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# Schools' Disciplinary Procedure

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This policy has been adopted by: Callands Community Primary School
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## DOCUMENT STATUS

Version	Date	Action
1	April 2001	New policy
2	August 2002	Review of existing document
3	April 2007	Review of existing document
4	October 2010	Document reviewed for schools
5	April 2012	GTC reference removed
6	April 2013	Agreed at JCC
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## **1. INTRODUCTION**

- 1.1 This procedure sets out the steps that will be taken to investigate allegations of potential misconduct and gross misconduct and if necessary, the disciplinary process to be followed, where such instances are considered to have a bearing on the employment relationship.
- 1.2 The school will seek to ensure that issues of alleged misconduct and gross misconduct are investigated and resolved as quickly and as close to the source as practically possible.
- 1.3 Where an employee is subject to investigation at any stage under this procedure, any grievance issues raised by that employee during the disciplinary process, that are deemed by the school to be associated to the circumstances of the case being considered by them, will not be addressed using the separate Schools' Grievance Procedure. The issues raised will be considered as part of the response from the employee under this procedure.
- 1.4 Where a grievance is raised, related to the circumstances of the case, in advance of any disciplinary process commencing, this will be considered first.

## **2. SCOPE OF PROCEDURE**

- 2.1 Regulation 4 of The School Staffing (England) Regulations 2009 allows the Governing Body to delegate all its functions relating to staff employment in schools, including the power to appoint and dismiss, to the headteacher, one or more governors or one or more governors and the headteacher.
- 2.2 The DCSF Guidance on Managing Staff Employment in Schools 2009 (Chapter 2 2 Section 10) recommends that the Governing Body delegates functions relating to all dismissals to the headteacher. Subsequent appeals procedures should be delegated to one or more governors not involved in the original determination in order to provide a greater degree of impartiality. In the event that it is appropriate for the headteacher to undertake the disciplinary investigation, the power to dismiss will be delegated to one or more Governors.
- 2.3 The Local Authority is responsible for the discipline, suspension and dismissal of centrally employed staff who work at a school.
- 2.4 The Governing Body is responsible for the discipline, suspension and dismissal of all other staff employed by the school.
- 2.5 There are however certain exceptions where a Governing Body cannot delegate its functions, including,
  - (i) establishing procedures for the regulation of conduct and the discipline of staff (The School Staffing Regulations Regulation 7).

Governors must therefore ensure that appropriate procedures exist within school to deal with allegations of potential misconduct and gross misconduct and this function cannot be delegated.

- 2.6 The Governing Body should also agree under what circumstances the delegated functions will be removed from the headteacher, how the removal will be implemented and who may assume responsibility for the functions that have been removed. For further information regarding the removal and restoration of a headteacher's delegated powers please refer to the DCSF document 'Guidance on managing staff employment in schools 2009'.
- 2.7 If the function relating to the dismissal of teachers and support staff is not delegated to the headteacher, the headteacher has a right to attend and offer advice at all relevant proceedings. Any advice given must be considered by the governors to whom delegation has been made (The School Staffing (England) Regulations Paragraph 4 Section 3).
- 2.8 This procedure does not apply in the following circumstances:
- (i) Sickness absence that is being managed through the School's policies and procedures for sickness absence. However it will be applied where there is evidence that the School's sickness absence scheme is being abused.
  - (ii) Capability - where an employee is unable to or can no longer carry out the tasks required to an acceptable standard, because he/she does not have the skills and/or aptitude required to carry out their job satisfactorily. Issues of this nature will be progressed through the School's Managing Employee Performance (Capability) Procedure.
- 2.9 Recordings of conversations, meetings or proceedings should not be taken without the agreement of all parties present. Such recordings, where they are undertaken without consent will not normally be accepted as evidence under this policy. Where recordings taken without consent are subsequently shared with others, this may constitute a breach of data protection law and confidentiality. In these circumstances a referral may be made to the Information Commissioners Office. Such recordings may also constitute an act of misconduct/gross misconduct under this policy.

