



# SCHOOL STAFF DISCIPLINARY PROCEDURES

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## **1 Introduction**

- 1.1 In applying this procedure governing bodies must at all times follow the Welsh Government (WG) revised statutory guidance *“Disciplinary and Dismissal Procedures for School Staff: Circular 002/2013”* published in January 2013.
- 1.2 This staff disciplinary procedure applies to school staff with the exception of some school-based staff employed by the (LA), supply staff provided by agencies and any self-employed supply staff. Members of staff have been made aware of this procedure and copies will be given to any member of staff who is the subject of any allegation.
- 1.3 All timescales included in this staff disciplinary procedure and included in Appendix 1 have been agreed by the governing body and the school's local staff trade unions. Depending on the circumstances of the case, there may need to be flexibility with these timescales, e.g. where there is a large amount of paperwork or unavailability of staff. Timescales may be shortened or extended by mutual agreement between all relevant parties.
- 1.4 Where required throughout this procedure the Chair of Governors (CofG) will take appropriate action unless they are compromised, in which case the Vice-Chair will take over the role and actions normally carried out by the Chair. If the Vice-Chair is also compromised the governing body will have to select another governor who is not compromised and minute this decision.

## **2 Purpose and scope**

- 2.1 The governing body is responsible for the conduct and discipline of school staff and is required to have a procedure in place for dealing with staff disciplinary matters.
- 2.2 Disciplinary procedures are necessary for promoting orderly employment relations, achieving fairness and consistency in the treatment of individuals and minimising disagreement about disciplinary matters.
- 2.3 This disciplinary procedure is intended to help and encourage all employees to achieve and maintain acceptable standards of conduct and to make clear to all concerned the procedure to be followed by this school and governing body to address concerns about an individual's behaviour or conduct and any subsequent disciplinary action that may be taken.
- 2.4 The aim of the procedure is to ensure consistent and fair treatment for all members of staff within the school.

### **3 Matters outside the scope of the procedure**

3.1 The following matters are outside the scope of this disciplinary procedure:

- a) where employment is terminated: -
  - (i) by reason of redundancy; or
  - (ii) by an employee reaching the end of a temporary or fixed-term contract.
- b) where any deficiencies in performance on the part of the staff member arise from a lack of aptitude or skill (in such cases the capability procedure will be used)
- c) staff grievances and grievances lodged as a result of disciplinary action. If, however, action under the staff grievance procedure results in the need for disciplinary action then this disciplinary and dismissal procedure will apply
- d) termination during or at the end of a probationary period whether or not extended beyond its originally specified duration.
- e) matters which ought to be dealt with through the governing body's general complaints procedure and which do not raise staff disciplinary issues for individual members of school staff
- f) **for Foundation and voluntary aided schools only** – the function of the staff disciplinary and dismissal committee (SD&DC) of a foundation school, foundation special school or voluntary-aided school to decide that a person employed at the school should not have their contract of employment renewed.

### **4 Principles**

4.1 This procedure is a way of helping and encouraging improvement in members of staff whose conduct is unsatisfactory and is not to be viewed as simply a means of imposing sanctions or punishment.

4.2 In all cases, the school and governing body will ensure that disciplinary cases are dealt with in an unbiased, open and fair way.

4.3 The principles, in summary, are as follows: -

- a) Where appropriate, every effort will be made to address concerns about behaviour or conduct without recourse to formal procedures.
- (b) No disciplinary action will be taken against a member of staff until the case has been fully investigated by a person who has no connection with the case in question.

