



LOCATION : SCHOOL HANDBOOK,SECTION 2, DOCUMENT 16

## **DISCIPLINARY POLICY**

**The Governing Body of Abbey Court School have formally adopted  
Medway Local Authorities Disciplinary Procedure for its own use.  
Adopted on 28.6.2005**

**This policy was last reviewed to ensure appropriateness and relevance in:**

**January 2020**

# **Model Policy Disciplinary Policy**

***For adoption by schools and Academies***

Medway's HR Schools team undertakes to check and review this model policy annually, and where necessary, update it to comply with current legislation and good HR practices.

All trade unions and professional associations formally recognised by Medway Council have been consulted in the development of this policy.

Latest revision – August 2019

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## **1. Introduction**

- 1.1 All employees of this school/academy are expected to maintain high standards of conduct.
- 1.2 This school/academy recognises the shared responsibility between managers and employees for maintaining acceptable standards of behaviour, conduct and performance at work. Whilst most day to day issues will be picked up through regular communication and supervision between managers and their staff, there are occasions when an individual's conduct may need more serious attention.
- 1.3 This policy is designed to help and encourage employees to achieve and maintain standards of conduct and aims to ensure fairness, equity and consistency in the management of employees.
- 1.4 This policy should be used in cases where conduct is allegedly unsatisfactory. It does not apply where there are matters of:
  - Minor misconduct that can be dealt with informally by means of guidance, training or informal reprimand in order to improve conduct
  - Grievance which is dealt with under a separate procedure
  - Competency or capability which is dealt with under a separate procedure, unless it is clear that the employee is capable of reaching the required standard and has not done so or chooses not to do so.
  - Ill health for which there is a separate procedure unless there is evidence of abuse of the sickness absence procedure
  - Bullying, harassment, discrimination and / or victimisation which are dealt with in the first instance under the Grievance and Harassment Policy.

## **2. Equalities Statement**

- 2.1 This school/academy is committed to providing equal opportunities and access to all. This policy statement embraces the spirit of managing a diverse workforce and those managing and dealing with the process of the Disciplinary Procedure must ensure that no employee is discriminated against either directly or indirectly or victimised on the grounds of their race, disability, sex, sexual orientation, religion or belief, age, marital or civil partnership status or any stage of gender reassignment.

## **3. Scope**

- 3.1 This procedure is relevant to all permanent and temporary teaching and support staff including Headteachers and Deputy Heads in LA Community, Community Special, and voluntary controlled Schools. The procedure also applies to all teachers employed by the Local Authority (subject to 3.2. below). The LA commends the procedure to Voluntary Aided, Foundation Schools and Academies.

- 3.2. Whilst this procedure relates equally to centrally employed teachers, the role of the school governing body will be taken by the Director of Children & Adults, Learning & Caring, or Assistant Director delegated by the Director. The role of Headteacher will be taken by a designated manager.

## **4. Roles and responsibilities**

### **4.1 Initial dismissal decision**

- The School Staffing (England) Regulations 2009 and sections 35 (8) and 36 (8) of the Education Act 2002 give the governing body the overall responsibility for dismissals in its school.
- The law delegates initial dismissal decisions to one or more governors, the Headteacher or one or more governors and the Headteacher. Governors should confirm from their scheme of delegation who has the authority to dismiss.
- It is recommended that three governors constitute a staffing committee to hear any case which could result in an initial dismissal decision being taken. The same number of Governors (different governors) should sit on an appeal panel if necessary.
- Dismissals and notice periods are effective from the initial dismissal decision with reinstatement should the appeal be successful.
- The school's HR Consultant must be present at any hearing which could result in an initial dismissal decision in order to offer professional advice to the Governor's Disciplinary Panel.

### **4.2 Employee responsibilities:**

- Making themselves fully aware of the conduct expected of them and ensuring they observe this at all times
- Asking questions of his/her line manager or Headteacher if he/she is unsure about any aspect of the disciplinary procedure
- Responding positively to informal attempts to resolve disciplinary issues by the line manager/Headteacher
- Co-operating fully during all stages of the procedure
- Willingly engage in training or development to correct or improve behaviour or conduct
- Arrange their own representation at meetings/hearings

#### **4.3 Line Manager/Headteacher's responsibilities:**

- Monitoring the conduct of their staff, making clear the standard of conduct that the school expects of them and for giving them help and encouragement to reach required standards
- Taking timely but considered action in all cases, supported by HR advice, where an employee's conduct gives cause for concern
- Ensuring standards of fairness, objectivity and consistency in treatment of staff, in all cases.
- Collating all relevant documentation from all relevant parties involved in disciplinary cases, distributing and filing it appropriately
- Monitoring the outcome and impact of the disciplinary procedure on protected groups of staff as per the School's equal opportunities obligations

#### **4.4 HR Services responsibilities:**

- Providing advice to Headteachers (or nominated managers) and investigating officers on disciplinary matters, on request
- Advising the Governors at the disciplinary panel at hearings and appeals
- Advising Headteachers (or nominated managers) on the content of letters

#### **4.5 Trade Union Representative / Work place colleague role:**

- Attend formal disciplinary meetings, in the role of representative (if requested by member)
- Address meetings to put forward a case on behalf of the staff member
- Address meetings to sum up a case, on behalf of the staff member
- Respond to any views expressed at meetings
- Assist the staff member to understand questions being asked and where appropriate rephrase these in order to assist the member to answer
- Confer with the staff member/during meetings.