### **3. LOCAL AUTHORITY ADVICE**

- 3.1 In Community, Voluntary Controlled, Community and Maintained Nursery Schools, the Local Authority has a statutory entitlement to send a representative to all proceedings relating to the dismissal of any teacher (including the headteacher and deputy headteacher) and offer advice. If the Local Authority decides to send a representative they must be allowed to attend. (The School Staffing Regulations (England) 2009, Regulation 14)

- 3.2 Any advice offered by the Local Authority, at these proceedings, must be considered by the Governing Body (or those to whom the function has been delegated) when reaching a decision.
- 3.3 All advice offered by the Local Authority, and the decisions made by the Governing Body in light of the advice received should be fully documented in the minutes from the disciplinary hearing in order that a clear audit trail is provided.
- 3.4 In Foundation, Voluntary Aided and Foundation Special Schools, the Local Authority does not have a statutory entitlement to advise the Governing Body in relation to the dismissal of a teacher (including the headteacher and deputy headteacher). However it may do so where an agreement between the Governing Body and the Local Authority provides for it to do so. In this event, points 3.2 and 3.3 must be followed.
- 3.5 The Local Authority must take action at the request of the Governing Body (if deemed reasonable by the Local Authority to do so) if the implementation of any determination made by the Governing Body is not within the functions exercisable by the Governing Body, by or under the Education Act 2002, but is within the power of the Local Authority.
- 3.6 It is strongly advised that the provisions detailed above are adhered to for NJC staff being managed in accordance with this procedure.

#### **4. THE SEPARATION OF ROLES**

- 4.1 This procedure is underpinned by the rules of natural justice. Therefore there will be a clear separation of role between those involved in the investigation process and those involved in making a decision at the disciplinary hearing or appeal hearing. A nominated person, as deemed appropriate by the headteacher or Governing Body, shall not investigate and issue a formal disciplinary sanction in the same case. Similarly, a headteacher or governor shall not hear an appeal against a disciplinary sanction which he/she has decided.
- 4.2 An exception to 4.1 may occur in the circumstances where there is agreement between all parties to the proceedings that the headteacher or governor who has been involved in the investigation process may consider the issue of a formal disciplinary sanction.

#### **5. THE RIGHT OF REPRESENTATION FOR EMPLOYEES**

- 5.1 The employee has the right to be accompanied by a recognised Trade Union representative (as defined in the Trade Union Facilities Agreement) or a workplace colleague at any meetings held as part of the formal disciplinary process. The school has the right to involve a representative from HR Advisory Service as deemed necessary. There is no right for the employee to be accompanied by a practising solicitor or barrister.

The employee should not be represented by a relative, spouse or partner (in accordance with the Council's Relationships at Work Policy).

- 5.2 Where the employee is a Trade Union representative, the normal disciplinary standards apply. However, if disciplinary action is being considered against a Trade Union representative, the school should first discuss the case with a full time official of the branch or regional union official.

## **6. SUSPENSION FROM DUTY**

- 6.1 In all cases of alleged gross misconduct; where relationships have broken down; where there are perceived risks to School property; where it is not practical to carry out an investigation whilst the employee remains in their role; or where the School has a responsibility for other parties, all options should be explored to minimise the risk to all concerned this may include temporary redeployment, working in an alternative location, restrictive duties or suspension from duty.
- 6.2 Subject to Regulation 21 of The School Staffing (England) Regulations 2009, only the Governing Body or headteacher may suspend any person employed by the school. Advice regarding the grounds for suspension will be sought from Human Resources and, in the case of a child protection allegation, from the Local Authority Designated Officer.
- 6.3 Similarly, if during the course of an investigation it is considered that gross misconduct may have occurred, the employee may be suspended from duty. Any decision to suspend should be confirmed in writing as soon as possible.
- 6.4 The Governing Body or headteacher must inform the Local Authority in the event that a suspension is carried out. The original suspension must be reviewed regularly by the Governing Body, preferably every 25 working days and a decision made whether to:
- continue the suspension until the completion of the investigation or any subsequent disciplinary hearing
  - continue or end the suspension while awaiting the outcome of police investigations and/or criminal proceedings and/or any appeal or refer the matter to the police if it is not already in their hands; or
  - end the suspension

**Note: Only the governing body may end a suspension**

- 6.5 Following the review of the suspension, the suspending officer must confirm the outcomes of the review to the employee in writing within 5 working days of the decision being made.
- 6.6 Only the Governing Body may end a suspension (Regulation 19(3) and 31 (3)). The Governing Body cannot delegate this function. The Governing Body may however decide

that it is appropriate for the Chair to undertake these functions on behalf of the Governing Body.