- (c) An investigator will be impartial, suitably qualified and experienced. Reasonable objections to an investigator relating to their inability to act impartially or their competence for the role will mean that the investigator will be changed.
- (d) Where it is decided to deal with a disciplinary matter through lesser misconduct procedures the member of staff will be informed of the allegation against them and will be given the opportunity to defend the allegation at the disciplinary hearing before the Headteacher (or (CofG) for allegations against the Headteacher).
- (e) A member of staff will not be dismissed for a first breach of discipline in cases of lesser misconduct. However, should this lesser misconduct be repeated it may result in the member of staff being disciplined for gross misconduct as they are not moderating or amending their behaviour. This should be made clear to the member of staff when discussing their behaviour and the improvements/changes expected.
- (f) Where it is decided to proceed to the formal stage, i.e. the allegations amount to gross misconduct, the member of staff will be informed of the allegation, date, time and place of any hearing before the governing body (SD&DC) (subject to mutual agreement), the purpose of the hearing and the stage reached in the disciplinary procedure.
- (g) The member of staff will be provided with the membership of the (SD&DC) prior to a hearing and advised of their right of objection to any committee member on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case.
- (h) The member of staff will be provided prior to the hearing: -
- the name of the presenting officer;
  - the names of persons who will be present at the hearing and in what capacity;
  - full details of the allegations;
  - an outline of the evidence to be presented with supporting evidence;
  - the names of any witness to be called; and
  - copies of written statements.
- (i) The member of staff will have the right to be accompanied by a companion or a representative of their trade union during the investigation, the disciplinary hearing and the appeal hearing.
- (j) Dismissal for gross misconduct will take place immediately following the decision of the (SD&DC) or following the outcome of any appeal by the member of staff. Dismissal under these circumstances will be without notice or payment in lieu of notice.
- (k) A member of staff will have the right to appeal against any disciplinary sanction imposed by the Headteacher or (CofG) in respect of lesser

misconduct matters or the (SD&DC) in respect of gross misconduct matters.

- (l) The process will be supportive towards the needs of the member of staff.
- (m) Investigations and hearings will be conducted (all or part) in English or Welsh or with access to interpretation at the request of the member of staff.

## **5 Informal discussion with the Headteacher – outside of disciplinary process**

- 5.1 There will be occasions when it is appropriate for a member of staff's actions to be discussed with them as part of normal supervisory arrangements and without recourse to the formal procedures. In these circumstances the member of staff will be given guidance and support from their line manager. This could take the form of advice, counselling, training, instruction, coaching or other managerial strategies as is appropriate. Such activity may be delegated to a member of the senior management team. In respect of the Headteacher however, this would be carried out by the (CofG) with advice and support from the (LA) (HR) Advisor.
- 5.2 The aim of this action is to ensure that problems are discussed so as to encourage and help the member of staff to improve and understand: -
  - what they need to do in relation to their conduct;
  - how future conduct will be monitored and reviewed;
  - the period of time over which conduct will be monitored; and
  - that formal action might be taken if the conduct in question recurs.
- 5.3 Where discussions and support structures which have been put in place to help the member of staff do not lead to the necessary improvement or the relevant changes in conduct within the agreed timescale the member of staff will normally be advised in writing of further action to be taken which may be formal.

## **6 Formal process for lesser misconduct**

- 6.1 The definition of lesser misconduct is given in Appendix 2. Responsibility for disciplinary matters where the allegation could constitute lesser misconduct has been delegated by the governing body to the Headteacher.
- 6.2 If an allegation which could constitute lesser misconduct is made against the Headteacher, the (CofG) will be responsible for disciplinary action.

## **7 The investigation: lesser misconduct**

- 7.1 As soon as the alleged breach of discipline has been brought to the attention of the Headteacher or the (CofG in the case of the Headteacher) a full investigation must be carried out. Where possible the Headteacher or (CofG) will arrange for any investigation to be carried out externally, e.g. by the (LA), diocesan authority (where appropriate) or a person who is unbiased.
- 7.2 The member of staff who is the subject of the alleged breach of discipline and all witnesses will be interviewed and requested to provide a signed statement. Notes will be taken at all investigation meetings and a copy given to the party involved. No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected.
- 7.3 The member of staff will be given the opportunity to respond to the allegation and will have the right to be accompanied by a companion or a representative of their trade union at an investigation interview meeting.
- 7.4 Once the investigation has been concluded, the investigating officer will present the findings to the Headteacher or the (CofG in the case of a Headteacher) in a written report. This will be done as soon as practicable after the conclusion of the investigation. The investigation report will be based on matters of fact and not opinions; references to or expressions of views on the personalities of individuals will not form a part of the report.
- 7.5 The Headteacher or (CofG in the case of a Headteacher) may conclude that:
- - no further action will be taken;
  - matters can be dealt with by informal discussion (refer to paragraphs (5.1–5.3) of this procedure);
  - there appears to be sufficient evidence for a hearing before the Headteacher or (CofG if the Headteacher is to be disciplined) and the possible outcome may be sanctions short of dismissal;
  - there appears to be sufficient evidence that the allegation constitutes gross misconduct to trigger a formal disciplinary hearing before the (SD&DC).
- 7.6 Where dismissal could result because a member of staff is currently on a final written warning the case must be referred to the (SD&DC).

