



Disciplinary Procedure for Employees in Educational Establishments

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1.0 Purpose

1.1 This procedure is designed to:

- i) Assist Headteacher/Governors and other managers with their responsibility to ensure consistent and fair treatment of all employees and comply with relevant legislation and the current ACAS Code of Practice
- ii) Help and encourage all employees to achieve and maintain satisfactory standards of conduct.
- iii) Provide opportunities, where appropriate, for assistance and support to be given to employees to avoid unacceptable conduct being repeated.

2.0 Legal Context

2.1 This guidance has been written to reflect the School Staffing (England) Regulations 2009, sections 35 and 36 of the Education Act 2002 (applicable to maintained schools only), the Employment Act 2008 and the ACAS Code of Practice for Discipline and Grievance.

2.2 Part 1 of the School Staffing (England) Regulations 2009 requires each maintained school to establish dismissal procedures for all school staff and permits delegation, by the full Governing Body, to Headteachers, the power to make staff dismissal decisions. Academy Governing Bodies have full discretion regarding delegation of staff dismissal decisions but must ensure that they clearly minute what powers have been delegated.

- 2.3 This procedure does not form part of any employee's contractual terms and conditions and any links within this document to other documents are for ease of use and do not form part of this procedure.

3.0 Scope

- 3.1 The Governing Body will need to decide which, if any, powers they wish to delegate to the Headteacher. In principle, all Governors are strongly advised to delegate the authority to dismiss to the Headteacher. The responsibility for dismissal cannot be delegated to any other employees in a maintained school.
- 3.2 In practice, the Headteacher will have to judge the extent to which they need to have an involvement in carrying out or overseeing the investigation of any disciplinary issue. If this is a significant involvement then they should not normally be involved in decision making at any subsequent hearing. If there is any doubt the Headteacher should discuss with their Chair of Governors and Education Personnel Services (EPS).
- 3.3 In general the investigation should be undertaken by a senior school manager other than the Headteacher thus enabling the Headteacher to conduct the disciplinary hearing and to make decisions.
- 3.4 The issue of the unsatisfactory performance of an employee should be dealt with through the relevant Capability Procedure. There may be occasions when the distinction is blurred and schools should take advice from EPS in these situations.
- 3.5 This procedure applies to all employees in schools for whom the Governing Body have delegated responsibility and who have two or more years' continuous service. For employees with less than two years' service, schools should use the Procedure contained in Appendix One.

4.0 Principles

- 4.1 The audio or video recording of any meetings or hearings held under this procedure is not permitted. Where an employee is unable to take his or her own notes of a meeting due to a physical, sensory or mental impairment, it is expected that the employee's representative will take notes on their behalf and/or alternative options will be considered to remove any potential disadvantage that an employee may have. Only in exceptional cases may an employee request an audio or video recording of the meeting as an alternative, In such cases, consideration will be given as to whether or not recording the meeting is appropriate in all the circumstances, including an assessment of whether other options have been considered as above.
- 4.2 No disciplinary action should be taken until the allegations have been as fully investigated as is practicable within a reasonable timescale.
- 4.3 No first written, final written warning or dismissal decision will be issued without a disciplinary hearing.
- 4.4 Other than in cases of gross misconduct, no employee will be dismissed for a first

offence and in all cases, the nature of the sanction must be proportionate to the case including the nature of the misconduct.

- 4.5 An employee shall be advised of the nature of the allegations against him/her and shall be given the opportunity to state his/her case during an investigation before any decision is made to proceed with a disciplinary hearing. Exceptionally, where the allegations include public interest disclosures, Child Protection issues or potential criminal matters, it may not be possible to disclose the full nature of the allegations in the early stages of an investigation.
- 4.6 Before a disciplinary hearing takes place, an employee shall be advised of the nature of the allegations against him/her. The employee shall be given the opportunity to state his/her case during a disciplinary hearing before any decision is made on the outcome of such a hearing.
- 4.7 **An employee has the right to be accompanied by his/her Trade Union representative or a work colleague at formal investigation meetings and hearings convened under this procedure.**
- 4.8 An employee has the right to appeal against any disciplinary outcome.
- 4.9 Disciplinary and appeal hearings should normally take place within the working day of the employee.
- 4.10 Whilst Staff Governors may be a member of the disciplinary committee, it is on most occasions, not appropriate for them to do so and therefore normal for them to choose not to be involved.
- 4.11 The employee will not normally be allowed to raise a separate formal grievance related to any action taken, or contemplated, under this procedure. Such concerns will usually be managed within the hearing or appeal process detailed within this procedure. The grievance procedure cannot be used to circumvent the consideration of legitimate management action on matters of conduct.
- 4.12 Where there is a requirement and/or a determination to make a referral to the Disclosure and Barring Service (DBS) or the National College for Teaching and Leadership (NCTL), the employee should be notified that such a referral will take, or has taken, place.

