
Schools Disciplinary Policy

Approved by:

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1. Introduction

Policy for school-based staff

The Council and Schools are committed to providing a working environment where individuals are treated with fairness, dignity and respect. This policy is designed to ensure that there are fair and objective arrangements for dealing with disciplinary issues in the workplace.

This policy is offered to Governing Bodies as an example of good practice for adoption across the Borough. Uniform use of the procedure will ensure fair and equitable treatment for all staff.

The Schools Disciplinary Policy is particularly significant since it covers a complex area. Procedures must be in line not only with natural justice but with a variety of legislation. Mistakes and errors in this area can be time consuming and could be very costly. They can also destroy the working relationships between staff, staff and pupils, staff and school management and staff and Governors.

The Policy should not be viewed primarily as a means of punishing individuals but as a way of helping and encouraging employees to improve and to rectify unsatisfactory conduct. It is intended to ensure allegations of misconduct are dealt with promptly, fairly and consistently in accordance with relevant Council and school policies, employment legislation and “Best Practice”.

This Policy (other than the list of possible allegations in **Appendix 6**) has been agreed with the accredited local representatives of the recognised Trade Unions. Adoption and operation of this Policy should ensure that the Governing Body, the Head Teacher and SLT operate in accordance with the following provisions:

- The Employment Rights Act 1996 and the Employment Relations Act 1999.
- Conditions of Service for School Teachers in England and Wales (Burgundy Book)
- Conditions of Service for Support Staff in England and Wales (Green Book)
- Conditions of Service issued to school staff at the time of their employment and the letters which confirm their contract of employment.
- The Education Act 2002 (Section 35 (8) and Section 36 (8))
- The School Staffing (England) Regulations 2009
- ACAS statutory Code of Practice for Disciplinary and Grievance Procedures,
- ACAS guidance on Bullying and Harassment at Work (effective from 6 April 2009).

In order to avoid unfair treatment or discrimination, Governing Bodies and Head Teachers should seek the advice and assistance of Schools HR Advisory Service or the schools HR Provider at all stages in the operation of these procedures.

The Commissioning Director Education or representative is entitled to attend all the meetings of the Governing Body's Disciplinary and Appeals Committees.

Adoption of the Policy will ensure that the Governing Body will have the full support of the Local Authority in progressing cases but, if a Governing Body wishes to consider adopting an alternative policy and procedure, then a copy of that draft policy and procedure, together with the reasons for wishing to adopt it, should be sent to the Commissioning Director Education who will advise the local secretaries of recognised unions and organisations.

Governing Bodies should note that they have a statutory obligation to engage in collective bargaining with the recognised unions on terms and conditions of their members and the school should ensure that negotiations are pursued with the local representatives of the recognised trade unions/organisations, who will usually be the local union/association secretaries. Contact details will be provided by the Commissioning Director Education or their representative.

Governors must ensure that the adopted procedures are readily available to and understood by all members of staff.

These procedures relate exclusively to breaches of discipline by staff, including Head Teachers, in Barking and Dagenham Community and Voluntary Controlled Schools but may be adopted by other Schools, Academies and other Educational Settings. This document does not apply to Borough Unattached Staff, Peripatetic Staff or Advisory Teachers.

2. General

Advice and Support

Human Resources services will support and advise Head Teachers and Governors considering allegations of misconduct and monitor all formal disciplinary cases to ensure that they are dealt with in accordance with this Policy, employment and equalities legislation, and “best practice”.

Community and Voluntary-controlled Schools using Human Resource providers other than the Local Authority recognised service provision must ensure that the Local Authority is notified in line with this Policy. Said provider must adhere to the agreed Policy, when providing support. In cases, where the allegation is Gross Misconduct and/or any allegation which may lead to the possibility of dismissal, the Local Authority should receive notification prior to all hearings; as the Local Authority is the employer and only the employer can terminate an employee’s employment.

Support at formal meetings

Employees have a statutory right to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union at any formal meetings arising from the disciplinary policy.

The trade union representative must be from a union that is a TUC member.

The companion should be allowed to address the hearing to put forward and sum up the worker’s case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions

on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

In exceptional cases, as determined in consultation with Human Resources, the employee may be accompanied / represented by a legal representative at formal hearings and appeals. This will only apply where the potential outcome may determine what happens in proceedings consequential to the disciplinary procedure case: e.g., where the process may result in the employee being barred from future employment i.e., a serious Safeguarding allegation. The Legal Representative must be familiar with this LBD policy, as formal hearings and appeals will be conducted in line with this Policy.

It is primarily the employee's responsibility to arrange for representation and to inform the representative of the arrangements (time and dates) of meetings. By agreement and to avoid delay, the employee's representative may be communicated with directly by the employer/Human Resources on such matters and vice versa.

Furthermore, the School may, in consultation with Human Resources, and as a reasonable adjustment, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) if you are disabled and refusing your request would place you at a substantial disadvantage.

In addition to family members, a request to bring a mental health support worker or personal assistant if they are physically disabled would also be examples of a reasonable adjustment which might be made.

Confidentiality

In the interests of natural justice, to avoid prejudicing the outcome of any disciplinary investigation, and because of legal obligations under the General Data Protection Regulations as amended the proceedings must be kept **strictly confidential**. All witnesses involved in the process will be required to maintain confidentiality at all times and so must not discuss or disclose details of allegations, witness statements or the outcome of meetings with anyone or via the media. It is imperative that witnesses are not approached by anyone other than those who have been nominated to do so.

All parties involved in the various stages in this disciplinary procedure are advised that, under no circumstances, should they discuss the case with any other party or amongst themselves. Failure to observe this instruction could result in the case being dismissed on procedural grounds.

