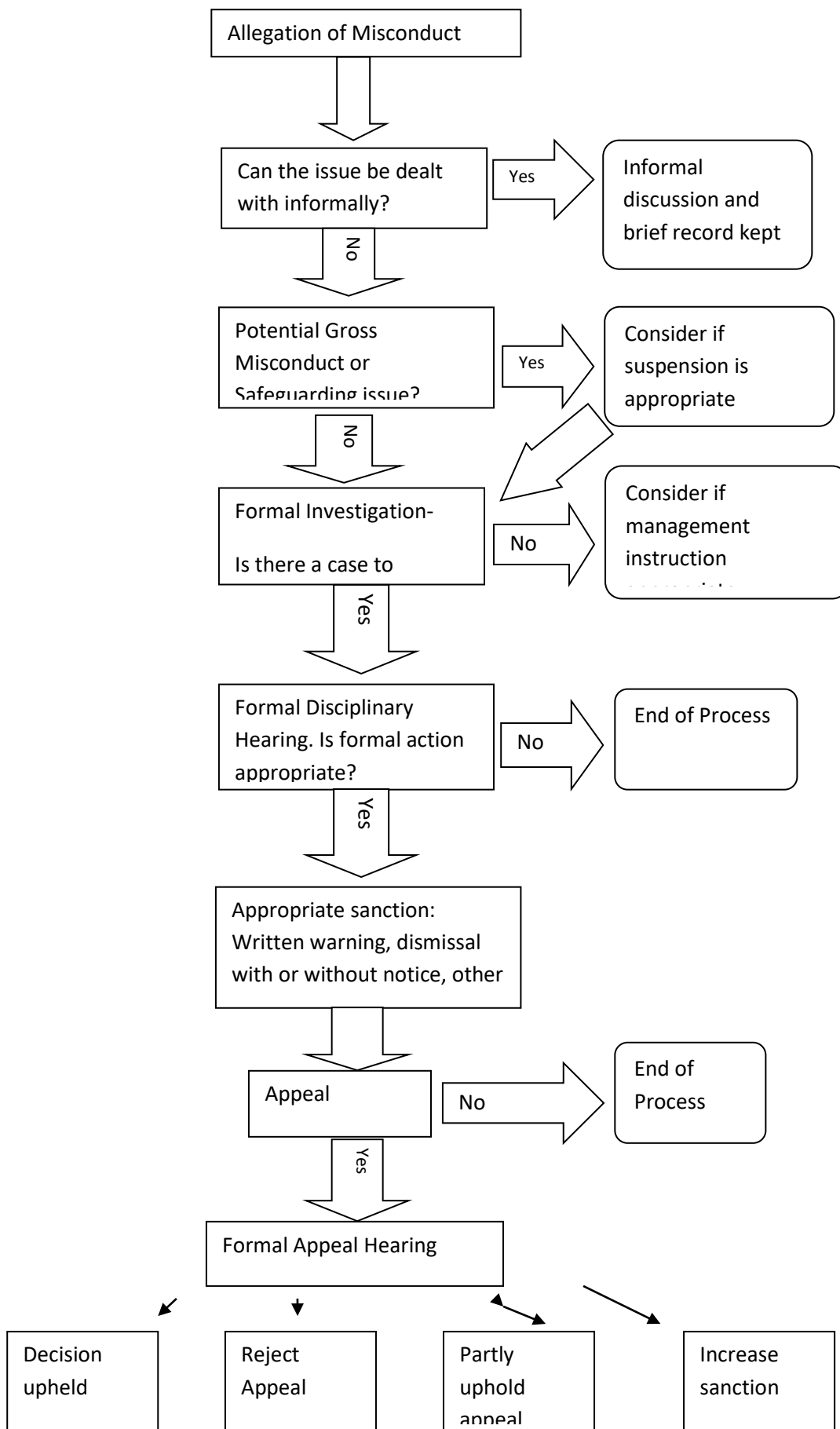
The procedure to be adopted at any disciplinary hearing will normally be:

