

Disciplinary Policy for Schools and Academies

Effective from September 2016

1. Policy Statement

This procedure is recommended for adoption by the Governing Bodies of schools and academies. Governing bodies are required to adopt formal policies and procedures to help manage the process of improving conduct and discipline.

The Governing Body is responsible for ensuring that fair, consistent and objective procedures exist for matters relating to discipline.

The procedure should be made known to all employees and should remain accessible to them.

This procedure is designed to help and encourage all employees to achieve and maintain the expected standards of behaviour and to comply with the rules of the Governing Body.

This policy has been implemented following consultation with the recognised Trade Unions. Where the Governing Body wishes to deviate from this proposed policy or adopt any other policy, it is the responsibility of the Governing Body to arrange consultation with recognised trade unions.

2. Scope

The procedure applies to all school employees (including Head Teachers), other than support staff within their probationary period.

This procedure does not apply to matters of:

- **grievance** which is dealt with under a separate procedure adopted by the Governing Body;
- **capability** for which there is a separate procedure adopted by the Governing Body, unless it is clear that the employee is capable of reaching the required standard and has not done so;
- **sickness absence** for which there is a separate procedure adopted by the Governing Body, unless there is good reason to believe that the absence or ill health is not genuine.

Allegations of **bullying, harassment, discrimination and/or victimisation** will normally be handled under the Anti- Bullying and Harassment Policy. However, if allegations of bullying, harassment, discrimination and/or victimisation are made concurrently with other allegations of misconduct/ gross misconduct, all the allegations may be investigated together under this policy.

3. Legal Context

This policy is compliant with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

This procedure is also compliant with the Education Act and the School Staffing (England) Regulations.

4. Principles

This procedure is primarily concerned with improving conduct. It aims for an outcome that is fair and constructive.

Employees should be made fully aware of the school's standards and expectations of conduct and behaviour and the possible consequences of falling below these standards. All disciplinary issues should be dealt with in a timely way.

When appropriate, conduct issues should be dealt with using informal disciplinary action. Employees should be encouraged to seek the advice of a trade union and be informed of their right to be accompanied by a work colleague or trade union representative at all formal stages.

No formal disciplinary action will be taken without a prompt, objective and thorough investigation into the circumstances.

Employees will be given a full opportunity to respond before a decision is reached. The employee will be heard in good faith and decision makers will act impartially.

An employee will not be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice. (summary dismissal).

An employee will be given a written explanation for any sanction.

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

The timescales within this policy are recommended. If it is not possible to meet these timescales, the parties involved should be told why and when a resolution or outcome can be expected.

An individual faced with possible disciplinary action may be anxious about the situation, therefore the Head Teacher should make the employee aware of the confidential counselling services that may be available as follows:

- Employee Assist: Mon –Fri 9:00 am to 5:00 pm
Telephone: 01604 626787
Email: employeeassist@relatenorthants.org.uk
- Education Support Partnership, Telephone: 08000 562561;
www.educationsupportpartnership.org.uk

5. Responsibilities

5.1 Responsibility for investigating the allegations

It should be noted, before appointing an investigator, that the investigator cannot also make a disciplinary decision or issue any formal disciplinary sanction.

It is the Head Teacher's responsibility to identify an appropriate person to investigate the allegations. This may be a member of the school's leadership team, or an external person with appropriate knowledge, skills and experience. The Head Teacher may nominate him/herself to investigate.

If the allegations are against the Head Teacher, it is the Chair of Governors' responsibility to identify an appropriate person to investigate the allegations. This may be another governor, or an external person with appropriate knowledge, skills and experience. The Chair of Governors may nominate him/herself to investigate.

The investigator is responsible for:

- Gathering all the relevant facts
- Producing a written report, and
- Determining whether there is a case to answer.

The investigator should not make judgements about whether the allegations are "proven" or as to what disciplinary sanction if any should follow.

5.2 Responsibility for making a determination at a disciplinary hearing

The Governing Body may delegate to the Head Teacher, and/or one or more governors, its power to make decisions regarding the dismissal of any member of staff.

It is expected that the Governing Body will normally delegate the function of decision maker at the disciplinary hearing to the Head Teacher, unless the Head Teacher:

- Is the subject of the allegations
- has carried out the investigation into the allegations, or
- is a witness to the allegations.

In situations where for any reason the Head Teacher cannot perform the decision making function, a Committee of one or more Governors will be responsible, according to the school's delegation of functions.

Where the allegations are against the Head Teacher, a Committee of one or more Governors will be responsible, according to the school's delegation of functions.

A Committee of Governors may, where necessary, consist of governors from other school(s) within the Local Authority/ Academy Trust/ relevant diocese. The Chair of Governors will decide whether such steps are necessary having taken advice from an HR Advisor and Local Authority Governor Support Services / appropriate person at the Academy Trust.

5.3 Responsibility for hearing an appeal

Appeals will be heard by a Committee of one or more Governors, according to the school's delegation of functions. The member(s) of the Appeals Committee will not have been previously involved in the case.