5.0 Special Considerations

5.1 Safeguarding Children and Young People

- 5.1.1 Any allegations of misconduct involving allegations of a child protection nature against an employee must be dealt with in line with Hampshire's child protection procedures in order to avoid either putting a child at further risk or prejudicing a police or social care investigation.
- 5.1.2 This procedure will therefore not be used in cases of child protection allegations unless and until there is written confirmation from the Local Authority Designated Officer

(LADO), or their representative that the school may proceed with an internal investigation.

5.2 Criminal Offences (other than safeguarding matters)

- 5.2.1 If a Headteacher/senior member of school staff becomes aware that an employee is subject to a criminal investigation, the Headteacher/senior member of staff must contact the Lead Investigation Officer within the police authority, at the earliest opportunity, to ensure that an internal investigation will not hamper any criminal investigation. Advice should always be sought from EPS in these circumstances.

5.3 Disciplinary action against a Trade Union Representative

- 5.3.1 The same disciplinary standards will apply to a Trade Union representative's conduct as an employee. However, no informal or formal disciplinary action should be taken in respect of a Trade Union representative, following the initial investigation of any allegation against the representative, until the circumstances of the case have been discussed confidentially and with the employee's knowledge, with a senior Trade Union representative or a full-time Officer of the Trade Union.

6.0 Roles and Responsibilities

6.1 Determination of roles and responsibilities

- 6.1.1 Upon receipt of an allegation, it will be important to establish who will undertake the necessary roles and responsibilities in relation to investigating an allegation of misconduct and carrying out any resulting disciplinary hearing following such an investigation.
- 6.1.2 In doing so it will be important to ensure that the investigating officer or any other individual who has taken part in the investigation should not be involved in making any decisions as part of subsequent hearing or appeals processes.

6.2 Investigating Officer

- 6.2.1 The Investigating Officer, with appropriate advice from EPS, will be responsible for conducting the investigation and presenting the findings to the Headteacher or Governors Disciplinary Committee.
- 6.2.2 It is not normally appropriate for the Headteacher to be the Investigating Officer as well as the person responsible for deciding whether or not to apply a disciplinary warning or dismiss the employee. Exceptionally the Headteacher could be the Investigating Officer, if no other senior member of school staff is available to carry out the investigation, or because of the serious nature of the allegations. Schools should seek advice from EPS in these cases.
- 6.2.3 Where the disciplinary decision is delegated to the Headteacher, another appropriate senior member of staff should, where possible, take on the role of Investigating Officer. In exceptional circumstances the Headteacher or Chair of Governors may request the

services of the Local Authority to support or lead an investigation into the matter on behalf of the school.

- 6.2.4 It is strongly advised that the Investigating Officer seeks advice from EPS to ensure that the correct investigatory procedures are followed.

6.3 Governors' Disciplinary Committee/Headteacher Disciplinary Hearing

- 6.3.1 Following the investigation, a decision will need to be made as to whether the matter needs referral to a disciplinary hearing and where such a referral is being made, whether the case can be heard by the Headteacher or will need to be referred to the Governors' Disciplinary Committee.
- 6.3.2 Where dismissal is a potential outcome, this decision will take into account whether the authority to dismiss has been delegated to the Headteacher by the Governing Body, in accordance with paragraph 3.1.
- 6.3.3 The decision as to who should hear the case, will also take into account the nature of the Headteacher's involvement with both the allegations and the investigation.
- 6.3.4 Where dismissal is being considered by the Governors' Disciplinary Committee in maintained schools, the Committee would normally consist of 3 governors but, in exceptional circumstances, could proceed with 2 governors. For Academies, the constitution of the committee will depend on the agreed terms of reference.
- 6.3.5 The election of Governors for a disciplinary committee must be determined and minuted by the full Governing Body, and, in each case, Governors must ensure that there is no conflict of interest which may arise in them hearing the case and deciding the outcome.

6.4 Governors' Appeal Committee

- 6.4.1 All appeals against disciplinary outcomes including dismissal will be heard by a Governors' Appeal Committee. In maintained schools, this Committee must consist of a minimum of 3 Governors. All appeals committees must consist of governors who have had no previous involvement in the case. For Academies, the constitution will reflect the agreed terms of reference.
- 6.4.2 The election of Governors for a Governors' Appeal Committee must be determined and minuted by the full Governing Body, and, in each case, Governors must ensure that there is no conflict of interest which may arise in them hearing the case and deciding the outcome.

7.0 The right to be accompanied

- 7.1 All employees have a statutory right to be accompanied at both disciplinary and appeal hearings as well as formal investigation meetings.
- 7.2 This representative may be:

- i) a work colleague
- ii) a Trade Union representative

In exceptional circumstances, and with prior agreement of the hearing committee, the individual could bring a companion who is not a work colleague or their union representative.

