



# DISCIPLINARY POLICY & PROCEDURE

(For School-Based Employees)

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## **SECTION 1: OUTLINE OF THE POLICY**

### **1. Policy statement**

- 1.1 The Governing Body is committed to being a fair and reasonable employer and expects reasonable standards of conduct from employees. It will support employees through guidance, information, advice, training or other suitable approaches to achieve acceptable standards of conduct.
- 1.2 However, from time to time an employee's conduct/performance may fall below the required standards. This policy provides a framework to ensure that, where necessary, an employee can improve their conduct to an acceptable level. It also ensures that conduct issues are managed fairly and consistently across the organisation.

### **2. Scope of the policy**

- 2.1 This policy applies to all teaching and support staff who have successfully completed their probation period, regardless of grade, position, hours worked per week or whether their contract is permanent or fixed term.
- 2.2 This policy does not apply to:
- a) Staff who are on a probation period
  - b) Staff subject to poor performance or ill-health where the appropriate policies will apply.
  - c) Supply staff employed by external agencies.
- 2.3 If a complaint from the outcome of the grievance procedure is upheld, or if the complaint is found to be malicious or frivolous, the matter may be dealt with under this disciplinary policy.
- 2.4 There are separate policies covering capability, ill health, and whistleblowing, which may be more appropriate than this disciplinary procedure in certain circumstances. Guidance and advice should be sought from the School's Traded HR Provider.
- 2.5 In applying this procedure, it is important to distinguish between capability and disciplinary matters. Generally, the disciplinary policy and procedure applies when a member of staff is capable but underperforming because of carelessness or lack of co-operation. The Capability Policy and procedure applies when an employee's performance is causing concern.
- 2.6 Where there are concerns regarding the conduct/performance of the Headteacher, no action under this policy should be initiated before the Chair of Governors has sought advice and guidance from the Senior Representative of the Employer.

### **3. Roles and Responsibilities**

#### **3.1. Governors/Headteachers**

In respect of any member of staff they manage, all managers have responsibility to:

- a) Establish standards of staff conduct.
- b) Be conversant with the disciplinary policy.
- c) Ensure members of staff have access to the disciplinary policy.
- d) Inform members of staff of their rights under the disciplinary policy.
- e) Apply the disciplinary policy fairly.
- f) Manage the disciplinary procedure when it is necessary to take disciplinary action.
- g) Inform the member of staff of any allegation against them, and give them the opportunity to respond and raise any mitigating circumstances before a decision is reached.
- h) Appoint an Investigating Officer who needs to ensure that the allegations are thoroughly investigated before taking disciplinary action.
- i) Determine whether it is necessary to suspend the member of staff.
- j) Ensure that the correct procedure under the disciplinary procedure is followed.
- k) Ensure that any disciplinary action is appropriate and proportionate to the conduct of the member of staff.
- l) Make notes of all meetings and agreed actions covered by this procedure, and retain all such notes in a confidential file for the required period of time.
- m) Ensure that any records are held in a confidential manner and in accordance with the principles contained within the Data Protection Act 1998.
- n) If the member of staff is a trade union representative, inform the unions Regional Office if the formal stages of the procedure are invoked.
- o) Refer all cases of alleged safeguarding to the Local Authority Designated Officer (LADO) who will advise on the steps prior to any internal investigation being carried out.

#### **3.2. Employees**

Members of staff are individually responsible for:

- a) Familiarising themselves with this disciplinary policy and understanding their rights and obligations under it.
- b) Achieving standards of personal conduct and behaviour at work as outlined in the code of conduct policy).
- c) Co-operating with any disciplinary investigation including attending meetings and hearings when requested and be prepared to put forward their version of events and/or explain their conduct fully, honestly and truthfully.
- d) Information can be shared on a need to know basis with a friend, colleague, close family member and/or trade union representative for support/guidance or professional advice.
- e) Demonstrating the level of commitment required to improve, if improvement is required.
- f) Attending all relevant counseling, support or formal disciplinary meetings as required.