An Appeal Committee may, where necessary, consist of governors from other school(s) within the Local Authority/ Academy Trust/ relevant diocese. The Chair of Governors will decide whether such steps are necessary having taken advice from an HR Advisor and Local Authority Governor Support Services / appropriate person at the Academy Trust.

5.4 Responsibility for notifying the Local Authority of a decision to dismiss

Where the Council is the employer (Community and Voluntary Controlled Schools), and a determination is made that an employee should cease to work at the school, the governing body must notify HR Advisory at the Council, in writing. The Council will carry out the formal dismissal, with appropriate notice, within 14 days, following which there is an opportunity for an appeal to a governor committee.

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5.5 Responsibility for notifying other agencies in certain serious cases

The Head Teacher is responsible for making a referral to the National College of Teaching and Leadership (NCTL) when a teacher has been dismissed for misconduct, or would have dismissed them had they not resigned first. (The Chair of Governors will assume this responsibility if the referral is about the Head Teacher.)

The Head Teacher is responsible for making a referral to the Disclosure and Barring Service (DBS) if someone has harmed, or poses a risk of harm to a child and has been removed from working (paid or unpaid) in the school, or would have been removed had they not left. (The Chair of Governors will assume this responsibility if the referral is about the Head Teacher).

6. Right to be Accompanied

An employee has a statutory right to be accompanied where a disciplinary meeting could result in a formal warning, some other disciplinary action or confirmation of disciplinary action (at appeal).

The employee can be accompanied by a work colleague or a trade union representative or an official employed by a trade union, if they are a trade union member. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker.

To exercise their statutory right, an employee must make a reasonable request to be accompanied. It would not be reasonable, for example, to insist on a companion whose presence may prejudice the hearing.

The companion may address the meeting to put and sum up the employee's case, respond on behalf of the employee to views expressed at the meeting and confer with the employee during the meeting.

The companion does not have the right to answer questions on behalf of the employee, address the meeting if the employee does not wish it or to prevent the employer from explaining its case.

7. Special Circumstances

7.1 Trade Union Officials

If the subject of a disciplinary matter is an official representative of a trade union, no action (including suspension) will be taken beyond the informal stage, until the circumstances have been discussed with a senior representative or paid official as nominated by the relevant trade union, after obtaining the employee's agreement to discuss the matter. In this event the Head Teacher / Chair of Governors will contact their HR Advisor for advice.

7.2 Child Protection Issues

If there is a child safeguarding allegation against any member of staff (including volunteers), the Head Teacher will:

- immediately seek initial advice from a Designated Officer (previously known as LADO) on 01604 364031 or via the Multi-Agency Safeguarding Hub (MASH) on 0300 1261000.

- make a referral to the Designated Officer via the MASH within 24 hours, using the [Online Form](#)
- not attempt to investigate the matter by interviewing any potential child witnesses or the accused person but simply record the facts/information that has been presented to them.
- take advice from both the Designated Officer and HR Advisor before suspending any member of staff or taking any investigatory action.

The Designated Officer will respond to a referral within 7 calendar days. If any concerns are identified a strategy discussion will be held with the police to decide how best to proceed with the investigation.

Further information regarding the threshold criteria and procedures for managing an allegation against an adult who works with children and young people can be found at:

http://northamptonshirescb.proceduresonline.com/chapters/p_man_alleg_abuse.html#referring

7.3 Criminal Offences

Criminal offences outside employment will not be treated as automatic reasons for disciplinary action. The main consideration will be whether the employee's conduct warrants action because of its employment implications.

Generally, disciplinary action will not be postponed because other proceedings are contemplated or pending. The school will investigate the facts as far as possible and take action appropriate to the findings.

There may be circumstances which may require the Head Teacher or Chair of Governors to liaise with the Police or other statutory bodies, and the school may need to take other proceedings into account when managing its process.

Where criminal charges result in an employee being unable to fulfil their contractual obligations this may result in dismissal.

It should be noted that a decision by the police/CPS not to charge or prosecute will not necessarily mean that action under this policy will not continue. It should be borne in mind that the burden of proof in criminal cases (beyond reasonable doubt) is different from the burden of proof in disciplinary cases (balance of probabilities).

In all cases the Head Teacher may seek advice on this matter from their HR Advisor.

7.4 Grievance during the disciplinary process

Where an employee raises a grievance during a disciplinary process, the Head Teacher/ Chair of Governors will decide what to do depending upon the circumstances of the case. Normally, both disciplinary and grievance processes will run concurrently. However in some circumstances the disciplinary process will be temporarily suspended. Where this situation arises, the Head Teacher/ Chair of Governors can contact their HR Advisor before taking further steps.

7.5 Suspension

In some circumstances it may be appropriate to suspend an employee, with pay whilst investigations are carried out.

Only the Head Teacher or the Governing Body can suspend an employee. Only the Governing Body can lift the suspension.

Advice should be sought from the school's HR Advisor before suspension.

Consideration should be given to alternatives to suspension (e.g. moving the employee to other work or another location) in the first instance.