The Trade union representative / work place colleague does not have the right to:

- Answer questions on behalf of the member of staff (i.e. if a question is directed at the member of staff)
- Address meetings if the member of staff does not wish it
- Prevent any party from explaining their case.

## 5. Principles

- 5.1 Managers/Headteachers will try to resolve issues of minor misconduct informally. However where this approach has been tried and has not worked, or where the misconduct is more serious, formal disciplinary action will be considered.
- 5.2 Allegations of misconduct will normally be investigated before any disciplinary action is taken. Exceptionally, the circumstances may be such that an investigation is not required, for example where the employee admits to the misconduct, or where the facts of the case are already explicitly clear (e.g. conviction of a serious criminal offence). In these circumstances the case will proceed directly to a disciplinary hearing.
- 5.3 The employee will be advised in writing of the nature of the complaint against them and given the opportunity to state their case and present relevant evidence to a disciplinary hearing before any decision is made. The employee will have the right of appeal against any formal disciplinary action under this procedure.
- 5.4 At all stages of the formal process the employee will have the right to be accompanied by a trade union representative or work place colleague. Legal representation is not permitted at any stage in this procedure.
- 5.5 In this school/academy formal hearings to consider matters short of dismissal will be delegated to the Headteacher or one Governor. Where matters are heard by the Headteacher – appeals against any sanction imposed will be heard by a Governor. Where a Governor has considered the matter - appeals will be heard by the Chair or Vice Chair of Governors. The Headteacher; including where they fulfil the role of Commissioning Manager may hear the case. Advice should be sought from the Schools HR service.
- 5.6 Employees will not generally be dismissed for a first incident of misconduct except in the case of gross misconduct.
- 5.7 Information relating to formal proceedings will be kept confidential.
- 5.8 The timescales within this procedure may be varied by agreement. However any disciplinary issues will be handled promptly and in a fair and consistent manner.
- 5.9 The procedure can be started at any stage. The first stage will depend on the nature of the alleged misconduct.
- 5.10 An employee or trade union representative / workplace colleague who cannot attend a hearing because of illness or other unforeseen circumstances should notify the School at the earliest opportunity and give full reasons. The hearing will usually be rearranged. However, if no reason is received or the employee or trade union representative / workplace colleague fails to attend a second time then the hearing will proceed in their absence. The reason for non-attendance will be recorded.

- 5.11 In all instances of alleged misconduct, however serious, the employee will normally be given the opportunity and reasonable notice i.e. (no less than ten working days unless by agreement) to attend a disciplinary hearing to explain their action.
- 5.12 Throughout the procedure, managers will demonstrate their commitment to equal opportunities and carry out fair investigations and hearings taking account of the school's equal opportunities policy.
- 5.13 As an employee faced with possible disciplinary action is likely to find the situation stressful, the employee should be made aware of the confidential counselling service available as follows: -

- Care first – Tel: 0800 174 319 [www.care-first.co.uk](http://www.care-first.co.uk)

*Carefirst is available to LA Maintained Schools and Academies through Medway HR Services. When adopting this policy, if the school does not buy into the Carefirst Employee Assistance Programme (EAP) package, schools will need to delete references to the Carefirst EAP service or substitute details of their own EAP provider, as appropriate.*

- 5.14 Disciplinary and dismissal proceedings shall not be affected or interrupted by the employee who is subject to the procedure invoking the grievance procedure. Any grievance raised during the course of these proceedings, that relates to disciplinary action or dismissal, will be dealt with as part of the disciplinary hearing, or appeal hearing as appropriate. Where an employee is on sickness absence leave at the time of a disciplinary process, Occupational Health advice will be sought, if deemed appropriate regarding whether the employee is fit to participate in the hearing.
- 5.15 All steps of the formal procedure should be completed as speedily as possible in the interests of both management and staff, and particularly in respect of cases of alleged gross misconduct. However this shall not be to the detriment of a fair investigation or the principles of natural justice.
- 5.16 The schools HR Consultant should be consulted and involved at all formal stages of the procedure. Failure to seek advice, or follow that advice may result in the LA (if appropriate) withdrawing support (financial and advisory). In instances of potential dismissal the schools HR Consultant **MUST** be consulted.

## **6. Action against a Trade Union representative**

- 6.1 No formal action will be taken against a trade union representative until the circumstances of the case have been discussed with a regional officer of the trade union concerned. In cases of alleged gross misconduct against a trade union representative and where a regional officer cannot quickly be contacted, the trade union representative may be suspended on full pay until the regional officer has been contacted and further action discussed.



## 7. Action against a Headteacher

- 7.1 In the event of an alleged disciplinary offence by the Headteacher, the Chair of Governors shall be responsible for ensuring that the matter is investigated and for deciding (in consultation with the Director of Children & Adults, Learning & Caring) for LA maintained schools whether disciplinary action is to be taken. In such a case, the schools HR Consultant should also be consulted.