### **3.3. Human Resources**

Human Resources are expected to:

- a) Attend any hearing which may result in dismissal/disciplinary action being taken against a member of staff and appeal hearings.
- b) Provide advice to the Headteacher/Chair of Governors/Appeal Panel as appropriate.
- c) Ensure that correct procedures are followed.
- d) Ensure that any disciplinary action is appropriate and proportionate to the conduct of the member of staff.
- e) Support the managers to keep to the timescales stated in the policy at each stage.
- f) Ensure that any records are held in a confidential manner and in accordance with the principles contained within the Data Protection Act 1998.

### **3.4 Investigating Officer**

The investigating Officer is expected to:

- a) Liaise with the Headteacher and HR to gain a full understanding of the nature and scope of an investigation.
- b) Provide a comprehensive investigation report, within a recommended timeline.
- c) Be impartial and not have a conflict of interest that might prejudice a fair investigation.
- d) Make a recommendation to the Headteacher and HR as to whether a disciplinary hearing should be arranged or whether the matter should be dropped.
- e) Attend disciplinary hearings and present the investigation report.
- f) Information can be shared on a need to know basis with a friend, colleague, close family member, trade union representative for support/guidance or professional advice.

## **4. Key Principles**

- 4.1 The provisions of the Equality Act 2010 will be applied throughout the implementation of this Policy.
- 4.2 The stages of the disciplinary procedure will be conducted without unnecessary delay. At all stages, the employee will be advised of the nature of the complaint against him/her and that the formal procedure has been instigated and is being followed
- 4.3 No formal disciplinary action will be taken against an employee until the allegation has been fully investigated. If it is deemed appropriate, the employee may be suspended whilst the investigation is being carried out
- 4.4 No formal disciplinary sanction will be given without the right to attend a disciplinary hearing and any sanction will be confirmed in writing to the employee.
- 4.5 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty could be dismissal without notice or pay in lieu of notice

- 4.6 An employee will be given the opportunity to state his/her case at a formal hearing and will have the right to be accompanied at the hearing by a Trade Union/Professional Association representative or work colleague of his/her choosing providing this person does not have a conflict of interest or their presence would prejudice the hearing
- 4.7 A decision on disciplinary action will be made in the light of what is believed, on the balance of probabilities, to have occurred and in reaching a decision about appropriate sanctions the Chair will take account of any mitigating or aggravating circumstances. The nature of any disciplinary action taken will be proportionate to the seriousness of the case and its surrounding circumstances and will reflect a conclusion that any reasonable employer could have been expected to reach.
- 4.8 An employee will have the right to appeal against any formal disciplinary sanction imposed under this Disciplinary Policy.
- 4.9 Where it is deemed necessary to suspend a member of staff, they will be paid their normal rate of pay (including any other contractual payments) as received immediately prior to the suspension. The reason for suspension will be explained.
- 4.10 Where the suspension of a local Trade Union/Professional Association representative is being considered, before such action is taken, the circumstances must be reported to your HR provider and, after obtaining the employee's agreement, they will inform the senior Trade Union/Professional Association officer. If a suspension becomes necessary, after obtaining the employee's agreement, they will ensure that the Trade Union/Professional Association Regional Officer is notified. Where this is not possible, suspension will only be permitted where the situation requires an immediate response such as in cases of gross misconduct or where a risk to health and safety exists.
- 4.11 Staff governors will have no involvement in any formal disciplinary proceedings against another member of staff within the school
- 4.12 It is essential that all formal stages of the disciplinary process are carefully documented.

## **SECTION 2: THE PROCESS**

### **1. FORMAL ACTION**

- 1.1 If informal action does not bring about the desired improvement, or the matter could constitute serious or gross misconduct, the formal procedure should be undertaken.

The key stages in the formal disciplinary procedure are:

- a) Deciding what action to take (page 9).
- b) Investigation (page 12).

c) Formal disciplinary hearing (page 13). Outcomes:

1 - Written Warning.

2 - Final Written Warning.

3a) - Demotion

3b) - Dismissal

3c) - Summary Dismissal.

d) Appeals (page 17) – Every employee has the right to appeal against any action taken against them at the formal stages of the procedure.

1.1.1 The formal stages of the procedure involve some key features which are outlined below. Read this section before starting to follow the procedure.

## 1.2 Investigation

1.2.1 All allegations of misconduct should be thoroughly investigated before formal action is taken. The purpose of the investigation is to establish the facts surrounding the alleged misconduct.

1.2.2 Investigations should usually be carried out by an Investigating Officer. This will be a manager, who is appointed by the Headteacher or their representative. This may be the individual's line manager if it is practical and appropriate.