- 6.7 When ending a suspension, the Governing Body must immediately inform the employee concerned, the Local Authority and the headteacher.
- 6.8 In the context of the 2009 Regulations, 'to suspend' means to do so with full pay. In the event that an employee is absent from work due to sickness, and this absence is covered by a medical certificate, the employee will receive their contractual pay, which in these circumstances is sick pay.
- 6.9 The suspension of an employee will not usually take place before every reasonable effort has been made to contact their Trade union official, unless the circumstances of the suspension are so serious that immediate action is required.
- 6.10 The suspension of an employee who is a Trade Union representative will not usually take place before every reasonable effort has been made to contact a full time official or the regional unless the circumstances of the suspension are so serious that immediate action is required.
- 6.11 Failure to comply with the conditions of a suspension will be treated as a serious disciplinary matter and may lead to further action under the formal disciplinary procedure.
- 6.12 Suspension from duty is not a disciplinary action or sanction. It is a precautionary act pending the outcome of an investigation.
- 6.13 If an employee is suspended from duty, they will be allocated an appropriate contact person from within school. This contact person will maintain regular communication with the employee and filter any questions regarding the process. The role of the contact person is to provide updates regarding the investigation process and answer any procedural queries. The role does not include providing the employee with advice.
- 6.14 Employees can obtain advice and guidance from either their trade union representatives or alternatively they can obtain advice from ACAS.
- 6.15 Depending on the seriousness of the allegation, consideration should be given to whether the result that would be achieved by suspension can be achieved through an alternative arrangement for example relocation to an alternative work site or restriction of duties pending investigation. Any such action must be deemed practical by the school and should not compromise the investigation process moving forward.

**7. THE INFORMAL PROCESS/MANAGEMENT GUIDANCE AND SUPPORT/ MANAGEMENT INSTRUCTIONS**

- 7.1 Where the headteacher, or in the case of a headteacher, the Chair of Governors, considers that the conduct of an employee has fallen below the required standards, a decision will be made about the most appropriate method to be used to bring the issue to the attention of the employee.
- 7.2 Informal management guidance and support is a satisfactory method of avoiding and resolving problems and reminding employees of the expected standards of behaviour. Such support and guidance should be implemented in an attempt to address concerns and to prevent matters from becoming worse. Discussions should take place in a confidential setting and additional support, supervision and training should be considered as part of this process.
- 7.3 The headteacher, or in the case of a headteacher, the Chair of Governors, will keep a note of any informal management guidance and support meetings for reference purposes, including details of any agreed action or help offered. The headteacher or Chair of Governors may take the opportunity to confirm the details in writing. Any letter of this nature will not be treated as a disciplinary sanction.
- 7.4 If, during the informal management support and guidance process, it becomes obvious that an issue is more serious and requires resolution through the formal process, the employee would be advised that the matter will be pursued under the formal disciplinary procedure.

## **8. CRIMINAL OFFENCES**

- 8.1 If an employee is suspected of, or charged with, a criminal offence this does not automatically justify disciplinary action against the employee but a considered view needs to be taken as to whether the offence merits action because of its employment implications.
- 8.2 Irrespective of any police involvement, the headteacher, or in the case of a headteacher, the Chair of Governors, will make a decision about whether or not to suspend the employee on full pay pending a full investigation into the allegations.
- 8.3 If the school initiates formal disciplinary action relating to a criminal offence then the disciplinary process will proceed as normal and independently of any police investigation.
- 8.4 It is essential that an employee immediately inform their headteacher, or in the case of a headteacher, the Chair of Governors, if they are involved in any criminal proceedings or are charged with a criminal offence. Failure to disclose such information may result in disciplinary action being taken.

## **9. SAFEGUARDING**



- 9.1 All adults who come into contact with children and young people through work have a duty of care to safeguard and promote their welfare.
- 9.2 The Children Act 2004, through the Stay Safe outcome of the Every Child Matters Change for Children programme, places a duty on organisations to safeguard and promote the wellbeing of children and young people. This includes the need to ensure that all adults who work with or on behalf of children and young people are competent, confident and safe to do so.
- 9.3 Adults working with children and young people may be at risk of allegations of abuse being made against them. Allegations may be malicious but equally some may be genuine.
- 9.4 It is essential that any allegation of abuse is dealt with fairly, quickly and consistently and in a way that both protects the child but at the same time supports the adult who is the subject of the allegation.
- 9.5 The framework for managing allegations against individuals who work with children is set out in the Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children 2010.
- 9.6 In the event that an allegation of abuse is made against a member of staff, the headteacher will seek advice from the Local Authority Designated Officer (LADO) and HR who will provide appropriate recommendations in accordance with this document.
- 9.7 The decision to suspend an employee from work and undertake a disciplinary investigation will be considered where there is cause to suspect a child is at risk of significant harm or the allegation warrants investigation by the police and is so serious that it might be grounds for dismissal.
- 9.8 The Local Authority and Governing Body have a duty to carry out their functions under The Education Acts with a view to safeguarding and promoting the welfare of children under section 175 of the Education Act 2002. In line with safeguarding and promoting the welfare of children, previous patterns of behaviour will be considered as part of any safeguarding investigation.
- 9.9 From 12 October 2009, a new duty to share information was introduced under the Vetting and Barring Scheme. Employers have a duty to notify the DBS of relevant information so that individuals who pose a threat to vulnerable groups can be identified and barred from working with these groups. For further information regarding when to make a DBS referral please contact your designated Human Resource Business Partner.