## 8. Informal Stage

- 8.1 Where possible, matters relating to conduct and discipline should be resolved informally. This may be achieved by the manager/Headteacher giving the employee informal advice, coaching and counselling and, if appropriate an informal reprimand. This informal process does not constitute formal disciplinary action under this procedure.
- 8.2 The line manager/Headteacher will talk to the employee in private. This will be a two-way discussion aimed at pointing out their shortcomings in conduct and encouraging improvement.
- 8.3 The line manager/Headteacher will listen to whatever the employee has to say about the issues.
- 8.4 Where improvement is required the line manager/Headteacher will ensure that the employee understands what needs to be done, how their conduct will be reviewed and over what period. The employee will be told that if there is no improvement then the next stage will be to invoke the formal disciplinary procedure.
- 8.5 Written notes will be kept of the meeting and it is recommended that these are shared with both parties. Any disagreement by the employee as to the accuracy of the notes should be formally recorded and added to the note.
- 8.6 The action agreed will be in writing and a copy placed on the employee's personnel file.
- 8.7 If during discussions it becomes obvious that the matter may warrant formal investigation the meeting should be stopped and the employee told that the matter will be continued under the formal procedure.
- 8.8 Informal reprimand – if following informal discussion the manager/Headteacher considers it appropriate to issue an informal reprimand, this must be given at the meeting and be made clear to the employee. **The informal reprimand may be recorded in writing and referred to at a later stage to evidence that an informal approach was attempted and the success or failure of such an approach. Informal warnings will not normally be kept on record for longer than 12 months.**

## 9. Formal Stage

### Informing the employee of the allegations

- 9.1 In cases of alleged misconduct the employee will be informed of the nature of the allegations and that an investigation may be conducted. Where the employee admits to the misconduct or the facts are explicitly clear, the circumstances may be such that an investigation is not required and the case proceeds directly to a disciplinary hearing.

### Investigation

- 9.2 The aim of an investigation is to establish the facts of the case as promptly and thoroughly as practicable.
- 9.3 The employee must be informed in writing:
- That an investigation is taking place and that they will be given the opportunity to respond to the allegation(s)
  - Of general details of the complaint / allegation(s)
  - Who the investigating officer will be
  - That they are entitled to be accompanied by a workplace colleague or trade union representative at any meetings
- 9.4 The investigating officer (who may be nominated by the Headteacher) will promptly establish what has happened, obtain written statements from witnesses and record all the facts. The school's HR Adviser will provide procedural guidance to the investigating officer, but will not normally form part of the investigation itself.
- 9.5 Any witnesses to alleged offences should be asked to voluntarily make written statements and to sign and date their statements. Any witnesses must be informed that they may be asked to attend a disciplinary hearing to act as a witness.
- 9.6 Sometimes it may be appropriate for an external investigating officer to be appointed. The Headteacher will nominate the external investigating officer. A member of the HR Services team will provide procedural guidance to the investigating officer.
- 9.7 It may be necessary to suspend an employee prior to an investigation being undertaken. Alternatives to suspension may also be appropriate. (Please see section 10.0 below).
- 9.8 As part of the investigation the investigating officer will interview the employee and any other relevant witnesses. The employee will be asked if they admit to or deny the allegations. The investigating officer will obtain written statements, and collect all relevant documentation relating to the investigation. The employee should be clear that the interview is part of the investigation, not part of a disciplinary hearing. On conclusion of the investigation, the investigating officer will decide, in consultation with

a school's HR Adviser, whether there is a case to answer requiring a formal disciplinary hearing. If it is clear that there is an adequate explanation and there is no case to answer, no further action will be taken and all details referring to the investigation shall be removed from the employees file, except in cases of child protection or adult abuse.

- 9.9 The employee under investigation will be kept informed at all stages by the investigating officer. Every effort will be made to conclude the investigation as quickly as possible.

## 10. Suspension

- 10.1 Suspension should only be applied where the circumstances of the case make it unacceptable for the employee to remain in work while the facts are ascertained. Such circumstances are where there is an allegation, or potential allegation of gross misconduct, i.e. behaviour which may result in dismissal. Suspension may also be appropriate where:

- Children / adults are at risk
- The employee needs protection themselves
- Where the presence of the employee at work may impede the investigation.

- 10.2 The power to suspend in a school lies with:-

### 10.2.1

- (i) the Headteacher; or
- (ii) the Governing Body (usually delegated to the Chair)

Both the Governing body and the Headteacher have the power to suspend on full pay anyone who works at the school. Each must inform the other, and the LA, if they take such action. Only the governing body may end a suspension.

### 10.2.2 in the LA for centrally employed teachers

- (i) the Director of Children & Adults, Learning & Caring (or nominated Assistant Director).

It is important to emphasise that any of the parties above may decide that suspension is appropriate.

- 10.2.3 **Prior to suspending a member of staff it would be advisable to contact the school's/academy's HR services team.** The HR Adviser may wish to inform other agencies at this stage (e.g., the LA Director of Finance in the case of possible financial irregularity, or the nominated Child Protection Representative in the case of possible child abuse).

10.2.4 Your HR provider will advise on the action to be taken prior to any suspension. This may need to take into account the advice from other agencies (e.g., the Police – who may wish to conduct a criminal investigation under their own requirements).

10.3 In most cases, a meeting will take place with the employee, who may be accompanied by a trade union representative or workplace colleague. A meeting should not be delayed due to the unavailability of a trade union representative or workplace colleague.