1. The hearing will normally be conducted by the head teacher (up to and including dismissal stage). They may be accompanied by an appropriately qualified advisor (e.g. Education HR Representative) who will not have been involved in the investigation and will be to assist in the conduct of the hearing. Consideration should also be given to having a person present to take notes, although in more straightforward cases the advisor may undertake this role.
2. The person or group conducting the hearing will satisfy themselves that the employee understands the purpose of the hearing, the nature of the complaint(s) and the possible implications arising from it.
3. The case against the employee will be presented normally by the appointed presenting officer. The case will be presented and may include witnesses, written statements or other documents where these are necessary. If written statements or other documents are to be presented, copies of these should normally be sent to the employee and/or their representative with the letter convening the hearing.
4. The employee and/or representative will be given the opportunity to question the presenting officer as well as any witnesses who may have given evidence.
5. The employee or their representative will then be invited to respond to the case as presented. The employee may also produce witnesses, written statements or other documents in support of their case. Where it is the intention to submit written Statements of Case, these should be exchanged by both sides prior to the hearing. Where witnesses are School employees, they should be given reasonable time off with pay to attend the hearing.
6. The presenting officer will be given the opportunity to question the employee, their representative and any witnesses called in their defence.
7. At any stage during the hearing, the person or group conducting the hearing and any advisor(s) may ask questions of the employee or the presenting officer, as they may consider appropriate in order to ascertain the facts and arguments. The formulation of views before the end of the hearing should be avoided.
8. The presenting officer will then be invited to make a closing statement not introducing any new material.
9. Either party may ask for an adjournment at any stage of the disciplinary hearing.
10. Finally the employee or their representative will be given the opportunity to make a closing statement also without introducing any new material.
11. If at any point the person or group conducting the hearing considers in the light of the information presented, that there is a need to collect additional evidence to assist in making a decision, they may adjourn the hearing to enable this to happen. This must be done quickly and the employee must have the opportunity to respond to the new evidence.
12. Both parties will withdraw to allow the person or group conducting the hearing to review and consider the evidence in conjunction with any advisors.

13. The person or group conducting the hearing will then recall both parties to inform them of their decision. The decision should normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately the parties should be informed of this. In any event a decision must be made and communicated to the employee within 5 working days of the hearing. The decision should be confirmed in writing and delivered to the employee either by hand or recorded delivery, with a copy to the trade union or other representative.



# APPENDIX 4: FLOW CHART – DISCIPLINARY PROCEDURE



## **APPENDIX 5: Disciplinary Appeals Procedure – Governors Panel**

In order to deal with the appeal expeditiously the hearing will normally take place within 20 working days of the appeal being lodged.

The employee will be given in writing a minimum of 5 working days notice of the time and place of the hearing, and will be allowed to be accompanied by either their trade union representative or work colleague.

The procedure for the appeal hearing will be circulated in advance.

The procedure at the appeal hearing will be as follows:

1. A panel of governors (minimum 2 and no less than the original hearing) will hear the appeal with a person acting as Secretary and a HR Adviser in attendance.
2. Both parties will enter i.e. the Schools/Academies representative (normally the Head Teacher or Manager who took the original decision) and a HR Officer (who will not be a witness) and the appellant together with their representative. Witnesses will not enter at this stage.
3. The Chair of the panel will satisfy himself/herself that both parties are familiar with, and understand, the procedure to be followed at the hearing.
4. The Schools/Academies representative (normally the HT) will state the Schools/Academies case and may call witnesses on an individual basis. Witnesses will only be present for the duration of their evidence.
5. After the witness has given their evidence the Appellant or their representative will have an opportunity to ask questions of the witness.
6. The Panel will then have the opportunity to ask questions of the witness
7. The Schools/Academies representative will have the opportunity to re-examine their witnesses on any matter referred to in the examination by the panel, the Appellant or their representative.
8. At the conclusion of the Schools/Academies evidence the Appellant or their representative and the panel will have the opportunity to ask questions of the Schools/Academies representative.
9. The Appellant or their representative will put their case and may call witnesses on an individual basis. Witnesses will only be present for the duration of their evidence.
10. After the witness has given their evidence the Schools/Academies representative will have the opportunity to ask questions of the witness.
11. The Panel will then have the opportunity to ask questions of the witness.
12. The Appellant or their representative will have the opportunity to re-examine their witness on any matter referred to in the examination by the Panel or the Schools/Academies representative.
13. At the conclusion of the Appellants evidence the Schools/Academies representative and the Panel will have the opportunity to ask questions of the Appellant or their representative.
14. The Schools/Academies representative and the Appellant or their representative will have the opportunity to sum up their case if they so wish. The Appellant or their representative will have

the right to speak last in their summing up. Neither party may introduce any new evidence at this stage.

15. All parties, except the Panel and the Secretary, and the HR adviser will then withdraw.
16. The Panel will then deliberate in private with the Secretary and HR Adviser in attendance. If recall is necessary to clarify any points both parties will return notwithstanding only one is concerned with the point giving rise to doubt.
17. The Chair of the panel will announce the Panel's decision to the parties personally. The decision will then be confirmed in writing.