This matter is of particular relevance because individual members of the Governing Body may, at a later stage be required as a member of an appeal body and natural justice demands that they must have no prior knowledge of the case. Governors must remain unbiased and their integrity must not be tainted.

Fairness and objectivity

It is important to make sure that the disciplinary process is conducted in a fair and unbiased manner. The persons carrying out an investigation (the Investigating Officer) and conducting the Disciplinary

Hearing (the Hearing Officer) must, to remain impartial, have had no prior involvement in the case being investigated either as a witness or complainant. Head Teachers, Senior Leaders and Governors involved in applying the procedures should undertake appropriate training.

Records

The ACAS Code of Practice recommends that records should be kept of disciplinary hearings, detailing the following:

- the complaint against the employee
- the employee's defence
- findings made and actions taken
- the reason for actions taken
- whether an appeal was lodged
- the outcome of the appeal
- any grievances raised during the disciplinary procedure
- subsequent developments
- Notes of any formal meetings

Records should be confidential and kept in accordance with the requirements of the procedure and the Data Protection Act 1998 as amended. The employee should receive copies of any meeting records.

Definitions

- a) "The Local Authority" means the Council of the London Borough of Barking and Dagenham.
- b) "The Governors" means all members of the Governing Body of a school appointed from time to time, in accordance with the provisions of the Education Acts and in accordance with the decisions of the Local Authority and the provisions of the Articles and Instrument of Government.
- c) "The Commissioning Director Education" means the Chief Officer appointed as such by the Council of the London Borough of Barking and Dagenham, or their representative (SHRAS).
- d) "The Head Teacher" means the person who has been appointed - whether on a permanent, temporary or acting basis - in accordance with the provisions of the Articles of Government.
- e) "The employee" means the person employed by the Local Authority in a maintained School who is paid in accordance with the scales of salaries for teachers or for non-teachers in such school.
- f) "Complaint" means an allegation of misconduct, indiscipline and/or any other specific cause of disciplinary enquiry and/or action against an Employee. A complaint may be about a single matter or comprise a number of separate issues.
- g) "Work colleague or trade union representative" means the person accompanying, advising and/or representing the employee.

- h) Gross misconduct means serious misconduct
- i) Misconduct means a failure by the employee to observe the normally understood and accepted rules affecting work procedures, safety standards and professional conduct, whether written or not, to which the employee is lawfully and reasonably expected to conform.
- j) Investigating Officer will be appointed by the Governing Body or Head Teacher or (as the representative of the Governing Body) after seeking advice from their HR provider.
- k) Hearing Officer will be appointed by the Governing Body. This will normally be the Head Teacher, or the Chair of the panel appointed by the Governing Body from amongst its number for this purpose.
- l) 'Governors' designated person' or 'designated person' is the person appointed by the Governors in cases where the Head Teacher is the employee about whom complaints or allegations have been made.
- m) 'Natural Justice' the words "natural justice" have specific meaning in the law. Natural justice comprises two rules, the rule against bias and the rule of the right to a fair hearing. Because of the necessity of maintaining confidence in the process, it is most important that people who are engaged in these processes feel that they have had a fair hearing and that there has been no bias.

Monitoring

The local authority Human Resources service will update the Policy to comply with any changes to legislation and / or ACAS guidance, monitor closely the application of the procedure and seek to agree with the recognised Trade Unions any amended draft from time to time.

3. Special Circumstances affecting Disciplinary Cases

Criminal Offences

Criminal convictions, cautions or charges are not automatic reasons for dismissal. The Head Teacher or Designated Person, with Human Resources, should consider all the facts and whether the allegation is relevant to the person's employment and warrants investigation and action under the Policy.

Child Protection / Fraud

Head Teachers and Governors must seek advice from Human Resources where there are allegations of misconduct relating to child protection issues or fraud before taking any action under the Policy.

Allegations could form part of or be linked to another procedure and may therefore need to involve other Officers of the Local Authority for example the Local Authorities Dedicated Officer (LADO) for child protection or the Local Authorities Audit Section. Employees should be referred to the appropriate local guidelines in child protection cases.

Child Protection / Fraud - Suspension

The LADO may advise the school to suspend an employee for safeguarding reasons and this should adhere, except in extremely exception.

Trade Union Officials

Head Teachers and Governors must seek advice from Human Resources where there are allegations of misconduct against a trade union shop steward, branch official, Health and Safety or Learning Representative. A senior officer/official of the Union must be contacted before starting a formal investigation under the Procedure.

Workers not directly employed by the school

Head Teachers and Governors must seek advice from Human Resources on dealing with any allegations of misconduct concerning agency workers or workers not directly employed by the school.

4. Roles and Responsibilities

All formal proceedings will be confidential and held in private. If a public statement is considered necessary, it will normally be confined to the operative decision only.

Employee's Responsibility

Employees are required to comply with the London Borough of Barking and Dagenham Employees' Code of Conduct, the School's policies and procedures and any relevant Professional Codes of Conduct (i.e., Teachers' Standards)

Employees must comply with arrangements detailed in this Policy which are designed to ensure that disciplinary issues are dealt with fairly and objectively. Employees are required to:

co-operate fully with the process;

- maintain confidentiality;
- attend meetings at the times and places designated;
- give as much notice as possible when they or their representatives cannot attend formal meetings and be reasonable when suggesting alternatives, which should be within 5 working days of the original date except by mutual agreement; and
- follow the terms of any suspension.

Head Teacher's and Governors' Responsibilities

The Head Teacher and Governors must ensure that employees are made fully aware of the standards expected by the Employee's Code of Conduct, the School's policies and procedures, relevant Professional Codes of Conduct, Contractual Terms and Conditions.