10.4 At the meeting the employee will be told of the allegations and asked for their response to the allegations. The employee will be asked if they admit to or deny the allegations. If the employee's explanation is not accepted they will immediately be suspended. The employee should also be told:

- That they will continue to receive their normal pay (unless in exceptional circumstances as set out in 10.7)
- The reason for suspension
- The period anticipated for the suspension. The suspension will normally last until the investigation has been concluded or any resulting disciplinary hearing has been held
- Other rules (e.g. that they must not return to the workplace without prior approval by the Headteacher, contact particular members of staff)
- That they should be available to attend any investigatory meeting or hearing during the period of suspension during their normal working hours or provide any information that may be required to assist with the investigation (e.g IT passwords if access to electronic files is required in the investigation)
- That they should notify management of any authorised annual leave
- That they can request annual leave during the period of suspension (all year round contracts only)
- Where appropriate and depending on the nature of the investigation and alleged misconduct, that their IT access will also be suspended
- That they should return upon request any particular items such as keys, laptop computer etc.

10.5 The following support should be offered to the employee during the period of suspension:

- The name of a responsible person to act as a point of contact, to provide information as to the progress of the investigation

If appropriate, counselling may be offered through Care First\*

*(Carefirst is available to LA Maintained Schools and Academies through Medway HR Services. When adopting this policy, if the school does not opt into the Carefirst Employee Assistance Programme (EAP) package, schools will need to delete references to the Carefirst EAP service or substitute details of their own EAP provider, as appropriate.*

- Reasonable access to information which will help them prepare their case for a formal disciplinary hearing

- 10.6 The above should be confirmed in writing to the employee within two working days of being suspended.
- 10.7 Suspension is not a punitive measure and is usually on full pay. In exceptional circumstances consideration will be given to suspension without pay. This is only likely to be appropriate where an employee is in prison custody, has been convicted (or is highly likely to be) of a serious criminal offence or has admitted to an offence under Police or formal caution whereby the effect of the charge or conviction has considerable impact on the employee's suitability to do the job, or is a conviction for crimes against the school. In these circumstances HR and Legal opinions should be sought. Should the subsequent outcome of a disciplinary hearing or dismissal appeal result in the person continuing to be employed by the school, then pay for the period of the suspension will be re-instated, back to the date of suspension.
- 10.8 An employee can be suspended at any stage during the disciplinary process where it is considered appropriate e.g. when further information comes to light.
- 10.9 In some circumstances, as an alternative to suspension, it may be necessary to place an employee on a period of additional leave to allow for an initial investigation of the facts to be undertaken. Such leave is determined by the Headteacher and is a neutral position. During this period the employee will continue to receive full pay as if they were at work.
- 10.10 The Headteacher should also inform the Chair of Governors of the suspension, and any senior staff in school (as appropriate). The Chair should not be made aware of the details of the investigation, in the event that he/she has to form part of the disciplinary hearing or appeals panel.

## **11. Criminal Offences**

- 11.1 This school/academy will treat seriously any employee who is charged with a criminal offence, although being charged with, or convicted of a criminal offence does not automatically lead to dismissal. It would depend on the offence, its seriousness and the effect on the employee's ability to continue to do the job, or how it might affect the school's credibility with the public. Employment law is based on different principles to criminal law which means that the school can take disciplinary action before the outcome of a criminal case. An employee found not guilty of a criminal offence will not necessarily be immune from disciplinary action.

- 11.2 The school will request a copy of the crime report, witness statements, suspect PACE interview or a summary report from the police or fraud investigation team to inform the internal disciplinary investigation.
- 11.3 Where this evidence supports the allegation of gross misconduct, the employee has admitted the offence under Police or formal caution and the charge or conviction is such as to affect (or likely to affect) the suitability of the employee for the position they are employed, then the case will proceed directly to a disciplinary hearing (section 16.0), where the employee will be allowed to account for their conduct and put forward any mitigating factors.

## **12. Allegations of Child / Adult Abuse**

- 12.1 Allegations of child / adult abuse should be referred to the designated officers(s) before any investigation is commenced to ascertain whether statutory processes should commence involving the police and relevant agencies.

## **13. Financial Misconduct**

- 13.1 Where the alleged misconduct has arisen as a result of an LA Audit investigation, the Schools HR Team must be informed of the matter as soon as possible. A disciplinary investigation will be conducted as soon as possible, and wherever possible, Audit will provide information to inform the investigation. In some cases the Audit investigation may cover all that is required for a disciplinary investigation.

## **14. Disciplinary Hearing**

### **Notification**

- 14.1 Following the investigation, a disciplinary hearing may be convened. The disciplinary hearing will decide what, if any, action should be taken in respect of the alleged misconduct.
- 14.2 The employee will normally be given no less than **10 working days** notice in writing of the disciplinary hearing, unless all parties are in agreement to hold the hearing at an earlier date. The school/academy will write to the employee to confirm the allegations against him/her and inform him/her of the date, time and venue for the disciplinary hearing. This notification will remind the employee of his/her right to be accompanied by a trade union representative or workplace colleague and will include copies of documents that will be used to support the management's case along with the names of any witnesses to be called.
- 14.3 In matters of misconduct short of dismissal it would be appropriate for the Headteacher, if they have not been previously involved, to hear the case and issue a sanction. If during the investigation it becomes apparent that the level of misconduct may result in dismissal the case will be heard by a Governor.
- 14.4 The employee will be informed if the outcome of the hearing could result in dismissal (normally where the allegations are for gross misconduct or where the employee is

subject to a final written warning that had not expired at the time of the alleged misconduct or where the potential dismissal is for some other substantial reason – see **Appendix 1**). This should happen at the earliest appropriate point and at the conclusion of the investigation at the latest.