## **10. SICKNESS DURING THE DISCIPLINARY PROCESS**

- 10.1 In cases where an employee signed off sick during the investigatory process/formal proceedings, the date of the meetings will not be moved unless the individual's general

practitioner or occupational health gives a firm an unequivocal written statement that the individual will not be fit to attend the investigation or disciplinary hearing. It will not be possible to postpone a hearing indefinitely. Where there is a difference of medical opinion please refer to the Managing Attendance Procedure.

10.2 If no satisfactory medical evidence is produced or following a previous postponement, a meeting date will be set and the individual will be given the following options:

- To attend the meeting at the date and venue fixed;
- To attend the meeting on the date fixed but at a venue away from the site;
- Not to attend the meeting but to send written representations.

## **11.0 FORMAL DISCIPLINARY INVESTIGATIONS**

11.1 No formal disciplinary action will be taken against an employee until the allegations have been properly investigated.

11.2 During a disciplinary investigation evidence will be collected from all relevant sources, including CCTV where it is available. CCTV footage should not be used to routinely monitor staff. CCTV must only be used as supporting evidence, which is limited to:

- suspected criminal activity or
- an act of alleged gross misconduct or
- any behaviour which puts others at risk.

11.3 Any formal disciplinary allegations should be brought forward in a timely manner, i.e. as soon as possible following the incident and at least within 3 months of knowledge of the incident.

11.4 The headteacher or Chair of Governors will appoint an Investigating Officer to undertake an investigation into the allegations. Before starting, the Investigating Officer will consult their directorate Human Resources Business Partner for advice on the scope of the investigation and any special circumstances relating to the case. In identifying an investigating officer, consideration should be given to the seriousness of the allegations and whether the individual is at an appropriate level of seniority within the organisation to undertake the investigation. A Headteacher can be an investigating officer provided that their objectivity has not been compromised through any initial involvement in the case. In these circumstances any hearing must be heard by the Governors Panel.

11.5 An employee can either directly, or through their trade union representative, raise concerns regarding the appointment of an Investigating Officer. In such circumstances, the employee must outline in writing the reasons for their objections and the school must give due consideration to the issues raised. The employee will be informed in writing of the school's decision with a justification of the decision taken provided.

- 11.6 The purpose of the investigation is to gather the facts relating to the allegation and interview the employee and any witnesses as appropriate. Where there is witness involvement, signed witness statements will be obtained. These will be confidential but will be shared as required and appropriate to the parties involved in any formal process that might arise from the investigation. The investigation may also involve the examination of systems, documents and personnel files.
- 11.7 As soon as it becomes clear that it is possible that CCTV evidence might be referred to in a disciplinary situation, the CCTV systems officer (the person responsible for CCTV or Headteacher) must be informed. The investigating officer must arrange an opportunity for the employee and their representative to view the entire CCTV footage privately.
- 11.8 Evidence may sometimes need to be collated from pupils depending on the nature of the alleged misconduct. In these circumstances, advice should be sought from the HR Advisory Service to ensure that any information is gathered sensitively and with the welfare of the child in mind.
- 11.9 The Investigating Officer will write to the employee to inform him/her of the alleged misconduct or gross misconduct and the reasons why this is not acceptable. The letter will invite the employee to an investigatory meeting and inform of the right to be represented at the meeting. The employee will be given a preliminary indication of the expected timescales of the investigation and kept informed of the progress being made and of any changes to the originally indicated timescales.
- 11.10 The Investigating Officer will compile a report of their findings, based on the facts, and make various recommendations. The investigation officer must remain neutral and not express their opinion or perception of the case within the report, but should base their recommendations only on the facts that have presented throughout the investigation process. The headteacher will receive the information from the Investigating Officer and make a decision as to whether there is a requirement to progress to a disciplinary hearing. The role of the Investigating Officer is to gather relevant information and evidence in relation to the allegations made and not to determine whether the case should progress to the hearing stage.
- 11.11 It is important that the member of staff commissioning the investigation has no involvement in the investigation process to ensure that an impartial decision is made. Where the headteacher is involved in the process, for example, has been asked to give a witness statement or is the investigating officer, then the report will be sent to an impartial governor who will make the decision regarding progression to a hearing. This governor will subsequently take no part in the disciplinary hearing or appeal process.
- 11.12 The employee will be informed of the outcome of the investigation in writing by the individual commissioning the report and should the decision be made that there is a formal disciplinary case to answer.