## **8 The hearing before the Headteacher (or Chair of Governors)**

- 8.1 Conduct that is considered to fall within the scope of lesser misconduct has been delegated to the Headteacher to deal with. The (CofG) will deal with lesser misconduct allegations against the Headteacher. A hearing will take place with the Headteacher or the (CofG in respect of the Headteacher) supported by advice from the (LA) or diocesan authority (where appropriate). Should the (CofG) be compromised this role should be delegated to the Vice-Chair (providing the Vice-Chair is not compromised).

- 8.2 The member of staff will be sent a copy of these procedures and will be informed in writing of the following information: -
- the nature of the alleged misconduct;
  - the stage reached in the procedure;
  - the date, time and place for the hearing;
  - the possible outcome of the hearing; and
  - their right to: -
    - produce written statements which will be circulated to all parties in advance of the hearing;
    - ask questions relating to any written statements so produced;
    - state their case in person and/or through a representative;
    - produce witnesses; and
    - be accompanied by a trade union representative or companion of their choice.

8.3 There are five possible outcomes following on from such a hearing: -

- informal action;
- oral warning;
- first written warning;
- final written warning; or
- referral to a disciplinary hearing before the governing body's (SD&DC).

8.4 In many cases lesser misconduct can be dealt with in the first instance by informal action. However, there may be occasions when it will be appropriate to give a member of staff an oral warning or a written warning. The sanctions used will depend on the circumstances of the member of staff's behaviour.

8.5 Further advice on each of these sanctions is set out in Sections (10) to (13) below. The sanctions a member of staff could receive will be in line with the nature and severity of the allegation. However, there may be occasions where a member of staff has had repeated lesser misconduct allegations against them and has not altered or improved their behaviour. This may result in a more severe sanction being given, e.g. a final written warning. Alternatively, the lesser misconduct behaviour may be serious enough to warrant an immediate final written warning instead of any other sanction.

## **9 Informal action**

9.1 As a result of the hearing the Headteacher or the (CofG in respect of the Headteacher) with support from the (LA) (HR) Advisor may deal with matters by giving advice, counselling, training, instruction, coaching or other managerial strategies as is appropriate. Such activity may be delegated to a member of the senior management team. In respect of the Headteacher however this will be carried out by the (CofG) with advice and support from the (LA) (HR) Advisor.



9.2 The aim of this action is to ensure that problems are discussed so as to encourage and help the member of staff to improve. The member of staff needs to understand:

- what they need to do in relation to their conduct;
- how future conduct will be monitored and reviewed;
- the period of time over which conduct will be monitored; and
- that formal action might be taken if the conduct in question recurs.

9.3 Where discussions and support structures which have been put in place to help the member of staff do not lead to improvement or the relevant changes in conduct in the agreed timescale, the member of staff will normally be advised in writing of further action to be taken.

## **10 Warnings**

10.1 Where the member of staff's conduct is satisfactory for the specified period of a warning such warnings will be expunged from the staff member's file after a specified period and cannot be referred to again once spent. Suitable periods would be: -

- oral warning – 3 months
- first written warning – 6 months
- final written warning – 12 months

## **11 Oral warning**

11.1 If at the conclusion of the hearing it is decided to proceed with disciplinary action by way of an oral warning, the Headteacher or the (CofG in respect of the Headteacher) will issue the oral warning to the member of staff in the presence of their trade union representative or companion.

11.2 An oral warning will be confirmed in writing with a copy to any person who accompanies the member of staff in accordance with these procedures and will state: -

- the nature of the misconduct;
- the stage reached in the procedure;
- what is expected for the future; and
- the right to appeal with the time limit within which the appeal should be made and how the appeal should be made.

11.3 The member of staff will be required to indicate receipt of the written confirmation of the oral warning. A record of the warning will be placed on the member of staff's file. Where the member of staff's conduct is satisfactory for the specified period (usually three months) following an oral warning, such warnings shall be expunged from their record and therefore cannot be referred to again once spent.