Suspension should be a last resort only be applied where the circumstances of the case make it unacceptable for the employee to remain in school while an investigation is carried out. Suspension is always on full pay.

Some examples where suspension may be appropriate are as follows (not an exhaustive list):

- children are at risk;
- staff are at risk;
- the employee needs protection;
- the allegation if proved is likely to amount to gross misconduct;
- the school's reputation may otherwise suffer unduly;
- the presence of the employee may impede the investigation.

Suspension should be regarded as a neutral and protective measure, not in any sense as a disciplinary sanction or implying guilt.

Where suspension is under consideration, whenever practicable, the employee should be called to a meeting. This may be at very short notice.

Written confirmation of the suspension should be sent within one working day.

The Head Teacher or Governing Body should notify the Council of the suspension, if the Council is the employer. This can be done via the HR Advisory team.

The period of suspension should be kept as brief as possible and kept under regular review by the Head Teacher or Chair of Governors. Investigations should be started immediately. The suspension will usually last until the investigation has been concluded or any resulting disciplinary hearing has been held.

The employee should not contact pupils, other members of staff, or come onto school premises during the suspension without the written permission of the Head Teacher or Chair of Governors. However, where practicable, the following support should be offered to the employee during the period of suspension:

- The name of a responsible person to act as a point of contact, to provide information on the progress of the investigation.
- Information on counselling that may be available through Employee Assist, Education Support Partnership and other appropriate sources of support.
- Reasonable access to information which will help the employee to prepare their case.

8. Misconduct and Gross Misconduct

8.1 Examples of Misconduct

The following are examples of misconduct and in severe cases some examples could be considered as gross misconduct.

This is not an exhaustive list:

- leaving the place of work during the employee's normal working hours without permission;
- frequent failure to attend work punctually;
- failure to comply with the school's agreed procedures e.g. failure to notify / certify absence;
- making unauthorised private telephone calls or sending personal mail at the school's expense or unauthorised use of the internet;
- failure to comply with a reasonable instruction;
- failure to exercise proper control or supervision over pupils;
- failure to discharge without sufficient notice the obligations placed on the employee by their contract and terms and conditions of employment;
- abusive behaviour or language that is directed to employees, parents, pupils and members of the public;
- a wilful attempt to mislead.

8.2 Examples of Gross Misconduct

This term is used to describe serious misconduct which may destroy the employment contract between the employer and the employee and make any further working relationships and trust impossible.

The following are examples of the sort of conduct that could be regarded as gross misconduct, making the employee liable to dismissal without notice.

This is not an exhaustive list:

- harming a child (whether physical, sexual, emotional harm or neglect)
- serious bullying, harassment, discrimination or victimisation of other employees; (Where referred as a disciplinary matter as an outcome of an investigation carried out under the 'anti-harassment, discrimination and bullying at work policy and procedure)
- serious bullying), harassment, discrimination or victimisation of pupils or members of the public;
- dishonesty, including theft, fraud or deliberate falsification of records;
- acceptance of bribes;
- physical violence or threatening behaviour;
- sexual offences or sexual misconduct;
- serious negligence which causes or might cause unacceptable loss, damage or injury;
- deliberate damage to school property;
- serious or persistent failure to comply with a reasonable instruction;
- misuse of the school's property or name, or misuse of official position for personal gain;
- being under the influence of illegal drugs or alcohol whilst at work, including at school events;
- serious infringement of health and safety rules;
- inappropriate contact with any pupil (regardless of age);
- serious breach of any professional code of conduct applicable to the job
- serious abuse of the school's computer equipment/software; including deliberately accessing internet sites containing pornographic, offensive or obscene material and inappropriate use of Social Media;
- serious breach of trust and/or confidence;
- serious breach of child safeguarding or child protection rules;
- act(s) (within or outside the course of duty) that could have or do bring the School/ Council/ Academy Trust into disrepute.

Where gross misconduct is determined at a disciplinary hearing the employee may be summarily dismissed – that is dismissed immediately without notice or pay in lieu of notice. However, pay would be reinstated in full back to the date of dismissal if an appeal against dismissal was subsequently successful.

9. Informal Disciplinary Action

Where possible, less serious conduct and disciplinary matters should be dealt with informally. Consistency of approach to discussing and handling these matters with employees is important. General conduct issues can be resolved by the line manager through providing guidance, advice, the opportunity to undertake further development, coaching and counselling.

Informal discussions should be conducted privately and the main focus should be a two way discussion that facilitates the opportunity to encourage improvement.

During the discussion the line manager will consider and listen to the views of the employee.

Where improvement is required the line manager will ensure that the employee clearly understands the level of improvement required, how their conduct will be reviewed and over what period. The employee should be advised that should there be no improvement or further conduct issues these will be dealt with under the formal procedure.

The line manager will confirm the key aspects and outcomes of the informal discussion in writing.

If during discussions it becomes obvious that the matter may warrant formal investigation the meeting should be stopped and the employee will be told that the matter will be continued under the formal procedure.