The Head Teacher and Governors must comply with arrangements detailed in this Policy which are designed to ensure that disciplinary issues are dealt with fairly and objectively. The Head Teacher (or Chair of Governors in cases of disciplinary proceedings against Head Teachers) is required to:

- promptly notify the employee of any concerns about unsatisfactory conduct and/or behaviour and ensure that copies of signed and dated complaints made are available to the employee at the appropriate point in the procedure.
- maintain confidentiality;
- try and resolve minor issues informally with the employee through informal discussion and advice, which must be documented and copies provided for the schools' HR service for retaining on personnel files subject to deletion in accordance with this procedure;
- establish the facts promptly before recollections fade and decide whether a formal investigation is required;
- seek advice from Human Resources before undertaking any further investigations in cases where there is a complaint/allegation that comes under the remit of Child Protection; and
- ensure that regular contact is maintained with employees (and their representatives whenever possible) on suspension to keep them advised of the progress of the investigation

Responsibilities for All

All attendees at Hearings and Appeal Hearings should seek permission from the Chair of Disciplinary Panel, if they would like to record the Hearing. **In normal circumstances this will not be allowed.**

All Hearings and Appeal Hearings should be conducted in a professional manner, where any participant does not conduct themselves professionally, they may be expelled from the proceedings.

This will be the decision of the Hearing Officer or Chair of the Governors' Panel.

Investigations

If the investigation provides evidence that may be regarded as misconduct or gross misconduct, the Investigating Officer should recommend to the Head Teacher or Chair of Governors (or whichever Governor has been appointed to make the decision) whether there is a need for a disciplinary hearing and, if so, arrangements for the hearing to take place should be made and for the employee to be advised formally in writing of:

- the date and arrangements for the hearing;
- the specific complaints and allegations made;
- the maximum level of sanction if the allegations are upheld including (the IO, cannot determine the maximum sanction, as this is the responsibility of the decision maker/s - change not accepted) whether dismissal may be a considered option;
- the right to be represented;
- the right to present evidence and call witnesses; and

the names of witnesses being called together with copies of the evidence to be presented, including any CCTV evidence, offending internet material or emails arising from the investigation.

The employee and/or their representative is/are responsible for:

- i) calling witnesses for the employee and notifying them of the time and date of the hearing
- and**
- ii) providing the employee's evidence/documentation for presentation at the hearing a minimum of two days in advance of the meeting.

The employee and the employee's representative should be given a minimum of 10 school working days' notice (excluding School closure periods) of the date of the hearing with details of the information to be presented (e.g., the investigation report, witness statements etc.) and the names of witnesses to be called. If agreed by the employee, 10 days may be waived in cases of impending school holidays and then the case can be heard earlier.

If the employee's chosen representative is unable to attend, the Hearing can be rescheduled to a mutually convenient time no more than 5 school working days (excluding School closure periods) after the date originally proposed. (This deadline may only be extended by agreement).

The employee will be notified in writing that if they fail to attend the re-arranged hearing without good reason, fail to arrange representation or refuse to co-operate, the case may be heard in their absence.

The Hearing Officer conducting the meeting will arrange for a note taker to be present. The minutes/report will be made available to the employee and their representative after the meeting for verification (If the employee disagrees with the notes of any meetings, they can ask for their version to be attached to the minutes).

5. Disciplinary Process

Human Resources

Procedural advice should be sought from the Human Resources provider to ensure adherence to the policy and the concept of natural justice. A Human Resources Adviser should attend all formal Disciplinary Meetings and Appeals to ensure a thorough and fair process for all concerned in line with the School's policy and best practice contained therein.

The Human Resources Adviser will be available to give appropriate support and advice during the process; this will include:

- talking through the process to be followed and
- advising where to go for further help and support

It is essential that any complaints alleging misconduct are investigated and the facts established promptly before recollections fade. Investigations do not need to be time consuming, but speed should not be at the expense of thoroughness. Complaints should be put in writing, be signed and dated and copies made available to the employee about whom the complaint has been made.

In accordance with the principles of natural justice, employees will be advised at each stage, by the Investigating Officer, of the precise nature of the complaint and any allegation(s) against them and given the opportunity to respond, as part of the investigation, before any decision is made about the outcome of an investigation.

No disciplinary action will be taken until the matter has been investigated and employees will not be dismissed for the first instance of misconduct except, if so determined, in a case of gross misconduct or for breach of implied term of mutual trust and confidence.

The employee will have the right to appeal against any disciplinary sanction.

Gardening Leave

Gardening leave describes the practice where an employee leaving a job – having resigned or otherwise had their employment terminated – is instructed to stay away from work during the notice period, while remaining on the payroll.

Locally Agreed (LBBD) Gardening Leave normally describes the situation when an employee is sent home pending possible formal suspension or initial fact finding, where a serious allegation has been made. This can be performed without notice and the action should be confirmed, together with the reasons for it, in writing to the employee.

The continuation of Gardening Leave will be under regular review. If gardening leave exceeds a period of six weeks there will be a review of the need for continuing the gardening leave and the employee or their representative will be contacted by the employer for that purpose. Gardening Leave should be reviewed by the Chair of Governors.

Suspension

Where the alleged misconduct is so grave that it is not reasonable for the employee to remain at school pending an investigation and following completion of the risk assessment (**appendix 7**), the Head Teacher, in consultation with the Chair of the Governing Body and the Commissioning Director Education or representative, may suspend the employee on full pay. The employee will be advised to make immediate contact with their Trade Union or Workplace Colleague and that they may be accompanied by this person at the meeting called for the purpose of formal suspension.

The meeting should be held within 5 school working days' notice (excluding School closure periods) and the action should be confirmed, together with the reasons for it, in writing to the employee.

Where such action is against the Head Teacher the role of the Head Teacher will be taken by such person as the Governing Body chooses to appoint for that purpose.