## **12. THE DISCIPLINARY HEARING**

- 12.1 The employee will be given a minimum of 10 working days' notice of the hearing (this may be varied by agreement between the parties). The letter will give confirmation of the allegations, and any relevant paper work arising from the investigation that is to be the subject of consideration at the hearing, including the names of witnesses. The employee will also be given the right to be represented in accordance with the provisions of Section 5 of this document.
- 12.2 The employee will be required to submit the names of any witnesses he/she intends to call at the hearing and any documentary evidence for consideration at least 5 working days prior to the hearing.
- 12.3 The purpose of the disciplinary hearing is to bring together all of the available information relating to the case at a single hearing and for a decision to be made as to whether or not the allegation(s) are proven on the balance of probabilities and, if so, the disciplinary sanction to be applied.
- 12.4 Following the disciplinary hearing, the decision will be communicated to the employee in writing by the chair of the hearing within 5 working days. If the decision requires further clarification, or further action by a third party, both sides shall be informed and the written decision will be submitted as soon as possible thereafter.

## **13. LEVELS OF DISCIPLINARY SANCTIONS**

- 13.1 There is a range of sanctions available. None of the following sanctions can be imposed without an investigation and a hearing taking place to consider the allegations.
- 13.2 The employee should be given the right to appeal any level of disciplinary sanction.
- 13.3 Where there is further misconduct during the currency of a disciplinary sanction, a further investigation and hearing will take place, and an appropriate level of sanction imposed. In most cases, this will be an escalation of the current sanction implemented.
- 13.4 **Formal Instruction**
- 13.5 A Formal Instruction will be confirmed in writing and include a statement that unless there is evidence of improvement, or in the event of a further offence being committed within a period of six months, the employee will be liable to more serious disciplinary action.
- 13.6 A Formal Instruction will be recorded on the employee's personal file but, in the absence of further misconduct within six months, will be disregarded for disciplinary purposes thereafter.

### **13.7 Written Warning**

13.8 If the offence is more serious, a Written Warning will be issued. A Written Warning will include a statement that unless there is evidence of improvement, or in the event of further misconduct being committed within a period of one year, the employee will be liable to more serious disciplinary action.

13.9 A Written Warning will be recorded on the employee's personal file but, in the absence of further misconduct within one year, will be disregarded for future disciplinary purposes.

### **13.10 Final Written Warning**

13.11 If the offence is more serious, a Final Written Warning will be issued. A Final Written Warning will include a statement that unless there is evidence of improvement, or in the event of further misconduct being committed within a period of 18 months, the employee may be liable to dismissal.

13.13 A Final Written Warning will be recorded on the employee's personal file, but in the absence of further misconduct within 18 months, will be disregarded for future disciplinary purposes thereafter.

### **13.14 Dismissal**

13.15 If conduct is still unsatisfactory following previous warnings, or if the offence is so serious as to be regarded as gross misconduct, this may result in the contract of employment being terminated.

13.16 The employee will be provided with a written reason for dismissal, the date on which employment was terminated, and their right of appeal. Letters of dismissal must also stipulate statutory rights in relation to access to an Employment Tribunal.

13.17 In cases of gross misconduct, notice to terminate an employee's contract of employment will be summary, that is without notice or pay in lieu of notice.

13.18 Dismissal for cumulative acts of misconduct will be with notice. The notice period will be in accordance with the statutory minimum, or as specified in the employee's contract of employment whichever is the greater.

13.19 Where appropriate, a single payment will be made in-lieu of notice, thereby terminating the contract of employment earlier.

### **13.20 Disciplinary Action Short of Dismissal**

- 13.21 Action short of dismissal can only be taken in cases of gross misconduct, or, where a further offence has occurred during the period within which a final written warning is already in force. Action short of dismissal will only take place where the Disciplinary Panel firmly believes the circumstances are such that alternative sanctions to dismissal will work and that there will not be a repetition of the conduct issue.
- 13.22 Action short of dismissal cannot be taken where evidence of gross misconduct is insufficient (either during the disciplinary hearing or following a successful appeal).
- 13.23 Such action may include one or more of the following:
- (i) In situations where a Final Written Warning is issued as an alternative to dismissal on grounds of gross misconduct, it is open to the Disciplinary Panel to determine a longer period for the Final Written Warning to remain in force according to the nature of the offence/misconduct. There must be exceptional circumstances for such a warning to remain in force for a period exceeding two years. In these circumstances, the period must be defined, and must be accompanied by written justification for this decision.
  - (ii) Withholding of incremental progression for a specified period (normally 6 or 12 months).
  - (iii) Transfer to other duties (including lower graded duties, and without protection of pay) within the capabilities of the employee and within the School's establishment.
  - (iv) Suspension without pay for up to two weeks (not to be confused with suspension during investigations, which is on full pay).