10. Formal Procedure

10.1 Investigations

Where a complaint of misconduct warrants formal investigation, no action should be taken until the Head Teacher/ Chair of Governors has appointed an appropriate person to conduct a full investigation (see Section 5 - Responsibilities).

The aim of the investigation is to establish the facts of the case as promptly and thoroughly as practicable.

employee will be informed:

- That an investigation is taking place.
- Of the details of the complaint/allegation.
- That they may be accompanied by a work colleague, a trade union official or an official employed by a trade union to any formal meetings.

If the employee is required to attend an investigation meeting, they will be given reasonable notice of this meeting where practicable.

Although there is no statutory right to be accompanied at the investigatory interview, the school allows this right under this policy. However, the investigatory interview will not be delayed to allow a particular representative or colleague to attend.

Once the investigation is complete the investigator will produce a report. The report will state whether or not there is a case to answer.

If there is no case to answer, the matter will be closed and the employee informed in writing. If there is a case to answer, the Head Teacher / Chair of Governors will usually arrange a formal disciplinary hearing. The employee will be notified in writing.

Exceptionally, following investigation a matter may be less serious than the allegations first indicated. The Head Teacher / Chair of Governors may decide it is more appropriate to resolve the matter informally than hold a formal disciplinary hearing.

10.2 Disciplinary Hearing

The person(s) appointed to act as decision maker at the disciplinary hearing will notify the employee in writing of the hearing, giving at least 7 calendar days' notice and informing them of their right to be accompanied by a work colleague a trade union representative.

The employee should be given details of the allegations and informed that either party can produce witnesses and/or written statements and relevant supporting documents at the hearing.

An exchange of documents should take place at least 7 calendar days before the hearing although this may be extended or reduced with the agreement of the appointed decision maker.

A model agenda for the disciplinary hearing can be found at Appendix 2.

10.3 Location of Meetings

Meetings should always be conducted in a private setting and there may be circumstances when it is appropriate for these to be held in external locations.

10.4 Failure by the employee to attend / rearrangement of meetings

Employees must take all reasonable steps to attend meetings or hearings under this policy. An employee who cannot attend a meeting should inform the relevant person in advance. If the employee fails to attend and has not provided an acceptable reason in advance, reasonable attempts should be made to contact them. A decision may be made for the meeting should go ahead in their absence.

If the employee fails to attend through circumstances beyond their control e.g. illness, the meeting should be rearranged taking into account the reason. If the inability to be able to attend is related to sickness a medical certificate should be provided. In some cases a referral to Occupational Health may be made where deemed necessary to consider whether the employee is fit to attend a disciplinary hearing. Where the medical opinion is that the employee cannot attend, the Head Teacher/ Chair of Governors will decide for how long it is reasonable to delay the hearing, taking into account medical information, the needs of the school and all the relevant circumstances. However, the meeting will not be postponed indefinitely. When the hearing is rearranged, if the employee's absence is ongoing the employee will be given the option of providing written representations and / or having their trade union representative attend on the employee's behalf (if the employee is a member of a trade union).

If the employee's representative or colleague cannot attend on the proposed date, the employee can suggest another date that is reasonable and is not more than 7 calendar days after the original date proposed, unless mutually agreed otherwise.

Meetings will not be rearranged more than once unless there are exceptional circumstances in which case a further rearrangement will be at the discretion of the Head Teacher / Chair of Governors. Usually, if the employee fails to attend a rearranged meeting, it will proceed in the employee's absence.

10.5 Witnesses

If witnesses are called to give evidence their identity will be disclosed to the other party in advance, unless exceptional circumstances prevent this e.g. where anonymity is to be preserved. Caution should be exercised where children could be called as witnesses. However, where there is a requirement to call children, parents or guardians must be informed and given the opportunity to accompany the child at the hearing.

The other party will receive advance copies of written witness statements to which reference will be made at the hearing. It is preferable that the authors of statements attend the hearings as witnesses, although in certain circumstances it is acknowledged that this may not be appropriate or necessary e.g. in the case of children or where anonymity is to be preserved.

10.6 Notes

Notes of the hearing should be taken and copies of the notes circulated to all parties as soon after the meeting as practicable. The Note taker is arranged by the school and will not have been involved in any other part of the formal process.

If amendments to the notes are requested by any individual who was present at the hearing, these changes should be made in a separate document, signed and appended to the original notes so that the original document remains unaltered.

10.7 Support

The Head Teacher/ Governors may have HR Advisor to attend in an advisory capacity. The investigator may also be supported by a HR advisor in presenting their case.

10.8 Making the Decision

The Head Teacher/ Committee will deliberate in private, with their HR advisor present in an advisory capacity only. The parties may be recalled to clear points of uncertainty on evidence already given. If a recall is necessary both parties are to return even if only one is concerned with the point giving rise to doubt.

Where there is a committee of two or three governors, they will make all reasonable efforts to reach a unanimous decision.