1.2.3 It is recommended that Headteachers only carry out investigations in exceptional circumstances as their input may be required at a later stage, should it be decided that the employee has a case to answer.

1.2.4 If the allegation is against the Headteacher, then the Chair of Governors should undertake the investigation themselves or appoint an appropriate alternative, who may be external.

1.2.5 The investigation should be conducted in a timely fashion as it is in the interests of all parties for the matter to be dealt with quickly and efficiently. Some investigations are more complex than others but in general they should be carried out within 10 – 20 working days of the Investigating Officer being appointed. Where these deadlines cannot be adhered to then the employee should be informed.

1.2.6 The Investigating Officer is responsible for ensuring that the investigation is documented and the findings, if any, are supported by reliable evidence. They must:

a) Write to the member of staff advising them of the investigation and inviting them to a meeting to provide information relevant to the investigation.

**Note:** The investigation meeting is still part of the information gathering exercise and does not constitute disciplinary action.

b) Collect all documentation relevant to the investigation.

e) Interview witnesses (if appropriate) and consider any other written or physical evidence that supports the case.

- d) Create the witness statements electronically and get them signed by the witnesses.
- e) Produce a final report covering the findings, any key issues that arose during the investigation, including any conflicting evidence. The report should also state whether they feel there is a case to answer.

### **1.2.7 Agreed Outcome**

Following the conclusion of any investigatory meeting, an employee, with advice from their representative, may accept a disciplinary sanction. In accepting an agreed outcome, an employee will forego their right of appeal.

## **1.3 Involvement of others**

- 1.3.1 Although the member of staff has the right to be accompanied by a trade union official or work colleague at an investigation meeting, they should not bring along a person who may be interviewed as part of the investigation or who is normally their line manager.
- 1.3.2 Persons directly involved in the investigation may present a case or appear as a witness, but may not give advice to or sit on any subsequent disciplinary panel.

## **1.4 Formal disciplinary hearing**

- 1.4.1 A formal hearing will be convened if the findings of an investigation suggest that formal disciplinary action may be required.
- 1.4.2 The purpose of the formal hearing is for evidence to be presented and considered. The member of staff will have the opportunity to prepare a response to the evidence presented and answer any allegations that have been made. They will also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses.

## **1.5 Preparing for the hearing**

- 1.5.1 The Headteacher or their nominated person is normally responsible for the arrangements for a disciplinary hearing conducted by the Headteacher and the Governors Disciplinary Panel. They will be supported by a HR representative and, in all cases, a minute taker.
  - 1. Arrange a location for the hearing and someone to take the minutes.
  - 2. Write to the employee, usually within five working days of receiving the investigation report, to advise the member of staff of:
    - a) The grounds that have led the school to consider disciplinary action against them (the allegations), the reasons why the alleged conduct is unacceptable and possible disciplinary sanctions if the allegations are proven.
    - b) The schools intention to institute formal procedures.
    - c) The date, time and place of the hearing (usually within seven working days of the date of the letter).

- d) The right to be accompanied by a trade union representative or a work colleague.
- e) Details and copies of any documents intended to be used as evidence.
- f) Details of any other persons who will be attending the hearing i.e. governors, witnesses and HR representation.
- g) The right to submit documentation and call witnesses as appropriate.
- h) That the deadline for submission of documentation and witnesses is within three working days of the hearing.
- i) For maintained schools where LBWF is the employer you must notify the Schools' HR Team of any hearings which may lead to an employee's dismissal. As the employer the Council has the right to send a representative on behalf of the employer to the hearing.

**Note:** The submission of late evidence (in particular, evidence submitted on the day of appeal) will only be admitted at the discretion of the Chair of the disciplinary panel, and only under exceptional circumstances if there are mitigating circumstances.

- 3. Employee submits evidence and details of witnesses to be called.
- 4. Circulate details of the investigation and notification of any witnesses to be called to all parties.
- 5. Invite witnesses if appropriate. Give three working days' notice.

## **1.6 Non-attendance**

- 1.6.1 If the member of staff and/or accompanying person cannot attend a hearing, they should inform the Chair in advance. If the member of staff fails to attend through circumstances outside of their control, at the time of the hearing, another hearing should be arranged. However, a decision may be taken in their absence if the member of staff fails to attend the re-arranged hearing. The hearing will only be rearranged once.