## **14 GOVERNING BODY RESPONSIBILITIES**

- 14.1 For Community, Voluntary Controlled, Community Special and Maintained Nursery Schools, the Governing Body must notify the Local Authority, in writing, if it determines that any person employed or engaged by the authority to work at the school should cease to work there, and the reasons for the determination.
- 14.2 If the person is employed to work solely at the school, the Local Authority must either
- (i) terminate the person's contract, giving notice as required under the contract
  - (ii) terminate the contract without notice if the person's contract is such that it is entitled to do so

The Local Authority must take this action within 14 days of the date notification was issued by the Governing Body.

- 14.3 In foundation, voluntary aided or foundation special schools, the Governing Body is responsible for the dismissal of staff and must ensure that the appropriate processes to terminate a contract of employment are in place.

## **15. THE RIGHT OF APPEAL**

- 15.1 The Governing Body must establish a procedure for enabling staff to appeal against a decision to dismiss them (Guidance On Managing Staff Employment In Schools Chapter 8 paragraph 33). When establishing such procedures the Governing Body should be mindful of their obligations under employment law. An appropriate Appeals Committee of the Governing Body must be established to hear any disciplinary appeal and must not include any individuals involved in the previous disciplinary investigation process or hearing.
- 15.2 An employee may exercise a right of appeal against any form of formal disciplinary action, within 10 working days of receipt of the written warning or notice of dismissal. This must be made in writing, addressed to the Chair of the Disciplinary Hearing, and stipulating the grounds of appeal. An appeal will not always be a full re-hearing of the case but will be confined to the matters stipulated in the grounds for appeal.
- 15.3 One or more Governors not involved in the original determination or investigation shall hear the appeal. This is to ensure that an impartial judgement is reached.
- 15.4 An appeal may be made on the following grounds, with any written submission being presented at least 5 working days before the hearing:
- (i) Failure by the school to follow the Disciplinary Procedure. The employee is required to give a full written explanation of how he/she considers that the procedure was not followed and the appeal process will focus initially on procedural matters only. Where such an appeal is upheld the governor or governors hearing the case will proceed to hear the case in full.
  - (ii) The appropriateness of the disciplinary sanction issued is contested. A detailed explanation must be given in writing as to why the level of disciplinary sanction awarded is considered to be inappropriate. Where the facts of the case are not under dispute and it is the level of sanction that is being challenged, a full re-hearing will not be appropriate and there will normally be a shortened appeal hearing focussing on the level of sanction.
  - (iii) The employee is appealing against the believes the conclusions reached by the presiding officer on the basis of the evidence available to them at the hearing. A written explanation must be submitted by the employee indicating specifically why they considers that the conclusions reached were flawed, pointing to the relevant evidence within the disciplinary pack or minutes of the hearing that

support this. Where such an appeal is upheld the governor or governors hearing the case will proceed to hear the case in full.

- (iv) It is contended that there is new and significant evidence that was not available to the initial disciplinary investigation and Hearing. The details must be explicitly put in writing. Where such an appeal is upheld the governor or governors hearing the case will proceed to hear the case in full.

- 15.5 Wherever possible the decision will be communicated to the employee following the appeal hearing. This will be confirmed in writing by the Presiding Officer within 5 working days. If the decision requires further clarification, or further action by a third party, both sides shall be informed that there may be a delay and the written decision must be submitted as soon as practically possible and preferably within 10 working days.