If a unanimous decision cannot be reached:

- in a Committee of two governors, the Chair of the Committee will have the casting vote;
- in a Committee of three governors, a majority decision can be taken.

10.9 Communicating the Decision

The Head Teacher/Governor(s) will give the employee their decision on the day of the hearing whenever possible. The decision will be confirmed in writing within 7 calendar days of the hearing.

10.10 Outcomes

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Whether or not the allegations are substantiated will be decided on the balance of probabilities, having carefully considered all the evidence.

Case not Substantiated

If the Head Teacher/ Governor(s) consider that the allegations against the employee are not substantiated, if possible, the employee will be informed of this at the meeting and the decision will be confirmed in writing. All reference to the matter in question will be removed from the employee's personal file.

Case Substantiated

If the Head Teacher/ Governor(s) consider that one or more of the allegations are substantiated, an appropriate disciplinary action will be taken, having regard to all the circumstances. Wherever possible, the employee will be informed of this at the hearing and the decision will be confirmed in writing.

10.11 Disciplinary Action

Written Warning

In cases of misconduct, a written warning will be given detailing the reasons for the warning and any improvements required. It will also advise that further action under the procedure will be considered if the improvements required are not met and inform the employee of the right of appeal.

A copy of the warning will be kept but will normally be disregarded for disciplinary purposes after 12 months, subject to continuous satisfactory conduct during this period.

Final Written Warning

A Final Written Warning may be appropriate:

- For serious misconduct which would be insufficient to justify dismissal but would warrant only one written warning;
- For very serious misconduct which would justify summary dismissal for gross misconduct but a lesser penalty is appropriate in the circumstances; or
- Where there is still a failure to improve conduct following previous written warning(s).

A final written warning will give the reason for the warning, advise that dismissal will result if there is no satisfactory improvement and state the right of appeal.

A copy of the warning will be kept on the employee's personal file, but will normally be disregarded for disciplinary purposes after 18 months, subject to continuous satisfactory conduct during this period.

10.12 Warnings and periods of absence

Warnings are applicable during times that an employee is in work. Therefore, where an employee is absent from work for any reason, for more than 28 days, consideration will be given to placing the warning "on hold" and reinstating it when the employee has returned to work.

10.13 Dismissal

The sanction of dismissal is likely to be used where:

- there is a failure to improve or a further act of misconduct have occurred after a Final Written Warning has been given and remains live. Dismissal will be with notice or pay in lieu of notice.
- there is a serious failure to improve or a further act of serious misconduct after a Written Warning has been given and remains live. Dismissal will be with notice or pay in lieu of notice.
- there is an act of gross misconduct. Dismissal will be without notice (summary dismissal). In such cases pay will cease when the decision to dismiss is made and reinstated in full if an appeal is subsequently successful.

The employee will be provided with written confirmation of dismissal within 7 calendar days, containing the date on which the contract ends, the reason for dismissal and the right of appeal.

Where the Council is the employer, the head teacher must notify the HR Advisory Team, in writing, of the determination that the employee should cease to work at the school, and the Council will carry out the formal dismissal within 14 days, giving the appropriate notice.

Following dismissal there is an opportunity for appeal.

10.14 Appeal

Submitting an Appeal

An employee may lodge an appeal in writing against formal disciplinary action by writing to the Head Teacher/ Chair of Governors within 14 calendar days of receipt of confirmation of the disciplinary action.

The letter of appeal from the employee must:

- state their ground(s) for appealing, which must be one or more of the following:
 1. the findings of the hearing in relation to one or more of the allegations were wrong;
 2. the disciplinary sanction given was too severe or disproportionate;
 3. the disciplinary procedure has been applied defectively or unfairly;
 4. new evidence has come to light which was not reasonably available at the disciplinary hearing and which is relevant and may make a difference to the original decision.
- for each ground of appeal raised, provide full details of why that ground of appeal applies, including all the key points they wish to present at their appeal.

The appeal will be heard at the earliest opportunity, and normally within 4 calendar weeks of receipt of the request. The Appeals Committee may have an HR Advisor in attendance in an advisory capacity. The decision maker at the original hearing will also be in attendance to explain their decision and their HR advisor may also attend.

Notification of Appeal Hearing

The employee will be informed in writing of the place, date and time of the hearing at least 7 calendar days in advance of the date of the appeal hearing.

Evidence for Appeal Hearing

Evidence presented to the appeals committee must relate to one or more of the four grounds stated above and must enable the assessment of whether or not the allegations against the employee were substantiated and whether the disciplinary action was appropriate in all the circumstances. If

either party wishes to introduce new evidence, they must give written details of the new evidence and provide copies of any supporting documents, names of any witnesses, or written statements to be presented.

New evidence should be provided to the Chair of the Appeals Committee at least 5 days prior to the hearing. The Chair of the Appeals Committee has complete discretion as to whether to allow the new evidence.

In exceptional circumstances, additional new evidence may be permissible after this deadline at the complete discretion of the Chair of the Appeals Committee.