## **1.7 Conducting the hearing**

- 1.7.1 The Investigating Officer is responsible for presenting the case to the disciplinary panel.
- 1.7.2 It is for the person conducting the hearing to decide whether late evidence from either side can be admitted. If late evidence is accepted in the form of written documentation, it would be usual to allow reading time by way of a brief adjournment.
- 1.7.3 It may be appropriate to adjourn the meeting to collate further information or to consider the alleged misconduct in light of the response provided by the employee.
- 1.7.4 At the end of the formal hearing, one of the following options may apply:
  - a) The case is not proven and no further action is required.
  - b) A disciplinary sanction is issued (see section 2.8).
  - c) The employee is demoted (support staff only).
  - d) Dismissal.
  - e) The employee is suspended pending further investigation.

- 1.7.5 Before making any decision, account should be taken of any mitigating circumstances, any live disciplinary sanctions and the general record of the member of staff, and whether the intended disciplinary action is reasonable under the circumstances.
- 1.7.6 Once a decision is made, the member of staff should be notified of the decision in writing within five working days of the hearing, including any right of appeal. A copy of this letter should be sent to the relevant trade union representative or work colleague and Chair of Governors.
- 1.7.7 Notes of the hearing will be circulated by the person who was responsible for organising the hearing, to be agreed by the employee and members of the disciplinary panel. A copy of the letter of outcome should be stored on the employee's personal file in accordance with Data Protection principles. Formal warning letters should be removed from the personal file when the "live" period has expired.

## **1.8 Outcome**

- 1.8.1 The outcome of the hearing may be that the case is not proven and no further action is required, or one of the following actions:

### **a) 1 - Formal written warning**

If the infringement is regarded as more serious, the member of staff may be issued with a formal written warning. A letter confirming the decision will be issued and will set out:

- a) The nature of the misconduct.
- b) The likely consequences of further misconduct under this disciplinary procedure.
- c) That a written formal warning has been given.
- d) That note has been taken of previous warnings (if appropriate).
- e) That the warning will be recorded on their personal file.
- f) The period for which the warning will remain „live“ (6 or 12 months).
- g) The right of appeal against the decision and how it should be made.

- 1.8.4 The letter will also advise the member of staff that failure to address their behaviour may result in further disciplinary action.
- 1.8.5 This letter will be sent to the member of staff within five working days of the disciplinary hearing. A copy of this letter should be sent to the relevant trade union representative or work colleague, if appropriate.
- 1.8.6 Formal written warnings will normally be removed from personal files and destroyed after 6 or 12 months.

### **b) 2 - Final written warning**

- 1.8.7 Where there is failure to improve conduct, or a serious infringement occurs, the member of staff may be given a final written warning. A letter confirming the decision will be issued and will set out:
- a) The nature of the offence.
  - b) That a final formal warning has been given.

- c) That any further misconduct may result in dismissal.
- d) The period the warning will remain "live" (usually two years).
- e) The right to appeal and how it should be made.

1.8.8 The letter will make it clear that failure to address misconduct may result in further disciplinary action. Final written warnings will be removed from personnel files and destroyed after two years.

**c) 3a – Demotion**

1.8.9 In gross misconduct cases as an alternative to dismissal there may be circumstances where an employee (support staff only) may be demoted rather than the employee return to their substantive post. This does not have to be at the same grade as their current substantive post.

**d) 3b - Dismissal with notice**

1.8.10 Where there is still no improvement in conduct, despite the issuing of a final written warning the member of staff may be dismissed with the relevant notice period. A letter confirming the decision will be issued and the member of staff will be advised of their right of appeal. The letter will also advise the member of staff why this decision was taken. The dismissal will be effective from the point at which the employee is informed of the decision (where a letter is sent by post, a phone call confirming the decision is advisable).

1.8.11 Payroll should be informed of the dismissal date on the same day as the employee is notified.

1.8.12 A member of staff will not be required to work their notice a payment will be made in lieu of notice.

**e) 3c - Dismissal without notice**

1.8.13 Where a disciplinary panel determines a charge of gross misconduct the member of staff may be dismissed without notice. The dismissal will be effective from the point at which the employee is informed of the decision (where a letter is sent by post, a phone call confirming the decision is advisable). A letter confirming the decision will be issued and the member of staff will be advised of their right to appeal. The letter will also advise why this decision was taken. Payroll should be informed of the dismissal date on the same day as the employee is notified.