## **16 AGENCY REFERRALS**

- 16.1 The Education Act 2011 gives responsibility to the Secretary of State to regulate teachers' conduct and to hold a list of teachers who have been prohibited from teaching. Regulations (The Teachers' Disciplinary (England) Regulations 2012) provide information about how the specific and detailed arrangements should operate. From 1 April 2013 the National College for Teaching and Leadership will administer arrangements for teacher regulation on behalf of the Secretary of State.
- 16.2 The employer of a registered teacher (either the Governing Body or Local Authority) must report the facts of the case to the National College for Teaching and Leadership. A referral is appropriate if the alleged misconduct is so serious that it warrants a decision on whether the teacher should be prevented from teaching again. A referral should be made if a teacher:
- Is dismissed for a reason relating to misconduct: or
  - Resigns in circumstances where dismissal was a possibility.
- 16.3 Cases of misconduct or incompetence that have a child protection element should be referred to the Disclosure and Barring Service (DBS).
- 16.4 In resignation cases Governing Bodies should assess the seriousness of the misconduct at the point the teacher resigns and refer the case where they consider dismissal was a possible outcome.
- 16.5 Further information on when to refer a case and what constitutes serious misconduct can be found on the DfE website below  
<http://www.education.gov.uk/schools/leadership/teachermisconduct>

## **17. PERSONAL RECORDS**



- 17.1 Disciplinary Warnings and related information will be maintained and disposed of in accordance with the guidelines laid down by the Information Commissioner. For further information regarding the retention and disposal of personal records please refer to the website [www.ico.gov.uk](http://www.ico.gov.uk)
- 17.2 Account may be taken of any disciplinary action, which has not lapsed, in dealing with any subsequent allegations of misconduct. Account will also be taken of any patterns of behaviour in relation to any safeguarding case.

## **18. REVISION OR TERMINATION OF THIS PROCEDURE**

- 18.1 The Assistant Director, Human Resources or nominated person has specific responsibility for monitoring the effectiveness of this procedure. This will be undertaken in consultation with the appropriate consultative bodies. This procedure is monitored, evaluated and reviewed annually to ensure it is kept up to date and meets legislative and best practice requirements.
- 18.2 To ensure we are applying our policies and procedures fairly and in line with any relevant legislation, statistical information will be collated and kept. No personal details will be used inappropriately or made available to other sources except to report on the overall numbers relating to disability, ethnicity and gender of employees who have been involved with the disciplinary process.

## **19. FURTHER INFORMATION**

- 19.1 Further advice and guidance on this procedure or the specific circumstances of a disciplinary matter can be obtained from your directorate Human Resources Business Partner.
- 19.2 If you would like to comment on the content of the procedure please contact Human Resource on 01925 442941.
- 19.3 The disciplinary procedure is also available in alternative formats such Braille, large print, on audio tape or community languages if requested.
- 19.4 This policy links to the following sources of information,
- Safeguarding Children and Safer recruitment in Education 2007
  - Working Together to Safeguard Children 2010
  - Guidance for Safer Working Practice for Adults who work with Children and Young People
  - Guidance on Managing Employment in Schools 2009
  - The School Staffing (England) Regulations 2009

- The ACAS Guide to Discipline and Grievances at work

**EXAMPLES OF MISCONDUCT**

The following are examples of misconduct, which will normally justify the use of the disciplinary procedure, however this list is neither exclusive nor exhaustive. Depending upon the severity of degree, any of these may constitute gross misconduct, in addition to the examples given in Appendix 2.

- (a) **Disobedience** - when an employee, without sufficient cause, deliberately disobeys, omits or neglects, or fails to observe, a lawful order, operational requirement or standing order of the employing department
- (b) **Insubordination** - when an employee is insubordinate, by word or act
- (c) **Abuse of Authority** - when an employee's conduct towards a fellow employee or a member of the public is oppressive or abusive
- (d) **Unauthorised Absence from Duty** - when an employee without permission or sufficient cause is absent from duty, late for duty, leaves their place of work
- (e) **Neglect of Duty** - when an employee:
  - (i) Without sufficient cause fails to discharge the obligations which either statute, or the contract place upon them
  - (ii) By carelessness or neglect suffers any loss, damage or injury to occur to any person, or property
  - (iii) Fails to report any matter, which it is the employee's duty to report
  - (iv) Fails to make an entry, which it is the employee's duty to make, in any book or document
  - (v) Fails properly to account for, or to make a prompt and true return of any money or property, which comes into the employee's possession in the course of their duties
- (f) **Unauthorised Employment** - engaging in unauthorised employment during hours when contracted to work for the school, or engaging in employment during off-duty hours which conflicts with or is detrimental to the interests of the school, or weakens public confidence in the conduct of the school's business
- (g) **Sleeping on Duty** (except those people who are required to 'sleep in' as part of their duties)

- (h) **Criminal Conduct** - when an employee has been found guilty by a Court of Law of a criminal offence, having regard to the nature of the offence (see section 8)
- (i) **Being an Accessory to a Disciplinary Offence** - when an employee is knowingly an accessory to any disciplinary offence or misconduct by another employee
- (j) **Neglect of Health** - when an employee without sufficient cause neglects to carry out any instruction of a medical officer appointed by the school or, while absent from duty on account of sickness commits any act or adopts any conduct which wilfully hinders their return to duty
- (k) **Failure to disclose** - where an employee fails to inform the school that they are subject to criminal proceedings, are charged with a criminal offence or are convicted of a criminal offence during their employment with the school, that may have an impact on the employment relationship. Where a CRB check is a requirement of the position, failure to disclose any change in personal circumstances that may call into question suitability to work in that role.