If, at the appeal hearing, the Appeal Committee decides that because of new evidence further investigation, information, or clarification is required, it may be appropriate for an adjournment and to reconvene when this has been completed.

Notes of Appeal Hearing

Notes of the hearing should be taken and copies of the notes circulated to all parties as soon after the meeting as practicable. The Note taker is arranged by the school and will not have been involved in any other part of the formal process.

If amendments to the notes are requested by any individual who was present at the hearing, these changes must be made in a separate document, signed and appended to the original notes so that the original document remains unaltered.

Making the Decision

The Appeals Committee will deliberate in private, with their HR Advisor present in an advisory capacity only. The parties may be recalled to clarify points of uncertainty on evidence already given. If a recall is necessary both parties will return.

Where there is a committee of two or three governors, they will make all reasonable efforts to reach a unanimous decision.

If a unanimous decision cannot be reached:

- in a Committee of two governors, the Chair of the Committee will have the casting vote;
- in a Committee of three governors, a majority decision can be taken.

The decision will be announced at the close of the hearing whenever possible. The Chair of the Appeals Committee will confirm the decision in writing within 7 calendar days of the hearing.

The decision can confirm or overturn the original decision, or apply a greater, lesser or alternative penalty.

The decision of the Appeal Committee is final.

A Guide to the Appeal Hearing can be found at Appendix 3.

THE DISCIPLINARY INVESTIGATION: A GUIDE FOR INVESTIGATORS

No disciplinary action will be taken without a prompt and thorough investigation into the circumstances. Investigations may make significant demands on your time but need to be completed as quickly as possible without compromising their thoroughness.

The following bullet points are intended to act as a guide for investigators. You are strongly urged to make use of the support available from Human Resources. This guidance does not form part of the School's disciplinary procedure but should be read in conjunction with the procedure as additional guidance.

Investigations

- Keep all information relating to the investigation confidential. Know who you are to submit your report to, and do not discuss it with anyone else other than your HR advisor.
- The person conducting the investigation will explore thoroughly the facts of the matter including interviewing witnesses where appropriate.
- The investigation should be carried out as thoroughly and swiftly as possible.
- Any witnesses to alleged offences should be asked to make a written note of the incident witnessed as soon as reasonably practicable and to sign and date those notes as they may be used to form the basis of a written statement.
- Any witness should be informed that they may be asked to attend a disciplinary hearing to act as a witness.
- Witnesses may bring along a colleague or trade union official to any meeting or subsequent hearing.
- Written statements may be obtained from children when necessary but in such instances the investigator must inform parents/guardians and give them the opportunity to be present. Sensitive consideration should be given to the arrangements for interviewing children. Child witnesses should be kept separate from each other before the interview and be interviewed independently.
- The employee will normally be interviewed and may bring along a colleague or trade union official. The employee will be asked to sign and date a written record of the meeting. Any points of disagreement will be noted in writing and kept with the record of the investigation. The employee may also produce a written statement which is signed and dated.
- An investigation interview may not be necessary where the employee has admitted the allegations / the facts are not in dispute.
- Interviews may take place over more than a single session but should be carried out within a reasonable timescale.
- If a case has been referred from the 'Anti-Harassment, Discrimination and Bullying at Work Policy and Procedure' or the school's complaints procedure, to be dealt with under this procedure, the investigatory stage may be carried forward, avoiding the necessity for a further investigation.

Before starting the investigation

- You should familiarise yourself with the School's Disciplinary Policy.
- Your school's HR Advisor will be happy to run through the case with you before you begin the investigation process. They will discuss with you the incident/misconduct, the nature of the enquiry as well as the standards of investigation required and the role and responsibilities of the investigator.

- Build in appropriate time scales to the investigation process. You will need to balance the need for the investigation to be carried out in as concentrated a time scale as possible (to ensure the best recollection of the facts and to minimise uncertainty for all involved) with the need to conduct a thorough and fair investigation. This may require other work to be rescheduled or reallocated.
 - Collect as many relevant facts as are available about:
 - the alleged offence(s);
 - who was involved (e.g., any witnesses)
 - the sequence of events before and after the alleged offence(s);
 - the current circumstances of the employee(s), for example, suspension, sick leave.
- Inform the employee (in writing where possible) that an investigation is to take place and what the allegation(s) is/are at this stage.
- If an investigatory meeting is required, set a time and place. Advise the employee of their right to bring a union representative or work colleague to the meeting. Check whether the employee has any particular needs that need to be met to enable them to take part in the meeting.
- Collate all the relevant documents to provide evidence for discussion during the investigatory meetings.
- Ensure the venue for the interview is a private room, free from interruptions.
- Arrange for a note taker to be present and brief them regarding their role.