- 14.5 The employee will be required to provide a nominated representative of the school with all documents he/she intends to rely upon at the hearing along with the names of any witnesses they intend to call, at least **5 working days** before the hearing. The panel can decide not to accept late documentation or witnesses which have not been notified in advance. Any alternative timescale will be by agreement between the parties.

### **Procedure at hearing**

- 14.6 At the hearing each side will be entitled to present their case and call witnesses. Each party will be able to ask questions and comment on the case presented by the other side. A procedure to be followed at disciplinary hearings can be found at **Appendix 3**.
- 14.7 Notes of the hearing will be taken by an experienced note-taker provided by the school. A copy of the notes will be supplied to the employee and/or representative.
- 14.8 The school/academy HR representative will advise the disciplinary panel.

## **15. Disciplinary Action**

- 15.1 Following the hearing a finding will be made on the balance of probability as to whether the allegation(s) are proven or not, setting out the evidence supporting the decision on each allegation, then a decision will be taken on the appropriate disciplinary action. Wherever possible the decision will be notified to the employee verbally on the same day. If this is not possible it shall be confirmed in writing within **5 working days**.
- 15.2 Where an employee is found to have committed misconduct the following actions may be taken:

### **(1) First written warning**

The warning will:

- Set out the nature of the misconduct and the evidence supporting the decision
- State that failure to improve, or any repetition within the specified timescale could lead to more serious formal action being taken, including dismissal, and
- Refer to the right to raise an appeal within 5 working days of written notification of the outcome of the hearing and the name of the person and address where the appeal must be sent.

A record of the first written warning will be kept on the personal file. The warning will be disregarded for disciplinary purposes after 12 months unless the school/academy is required not to do so by statute or regulation, or has good reason following advice from HR.

## **(2) Final written warning**

Where there is a failure to improve or change behaviour in the timescale set at the first formal stage, or where the offence is very serious (but does not warrant dismissal) the employee should normally be issued with a final written warning. A final written warning may be issued even though no previous disciplinary action has been taken where it is warranted by circumstances and there is a degree of serious misconduct by the employee. The final written warning will:

- Set out the nature of the misconduct and the evidence supporting the decision and refer to any previous warning where appropriate;
- State that failure to improve or any repetition within the specified timescale may lead to dismissal
- Refer to the right to raise an appeal within 5 working days of written notification of the outcome of the hearing and the name of the person and address where the appeal must be sent.

A record of this final written warning will be kept on the personal file. The warning will be disregarded for disciplinary purposes after 2 years unless the school/academy is required not to do so by statute or regulation or has good reason, following advice from HR.

## **(3) Dismissal with Notice**

Where an employee has previously received a final written warning and is guilty of further misconduct serious enough to warrant disciplinary action (i.e. investigation and hearing), then the employee will normally be dismissed in accordance with the terms of their contract of employment. Where dismissal is a possible outcome, the case will normally be heard by one or more governors unless dismissal decisions have been delegated to the Headteacher.

The Governor or Chair of the panel will write to the employee within 5 working days of the decision giving reasons for dismissal, the date on which employment is terminated and to advise the employee of their right to appeal.

## **(4) Other Sanctions**

In exceptional circumstances and / or as an alternative to dismissal, it may be appropriate to consider one of the following:

- (i) Withholding of incremental progression
- (ii) Demotion
- (iii) Transferring the Employee to another role
- (iv) Requiring the Employee to undertake additional training



## **(5) Gross Misconduct**

If the employee is guilty of gross misconduct they will be summarily dismissed i.e. without notice or pay in lieu of notice. Exceptionally dismissal with notice may be appropriate.

The Governor or Chair of the panel will write to the employee within 5 working days of the decision giving reasons for the dismissal, the date on which employment is terminated and to advise the employee of their right to appeal.

- 15.3 In the case of a Voluntary Aided School and a Foundation School or Academy the Governors as legal employers must issue the letter of termination within 5 working days of the initial dismissal decision.

In the case of Community, Voluntary Controlled, and Community Special Schools the Chair of Governor(s) must inform the Local Authority of their decision within 5 days of the initial dismissal decision, or terminate the contract without notice, if they are entitled to do so by reason the person's conduct.

- 15.4 Where a contract of employment has been terminated without notice on grounds of conduct, the termination must be rescinded if an appeal is upheld.

If the employee is successful at appeal they will be reinstated and notice withdrawn. Whenever possible, appeals will be concluded within the notice period.

## **15.5 Dismissal by the LA**

- (i) Staff dismissal decisions are normally a matter for the school, but the LA may dismiss staff in its employment directly in the following circumstances.
- Where the school's delegated budget has been suspended.
  - Where the Secretary of State or the General Teaching Council have restricted further employment of any member of staff because of previous conduct or capability.
  - Where an unqualified teacher has failed to secure qualified teacher status within prescribed time limits.
- (ii) The circumstances above will remove the Governing body's (and the Headteacher's) responsibilities for the dismissal process including dismissal hearings and appeals.

## **15.6 Referrals to the Disclosure & Barring Service (DBS) and the National College of Teaching & Learning (NCTL)**

### **(i) Referrals to the DBS**

The Safeguarding Vulnerable Groups Act 2006 (SVGA) places a legal duty on employers and personnel suppliers to refer any person who has:

- harmed or poses a risk of harm to a child or vulnerable adult;
- satisfied the harm test; or

- received a caution or conviction for a relevant offence.