Suspension is not a disciplinary act, and does not imply guilt, but careful consideration should be given to the case before an employee is suspended.

Employees will be suspended on full pay and paid as normal.

NB: In some cases, Head Teachers/Governors may decide to suspend employees during an investigation in the light of evidence emerging

Circumstances in which suspension may occur include:

- when children are considered to be at risk;
- where allegations are so serious that dismissal for gross misconduct is possible;
- where the conduct of the investigation may be impeded by the presence in school of the employee;
- when there is some other justifiable substantial reason for preventing the employee's presence in the school.

The continuation of suspension will be under regular review. If suspension exceeds a period of six weeks there will be a review of the need for continuing the suspension and the employee or their representative will be contacted by the employer for that purpose. Suspension should be reviewed by the Chair of Governors.

5.1 Disciplinary Investigation

In most cases disciplinary issues will be investigated by a person appointed by the Head Teacher, normally, a member of SLT.

Advice must be sought from Human Resources where there are any concerns as to the impartiality of the nominated Investigating Officer. Any disagreement will be referred to the Chair of Governors whose decision is final.

The employee will normally be informed in writing of the allegation, the nature of the allegation and that an investigation is taking place.

The focus should be on the specific complaints/allegations made and determination of whether the allegation may be considered misconduct or gross misconduct which will arise from the evidence acquired and statements provided.

The investigating officer should establish the facts as quickly as possible, avoid the potential for collusion amongst potential witnesses and obtain all the relevant information by collecting written evidence and interviewing the employee and known witnesses. The officer should then decide whether there is an issue to be dealt with informally or a case to be dealt with using the formal procedure.

It is important to remember that disciplinary investigations are stressful for all concerned, especially for the employee, the complainant and potential witnesses. Moreover, the integration of employees subjected to lengthy disciplinary procedures back into the workplace may be much more difficult to achieve. Therefore, consideration should be given as to what priority and support is needed to enable the school to carry out a full investigation as speedily as possible.

It is not possible to set rigid timescales for the completion of investigations, but the Investigating Officer must seek advice as soon as possible from Human Resources if this is likely to take longer than four weeks. The employee and their representative should be kept regularly advised of the progress of the investigation if this is likely to last more than four weeks.

Witness Evidence

Witnesses should be interviewed and/or asked to provide written statements.

- A record should be taken of interviews and the notes of meetings and witness statements signed and dated by the witness.
- Witnesses must be reminded of the need to maintain confidentiality, that they may be required to attend future hearings and that their statements will be used as evidence and made available to all parties involved.

If, during the investigation, pupils are involved, especially young pupils, they may be asked to make an oral statement, which will be written verbatim and witnessed on their behalf. Questioning pupils is an alternative but must be undertaken with sensitivity and leading questions must be avoided; these statements should be anonymised.

Investigation meeting with the employee

The investigation will normally require the employee to have a face-to-face meeting with the investigating officer. The Investigating Officer, in consultation with Human Resources, must notify the employee as soon as practicable that an investigation is being conducted and the reason for this and arrange an investigation meeting.

The employee will be formally notified in writing of the arrangements for the meeting and be given at least 5 working days' notice (excluding School closure periods) of the meeting. The employee should also be notified in writing of the specific complaints made and potential outcomes of the investigation. A copy of the Disciplinary Policy will be provided to the employee if not already made available.

Employees may be accompanied at any meetings under the procedure either by a trade union representative or work colleague. If a chosen representative is unable to attend a meeting, the Investigating Officer will reschedule the meeting to a mutually convenient time, not more than 5 working days (excluding School closure periods) after the original notified date.

This deadline may be extended by agreement provided the meeting is held within 20 working days (excluding School closure periods) of the originally notified date.

NB: If the employee's preferred Trade Union rep remains unavailable, then it will be down to the employee and their Trade Union representative to make alternative arrangements i.e., an alternative rep or it may be necessary to base any findings on the information that is available.

The purpose of the investigation meeting is to give the employee the opportunity to respond to the allegation(s) and to raise any concerns or make comment as part of the fact-finding process.

Following the meeting it may be necessary to seek further information or to interview/re-interview witnesses to check facts or seek further clarification. Where new information is obtained **during the investigation** and potential new allegations come to light, it may be necessary to reconvene the investigation meeting in order to give the employee the opportunity to respond.

Once the investigation is completed, the Investigating Officer should produce an Investigation Report setting out the complaints/allegations made, the evidence and recommendations as to whether there is a case of misconduct or gross misconduct to pursue.

Where there is sufficient information/evidence i.e., correspondence relating to the allegation the requirement to carry out an investigation meeting with the employee may not be necessary, however the employee should be notified if this is the case.

NB: The determination of whether a case justifies a charge of misconduct or gross misconduct can only be made as a result of the investigation and the school should avoid pre-empting the outcome of the investigation when informing the employee of the reasons for the investigation. If there are reasonable grounds for considering whether the complaint may amount to gross misconduct, the employee should be informed at the interview and in any subsequent communications about a disciplinary hearing.

Any recommendation should take into consideration the following:

- Has the employee admitted to any of the allegations?
- Has the employee broken any rules and procedures?
- Are the rules known to employees and have they been applied consistently?
- Is it reasonable to expect the individual to know their conduct was wrong?
- If there has been an instance of potential misconduct, does it require formal action or can it be dealt with informally by counselling, training and development, etc.?

The employee will be notified in writing of the outcome of the investigation and the recommendation(s) as soon as possible after the conclusion of the investigation.

NB: No new allegations should be added once the report has been concluded and submitted to the employee.

5.3 Disciplinary Hearing

The arrangements and procedure for the Hearing are detailed at **Appendix 1**.

Before a Disciplinary Hearing can take place, the case must have been thoroughly investigated, the investigation report clearly written and supported by evidence. Care must be taken not to allow assumptions, prejudices or stereotyping to influence decisions.