## **12 First written warning**

- 12.1 If at the conclusion of the hearing it is decided to proceed with disciplinary action by way of a first written warning the Headteacher or the (CofG in respect of the Headteacher) will issue the first written warning to the member of staff in the presence of their trade union representative or companion.
- 12.2 With the agreement of the member of staff a written warning will be copied to any person who accompanies the member of staff in accordance with these procedures and will state: -
- the nature of the misconduct;
  - the stage reached in the procedure;
  - what is expected for the future; and
  - the right to appeal with the time limit within which the appeal should be made and how the appeal should be made.
- 12.3 The member of staff will be required to indicate receipt of the written warning. A copy of the warning will be placed on the member of staff's file. Where the member of staff's conduct is satisfactory for the specified period (usually six months) following a written warning, such warning shall be expunged from their record and therefore cannot be referred to again once spent.

## **13 Final written warning**

- 13.1 A final written warning may be issued where lesser misconduct recurs despite attempts by senior managers to support the member of staff and improve their behaviour or conduct. A final written warning may also be issued where a single instance of proven misconduct is considered to be of a serious nature.
- 13.2 Final warnings may be given following a hearing before the Headteacher or the (CofG in respect of the Headteacher) who will issue a final written warning to the member of staff in the presence of their trade union official or companion.
- 13.3 With the agreement of the member of staff a final warning will be copied to any person who accompanies the member of staff in accordance with these procedures, and will state: -
- the nature of the misconduct;
  - the stage reached in the procedure;
  - what is expected for the future;
  - that the next stage will be dismissal; and
  - the right to appeal with the time limit within which the appeal should be made and how the appeal should be made.
- 13.4 The member of staff will be required to indicate receipt of the written confirmation of final warning. A record of the warning will be placed on the member of staff's file. Where a member of staff's conduct is satisfactory for the specified period (usually 12 months) following a final warning such

warning shall be expunged from their record and therefore cannot be referred to again once spent. At the end of the period of the final written warning if the member of staff's behaviour has not improved the matter can be referred to the (SD&DC) for a formal hearing which could result in dismissal. The member of staff must be informed of this at the time the final written warning is issued.

#### **14 Appeals against formal warnings**

- 14.1 There is a right of appeal against any disciplinary action (refer to paragraphs 27.1–27.2 of this procedure for information on appeals).

#### **15 Referral for consideration under procedures for gross misconduct**

- 15.1 There may be rare occasions where, at the end of an investigation into lesser misconduct matters, the evidence in the investigation report indicates that the behaviour constitutes gross misconduct. If the Headteacher or the (CofG in respect of the Headteacher) with support from the (LA) or diocesan officer or another agreed appropriate person, concludes that this is the case, a referral for formal disciplinary action for gross misconduct may be justified. In these circumstances the member of staff will be informed immediately of the decision made and that the matter is being referred to the (SD&DC) for consideration. The most appropriate way for a member of staff or Headteacher and their respective trade union representatives to be informed of this decision will be through a meeting with the Headteacher or (CofG in respect of the Headteacher). As this is likely to be a rare occurrence this meeting does not form part of the lesser misconduct process.

#### **16 Gross misconduct (where the allegation does not relate to child protection issues)**

- 16.1 The term gross misconduct is used to mean an act or omission or a series of actions or omissions by a member of staff that fundamentally repudiates the contract of employment. A list of possible actions that may constitute gross misconduct will be found in Appendix 2. All gross misconduct allegations will be subject to a formal disciplinary hearing before the governing body's (SD&DC). The (SD&DC) and Staff Disciplinary and Dismissal Appeals Committee (SD&DAC) shall each have a minimum of three governors. The (SD&DAC) must have at least the same number of governors as the (SD&DC). No governor will be a member of both committees and both committees will also have separate advisers. The terms of reference for both these committees is given in Appendix 3.
- 16.2 Where alleged gross misconduct is to be considered responsibility for the arrangements to set up a disciplinary investigation rests with the (CofG) through the clerk to the governing body.
- 16.3 Gross misconduct allegations are usually sent to the Headteacher or (CofG if the allegation is about the Headteacher). On receipt of an allegation the Headteacher or (CofG) will make an initial assessment of the situation (but not investigate) to determine the nature and circumstances of the allegation,

i.e. witnesses, when it occurred, etc. If the conclusion is that the allegation may be true the member of staff and their trade union representative will be informed of the allegation immediately and that the formal disciplinary process is being engaged.