A referral must be made to the DBS when a regulated activity provider, such as an employer (i.e. a school) identifies that two conditions have been met:

- 1) The school has withdrawn permission for an individual at the school to engage in regulated or controlled activity, or would have done so had that individual not resigned, retired, been made redundant or transferred to a position which is not regulated or controlled activity:

And because:

- 2) they think that the individual has engaged in relevant conduct; satisfied the harm test; or received a caution or conviction for a relevant offence.

If both conditions have been met (further details can be found on the website 'DBS barring referral guidance') the information must be referred to the DBS.

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

## **(ii) Misconduct referrals to the NCTL**

The National College for Teaching and Leadership (NCTL), acting on behalf of the Secretary of State for Education, is responsible for investigating allegations of serious misconduct against teachers and Headteachers in schools in England.

Employers have a statutory duty to consider referral of cases involving serious professional misconduct to the NCTL.

Where a school/Academy has dismissed the teacher for misconduct, or would have dismissed them had they not resigned first, they must consider whether to refer the case to the NCTL. If a teacher leaves under a settlement agreement the school still has a statutory duty to refer the matter to the NCTL. The NCTL can put an interim prohibition order in place to prevent a teacher from teaching until their case has been fully investigated.

Guidance on making a referral is available on the NCTL website

<https://www.gov.uk/guidance/teacher-misconduct-referring-a-case>

## **16. Disregarded Warnings and Indefinite Warnings**

16.1.1 A warning will normally be disregarded after 12 months in the case of a first written warning, and two years in the case of a final written warning. However where statutory regulations apply (for example where the employee works with children and / or vulnerable adults) warnings will stay live indefinitely, or as required by the safeguarding regulations.

16.1.2 If any further misconduct of a similar nature is found to have occurred after a warning has expired, it is permissible to take this into account at a future disciplinary hearing when considering the overall employment of that employee. Advice will be sought from HR prior to the hearing.

## 17. Disciplinary Appeals

- 17.1 An employee is entitled to appeal against the formal decision taken at the disciplinary hearing.
- 17.2 The appeal must be made in writing, addressed to the appropriate person dependent on who chaired the hearing i.e. Headteacher, Governor or Governor Panel. It must state the grounds for the appeal, within 5 working days of being advised in writing of the decision of the disciplinary hearing.
- 17.3 The letter of appeal from the employee must clearly state the reasons for appealing e.g.:-
- It is alleged that the disciplinary procedure has not been properly applied or an appropriate investigation conducted
  - New evidence has come to light which was not available at the disciplinary hearing and which may make a difference to the original decision
  - The disciplinary sanction was too severe.
- 17.4 The disciplinary appeal will be heard as soon as possible taking into account the availability of all those involved and unless agreed otherwise not normally later than **20 working days** following the date of receipt of the appeal. This is not automatically an opportunity to re-hear the whole case.
- 17.5 The employee will normally be given no less than **10 working days' notice**, in writing, of the date of the disciplinary appeal hearing. This notification will give the names of panel members, and the name of the representative of the Schools Human Resources Team who will advise the panel. It will remind the employee of his / her right to be accompanied at the hearing by a trade union representative or workplace colleague.
- 17.6 No less than **7 working days** before the date of the appeal, unless otherwise agreed, both sides will exchange with each other copies of documents they intend to rely upon at the appeal and a list of witnesses. Copies will be provided to the panel members and the HR representative. The panel may decide not to accept late submission of documents and / or witnesses unless the evidence was not available at the time of exchange.
- 17.7 The Headteacher/Chair of the disciplinary panel of governors who dealt with the disciplinary hearing will attend the appeal hearing and present the management case. They will normally be accompanied by the schools HR Adviser who advised them at the disciplinary hearing. The employee will attend the appeal and has the right to be accompanied by a trade union representative or workplace colleague.
- 17.8 The employee or their representative will present their case referring to evidence and calling witnesses as necessary, the Headteacher/Chair will present the management case. Both parties will have the opportunity to question the other and any witnesses called, as will the Appeal panel.

- 17.9 The Appeal panel will review the decision of the disciplinary hearing in the light of the evidence presented at the appeal hearing and taking into account the grounds of appeal will decide whether or not to confirm the disciplinary decision, overturn the disciplinary decision or impose a lesser penalty.
- 17.10 The employee will be informed of the decision of the Appeal panel in writing; the panel will set out the reasons for its decision within **5 working days**.
- 17.11 The procedure to be followed at appeal hearings can be found at **Appendix 4**.

## **18. Guidance for Line Managers, Headteachers and Governors**

- 18.1 Senior Staff and Governors, at all levels, who may be involved in disciplinary action, shall be fully briefed in the operation of this procedure.
- 18.2 Staff governors should not usually be a member of a governor panel and where they are they must ensure that they can deal with the matter impartially and objectively.
- 18.2 To ensure consistency of approach across schools, the schools HR Team will provide advice to Senior staff, Governors and investigating officers in all disciplinary investigations and will advise the disciplinary panel at hearings and appeals.

## **19. Relevant guidance**

- 19.1 This procedure follows the advice contained in both the ACAS Code of Practice 'Disciplinary Practice and Procedures in Employment' and the Advisory Handbook 'Discipline at Work'.
- 19.2 This disciplinary procedure may be used in conjunction with other School procedures, such as the Child Protection Procedure, Adult Abuse or Dignity at Work Procedure.