**1.9 Appeals**

1.9.1 All appeals will be heard by a governing body Appeal Panel consisting of not less than three members of the governing body who have not been involved in any previous action or decision connected with the dismissal. The decision of this Panel is final, subject to the employee's legal rights. Where there are not enough governors available, the appeal may be heard by two governors, but there should be no fewer than the number that made the initial decision.

1.9.2 The Panel will be supported by a HR representative who has not previously been involved in the case.

1.9.3 The purpose of an appeal is for the member of staff to request the overturning of a decision, which they deem as unfair or unreasonable, for example

because they believe the penalty/action was unduly severe, new evidence has come to light, or the proper procedure was not followed in the original hearing.

- 1.9.4 If an employee wishes to appeal against the outcome of a disciplinary hearing, they should write to the Chair of Governors within seven working days of being notified of the disciplinary decision. The member of staff should clearly state in their initial letter the grounds for appeal.
- 1.9.5 During an appeal hearing the member of staff may be accompanied by a trade union representative or a work colleague and shall be given a full opportunity to state the grounds for their appeal and present new evidence (if any).

## **1.10 Preparing for an appeal hearing**

- 1.10.1 The Headteacher/Chair will nominate someone to make the arrangements for the appeal hearing.
  - a) Arrange a location for the appeal and someone to take minutes.
  - b) Write to the employee to arrange an appeal hearing, normally within five working days of being given the appeal letter. The member of staff should be given written notification of at least five working days before the appeal hearing is to take place and should be informed of the date, time and location of the hearing and the right to be accompanied by a trade union representative or work colleague.
  - c) Invite the person who conducted the disciplinary hearing and supporting HR representative to attend the appeal hearing to present evidence and the outcome of the panel's decision.
  - d) The employee and person who conducted the disciplinary hearing present documentation and provide details of relevant witnesses three days prior to the appeal hearing.

**Note:** The submission of late evidence (in particular, evidence submitted on the day of the hearing) will only be admitted at the discretion of the Chair of the appeal panel, and if there are mitigating circumstances.

- a) Invite witnesses, if appropriate. Give three working days' notice.

## **1.11 Conducting an appeal hearing**

- 1.11.1 At the appeal hearing, once the relevant issues have been thoroughly explored, the hearing will be adjourned in order for a decision to be taken. The decision does not need to be taken immediately if the Panel requires additional time to assess all the information; however the member of staff should be notified of the outcome within five working days of the decision being made.
- 1.11.2 The Chair of the Panel is responsible for writing the letter, with the support of the HR representative on the appeal panel. A copy of the letter of outcome should be stored on the employee's personal file in accordance with Data Protection principles.
- 1.11.3 Notes of the hearing will be circulated by the HR representative to be agreed by the employee and members of the Appeal Panel.
- 1.11.4 The decision of the Appeal Panel will be final and binding on all parties concerned. No further appeals are allowed and there is no further recourse under this procedure.

## **SECTION 3: GENERAL INFORMATION**

### **1. RESPONSIBILITY FOR DISCIPLINARY ACTION & DISMISSAL**

- 1.1. The governing body has the overall responsibility for disciplining and dismissing staff, with powers to delegate this responsibility to the Headteacher. Where the Headteacher has not been involved in the case or investigation, they should be given the delegated responsibility to make decisions up to the initial dismissal decision, following which there would be an opportunity to appeal to a panel of governors.
- 1.2. The Headteacher will chair any disciplinary hearing and make the initial dismissal decision unless the following circumstances apply:
  - a) The Headteacher has been directly involved in disciplinary procedures leading to dismissal (including any aspect of the investigation), has instigated a proposal to dismiss or is a witness of particular conduct giving grounds for the dismissal in question.
- 1.3. In situations where it is not appropriate for the Headteacher to perform these functions (see above), a Governors' Disciplinary Panel formed of members of the governing body will be responsible for the process of making such decisions.
- 1.4. The governing body should nominate three of its members of the governing body who are not staff members to represent the Governors' Disciplinary Panel and a further three governors, who are not staff members and who are different from the Governors' Disciplinary Panel to represent the Appeals Panel. Hearings of the Governors' Disciplinary Panel are usually convened by the clerk to the governors at the request of the Headteacher or Chair of Governors where they consider it appropriate.