- 7.3 The right to be accompanied is limited to one person only.
- 7.4 If the representative is unable, for good reason, to attend a meeting, an alternative date will be arranged, once only, normally within 5 working days of the original meeting. If the employee fails to attend the rearranged meeting, this will normally go ahead in the employee's absence.
- 7.5 Before the hearing, the employee must notify the school who will be accompanying them at the hearing. In exceptional circumstances, where the employee is seeking to be accompanied by another representative in accordance with paragraph 7.2, the employee must make a written request to the Headteacher or Governors' Committee hearing the case, at the earliest opportunity, but no less than 3 clear working days before the hearing.
- 7.6 The school will encourage employees to use their right to be accompanied.

8.0 Suspension and requests to stay away from school

- 8.1 At any stage prior to, during or following an investigation, the employee may be required to stay away from school for a short period. The employee must receive confirmation of this request in writing.
- 8.2 Where a decision to suspend then becomes a possibility, a letter should be sent to the employee, requiring them to attend a meeting, alerting them to the possibility of suspension and advising them of their right to be represented.
- 8.3 An employee may be suspended when:
 - i) The continued presence of the employee at work may be prejudicial to a fair disciplinary investigation
 - ii) There is prima facie evidence that the allegations are serious enough to warrant consideration of dismissal and/or may constitute gross misconduct. An outline of this evidence shall be made available to the employee and their representative. Where the matters relate to an on-going criminal and/or safeguarding investigation, permission will be sought from the Local Authority Designated Officer regarding the evidence that can be made available.
 - iii) There are grounds to believe that there may be a health and safety risk or danger to themselves or others
- 8.4 The reason for the suspension shall be made clear to the employee in writing as soon as possible. Since suspension is a precautionary measure and not a disciplinary sanction, an employee has no right of appeal against the decision

- 8.5 The Headteacher should consult with the Chair of the Governing Body and inform the Governing Body as soon as possible of any cases of suspension. This should be limited to ensure that such information does not taint any members of the Governing Body and thus preclude them for subsequent involvement in the case if this becomes necessary. In the case of a suspension of a Headteacher, EPS will support the Chair of the Governing Body in making the necessary arrangements (involving the District Manager or Area Director as necessary in maintained schools).
- 8.6 In maintained school a suspension can only be lifted by the Governing Body (who may delegate the responsibility to a Committee or identified member). Academies can determine who should have the power to lift a suspension. Where a suspension is lifted a re-integration plan should be agreed for absences of more than 2 calendar weeks to ensure that the employee could be re-integrated with the minimum adverse effects.
- 8.7 An employee who is suspended from duty shall, throughout the period of suspension, continue to be entitled to their full pay unless they become sick in which case the employee's contractual sickness regulations will apply.

8.8 Support and contact during suspension

- 8.8.1 The terms of the suspension often involve the employee being instructed not to contact colleagues during the suspension.
- 8.8.2 It is important to identify one or more people they are able to communicate with, in order to ensure that contact can be maintained. Ideally this should be agreed with the employee and his/her representative.
- 8.8.3 The contact person should usually be a member of staff from the employee's school. It is essential that the contact shall have no part whatsoever to play in any subsequent investigation, nor any other connection with, or vested interest in, the outcome of the case. The contact person should also not be a member of the school's governing body.
- 8.8.4 The assignment or nomination of a contact will need to be dealt with sensitively as it is not intended to usurp the role of the employee's representative or line manager but rather to reinforce the support/contact available for the employee concerned.
- 8.8.5 The primary role of the contact will be to act as a point of reference for the suspended employee particularly in regard to updating as to the progress of the investigation. Such updating must be limited, however, to issues such as timescales and cannot involve communication about substantive aspects of the case such as evidence. Particular care needs to be exercised where the case involves, or is likely to involve, criminal proceedings. In these circumstances liaison with the police will be necessary via Education Personnel Services and/or the Local Authority Designated Officer and it will be appropriate for the named contact to be briefed about their role by EPS.
- 8.8.6 Where an investigation is likely to involve a lengthy process, it is important that the employee is contacted on a regular basis. The frequency of such contacts will depend on the particular circumstances of the case, but should not normally be at longer intervals than fortnightly and in some instances, contact on a weekly basis may be appropriate. It

may also be appropriate to provide the suspended employee with details of the County's [Wellbeing Helpline](http://www3.hants.gov.uk/occupational-health/oh-foremployees) (<http://www3.hants.gov.uk/occupational-health/oh-foremployees>) (where purchased) or consider other additional support.

- 8.8.7 The Headteacher, or Chair of Governors in the case of a Headteacher suspension, must monitor the contact arrangements during the period of suspension to ensure they remain regular and effective.