A Disciplinary Hearing will be conducted by a Hearing Officer, who will either be the Head Teacher (or a Designated Person) with the authority to chair a disciplinary hearing and to issue sanctions or in cases where dismissal is a possibility then the hearing will be conducted by a panel of governors i.e. the Disciplinary Committee of the Governing Body (which should not include the Head Teacher or any Staff Governors). Human Resources will provide procedural advice to the Hearing Officer/Panel.

NB: A Governing body can delegate the authority to dismiss to the Head Teacher.

In cases when a Final Written Warning has failed to bring about an improvement in conduct within the set period of time or, in some circumstances of alleged gross misconduct, consideration may be given by the Investigating Officer, in consultation with the Head Teacher (or designated person) and the representative of the Commissioning Director Education, to determine that the case should be heard by the Disciplinary Committee of the Governing Body.

Outcome

When determining an outcome of the case the Hearing Officer/Panel should consider the following:

- Has there been as much investigation as is reasonable in the circumstances?
- Have the requirements of the Disciplinary procedure been properly complied with?
- Has sufficient regard been given to any explanation put forward by or on behalf of the employee?
- Is the evidence sufficient to enable the relevant committee of the Governing Body to genuinely believe that the employee's was guilty of misconduct?
- Are there reasonable grounds upon which to sustain that belief?
- Is the misconduct serious enough to warrant the disciplinary sanction contemplated?
- Has sufficient regard been given to any mitigating circumstances put forward by, or on behalf of, the employee and to the response by the person presenting the case against the employee?
- Is the decision reasonable in all the circumstances, taking into account the individual's service history and action taken in similar cases?

After full consideration of the evidence presented, the Hearing Officer/Panel may adjourn the hearing, pending further investigation of issues raised at the hearing, before reconvening to decide on the outcome or determine an outcome from the following:

(i) No Disciplinary Action

When it is apparent that there is no case to answer or the matter does not warrant a warning, the employee will be informed that the matter is being dropped and that no disciplinary action will be taken.

However, in some cases, when no disciplinary action is taken, it may be appropriate to make recommendations relating to the case in the form of informal advice.

The outcome and any recommendations will be confirmed to the employee in writing and kept on the employee's file for the duration of their employment at the school.

The records and other documentation from the investigation will be destroyed.

(ii) Counselling/Advice/Referral to Occupational Health

Where the inappropriate behaviour, or misconduct, can be dealt with through additional training, support, advice or counselling, such a determination should be made and consideration given to a referral to Occupational Health if there are concerns about the individual's health.

The employee will be informed of the outcome in writing and of the arrangements for any identified support or action taken.

NB: Hearing Officers and Governors must ensure that any support agreed is provided, since it will be unfair to review the case for further action if the employer or employer's representative has not complied with the outcome determined.

iv) **Written warnings and retention of records**

In the event of a decision to issue a warning, the Hearing Officer/Panel should ensure that the employee is clear about both the reasons for the warning, and the consequences of failure to heed it.

- a) **1st Written Warning – For a period of 6 months.** First written warnings are normally given for a first or less serious offence. A first written warning will be removed from the employee's file six months after the date upon which it was issued.
- b) **2nd Written Warning – For a period of 12 months.** Second written warnings are usually given for a second and more serious offence. A second written warning will be removed from the employee's file twelve months after the date upon which it is issued, providing no further breaches of discipline have occurred during that period.
- c) **Final Written Warning - For a period of 18 months.** Final written warnings are usually given for further instances of misconduct or a first instance of gross misconduct, depending on the seriousness of the case. A Final Written Warning will be removed from the employee's file eighteen months after the date upon it was issued, providing no further breaches of discipline have occurred during that period, except in exceptional circumstances notified at the time of the issuing of the final written warning.

v) **Dismissal**

If the misconduct is of such a serious nature that the Panel concludes that the employee cannot continue in their job, the case may be referred, following consultation with the Commissioning Director Education or representative, to the Disciplinary Committee of the Governing Body.

The outcome of such a hearing may result in the employee being dismissed with or without notice, depending on the seriousness of the case. Dismissal following cumulative warnings or by reason of capability, will be with pay in lieu of notice.

Consideration of outcomes should take into account:

- the seriousness and nature of the allegation;
- the employee's previous record;
- mitigating circumstances;
- the nature of the job.

Notes:

1. Action may be taken to recover any monies misappropriated / lost in fraud cases or through breaches of Financial Regulations and / or any other policies and procedures relevant to the case.
2. When, as a result of the outcome of a case, there is an intention by the employer to refer the employee to any professional, statutory or regulatory body that could bar the employee from working with children and vulnerable adults, the employee should be informed that such a referral might be made.
3. In all cases, the Hearing Officer/Panel will notify the employee in writing of the outcome of the Hearing, including any recommendations, within 5 school working days (excluding School closure periods), along with the right to appeal as appropriate.

5.4 Appeal

Employees have the right to appeal against any disciplinary sanction and if they wish to do so, they should write to the **Chair of the Governors** within 10 school working days (excluding School closure periods) of receiving the letter confirming the outcome of the Hearing, stating the specific grounds for the appeal. An Appeal hearing will not be arranged until the above has been adhered.

The appeal will be heard by the Appeals Committee of the Governing Body (normally three Governors). The appeals committee will give at least 10 school working days (excluding School closure periods) of the date, time and place of the appeal hearing to take place.

An appeal will not normally involve a re-hearing of earlier evidence, but the request for an appeal should specify the grounds for the appeal and whether these refer to the reasonableness of the decision or to procedural matters.

If either side intends to produce new evidence, all relevant documentation should be circulated in advance within the agreed timescales (i.e., within 3 working days of the meeting).