In certain circumstances a panel of two governors may be used.
- 1.5. The School's HR Provider will offer advice at all stages of this procedure (where LBWF is not the HR provider the Headteacher should seek professional advice from their HR Provider at the earliest opportunity).

### **2. REPRESENTATION AT MEETINGS**

#### **2.1 Right to be accompanied**

- 2.1.1 A member of staff has the right to be accompanied by a trade union representative or work colleague at the formal stages of this procedure.
- 1.1.2 If the accompanying person is not available at the proposed time, agreement with the member of staff or trade union representative will be sought for an alternative date and time where possible within five working days. The five day time limit may be extended in exceptional circumstances but the meeting should not usually be delayed by more than ten working days.

## **2.2 Role of the accompanying person**

2.2.1 Accompanying persons are entitled (with consent of the member of staff) to:

- a) Put the case forward on behalf of the member of staff.
- b) Confer with the member of staff during the hearing.
- c) Sum up the case for the member of staff.
- d) Respond on behalf of the member of staff to any view expressed at the hearing.

2.2.2 However, accompanying persons are **not** entitled to answer questions on behalf of the member of staff.

## **3.0 CONFIDENTIALITY**

3.1 Confidentiality should be maintained by all those involved, including the member of staff, at all stages throughout the procedure by ensuring that only those people who need to know have access to details. No other member of staff should be informed that a colleague is subject to action under the procedure.

3.2 While respecting confidentiality it is important that the member of staff is free to discuss issues with their trade union representative or work colleague who may be able to assist or support them through what is acknowledged to be difficult circumstances.

3.3 Written records of issues will be treated as confidential and kept no longer than is necessary in accordance with the Data Protection Act 1998.

## **4.0 SICKNESS ABSENCE DURING DISCIPLINARY CASE**

4.1 Reasonable steps should be taken to enable attendance at meetings and hearings and certified absence and entitlement to sickness pay do not of themselves represent grounds for deferring this procedure.

4.2 A member of staff who is unfit to attend a meeting or hearing must provide a medical certificate stating physical incapability of attending and/or inability on mental or psychological grounds to participate reasonably in the proceedings. Should the member of staff be unable to provide a certificate specifically justifying their absence failure to attend may constitute a disciplinary offence in itself. A referral to Occupational Health should be made where required.

4.3 The Chair of the panel will consider whether the meeting or hearing should go ahead in the absence of the individual. A considerate and sympathetic approach should be adopted but in general any justification for delay should be discussed with HR and Occupational Health (OH).

4.4 If a meeting or hearing is to go ahead in the absence of the member of staff, where possible, they should be notified, giving at least three working days' notice of the meeting. In such circumstances a full account of the meeting or

hearing should be provided to the member of staff in writing, confirming any decision taken.

- 4.5 If sickness absence occurs before the commencement of the **formal** stages of the procedure the case should be referred immediately to Occupational Health to assess the person's health and fitness to attend investigation meetings and disciplinary hearings.

## **5.0 DECIDING WHAT ACTION TO TAKE**

- 5.1 This section describes how to decide what action to take before instigating formal disciplinary action:

It may also be necessary to suspend the member of staff in the following circumstances:

- a) Where consideration is given to any potential child protection issues.
- b) To ensure a thorough unhindered investigation can take place.
- c) The allegations may constitute gross misconduct.

### **5.2 Suspension**

- 5.2.1 In cases of alleged serious or gross misconduct it may be necessary to suspend the member of staff (usually on full pay and conditions) before a decision about disciplinary action is taken.
- 5.2.2 Only the governors (normally the Chair of Governors) or the Headteacher have the power to suspend a member of staff. Only the Chair of Governors may end the suspension.
- 5.2.3 Suspension of an employee is a precautionary neutral act and does not in itself constitute disciplinary action or a presumption of guilt. It may be appropriate in the following circumstances:
- a) Where children are at risk.
  - b) Where employee needs protection themselves.
  - c) Where the allegations amount to alleged gross misconduct.
  - d) Where the school's reputation might suffer unduly.
  - e) Where the presence of the employee may hinder the investigation.