At the investigatory interview

- Explain the allegation(s) being made at this stage.
- Explain that the investigation process is taking place to clarify whether or not the allegations have any substance. It does not constitute disciplinary action.
- Explain that the role of the note taker is to take full (but not verbatim) notes.
- Following the meeting, the employee will be asked to sign a typed set of notes as an accurate record of the interview. If the employee does not agree that the notes accurately reflect the meeting, s/he may indicate this by submitting a document to this effect or an annotated copy of the notes. In such instances, the investigator will still submit their notes.
- If the employee is represented, explain that the representative may:
 - confer with the employee requesting an adjournment if necessary
 - address the interviewer
 - ask any questions of clarification
 - not answer questions on the employee's behalf
- If the employee is not accompanied, check that this is his/her wish. If, at any stage during the investigation interview, the employee wishes to adjourn to seek representation, this should be granted.
- Give the employee the opportunity to answer the allegation and give an explanation as to why he/she acted in a particular way.
- Use open questions throughout and probe/follow up any responses.
- Gather facts, for example, time, place, who was present, what happened.
- Reflect back to the employee what he/she has said to you by way of your notes, in order to check understanding.
- At the end of the interview, whether he/she wishes to say anything more and whether there are any witnesses they wish to be interviewed by the investigator.
- Offer support, including Employee Assist Counselling. (Telephone 01604 626787) and Education Support Partnership 08000 562561, www.educationsupportpartnership.org.uk

Interviewing witnesses

- Witnesses may bring a trade union representative or work colleague to any meetings.
- Witnesses to the incident/misconduct should be interviewed including witnesses who are able to support the employee's version of events. Arrange a time and venue for the interview and confirm in writing. **N.B.** If children are being interviewed, ensure that the correct child protection regulations are followed – speak to the child protection team in the first instance.
- Also interview any person who has relevant 'background/contextual' information.
- Witnesses who are employees are obliged to attend witness interviews. Every effort should also be made to interview witnesses who are not employees.
- Explain the allegation(s) that is/are being made at this stage.
- Explain that no disciplinary action is taking place at this stage. You are investigating the matter to determine whether or not the allegations have any substance and that their information will be important in helping you to determine this.
- Gather as much relevant information as possible. If the witness saw an incident, find out what they saw, what they heard, what they did and who else was present.
- Take a hand written or electronic witness statement from the individual and gain a signature before the witness leaves.
- If, at a later stage, the witness wishes to make any changes to their statement this should be done in the form of a second statement, or a separate document which is noted as an amendment to their statement. Whichever format is used, the original statement should remain unchanged and the second document should be signed by the witness and dated.
- Explain that if disciplinary action is pursued, this statement will be submitted to the disciplinary hearing.
- Explain to the witness that if disciplinary action is pursued, they may be required to give evidence at a disciplinary hearing.

After completing the investigation

- Take the opportunity to discuss the investigation process and your preliminary findings with your HR Advisor.
- Consider all the information that you have collected and decide whether or not there is sufficient evidence for the matter to be referred to a disciplinary hearing. Remember that the standard of proof required to substantiate disciplinary allegations is 'on the balance of probabilities' not 'beyond all reasonable doubt'.
- Whatever your decision, you will need to write a formal investigation report. If you believe that there is insufficient evidence to progress the matter to a disciplinary hearing, you should clearly indicate this and you should indicate why you believe this. You may recommend that some other form of management action is appropriate. You should note that even if you feel there is a case to answer, the disciplinary hearing might not find the allegation(s) to be substantiated.

Preparing the investigation report for management.

- The report should include:-
 - Details of the alleged offence(s);
 - Circumstances of the alleged offence including a chronology of events;
 - Factors in support of the allegations
 - Factors against the allegations

- Any documents which will be relied upon in the course of the investigation, for example documents, interviews notes (signed or unsigned), signed witness statements;
 - Aggravating factors relating to the employee, for example, previous spent or live warnings, extent to which employee should have known that the conduct was unacceptable;
 - Mitigating factors relating to the employee, for example, previous unblemished record, length of service;
 - Recommendations on whether there is a case to answer
 - Investigator's notes - step by step account of how the investigation was conducted, with dates and times of interviews, what was said by way of explanation of process.
- The report should be written using the format at Appendix 1a.
 - Keep the employee informed as to the progress, but not the details of the investigation. Confirm updates in writing where appropriate and make a note of all conversations and actions taken relating to the investigation process.

Preparing for the disciplinary hearing

- The investigator will present the case to a Governor disciplinary committee.
- Take advantage of the opportunity to discuss with your HR Advisor how the hearing is likely to progress, what is expected of you, what appears to be the weaker/stronger points in the management case etc.
- Familiarise yourself with the agenda of a disciplinary hearing by referring to the School's Disciplinary Procedure Guidance Document.
- Practice the presentation of your case.
- Anticipate likely questions from the employee and the head teacher/committee and any questions you may wish to ask.
- Support your witnesses. Ask your witnesses to arrive early on the day of the hearing in order to e-read their statement and to go through the questions that you will be asking them, ensuring that you do not suggest responses to the questions or otherwise influence their evidence.

At the disciplinary hearing

- Present the management case.
- Call any witnesses. Go through their statements and ask them questions to amplify/clarify the information they have given.
- Answer questions put by the employee or their representative.
- Answer questions from the head teacher/committee.