9.0 Investigations

9.1 Preliminary Enquiries

- 9.1.1 When a concern first arises about a person's conduct at work, the appropriate manager will establish the initial facts of the matter by carrying out a brief preliminary enquiry. This enquiry should be carried out as quickly as possible.
- 9.1.2 The purpose of preliminary enquiries is firstly to establish whether a potential disciplinary matter could have occurred i.e. that alleged parties involved were present, and secondly to make an initial assessment about the potential seriousness of the alleged conduct.
- 9.1.3 In cases of alleged serious misconduct, the employee will normally be asked to stay away from work by the manager for a short period while the preliminary enquiry is carried out to establish whether there may be a case to answer or whether further investigation is necessary.
- 9.1.4 Subject to the allegations not involving safeguarding or an ongoing criminal investigation the Headteacher or a senior member of school staff should have an initial discussion with the employee involved to ascertain their immediate response to the allegation(s) and asked to provide and sign a full written statement within 5 working days of this initial interview. The employee will be advised to seek advice from their professional association or trade union. If it is possible to identify an Investigation Officer at this early stage, then the Investigating Officer should undertake the initial discussion with the employee.
- 9.1.5 On the basis of the preliminary enquiries the Headteacher will need to decide whether:
- i) no further action is necessary and to confirm this outcome to the employee in writing (in the case of safeguarding related allegations, where no further action is required due to an unfounded or malicious allegation, a record must still be kept - see Managing Allegations Guidance on record keeping)
 - ii) it is sufficient for the Headteacher to discuss the matter with the employee concerned and issue managerial guidance
 - iii) to refer the matter for further investigation (and identify an Investigating Officer if not already identified)
 - iv) the employee should be required to remain away from school
 - v) consideration should be given to the suspension of the employee (in line with 8.0 of this procedure)
 - vi) to refer the matter to a disciplinary hearing on the basis of the preliminary enquiries undertaken so far

9.1.6 Where an Investigating Officer is not the Headteacher, he/she will need to refer the matter to the Headteacher for a decision on whether or how to proceed.

9.2 Investigation

9.2.1 Following the conclusion of the preliminary enquires, if it appears further investigation is needed, this will be conducted to establish the facts of the case. This will normally involve holding an investigatory meeting with the employee.

9.2.2 The Investigating Officer should review any documentary evidence available in relation to the allegations.

9.2.3 The Investigating Officer should interview any witnesses and take statements from them, or ask them to give their own statements, at the earliest opportunity. These statements should be signed and dated by the witnesses. A copy of the statement should be retained by the witness. The witnesses should be advised that they may be required to support their statements orally at any subsequent disciplinary hearing.

9.2.4 Where children are to be interviewed as part of the investigation appropriate arrangements for their support during the process must be made, with parental consent obtained prior to any interview taking place. Particular care must be taken in securing evidence from children. Advice must be sought from EPS. Children will never be called as a witness to a hearing/meeting convened under this procedure.

9.2.5 The arrangements for an investigatory meeting should be confirmed in writing to the employee giving 5 working days notice of that meeting and informing them of their right to be accompanied. The letter should also confirm the nature of the allegations to be put to them at the meeting and enclose a copy of the Disciplinary Procedure.

9.2.6 At the meeting the Investigating Officer will make clear to the employee exactly what is being alleged. They must also advise the employee that the matter may result in a formal disciplinary hearing.

9.2.7 Once the Investigating Officer has determined that the investigation has concluded, the Headteacher will need, on the basis of the information available, to decide whether:

- i) no further action is necessary;
- ii) it is sufficient for the Headteacher to discuss the matter with employee concerned and issue managerial guidance;
- iii) to refer the matter to a formal disciplinary hearing;
- iv) take appropriate action in the case of an employee who has been asked to stay away from the school and/or suspended.

9.2.8 It is important that the decision about how the case will progress is confirmed as soon as possible following the investigatory meeting. Where any delay occurs in relation to concluding the matter or moving forward, the employee must be informed.

10.0 Disciplinary Hearing

10.1 Convening a Disciplinary Hearing

- 10.1.1 Where the decision is taken to hold a formal disciplinary hearing, the employee will be given written notification of the hearing as soon as possible. Employees will be given a minimum of **7 working days** notice of a hearing. The written notification will include:
- i) the date, time and place of the hearing;
 - ii) who will be present at the hearing;
 - iii) statement of case outlining the specific allegation and details of the investigation and findings;
 - iv) copies of any documents, to be used in evidence;
 - v) the right to be accompanied by a Trade Union representative or a work colleague and the requirement to notify of the name of representative prior to the hearing. Where the employee wishes to have another representative in accordance with paragraph 7.2, this must be requested no less than **3 clear working days** before the hearing;
 - vi) the names of witnesses, if any, to be called;
 - vii) their right to call witnesses on their behalf;
 - viii) the opportunity to send any written submission or evidence to the committee up to 3 days prior to the hearing. A copy of any such submission should also be made available to the senior member of school staff presenting the case (which should, where possible, be the Investigating Officer);
 - ix) a copy of this disciplinary procedure.
- 10.1.2 The date of the hearing should always be set in consultation with both the employee's representative, where applicable, and EPS, to avoid any unnecessary delays.
- 10.1.3 The employee or their representative must submit any written documentation, names of witnesses and the detail of their representative in accordance with 10.1.1 v, vii and viii to arrive no less than **3 clear working days** before the hearing.
- 10.1.4 Where HCC is the employer of the school's staff and dismissal is a possible outcome, the LA has a statutory right to attend and offer advice. EPS must be invited to attend any hearing where dismissal is a possible outcome to advise either the Governors' Disciplinary Committee or Headteacher hearing the case on procedural aspects and matters of employment law.
- 10.1.5 Where HCC is not the employer of a maintained school's staff and dismissal is a possible outcome, the LA may still have a right to attend dependent upon agreements between the LA and the maintained school's governing body. In the absence of an agreement EPS should still be invited to attend any hearing where dismissal is a possible outcome to advise on procedural aspects and matters of employment law.
- 10.1.6 In both voluntary controlled and voluntary aided schools, the diocese may also have the same advisory rights as the Local Authority, where dismissal is a possibility. This will depend upon whether the Governing Body of the school has made such an agreement in writing.