#### **5.2.1 Considering whether to suspend an employee**

- 5.2.1.1 The Headteacher, following consultation with the Chair of Governors, makes the decision whether to suspend. Advice from HR should be sought.
- 5.2.1.2 The decision is confirmed in writing within three working days. The letter should state that the suspension is precautionary, pending the outcome of the investigation, and advise the member of staff:
- a) Of the reasons for suspension (the allegations against them), and possible disciplinary sanction if the allegations are proven.
  - b) Of the terms and expected duration of the suspension.
  - c) That the action of suspension does not imply guilt or that a decision about the outcome has been reached.
  - d) That the employee must be contactable but not attend the workplace or contact work colleagues unless required to do so by management.

- e) That the employee should not seek to influence anyone involved in the investigation.
- f) That the employee should seek advice from their union representative.

## **5.2.2 Actions during a suspension**

### **5.2.2.1 Whilst a member of staff is suspended:**

- a) The nominated contact person should communicate with them regularly keeping them informed of the status of the suspension and of progress on the investigation; the member of staff must not take alternative paid employment and must be available to assist with or participate in the investigation.
- b) The member of staff must confirm any sickness and annual leave.

## **6.0 SAFEGUARDING/CHILD PROTECTION**

- 6.1 Where an allegation of an offence is received that may be covered by the remit of legislation dealing with the protection of children consideration should be given to the suspension of any member of staff under investigation in accordance with Department for Education guidance in "Safeguarding Children and Safer Recruitment in Education".
- 6.2 Where there is a potential safeguarding/child protection issue the Headteacher should consult with the governing body to make a decision about the course of action that should be taken. Advice from HR and the LADO should be sought.
- 6.3 The Local Authority Designated Officer (LADO) should be informed of all allegations where an employee has:
  - a) Behaved in a way that has harmed a child or may have harmed a child.
  - b) Possibly committed a criminal offence against or related to a child.
  - c) Behaved towards a child or children in a way that indicates they are unsuitable to work with children.
- 6.4 The LADO will consult police and social care colleagues as appropriate. They should also be informed of any allegations that are made directly to the police or to children's social care.
- 6.5 If the alleged offence is within the school's remit a disciplinary investigation should be carried out in accordance with normal procedure even if other external agencies, (e.g. police, social services), are carrying out investigations. It is important that the school's investigation does not compromise the work of the external investigation. For example, this may mean it would not be appropriate to interview and take statements from some witnesses.
- 6.6 External procedures involving the police and social care colleagues are often, by their very nature extensive and are unlikely to meet the deadlines normally set within the disciplinary procedure. Cases need to be viewed on their merits, with advice taken from the external agencies and an appropriate timetable set. A disciplinary hearing may, if sufficient information is available, take place before external agencies have concluded their case. In these instances it is not unusual for the member of staff to decline to attend.

- 6.7 Suspension should be considered where there is cause to suspect a child is at risk of significant harm, or the action warrants investigation by the police or is so serious that it might be grounds for dismissal. However, a person should not be suspended automatically or without careful thought.
- 6.8 Where an initial evaluation concludes that there should be enquiries by social care and/or an investigation by the police the LADO should canvas police and social care views about whether the accused member of staff needs to be suspended to inform the school's decision. Where the decision is taken to suspend the school should provide appropriate support to the individual who is the subject of the allegations.
- 6.9 The fact that a person tenders his or her resignation, or ceases to provide their services, must not prevent an allegation being followed up in accordance with these procedures. Settlement agreements must not be used in these cases.
- 6.10 In all cases in this area it is essential that excellent communication is maintained between the school, HR, Social Care, Child Protection Officers, the Police and other external agencies.
- 6.11 It is important that a clear and comprehensive summary of any allegations made, details of how the allegation was followed up/ resolved, and a note of any action taken and decisions reached is kept on a person's confidential personnel file. The record should be retained for a period of 10 years from the date of the allegation.