**EXAMPLES OF GROSS MISCONDUCT**

'Gross misconduct' is regarded as misconduct of such a nature that it fundamentally breaches the contractual relationship between the employee and the employer and justifies the employer in no longer accepting the continued presence of the employee at the place of work. The following are examples of gross misconduct, which have led to the dismissal of school employees. However, this list is neither exclusive nor exhaustive. Depending upon the severity of degree, any of these may constitute misconduct, in addition to the examples given in Appendix 1.

- (a) **Falsehood** - when an employee:
  - (i) Knowingly or through neglect and whether or not for a fraudulent purpose, makes any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required by the school, or
  - (ii) Knowingly or through neglect falsified any information in support of an application for any post in the employment of the school
  - (iii) Malicious or vexatious complaints
  - (iv) Other offences of dishonesty
- (b) **Misconduct in relation to Official Documents** - when an employee without sufficient cause destroys or mutilates any record or document made, kept or required by the school, or alters or erases or adds to any entry in such a record or document
- (c) **Improper Disclosure of Information** - when an employee without proper authority communicates to any person information which was given to the employee in confidence in the course of their employment with the school
- (d) **Corrupt or Improper Practice** - when an employee improperly uses, or attempts to use, their official position for their own private advantage or for the private advantage of some other person
- (e) **Discrimination** - against another employee or member of the public on the grounds of disability, age, sex (including sexual harassment), sexual orientation, colour, race, creed, nationality or ethnic origin. This also covers employees with responsibility for dependants
- (f) **Misuse of Council/School Property** - when an employee, without authority, uses Council property, including vehicles, equipment and tools, for the employee's own purposes, and not connected with their duties for the school

- (g) **Unauthorised Removal of School/Council Property** - or of property within the school's control
- (h) **Damage to School/Council Property** - when an employee:
  - (i) Wilfully or without due care causes any waste, loss or damage to any property of the school, or
  - (ii) Fails to report any loss of, or damage, to any property issued to or used by the employee, or entrusted to the employee's care
- (i) **Theft** - of school property, or of property in the school's control, or of school employees, or otherwise carried out during the course of the employee's employment
- (j) **Fighting** - physical assault (including threatened physical assault)
- (k) **Conduct at work likely to offend decency** - including sexual misconduct, harassment, bullying, not treating people with dignity and respect, racial acts
- (l) **Failure to observe Health & Safety and Security Regulations** - when an employee fails to carry out safety procedures, thereby endangering the employee and others; or fails to observe security arrangements designed for the protection of employees, the general public, and school property
- m) **Being under the influence of drink or drugs** (other than those medically prescribed) - when an employee makes themselves unfit through drink or drugs so that they are unable to carry out their duties
- n) **Computer/Telephone Use** - when an employee fails to observe the rules of the School Computer and Telephone use policy or procedures
- o) **Breach of school procedures** - when an employee fails to follow the school's policies, procedures and practices
- p) **Damage to the reputation of the School** - when an employee's conduct brings the school's name into disrepute
- q) **Child Protection** - any behaviour or issue that falls under Child Protection Procedures. Examples of appropriate behaviours and consequently inappropriate behaviours are documented in the Guidance For Safer Working Practice For Adults Who Work With Children and Young People 2009 document and include but are not limited to
  - Conduct which would lead any reasonable person to question an employee's motivations and intentions
  - Sharing information about a child or young person in an inappropriate forum

- Using one's position to gain access to information about a child or young person for personal advantage
- Intimidating, bullying, humiliating, threatening or undermining a young person or child
- Using one's status or position of trust to form or promote relationships of a sexual nature or relationships which may become so
- Failure to maintain professional boundaries with a child or young person
- Communicating with a child or young person which could be interpreted as inappropriate or sexually suggestive or provocative i.e. verbal comments, letters, notes, electronic mail, phone calls, texts
- Using inappropriate language either in the presence of directly to children and young people
- Inappropriate physical restraint

(r) **Covert Recordings** - when an employee, without good cause, records any conversation, meeting or proceeding, including disciplinary and grievance hearings and appeals without the knowledge and agreement of all parties present.