- 10.1.7 EPS should be invited to attend any hearing in an academy where dismissal is a possible outcome to advise on procedural aspects and matters of employment law. Academies may also choose to clarify whether their legal provider wishes to attend.
- 10.1.8 If the employee, or their representative, is unable, for good reason, to attend a meeting, an alternative date will be arranged, once only, normally within 5 working days of the original meeting. If the employee fails to attend without notice, consideration can be given to proceeding and making a decision, in their absence.
- 10.1.9 The school should arrange for the Clerk to Governors or another appropriately experienced clerk to take notes at all disciplinary hearings.

10.2 Conduct of the Disciplinary Hearing

- 10.2.1 At any disciplinary hearing the Investigating Officer will normally explain the allegations against the employee and present the evidence that has been gathered. The employee or their representative will be entitled to set out their case and respond to the allegations. The employee or their representative will be entitled to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses. At any point during the disciplinary hearing an adjournment can be requested by any of the parties. The hearing will follow the [Procedure for a Headteacher & Governor Committee Hearing](#).
- 10.2.2 After an adjournment has taken place to allow the Disciplinary Committee / Headteacher to consider all the information presented to them, the Disciplinary Committee / Headteacher will, where possible, announce the decision to the employee, representative and senior member of school staff presenting the case (normally the Investigating Officer). The right of appeal against the decision will also be explained. The decision will be confirmed in writing to the employee within **3 working days** and giving details of their right of appeal.

11.0 Disciplinary Action

- 11.1 On the basis of all available information the Disciplinary Committee/Headteacher will need to consider whether each allegation is substantiated or unsubstantiated. The Committee must then consider the appropriate action, either:
- i) a decision that no further action is necessary
 - ii) a decision to issue a disciplinary warning or to dismiss the employee
- 11.2 Disciplinary warnings will normally be issued sequentially. However, offences of a serious nature may be brought into the procedure at either final written warning or dismissal stage, if the disciplinary committee/Headteacher hearing the case feels that is justified.
- 11.3 To ensure the decision of the disciplinary committee or Headteacher is reasonable in all

the circumstances of the case, account should be taken of:

- i) the employee's previous disciplinary record
- ii) the employee's general record, position and length of service
- iii) the disciplinary sanction imposed in similar cases in the past
- iv) any mitigating circumstances which might make it appropriate to lessen the severity of the sanction
- v) any advice given by EPS

11.4 Disciplinary Warnings

11.4.1 Where, following a disciplinary hearing, the Governors' Disciplinary Committee or Headteacher hearing the case determines that the employee has committed an act of misconduct, the Governors' Disciplinary Committee/Headteacher may issue either a first written warning or final written warning or dismiss the employee, dependent upon the seriousness of the misconduct or whether it is an act of gross misconduct and dependent upon whether the employee is subject to a live disciplinary warning at the time of the hearing.

11.4.2 First written warnings will normally remain live for a period of 12 months unless the Governors' Disciplinary Committee or Headteacher determine that a longer period is justified.

11.4.3 Final written warnings will normally remain live for a period of 24 months unless the Governors' Disciplinary Committee or Headteacher determine that a longer period is justified.

11.4.4 Disciplinary warnings will state:

- i) the nature, level and duration of the warning;
- ii) the specific misconduct committed;
- iii) the standard of conduct required in future;
- iv) the likely consequences of any further misconduct;
- v) details of the right of appeal.

11.4.5 If an employee has been found to have committed a further act of misconduct whilst a written warning remains live under this procedure or where a formal warning remains live under the Procedure contained in Appendix One, the Governors' Disciplinary Committee/Headteacher may determine that either a final written warning or dismissal will apply. This will be dependent upon the seriousness of the misconduct.

11.4.6 Where the Governors' Disciplinary Committee/Headteacher determines that an employee has committed a further act of misconduct whilst a final written warning remains live under this procedure, the Governors Disciplinary Committee/Headteacher will normally determine that dismissal will apply.

11.4.7 Where in paragraphs 11.4.5 and 11.4.6, the decision of the Governors' Disciplinary Committee/Headteacher is to dismiss the employee, this dismissal will be with notice unless the act of misconduct is serious enough to be considered by the Governors'

Disciplinary Committee/Headteacher as an act of gross misconduct (see 11.4.8).