The inter-relationship with Codes of Practice of relevant professional bodies must be recognised. The School/Academy/LA may report action taken under this disciplinary procedure to the relevant professional body and may take action under this procedure if an employee is removed from the relevant professional bodies register for professional misconduct.

## EXAMPLES OF MISCONDUCT, GROSS MISCONDUCT AND DISMISSAL FOR SOME OTHER SUBSTANTIAL REASON

### Examples of misconduct:

Ordinary misconduct is conduct of such a kind as to warrant disciplinary action rather than dismissal for a first offence on the part of the employee, and the warning procedure will normally be followed in the following circumstances:

- Unauthorised or casual absence from work, including repeated late attendance or persistent absenteeism
- Failure to comply with the School's code of conduct for employees, protocols or procedures.
- Persistent failure to comply with sickness absence reporting procedures
- Failure to comply with the provisions of the Data Protection legislation
- Failure to comply with the School's Rules of Procedure including financial Procedure Rules
- Using threatening or abusive language/behaviour towards colleagues, Council members or members of the public
- Failure to observe School's safety rules and regulations
- Failure to comply with a reasonable instruction, or provide information that is needed by a manager
- Wilful inefficiency or neglect of duties and responsibilities
- Failure to observe the School's Equal Opportunity policy and acts of discrimination against or harassment of employees, council members, governors or members of the public on any grounds
- Inappropriate use of School time, property and telephone e.g. misuse of e-mail and internet facilities for inappropriate personal use.
- Failure to discharge without sufficient cause the obligations which statute or the contract of employment places on the employee
- Failure to exercise proper control or supervision of pupils

### Examples of Gross Misconduct:

Gross misconduct is of such a kind that in the light of the employee's action, the School cannot allow the employee to continue work and sees no alternative to dismissal on the grounds of gross misconduct or suspension pending an investigation.

- Persistent and wilful refusal to carry out a reasonable management instruction
- Serious or deliberate failure to comply with the School's Code of Conduct for employees; Financial regulations and standing orders and corporate or directorate health and safety policies and practices
- Improper disclosure of confidential information
- Physical violence or assault of, or towards a member of the public, pupils, governors, Council members or staff
- Theft or attempted theft of cash or property belonging to the School or an employee of the Council

- Cash shortage by reason of negligence in relation to money within your responsibility
- Serious or persistent acts of discrimination or harassment.
- Conduct of a fraudulent nature, including falsification of time sheets, sickness absence forms, time sheets and fraudulently recording arrival on behalf of other employees, or inappropriate application of the School's services
- Willful and irresponsible actions or omissions which would endanger people or property
- Acts of professional negligence or grossly inadequate standards of work due to neglect or wilful failure to perform
- Conduct liable to cause serious loss of confidence in the School or considered contrary to the interests of the School. In addition to those mentioned in the Code of Conduct, this includes criminal offences outside of work, which may affect the continued performance of your contract of employment
- Interference with or misuse of School computer systems, hardware, software or data, in such a way as to threaten the continued operation, integrity or security of the School's systems
- E-mail and internet abuse which could call into question the employees suitability and integrity to continue in employment
- Unauthorised removal and use of School property
- Sexual offences/misconduct at work, including sexual relationships with pupils
- Improper use of an official position for private gain, including seeking and accepting bribes
- Unauthorised use and/or disclosure of information relating to the School's business, its members, staff or clients (contrary to the Code of Conduct)
- Serious failure to discharge obligations in accordance with statute or contract of employment
- Sleeping on duty unless expressly permitted
- Incapability through the result of the influence of alcohol or other drug misuse
- Causes of child protection or adult abuse
- Failure to report an incident of child protection or adult abuse which has come to your attention.
- Falsification of any information given on an application form for a teaching/non-teaching post to gain advantage whether pecuniary or otherwise
- Falsification of registration of pupils or students for pecuniary gain
- Tampering with pupil examination papers, results, coursework etc.
- Serious professional misconduct which could lead to a criminal conviction
- Drug offences committed by employees whose job brings them into contact with young people
- Breaking statutory provisions that would render the Governing Body liable to prosecution
- Failure to disclose, if asked, criminal convictions or cautions not exempt under the terms of the Rehabilitation of Offenders Act

***The above lists are for illustrative purposes only and are not exhaustive. Each disciplinary case will be viewed on its own merits as to whether it constitutes gross or minor misconduct***

### **Dismissal for some other substantial reason:**

Some dismissals do not fall into the specific categories of misconduct or gross misconduct and are termed under the Employment Rights Act 1996 as for “some other substantial reason” (SOSR) dismissals.

An employer is required to show that the substantial reason is a potentially fair one. Any employment tribunal must then decide whether the employer acted reasonably in dismissing for that reason. As in all unfair dismissal claims, an employment tribunal will take into account whether the employee was consulted, given a hearing and appeal rights, and whether dismissal was a reasonable response in the circumstances.

A potentially fair dismissal under SOSR can be made for a variety of reasons, for example

- Where an employee has confirmed that they are not prepared to accept a change in working practises/contractual terms following a reorganisation
- Where there is a serious breakdown in relationship which causes a breach of trust and confidence between the employee and the School
- Where an employee has a sentence of imprisonment imposed upon them which falls outside the normal disciplinary procedure
- Where an overseas trained unqualified teacher has failed to secure qualified teacher status within the prescribed time limits
- Where a qualified teacher has been appointed, in accordance with statute, to replace an unqualified teacher

This list of reasons is not intended in any way to be exhaustive or prescriptive. Each instance must be assessed on an individual basis within the context of the nature of the job and any other relevant circumstances.