## **7.0 REFERRALS TO DISCLOSURE & BARRING SERVICE (DBS).**

- 7.1 As an organisation we have a duty to refer information to the Disclosure and Barring Service (DBS) when we have dismissed an individual, or an individual resigns, because they harmed, or may harm, a child or vulnerable adult.
- 7.2 We also must refer information to the DBS where:
- a) An individual who is working closely with vulnerable groups has harmed, or may harm, a child or vulnerable adult.
  - b) An individual who might in the future work closely with vulnerable groups has harmed, or may harm a child or vulnerable adult.
  - c) We think the ISA may consider it appropriate to bar the individual.

Relevant information should be referred to the DBS as soon as it becomes available.

## **8.0 GRIEVANCE DURING A DISCIPLINARY CASE**

- 8.1 A grievance which is raised regarding an on-going disciplinary process will not necessarily postpone the disciplinary process.
- 8.2 Where the employee or trade union representative raises a grievance and requests a disciplinary process be suspended whilst the grievance is heard the Chair of Governors will determine whether or not the policy should be invoked and whether it is appropriate to suspend the disciplinary process in order to deal with the complaint. In these circumstances advice should be sought from the HR provider.

## 9.0 CRIMINAL OFFENCES

- 9.1 Employees of the school are expected to declare all convictions. A member of staff charged with or convicted of a criminal offence should notify the Headteacher immediately, as this may lead to disciplinary action. Failure to notify a criminal conviction or charge may be deemed gross misconduct.
- 9.2 Any such information will be treated on a confidential basis but decisions will be taken on whether the offence has breached the mutual trust that exists between the school and the member of staff or is a clear breach of the statutory rules concerning the employment of staff.
- 9.3 Where disciplinary action is appropriate a formal disciplinary hearing will be conducted. If the member of staff is unable to attend because of imprisonment/detainment the procedure may be applied in their absence.
- 9.4 A member of staff who is unable to report for work due to imprisonment as a result of a conviction or who is on remand will be suspended without pay until the conclusion of the disciplinary procedure (unless they have been dismissed in accordance with this procedure).

**Note:** Under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, persons who work with children or vulnerable adults need to declare all convictions even though they may be deemed as 'spent' under the above Act.

## **Appendix A – Examples of Misconduct & Gross Misconduct**

### **Misconduct**

Any breach of an employee's Terms and Conditions of Employment, any conduct, which the school considers unsatisfactory or prejudicial to its interests, or any failure to meet the required standards of work, may render an employee liable to disciplinary action.

The list below is not exhaustive and only serves as a guide to matters that the school may deem (depending upon the nature, circumstances and severity of the incident) to be a breach of general discipline.

Examples of misconduct might include:

- Unauthorised absence from work.
- Failure to follow absence notification and / or certification requirements.
- Poor time keeping.
- Refusal / failure to follow reasonable management instruction.
- Breach of one or more school policies or procedures by a deliberate act.
- Failure to adopt safe working practices by a deliberate act.
- Neglect of duty
- Misuse of School property
- Deliberate insubordination.

### **Gross Misconduct**

Gross misconduct comprises acts of such a serious and fundamental nature that they result in a breach of an employee's contractual terms and makes continuation of the working relationship impossible. Such behaviour may justify dismissal without notice. Where there is alleged gross misconduct it may be necessary to suspend the employee (usually on full pay) pending investigation.

The list below is not exhaustive and only serve as a guide to matters that the school may deem (depending upon the nature, circumstances and severity of the incident) to be a breach of gross misconduct.

Examples of gross misconduct might include:

- Misuse of official position for personal gain.
- Fraud, theft, unauthorised removal or possession of property belonging to the school or others.

- Acts of violence, including physical assault, threats or intimidating behaviour towards others.
- Serious sexual misconduct (behaviour at or away from work that affects the employee's suitability for employment e.g. child protection issues).
- Deliberate or malicious damage to school property.
- Bringing the name of the school into disrepute.
- Serious insubordination.
- Behaviour likely to endanger the health and safety of others.
- Causing unacceptable loss, damage or injury.
- Falsification of qualifications or information that is a statutory or essential requirement for employment or which results in additional remuneration.
- Dishonesty,
- Acceptance of bribes or corrupt practices.
- Being incapable of adequately performing work duties as a result of drunkenness or drug taking.
- Unauthorised disclosure of confidential records which breach the data protection regulations 1998.
- A criminal offence, relevant to the employee's suitability to remain in employment or right to work in the UK.
- Undertaking services (paid or voluntary) that conflict with the employee's obligations to the school.