- 11.4.8 Where the Governors' Disciplinary Committee/Headteacher determines that a serious offence amounting to gross misconduct has been committed, an employee may be summarily dismissed i.e. without notice.

11.5 Communicating and recording the outcome

- 11.5.1 Any decision of a disciplinary hearing must be confirmed to the employee in writing within **3 working days**. If it is necessary to vary this timescale the employee will be notified at the conclusion of the hearing.
- 11.5.2 Action taken by the Headteacher or Governors' Disciplinary Committee to issue a disciplinary warning within this procedure should not be reported to the full governing body in a way allowing the employee to be identified. Actions undertaken in respect of dismissal must be reported to the full governing body meeting.
- 11.5.3 The requirements of safeguarding children legislation mean that for investigations and /or warnings arising from the allegations of abuse, the school should retain records indefinitely. Reference should not be made to spent warnings when producing employment references unless they are related to safeguarding issues.
- 11.5.4 If the outcome of a hearing is to dismiss the employee, the employee's contract will be terminated with due notice or immediately with no notice in the case of gross misconduct. Where HCC is the employer of the staff, this will be undertaken by EPS following instruction from the Chair of Governors. Where the Governing Body is the employer of the staff, this will be undertaken by the Chair of Governors.

12.0 Governors' Appeals Committee

- 12.1 An employee has a right to appeal against any decision to issue a first written or final written warning or any decision to dismiss. The employee will be advised of this right in the conveying of any such decision by a Headteacher or Governors' Disciplinary Committee. This will also be confirmed in writing as part of the outcome letter. The employee will also be advised that he/she has **10 working days**, from the date of the letter confirming the outcome, to lodge an appeal via the Clerk to Governors at the school.
- 12.2 When lodging an appeal, the employee, or their representative, must state both the grounds of the appeal in full and whether he/she is appealing against the finding that he/she has committed an act or acts of misconduct or gross misconduct and/or if he/she is appealing against the level of disciplinary sanction that has been applied.
- 12.3 The purpose of an Appeal is to enable an impartial review to be carried out as to the 'reasonableness' of the previous decision. The appeal should not become another disciplinary hearing but should focus on reviewing the process followed and the reasonableness of the decision that was taken.

- 12.4 An appeal will be heard by a Committee of Governors who have played no part in the disciplinary hearing itself. In the case of an appeal against a decision taken by a Disciplinary Committee of Governors, the appeal must be heard by a minimum of 3 Governors for maintained school, and in accordance with the constitution for Academy schools.
- 12.5 The appeal hearing will take place as soon as possible. The employee will be given at least **6 working days'** notice of the date, time and place fixed for the appeal hearing. At the hearing of the appeal, the employee will be given an opportunity to state their case and will be entitled to be accompanied by the Trade Union representative, or work colleague. The Hearing will follow the [Procedure for a Governors' Appeal Committee Hearing](#).
- 12.6 If the employee, or their representative, is unable, for good reason, to attend an appeal meeting, an alternative date will be arranged, once only, normally within 5 working days of the original appeal meeting. If the employee fails to attend the rearranged meeting, this will normally go ahead in the employee's absence.

12.7 Conduct of the Appeal Hearing

- 12.7.1 The conduct of the appeal hearing will depend upon the grounds of appeal submitted in accordance with 12.2.
- 12.7.2 The Governors' Appeal Committee will consider the information presented by all parties. The employee or their representative will present their appeal and may call witnesses who will be open to questions from management or from the Governors' Appeal Committee. The Headteacher or a member of the Senior Leadership team will present the management response and may call witnesses who will be open to questions from the employee and/or their representative or from the Governor's Appeal Committee. Both parties will be permitted to put further questions to their own witnesses before summarising their cases. The employee will normally summarise first. Any requests to deviate from this sequence of events will be subject to agreement from the Governors' Appeal Committee. No new information should be introduced during the summing up. At any point during the appeal hearing, an adjournment can be requested by any of the parties.
- 12.7.3 After an adjournment has taken place to allow the Governors' Appeal Committee to deliberate and consider all the information presented to them, the Governors' Appeal Committee will, where possible, announce the decision to the employee, representative and management representative presenting the case. If further clarification is required from either party or the witnesses during the deliberations, all parties will be recalled.
- 12.8 At the appeal, the disciplinary sanction imposed will be reviewed, but it cannot be increased. The decision of the appeal committee, as appropriate, will be sent to the employee in writing within **3 working days** of the appeal hearing and will be final.

13.0 Referrals to relevant bodies

- 13.1 Where the dismissal (or resignation in circumstances where a disciplinary process has not concluded and the potential outcome may have resulted in dismissal) is related to a child protection matter, the employer is required to make a referral to the Disclosure and Barring Service (DBS). The DBS may take action under their statutory powers or refer the case to the National College for Teaching and Leadership (NCTL) for consideration where the matter concerns a teacher
- 13.2 Where the dismissal (or resignation in circumstances where a disciplinary process has not concluded and the potential outcome may have resulted in dismissal) is not related to a child protection matter, and it concerns a teacher, the employer may make a referral to the National College for Teaching and Leadership (NCTL). The NCTL may take action under their statutory powers.
- 13.3 Where there is a requirement or determination to make a referral to the DBS or NCTL the employee should be notified that such a referral has taken place.