Outcome

The Appeal Committee can dismiss the appeal or uphold the appeal.

If the appeal is dismissed (not accepted as sufficient for changing the original decision) the original decision arising from the hearing will stand.

If the appeal is upheld (accepted in full or in part) the committee may as deemed appropriate:

- impose a lesser penalty
- reinstate the employee
- make recommendations

NB: The Appeals Committee will not have the power to impose a more severe penalty than originally imposed by the Hearing Officer or Disciplinary Committee panel.

The Appeals Committee will not include any member of the Disciplinary Committee Panel. The Appeal Committee will normally consist of three members of the Governing Body and, in any case, no fewer members than the Disciplinary Committee.

Any decisions should be communicated in writing to the employee within 5 working days (excluding school closure periods) of the appeal hearing.

NB: The opportunity to appeal against a disciplinary decision is essential to the concept of natural justice, and appeals may be raised by employees on any number of grounds, for instance: new evidence, undue severity or inconsistency of the penalty. The appeal may either be a review of the disciplinary sanction, not a re-hearing depending on the grounds of the appeal. (*ACAS guide, discipline and grievance at work*).

This is the final stage; there is no further right of appeal.

Appendix 1

Procedures for Hearings and Appeals

- Any witnesses called, will, after giving any evidence, withdraw from the proceedings.
- Any person involved in an earlier stage of the decision-making process set out in this document should not be involved in a later stage of decision-making process in the same case.

1. Hearing Officer's Role

- The Hearing Officer will clarify the roles of those present, check both sides have copies of the documentation and details of the witnesses to be presented and outline the process to be followed.
- The Hearing Officer will not normally allow any further documentation or witnesses to be presented at the Hearing unless both sides agree.
- The Hearing Officer, Human Resources advisor, the employee and their representative will be present throughout the hearing except for any adjournment and when the Hearing Officer is considering a decision.

2. Presentation of the evidence

- Where the employee admits to the allegation(s), the Hearing Officer may consider claims of mitigation instead of having the whole case presented. The Hearing Officer will still allow the employee or their representative to clarify any points raised during questioning and the opportunity to ask questions
- Evidence should normally be presented by the Investigating Officer with the support of the HR Adviser
- The employee and/or their representative will be given the opportunity to respond to the questions.
- Questions may be asked by the employee and/or representative in relation to the evidence presented.

3. Employee's presentation

- The employee and/or their representative will present a response to the evidence and complaint/allegation made, calling witnesses and referring to documentation and evidence as appropriate.
- After the presentation, the Investigating Officer, with the support of Human Resources, may ask the employee and/or their representative questions.

- The employee and/or their representative will then have the opportunity to respond and clarify any points raised during the questioning.

4. Summing up

- Both parties, starting with the Investigating Officer, will have the opportunity to summarise their case if they wish and make a concluding statement. This is not a re-hearing of the whole case and neither side will be allowed to ask any further questions.
- Both parties will then withdraw whilst the Hearing Officer considers the case in order to decide on the outcome. If it is necessary to recall the employee or a witness, to clarify points of uncertainty as to the evidence presented, this must be done in the presence of the employee and representative.

5. Outcome

- In some cases, the Hearing Officer will recall the employee to notify the outcome, if a decision has been made. If further time is needed to consider the matter, the Hearing Officer will confirm the decision and any recommendation(s) in writing within 5 working days (excluding school closure periods) and arrange for the notes of the meeting to be issued to the employee and representative as soon as possible afterwards.

Appendix 2

Schedule – Governors Body Disciplinary Hearing

The Governing Body will follow a procedure as set out below. The Governors will act through a Disciplinary Committee with delegated powers. This committee would normally comprise of three members:

- Where a complaint is referred to the Governing Body a meeting of the Committee will be convened within 20 working days (excluding school closure periods) to consider the complaint/allegation.
- The employee will be given no less than 15 working days' notice (excluding school closure periods), in writing, of the meeting and will be informed of the nature of the complaint/allegations, the time and purpose of the meeting.
- No less than 10 working days (excluding school closure periods) before the date of the meeting the employee will be provided with two copies of all documents/written evidence and a list witnesses.
- The Commissioning Director Education will appoint an appropriate officer to advise the Governors as required on procedures and to act on their behalf as Clerk to the proceedings.
- The Head Teacher or designated person will present the case against the employee and will call witnesses as necessary in the presence of the employee who may be accompanied by a work colleague or representative.
- The employee and/or their representative will have the opportunity to ask questions of the Head Teacher or designated person or any witnesses on the evidence presented.
- The employee or their representative will present the employee's case calling witnesses and/or documentary evidence they consider appropriate.
- The Head Teacher or designated person will have the opportunity to ask questions of any witness on the evidence presented.
- The members of the Governing Body will have the opportunity at each stage to ask questions of all participants.
- Before summing up, either party may, in appropriate circumstances, recall and re-examine any witness. Thereupon the other party will also, have the right of re-examination.
- The Head Teacher or designated person will have the opportunity to sum up but may not introduce new evidence at this stage.

- The employee, or their representative, will have the opportunity to make the final summing up but may not introduce new evidence at that stage.
- Both parties will then withdraw, leaving the Governing Body to deliberate in private. The officer appointed as Clerk will remain with the Governing Body in order to advise on procedural matters and to record their decisions.
- If there is a need to recall anyone to clarify points of uncertainty, then both parties will return. Witnesses may be recalled and re-examined by the Governors in the presence of both parties.
- The employee and the Head Teacher or designated person may be informed of the decision immediately after the meeting and will be communicated to both in writing as soon as possible thereafter.
- The Governors may decide to take one or more of the following courses of action:
 - to take **no further action** where no suspension has taken place or to **rescind** the suspension.
 - to issue **a First Written Warning, Second Written Warning or Final Written Warning**. In addition to such warnings the Governors may also take such action as may be appropriate under the relevant pay and conditions document, i.e., STPCD, Green book or Burgundy book.
 - to **Dismiss**

Appendix 3

Schedule – Appeal Hearing

In the event of the employee wishing to appeal.