- 16.4 The Headteacher or (CofG) will arrange for the allegation to be thoroughly and fairly investigated. At this point the member of staff may be suspended by the Headteacher or (CofG) on full pay and in line with the governing body's agreed procedure. Both the Headteacher and (CofG) can suspend staff but only the governing body can end a suspension. The governing body has, however, delegated this function to the (CofG/the Chair of the SD&DC). The decision has been minuted. Suspensions will be reviewed by the (CofG) at intervals set out in this disciplinary procedure and the outcome will be reported to the member of staff and the governing body.
- 16.5 However, if after making the initial assessment of the allegation the conclusion of the Headteacher or (CofG in respect of an allegation against the Headteacher) is that beyond any doubt it is impossible for the allegation to be true, the Headteacher or (CofG) may take no further action. The member of staff and their union representative will be informed immediately of this decision.

## **17 The investigation: Gross misconduct**

- 17.1 As a possible outcome for gross misconduct hearings is dismissal it is important that investigations into gross misconduct allegations are unbiased and thorough. Consequently, and wherever possible, all investigations will be carried out externally by an appropriate person who has no connection or involvement with the case and has the relevant skills. The governing body may engage, for example, (LA) or diocesan officers, ex-Headteachers or ex-(LA) officers, who are impartial and have no connections with the case. Only in exceptional circumstances would the (CofG), members of staff or governors be asked to investigate gross misconduct cases. The (CofG) is responsible for controlling and managing all aspects of the disciplinary process including the engagement of an appropriate investigator. The member of staff has the right to object to an investigator if they have reasonable doubts as to their ability to act impartially.
- 17.2 Prior to the investigation the member of staff will be informed in writing of their rights under the school's disciplinary procedure, including the right to be accompanied by a companion or a representative of their trade union, at all meetings held in connection with the disciplinary matter.
- 17.3 Notes will be taken of the meeting and a copy given to the member of staff and their trade union representative following the meeting. No undertaking of confidentiality will be given to witnesses, however the overall confidentiality of the disciplinary process will be respected.

## **18 The investigation report**

- 18.1 A template for an investigatory report is given in Appendix 4. The report once completed will be given to the Headteacher and the (CofG) or the (CofG and another governor in respect of investigations into the conduct of the Headteacher) who will consider the findings and decide whether based on the findings of the report: -
- there is no evidence to support the allegations and the matter is closed;
  - based on evidence the conduct does not amount to gross misconduct but to lesser misconduct which can be dealt with by the appropriate person; or
  - based on evidence the conduct does amount to gross misconduct and is required to be referred to a staff disciplinary and dismissal hearing.
- 18.2 This discussion and decision will be minuted by the clerk. The member of staff will be advised of the outcome of the investigation as soon as possible in writing by the clerk to the (SD&DC).
- 18.3 A copy of the investigation report, including all interview notes, will automatically be provided to the member of staff against whom the allegation has been made within the timescales set out in this disciplinary procedure if the case is to proceed as outlined above.

## **19 Allegations that involve issues of child protection – receipt of an allegation**

- 19.1 Allegations involving issues of child protection will be brought immediately to the attention of the Headteacher or the (CofG if the allegation is in respect of the Headteacher) and the designated child protection officer in the school and referred to the statutory authorities, e.g. the police and social services.
- 19.2 The Headteacher or (CofG in respect of the Headteacher) will make an initial assessment (but not investigate) to determine the nature and circumstances of the allegation, i.e. witnesses, when it occurred, etc. If the conclusion is that beyond any doubt it is impossible for the allegation to be true the matter will be discussed by the (CofG), Headteacher and the lead child protection officer in the (LA) to determine whether a referral to social services and/or the police is required. If the allegation is about the Headteacher the (CofG) will have the same discussion without the Headteacher being present. If the conclusion of all parties is that it is impossible for the allegation to be true the Headteacher or (CofG) may not take any further action against the member of staff and no referral to the statutory authorities is required. If there is any doubt and agreement between these parties cannot be reached the matter will be referred to the statutory authorities.
- 19.3 If, however, the initial assessment by the Headteacher or (CofG if the allegation is about the Headteacher), in discussion with the (LA) lead child protection officer, indicates that an allegation might be true, there will be an immediate referral to the statutory authorities (social services and/or the police), in accordance with local child protection procedures.