A potential dismissal under SOSR will follow the disciplinary process and if there is a dismissal it would be with appropriate notice of termination of services

### DISCIPLINARY HEARING PROCEDURE

The hearing will be conducted by the Headteacher or Staffing Committee of Governors who will be accompanied by a Schools Human Resources representative. (See para 5.1) The hearing will be minuted.

The Headteacher/Chair of Staffing Committee will explain the procedure to be followed, outline the allegation(s) made and ask the employee whether he/she admits or denies the allegation(s).

- a) The investigating officer will detail the allegations and will present the evidence against the employee and call any witnesses in support of their case.
- b) The employee and/or his/her representative may cross-question the investigating officer and any witnesses and examine any documentary evidence submitted.
- c) The employee and/or his/her representative may present their evidence and call witnesses in support of their case.
- d) The investigating officer may cross-question the employee, his/her representative and any witnesses.
- e) The Headteacher/Staffing Committee and the Schools Human Resources representative may question the investigating officer, the employee, his/her representative and any witnesses.
- f) Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter (it is the responsibility of the employee to make arrangements for their witnesses to attend the hearing/be able to attend the hearing at an appropriate time as requested by the Chair of the panel).
- g) The investigating officer and the employee or his/her representative will have the opportunity to sum up their cases if they so wish.
- h) When the Headteacher/Staffing Committee and the Schools Human Resources representative are satisfied that all the relevant facts have been obtained, they will, in private, consider this evidence, any mitigating circumstances and any previous relevant disciplinary record prior to deciding what action is appropriate.
- i) An adjournment may be approved by the Headteacher/Staffing Committee, if necessary, to obtain further information.
- j) Wherever possible the decision will be notified to the employee and their representative verbally on the day of the hearing and confirmed in writing within 5 working days.
- k) Where disciplinary action is taken, the employee will be informed of his/her right of appeal against the decision.



### DISCIPLINARY APPEALS PROCEDURE

An Appeals Panel of Governors will conduct the appeal hearing and be advised by a Human Resources representative. The Chair of the Appeals Panel will explain the purpose of the hearing, outline the procedure to be followed and the powers vested in the Appeals Panel. The Appeal hearing will be minuted.

- a) The appellant has the right to be represented by his/her Trade Union representative or workplace colleague and may call witnesses and refer to documents.
- b) The appellant (or representative) will put the appellant's case in the presence of the Headteacher/Chair of Staffing Committee and may call such witnesses as required.
- c) The Headteacher/Chair of Staffing Committee will have the opportunity to ask questions of the appellant and witnesses who have been called on the evidence.
- d) The members of the Appeals Panel and the HR Adviser will have the opportunity to ask questions of the appellant and witnesses and call such witnesses as required.
- e) The Headteacher/Chair of Staffing Committee will put the case in the presence of the appellant and representative and may call witnesses as required.
- f) The appellant or representative will have the opportunity to ask questions of the Headteacher/Chair of Staffing Committee and any witnesses who have been called on the evidence.
- g) The members of the Appeals Panel and the HR Adviser will have the opportunity to ask questions of the Headteacher/Chair of Staffing Committee and call such witnesses as required.
- h) Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter.
- i) The appellant (or representative) and the Headteacher/Chair of Staffing Committee will have the opportunity to sum up their cases if they so wish.
- j) Headteacher/Chair of Staffing Committee and the appellant (and representative) will then withdraw.
- k) The Appeals Panel and the HR Adviser will deliberate in private. They will determine, on the basis of the case made and evidence presented, whether to refuse the appeal, allow the appeal or substitutes some lesser penalty. The Panel may not determine a harsher form of penalty.
- l) Wherever possible the decision will be notified to the employee and their representative verbally on the day of the hearing and confirmed in writing within 5 working days.

## SUMMARY OF DISCIPLINARY MEASURES AVAILABLE

## APPENDIX 5

LEVEL OF WARNING	AUTHORITY TO TAKE ACTION	APPEAL SUBMITTED TO	TIME LIMIT FOR APPEAL	APPEAL HEARD WITHIN	EXPIRY OF WARNING FROM PERSONAL FILE
INFORMAL STAGE Informal Advice/Coaching  Informal Reprimand	Line Manager or Headteacher	Not Applicable	N/a	N/a	Actions agreed on personnel file
FORMAL STAGE  First written warning	Headteacher or person acting on his/her behalf	Chairperson of Staffing Committee of Governors	5 working days of receipt of letter	20 working days of receipt of appeal letter	12 months
Final written warning	Headteacher or Staffing Committee	Chairperson of Appeal Committee of Governors	5 working days of receipt of letter	20 working days of receipt of appeal letter	24 months
Dismissal*	Staffing Committee or headteacher if has delegated authority	Chairperson of Appeal Committee of Governors	5 working days of receipt of letter	20 working days of receipt of appeal letter	N/A

Footnote: \*Alternative disciplinary action to dismissal, include demotion, withholding of an increment.

Footnote: At the appeal, any disciplinary penalty imposed will be reviewed but it cannot be increased.

Footnote: Working days does not include school holidays.

In the case of centrally employed teachers a designated manager has authority to take action except at the dismissal stage when an Assistant Director is authorised. An appeal is to an Assistant Director or to the Director of Children & Adults, Learning & Caring.