Written notice of the appeal, together with the grounds upon which the appeal is based should be sent within 10 working days (excluding school closure periods) of the date of the warning to the Chair of the Governing Body.

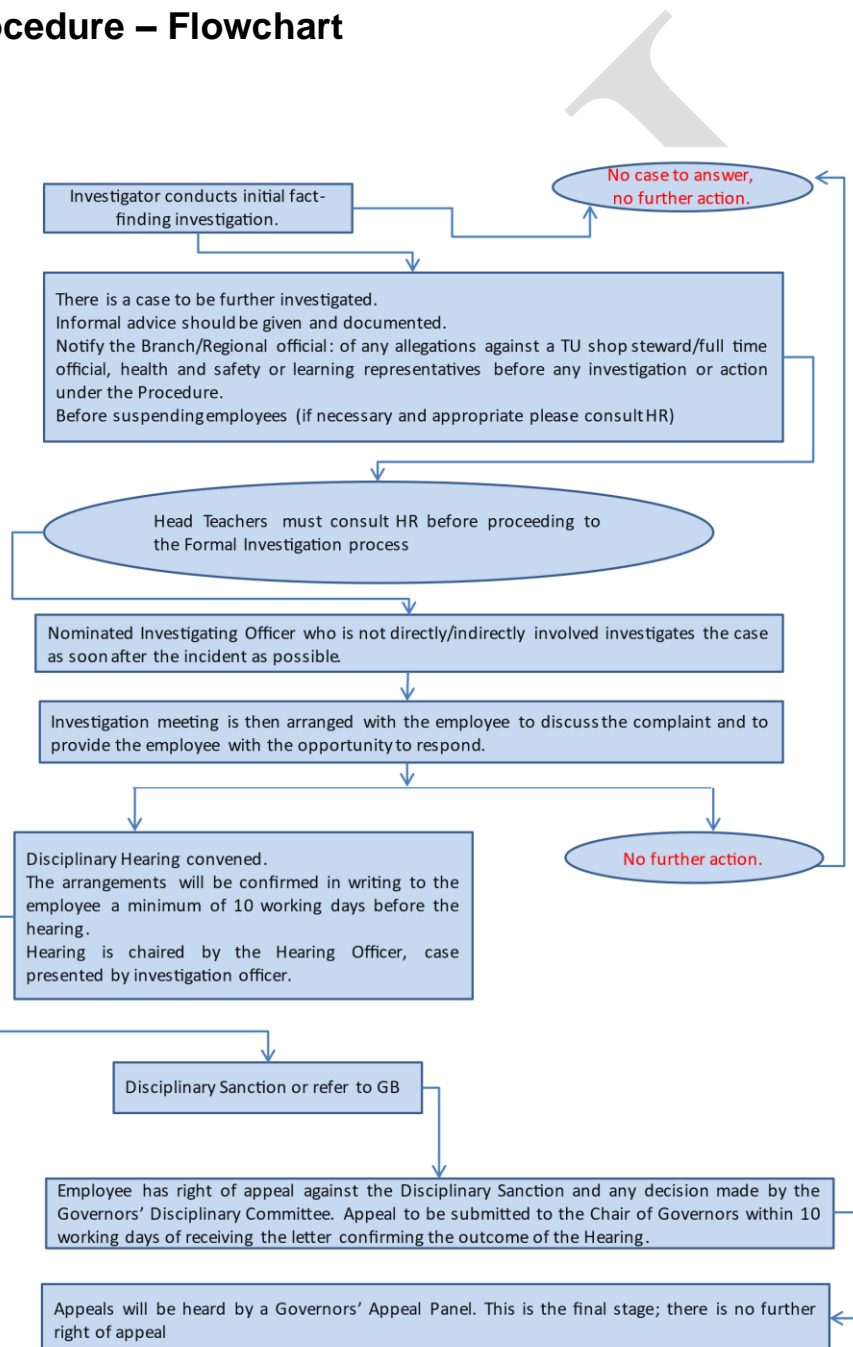
The appeal will be made to the Appeals Committee of the Governing Body and at least 10 working days' notice (excluding school closure periods) of the date and place of the hearing will be given to the employee.

The Chair of the original panel must attend the Appeal Hearing solely for the purpose of answering any questions that the Employee or their Representative, the Hearing Officer (Management) and/or Appeal Panel may wish to ask regarding the basis for the original decision.

- The Appeals Committee may decide to dismiss or uphold the appeal:
 - If the appeal is dismissed (not accepted as sufficient for changing the original decision) the original decision arising from the hearing will stand.
 - If the appeal is upheld (accepted in full or in part) the Appeals Committee may as deemed appropriate:
 - reinstate the employee
 - impose a lesser penalty
 - make recommendations

This will not be a re-hearing of the case but a hearing to hear the employee's reason for appealing the original decision.

APPENDIX 4 Disciplinary Procedure – Flowchart



APPENDIX 5

Examples of misconduct/gross misconduct

Examples of offences that could lead to disciplinary action being taken as a result of an investigation

Below is a list of **examples** of disciplinary offences only and not intended as an exhaustive list. What is listed under “misconduct” may also be considered as “gross misconduct” (and vice-versa) according to the seriousness of the case and the nature of the employee’s job.

Schools should avoid using the list as a menu to select from in order to create a case.

Complaints/allegations made and the investigation process will inform what the disciplinary offence may look like and whether misconduct or gross misconduct may be the charge that is heard in any subsequent disciplinary hearing.