- 19.4 The member of staff and their union representative will normally be informed of the decision as agreed by the statutory authorities that a referral is being made. However, there may be some circumstances where this will not be appropriate. At this point the Headteacher or (CofG if the allegation is about the Headteacher) may suspend the member of staff on full pay in line with the governing body's agreed procedures. Both the Headteacher and (CofG) can suspend a member of staff but only the governing body can end a suspension. The governing body has delegated this function to the (CofG/the Chair of the (SD&DC)). The decision has to be minuted. Suspensions will be reviewed at intervals set out in the disciplinary policy and the outcome reported to the member of staff and the governing body.
- 19.5 After the statutory authorities (e.g. the police and social services) have completed their consideration of the allegation, it will be referred back to the governing body to complete the staff disciplinary process. This will happen even if the statutory authorities take the decision not to pursue a criminal investigation.
- 19.6 The Headteacher and (CofG) or the (CofG and another governor if the Headteacher is the subject of the allegation), with advice from the school's designated child protection officer and (LA) lead child protection officer as appropriate, will discuss: -
- whether the allegation is of a child protection nature and the behaviour constitutes gross misconduct which requires it to be independently investigated prior to any disciplinary hearing;
  - whether there is evidence of misconduct which should be treated as lesser misconduct; or
  - whether no further action is required.
- 19.7 If there is any doubt at all or agreement cannot be reached as to whether the matter is a child protection issue the allegation will be independently investigated.

## **20 Referral for an independent investigation**

- 20.1 The requirement in education law is that the governing body must refer child protection allegations for independent investigation. In order to make the process easier this task has been delegated to the (CofG) and the governing body's decision to this effect has been minuted. This must be done prior to the hearing of any disciplinary proceedings. The independent investigator's contact in relation to the running of the investigation will be with the governing body (e.g. the (CofG) and not the (LA) or Headteacher. The purpose of an independent investigation is to enable the governing body to comply with the law and to provide members of the (SD&DC) with a thorough and unbiased investigation report, produced by persons with appropriate skills and training, to enable them to reach fair and balanced decisions.
- 20.2 The independent investigator will be appointed as soon as the governing body makes a referral; however, the independent investigator will not commence the investigation until after the statutory authorities have

completed their investigation. Once the statutory authorities have completed their investigation the independent investigator will then be able to conduct their investigation.

## **21 The independent investigation**

- 21.1 The independent investigator will set the parameters of the investigation and interview all witnesses in order to ensure a completely impartial and unbiased investigation is carried out. The report will not contain any conclusions and recommendations as these are matters for the committee to determine.

## **22 The independent investigation report**

- 22.1 The report once completed will be given to the Headteacher and (CofG) or (CofG and another governor in respect of investigations into the conduct of the Headteacher). They will consider these findings and decide whether, based on the findings of the report: -
- there is evidence to support a decision that the child protection allegations/are well-founded, that they constitute gross misconduct behaviour and that they will require a disciplinary hearing before the (SD&DC);
  - there is evidence to support a decision that the allegation constitutes lesser misconduct behaviour which can be dealt with by the Headteacher or (CofG if the allegation is against the Headteacher); or
  - there is no evidence to support the child protection allegation and no further action needs to be taken against the member of staff.
- 22.2 If there is any doubt at all or agreement cannot be reached by the Headteacher or the (CofG) or the (CofG and another governor in respect of the Headteacher) the matter will be referred for a full hearing before the (SD&DC).
- 22.3 The member of staff and trade union representative will be informed of the decision as soon as reasonably practicable.
- 22.4 The (CofG) will ensure that all relevant papers including the full investigation report are sent to the member of staff and/or their union representative, the person presenting the case against the member of staff and members of the (SD&DC) within the timescales set out in this procedure.
- 22.5 No evidence will be removed by any party from the investigation report before it is sent to the governing body (SD&DC).

## **23 Appointment of independent non-governor member on staff disciplinary and dismissal committees and staff disciplinary and dismissal appeals committees dealing with child protection allegations**

23.1 As required in law the (SD&DC) and the (SD&DAC) will have at least two governors plus an independent non-governor with voting rights. The appeal committee will have the same number of governors as the first committee. The governors including the independent non-governor on the appeal committee will be different from those on the first committee.