14.0 Headteachers

- 14.1 Action in relation to Headteachers shall be initiated by the Chair of Governors in consultation with Education Personnel Services (and the Area Director in respect of maintained schools).
- 14.2 The procedure for Headteachers will be the same as for other school employees who are not Headteachers, with the variations outlined below.

14.3 Investigations

- 14.3.1 The Chair of the Governing Body in consultation with EPS (and the Area Director/District Manager if appropriate) as necessary, will identify a Governor to lead the investigation into the disciplinary issue. The investigating Governor will be supported by an EPS Adviser.
- 14.3.2 The Chair of Governors will make the determination following discussion with EPS and involving (the Area Director/District Manager as appropriate), as to whether:
- i) no further action is necessary
 - ii) to refer the matter to a formal disciplinary hearing

14.4 Disciplinary Hearing

- 14.4.1 A disciplinary hearing will be conducted by a committee of 3 governors appointed by the Governing Body, with EPS acting in an advisory capacity. In maintained schools, the committee will also be supported by the Area Director.

Appendix One

Disciplinary Procedure for Employees in Educational Establishments with less than two years' continuous service

This procedure will be used for handling misconduct issues concerning employees who have less than two years' continuous service. This applies irrespective of whether the employee is on a permanent or temporary/fixed term contract of employment. It should be noted that continuous service may be accrued from a succession of contracts in different schools where the Local Authority is the employer.

It is expected that all new employees, during and after their induction, will have regular one-to-one meetings with their manager and that any concerns about the employee's conduct are raised as soon as possible.

The same obligations arise where allegations of misconduct involve allegations of a child protection or criminal nature or the matter concerns a trade union representative (see section 5 of the main procedure).

The relevant manager will conduct an investigation appropriate to the allegation which has been made and in reference to sections 6.2 and 9 of the main procedure.

Employees still have the right to be accompanied as outlined in section 7 of the main procedure and where required, the Headteacher may still consider requesting that the employee stays away from school and/or determines suspension is necessary (as outlined in section 8 of the main procedure).

Stage I: Formal hearing

It will be the norm for the Stage 1 Formal Hearing to be heard by the Headteacher unless there are specific circumstances which make it necessary to refer the case to a Governors Disciplinary Committee.

The Headteacher will adopt the same approach as set out in Section 10, following the process for potential dismissal. There is only **one** formal warning for employees with less than two years' continuous service. Where a formal warning is issued the Headteacher or Governors' Committee should indicate whether or not the warning should be treated as a **first** or **final** in the event of further misconduct occurring after the employee has been employed for more than two years.

Outcomes from this can include:

- i) no further action being necessary and confirming this outcome to the employee in writing (In the case of safeguarding related allegations, where no further action is required due to an unfounded or malicious allegation, a record must still be kept (see Managing Allegations Guidance on record keeping)
- ii) a determination that it is sufficient to issue managerial guidance
- iii) a formal written warning
- iv) dismissal with notice

- v) dismissal without notice (gross misconduct)

Where considering the action to be taken, the Headteacher (or Governors Disciplinary Committee) must take account of the detail contained in section 11 of the main procedure. Where a warning is issued, it will be for the Headteacher (or Governors Disciplinary Committee) to determine whether it should remain live for a period of 12, 18 or 24 months.

The employee will have the decision of the Headteacher/Governors Disciplinary Committee confirmed to them in accordance with section 11.5 of the main procedure and section 11.4.4 where a warning is issued.

The same obligations apply in relation to reporting to the Disclosure and Barring Service or the National College for Teaching and Leadership (see section 13 of the main procedure).

If any misconduct occurs following the issue of a formal written warning that continues to be live, there will need to be a further formal meeting to consider dismissal. This may be dismissal with or without notice if the subsequent allegation is founded, depending on whether the subsequent allegation is determined to be misconduct or gross misconduct.

Stage 2: Right of appeal against dismissal

Where dismissal occurs under this procedure, the employee has the right of appeal against the dismissal decision. There is no right of appeal under this procedure against a warning.

The employee must lodge an appeal as set out in Section 12. All appeal meetings will be set out in accordance with Section 12 of the main procedure.