Head Teachers/Chairs of Governors should take advice from Human Resources on whether an alleged offence may be deemed to constitute a case of misconduct or gross misconduct.

Misconduct

The following are examples of offences that may be considered as misconduct:

Health and Safety

- Wilful failure to comply with the obligation placed upon employees under the terms of the Health and Safety at Work Act 1974 and any subsequent amendments.
- Wilful failure to wear appropriate protective clothing or use necessary safety equipment provided by the school for particular duties.
- Wilful failure to comply with accident reporting procedures.
- Threatening behaviour, intimidation, physical assault or fighting at work either with fellow employees or other persons. This does not include reasonable self-defence in cases of assault on an employee.
- Serious breaches of health and safety regulations, endangering yourself or other people, including deliberate damage to, neglect or misappropriation of safety equipment.

- Dangerous or reckless behaviour involving risk of injury to a member of staff or to other persons or other conduct at work likely to diminish safety standards.

Misuse of School equipment, material and resources

- Accessing or downloading pornographic or offensive material from the web, intranet and/or any other sources.
- Deliberate damage to or deliberate neglect of School property.
- Misuse of materials, equipment or resources that is likely to endanger the health and safety of employees or any other persons or result in a financial loss to the School.
- Using the School's facilities and equipment, including e-mail, and mobile devices to threaten, bully or harass employees, or pupils.
- Unauthorised use of school materials, equipment or resources for private purposes.

Neglect of duty and inappropriate behaviour

- Wilful failure to renew or maintain accreditations, licenses or qualifications that are a requirement for the post or the responsibility of the post-holder.
- Wilful failure to account properly for or to make a prompt and true return of any money or property which comes into the possession of a member of staff during the course of duty.
- Wilful failure to follow financial procedures when submitting and approving claims for expenditure, including the provision and checking of receipts
- Making a false, malicious or vexatious complaint or accusation.
- Posting defamatory, offensive, incorrect or improper comments or disclosing confidential information about the School, its pupils, or fellow employees through any media including social networking sites.
- Offensive or abusive behaviour.
- Being under the influence of alcohol or drugs (other than those that have been medically prescribed) so that performance of work duties is detrimentally affected.

Absence and timekeeping

- Wilful failure to report absence from work and the reason for such absence.
- Wilful failure to provide an absence certificate as required under sick leave procedures.
- Persistent bad timekeeping
- Absence resulting for an application for 'leave of absence'/'special leave', i.e., where this has been refused, partially granted or has been granted unpaid

Gross Misconduct

Some acts by their nature are so serious that they destroy the employment relationship between the employee and the employer and make any further working relationship and trust impossible. These acts are considered to be gross misconduct and will normally lead to summary dismissal (dismissal without notice following a hearing).

The following are examples of offences that may be considered as a fundamental breach of contract and gross misconduct. However, they may also be considered as misconduct according to the seriousness of the offence and the nature of the employee's job:

Safeguarding

Breaches of child safeguarding principles, practice or policy including conduct out of working hours that harms a child or vulnerable adult or puts a child or vulnerable adult in harm's way

Absence and timekeeping

- Deliberate failure to follow the School's sickness absence and reporting arrangements, including unauthorised absence from work. (Lawful industrial action taken as part of a lawful trade dispute should not be regarded as relevant in this context).

Criminal offences in/outside work

- Wilful failure to notify the employer of being subject to criminal proceedings.
- Wilful failure to disclose a conviction/caution for a criminal offence whilst employed by the School.
- Criminal offences committed in or outside work will be considered according to the particular circumstances of the case, but dismissal may be the outcome when:
 - there is theft against the public purse amounting to fraud
 - continued employment would put at risk those taught or employed by the School.

Data and information protection

- Failure to follow the School's policies and requirements leading to a loss of confidential or personnel information relating to the School, its pupils or fellow employees.
- Misuse of data or personnel information relating to the School, its pupils or fellow employees.

Discrimination, bullying and harassment

- Sexual misconduct at any time with any person for whom the employer is vicariously liable including but not limited to fellow employees, pupils and contractors
- Acts of bullying and /or harassment that involve physical or mental intimidation or assault and discrimination on any grounds.

Finance regulations and School procedures

- Stealing from the School, its staff or pupils;
- Offering or accepting bribes
- Deliberate contravention Financial Regulations or neglect of duty by failing to follow procurement rules that results in a financial loss to the School or damages its reputation or affects staff employment.
- Fabrication of any document for financial gain.

- Deliberate fabrication of qualifications or information which is a stated requirement of employment or which could result in financial gain.
- Dishonest or improper use of information obtained in the School's employment.
- Doing unauthorised private work during hours when contracted to work for the School or during periods of sick leave.
- Offences, including failures to declare conflicts of interest, which would affect the employee's ability to undertake contractual duties or conduct obligations in accordance with a relevant code of conduct

Cumulative Misconduct

For example, where a warning for misconduct has not expired and a further act of misconduct has been committed and the conduct in its totality provides a sufficient reason for dismissal.

Appendix 6

Gardening Leave/Suspension Risk Assessment

Gardening Leave/Suspension Risk Assessment Risk Assessment for **NAME** following allegation(s) **DATE**

This document is to be used to assess if alternative options can be considered prior to formal Gardening Leave/ Suspension. Due to the nature of the allegation(s) the school need to consider the risks against the allegation(s).

Hazard / activity	Persons at risk	How Harmed and injury level: High Medium Low	Alternative options considered and control measures	In Place yes / no	Residual Risk Rating: High Medium Low	Comments / Actions (if Gardening Leave/Suspension is considered whom is the designated contact person and how regularly will they make contact)

Completed by:

NAME
Headteacher/Governing Body
Date:

Present: NAMES

DRAFT