N.B. All parties will be asked to leave the meeting when the hearing adjourns for the head teacher/committee to consider their decision.

STRICTLY CONFIDENTIAL

**INVESTIGATION REPORT
INTO
[NAME OF EMPLOYEE]
[REPORT COMPLETION DATE]**

BACKGROUND

This investigation was conducted following (outline the allegation(s) made) against.

- Name & Job Title
- Date appointed
- Any other relevant information about the employee

INVESTIGATION METHODOLOGY

The investigation was conducted by (names and job titles).

The investigation was conducted by taking statements and conducting interviews (list any other methods used) with the following people:

- Name & Job Title
- Name & Job Title

DETAILS OF THE ALLEGED OFFENCES

- Circumstances of the alleged offence including a chronology of events;
- Factors in support of the allegations
- Factors against the allegations

INVESTIGATION FINDINGS

Detail the findings of the investigation. Findings should be numbered to clearly outline each allegation and the findings against them. List all relevant findings, providing full names and job titles of people involved, dates and time, where relevant. Detail of any meetings, those present, date, content and outcome.

LIST OF SUPPORTING EVIDENCE AND INFORMATION

Detail the evidence gathered relating to the investigation. Notes of interviews, documents referred to, etc should be included and clearly referenced in the report.

- Any documents which will be relied upon in the course of the investigation, for example documents, interviews notes (signed or unsigned), signed witness statements;
- Aggravating factors relating to the employee, for example, previous spent or live warnings, extent to which employee should have known that the conduct was unacceptable;
- Mitigating factors relating to the employee, for example, previous unblemished record, length of service;

CONCLUSION AND RECOMMENDATIONS

- Detail the conclusion to the investigation findings and indicate whether there is a case to hear, detailing the relevant findings to support this. Do not make personal recommendations or observations - confine yourself to conclusions based on the available evidence.
- Investigator's notes - step by step account of how the investigation was conducted, with dates and times of interviews, what was said by way of explanation of process.

A GUIDE TO THE DISCIPLINARY HEARING

(This agenda assumes the Head Teacher will be making the disciplinary decision)

1. Introductions

The Head Teacher introduces him/herself and invites all others to introduce themselves. The Head Teacher runs through the agenda.

2. Nature of the complaint

The Head Teacher specifies the complaint and checks that all parties have the relevant documents.

3. Presentation by management

The Investigator presents the management case and calls any witnesses (*Witnesses can be questioned by the investigator/their HR support, the employee/their representative, the Head teacher/their HR advisor, and then re-examined by the investigator before they exit the hearing*).

4. Questions by employee

The employee and/or representative may question the person presenting the management case.

5. Questions by Head Teacher

The Head Teacher and/or their HR Advisor may question the Investigator.

6. Presentation by employee

The employee and/or their representative present their case and call any witnesses (*Witnesses can be questioned by the employee/their representative, investigator/their HR support, the Head teacher/their HR advisor, and then re-examined by the employee/their representative before they exit the hearing*).

7. Questions by Investigator

The Investigator may question the employee.

8. Questions by Head Teacher

The Head Teacher and/or their HR Advisor may question the employee.

9. Final statement by management

The Investigator may make a final statement.

10. Final statement by employee

The employee and/or representative may make a final statement.

11. Withdrawal

Both parties withdraw to allow the Head Teacher to come to a decision. The HR advisor remains. Both parties may be asked to remain available in case the committee need to clarify any points.

12. Adjournments

Either party may ask for an adjournment during the course of the hearing.

A GUIDE TO THE APPEAL HEARING

1. Introductions

The Chair of the Appeal Committee introduces him/herself and invites all others to introduce themselves. The Chair runs through the agenda.

2. Nature of the meeting

The Chair specifies the nature of the appeal meeting, setting out the allegations that were originally upheld and checks that all parties have the relevant documents.

3. Presentation by employee

The employee and/or their representative present their case and call any witnesses. *(Witnesses can be questioned by the employee/their representative, management /their HR support, the Appeal Committee /their HR advisor, and then re-examined by the employee/their representative before they exit the hearing).*

4. Questions by person presenting the management case

The person presenting the management case may question the employee.

5. Questions by committee members

The committee members and/or their HR Advisor may question the employee.

6. Presentation by management

The Head Teacher/Chair of Disciplinary Committee presents the management case and calls any witnesses. *(Witnesses can be questioned by management/their HR support, the employee/their representative, the Appeal Committee/their HR advisor, and then re-examined by management before they exit the hearing).*

7. Questions by employee

The employee and/or representative may question the person presenting the management case.

8. Questions by committee members

The committee members and/or their HR Advisor may question the person presenting the management case.

9. Final statement by employee

The employee and/or representative may make a final statement.

10. Final statement by management

The person presenting the management case may make a final statement.

11. Withdrawal

Both parties withdraw to allow the Appeal Committee to come to a decision. The HR advisor remains. Both parties may be asked to remain available in case the committee needs to clarify any points.

12. Adjournments

Either party may ask for an adjournment during the course of the hearing.