Appendix Two

Model disciplinary rules

- 1.0 The governing body of this school is committed to ensuring that all staff at the school should be treated in a consistent, fair and sensitive manner. This approach requires that the governing body should specify those aspects of misconduct which may warrant consideration under the terms of the school's disciplinary procedure. The following disciplinary rules have been drawn up in consultation with the Hampshire trade unions and professional associates. It is expected that, wherever possible, problems of misconduct will initially be dealt with informally through managerial advice. Where such advice has not led to the desired improvement, or the matter is sufficiently serious to warrant immediate formal action, the disciplinary procedure will be operated.
- 2.0 The lists below are not exclusive or exhaustive and there may be other matters which are sufficiently serious to warrant categorisation and consideration as either 'misconduct' or 'gross misconduct'. Gross misconduct occurs when the actions complained of are sufficiently serious to destroy the relationship between the employee and employer and in particular the trust and confidence that the employer holds in the employee.
- 3.0 In cases of alleged gross misconduct it is likely that it will not be feasible to permit the continued presence of the employee at the place of work while the matter is being investigated leading to suspension. Suspension on full pay is a neutral act and this period should be as brief as possible, kept under review and made clear that the suspension itself is not disciplinary action.
- 4.0 For the purposes of the disciplinary procedure, the terms 'misconduct' and 'gross misconduct' are also taken to include 'negligence' and 'gross negligence' where the occurrence amounts to a breach of duty.
- 5.0 Misconduct is defined as wilful or negligent misconduct or omission. Wilful misconduct can be summarised as lapses of conduct or unacceptable behaviour. It can also include unacceptable work performance if it is believed to be a wilful act. Negligent misconduct, or misconduct by omission, can be summarised as careless or reckless behaviour, or a failure to act which has a significant adverse impact on a service or an individual.

Examples of misconduct which may warrant action under the appropriate stage of the disciplinary procedure include (but is not restricted to):

- poor timekeeping or persistent lateness
- unauthorised absence from work
- unauthorised, inappropriate or excessive use of school facilities and resources (including the internet, e-mail, IT hardware or software), action contravening the school's acceptable use policy or action leading to the loss of data or contravention of the Data Protection Act or any damage to the school's IT resources

- inappropriate use of personal IT facilities and resources (including internet, email, social networking sites and IT hardware and software) where this use is not compatible with the expectations of adults working with children
- other actions inconsistent with the school's Acceptable Use of ICT policy
- wilful failure to comply with a reasonable instruction from a member of senior management
- persistent minor breaches of health and safety requirements
- foul or abusive language
- unauthorised disclosure of examination material or unauthorised assistance to pupils prior to or during examinations
- discrimination, harassment, victimisation or bullying on any grounds which are not sufficiently serious to fall into the category of 'gross misconduct'
- other actions and personal behaviour which are incompatible and/or inconsistent with the expectations of staff working with children and young people
- failure to take prompt and effective action when child protection/safeguarding concerns come to light
- breach of the school's policies and procedures and/or code of conduct
- actions inconsistent with the Professional Standards for Teachers
- failure to disclose any misconduct or alleged misconduct arising from alternative or additional employment outside of this school.

6.0 Gross misconduct is an act of misconduct or indiscipline which is so serious in nature that it will fundamentally damage the employment relationship and may therefore justify dismissal without notice. Each case has to be considered in the light of all the circumstances, including the nature of the job role and the details of the misconduct. Gross misconduct which, due to its nature is incompatible with the expectations of staff working with children and young people and may lead to a suspension from post prior to consideration of dismissal.

Examples of gross misconduct which may lead to disciplinary action under the appropriate stage of the procedure include (but are not restricted to):

- unauthorised removal of the school's property
- serious discrimination, harassment, victimisation or bullying on any grounds
- offences of dishonesty
- serious breaches of health and safety requirements
- sexual offences
- serious criminal offences which undermine the employee's ability to perform his/her job
- serious breach of the school's policies and procedures and/or code of conduct
- sexual misconduct at work
- failure to self-disclose a criminal offence, conviction or caution
- persistent wilful failure to comply with a reasonable instruction from a member of senior management
- fighting and/or physical assault/violence
- repeated unauthorised absences from work

- actions which bring the school into serious disrepute
- drunkenness or serious misconduct at work brought on by misuse of alcohol, drugs or any other substance misuse
- falsification of timesheets, subsistence and expenses claims, accounts, budgets, self-certification forms, whether or not for personal gain
- theft
- malicious or deliberate damage to the school's property
- serious breach of confidentiality
- causing loss, damage or injury through serious negligence
- accessing and/or downloading (via school resources) and/or possession at school of inappropriate material (i.e. pornographic, offensive or obscene material)
- engaging in inappropriate online contact and/or relationships with pupils, young people or vulnerable adults through social networking sites, text messaging, instant messaging or other IT media
- deliberately accessing and/or downloading via personal, school or other resources, and/or possession of obscene material containing images of children
- inappropriate relationships with pupils, young people or vulnerable adults
- other serious actions inconsistent with the School's Acceptable Use of ICT policy
- other actions and personal behaviour which are incompatible and/or inconsistent with the expectations of staff working with children and young people
- serious actions inconsistent with the Professional Standards for Teachers
- failure to disclose any serious misconduct or alleged misconduct arising from alternative or additional employment outside of this school
- deliberately aiding or encouraging another individual to undertake any of the above actions.