## **24 The disciplinary hearing in respect of all gross misconduct cases**

24.1 A disciplinary hearing will be held as soon as it can be arranged by the clerk to the (SD&DC) even if the member of staff has subsequently resigned or is on sick leave.

24.2 The member of staff will be informed in writing of: -

- the date, time and place for the disciplinary hearing, seeking agreement to dates from members of the committee, the member of staff, any witnesses appearing in person and the (LA) and diocesan authority (if appropriate);
- the purpose of the hearing and the range of possible outcomes;
- the right of the member of staff to be accompanied by a companion or representative of the member of staff's trade union;
- the membership of the (SD&DC) and (SD&DAC);
- the name of the person presenting the case against the member of staff;
- the full details of the allegation, the evidence to be presented and the names of any witnesses to be called, etc.;
- who is to be the adviser to the (SD&DC) and the (SD&DAC); and
- the date by which all relevant documentation should be received by the clerk prior to the hearing.

24.3 The clerk will arrange for the documentation from both parties to be distributed to the member of staff and their representative prior to the hearing, including up-to-date procedures, in accordance with the timescales set out in this procedure.

24.4 The staff member will be afforded the right to object to any member of the committee or the investigator on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case.

## **25 At the hearing**

25.1 The procedure for the disciplinary hearing is given in Appendix 5. The hearing will be conducted in a fair manner with all parties having the opportunity to present evidence and call and question witnesses. There will also be an opportunity for the presenting officer and the member of staff and/or their trade union representative to summarise their case. The clerk to the governing body will be present to record the hearing in detail.



25.2 Once this part of the hearing is completed there will be an opportunity for the (SD&DC) to receive advice. Once this is received members of the committee will be left alone with the clerk to discuss the evidence and make their decision. Where possible this will be given verbally at the end of the hearing. If for some reason this is not possible the committee's decision will be given in writing to the member of staff as soon as possible after the hearing. At this point the member of staff will also be informed of their right to appeal and the timescale within which this must be made.

## **26 Decision reached after the hearing has taken place**

26.1 Having considered all the evidence and taken into account advice provided, the (SD&DC) may conclude that: -

- the allegation is unproven and there is no action to be taken;
- the alleged behaviour constitutes lesser misconduct and a formal oral, first warning or final written warning should be issued; or
- the allegation of gross misconduct is proven and, depending on the severity of the misconduct, an appropriate sanction shall be imposed.

26.2 Possible sanctions may be: -

- relegation to a lower-graded position (if practical and appropriate) and loss of salary;
- specified training and development;
- issue of a formal warning (where the alleged behaviour constitutes lesser misconduct); or
- dismissal of the member of staff without notice.

26.3 Matters that are considered lesser misconduct will be dealt with by means of formal action set out in paragraphs 9.1–13.4.

## **27 Disciplinary hearing – appeal**

27.1 A member of staff is entitled to appeal against a decision of the (SD&DC). The notice of the intention to appeal needs to be lodged with the clerk to the (SD&DAC) within five school days after receipt of the decision by the (SD&DC). The appeal notice will need to include the grounds for the appeal.

27.2 The appeal will be heard by the (SD&DAC) within forty school days following the decision of the (SD&DC) i.e. thirty-five school days following notification of the appeal. The procedure for a disciplinary appeal hearing is given in Appendix 6. Appeal hearings will focus on the issues set out in the appeal notification, therefore the appeal process may not always take the form of a complete hearing. However, under certain circumstances, e.g. where new evidence comes to light or the first hearing process was flawed or biased it may be appropriate to rehear part, if not all, of the case. The member of staff will be given notice of the date and time of the appeal hearing. Agreeable times and dates will be arranged for all parties concerned where possible.

- 27.3 The (SD&DAC) may, after considering all the facts presented to it, including any new evidence, come to one of three conclusions: -
- uphold the decision of the (SD&DC);
  - impose a lesser penalty; or
  - conclude that no disciplinary action should be taken against the member of staff.
- 27.4 The (SD&DAC) cannot impose a more severe penalty than that imposed by the Headteacher or (CofG) in respect of the Headteacher in lesser misconduct cases or the (SD&DC) in gross misconduct cases.
- 27.5 The decision of the (SD&DAC) will be final and the staff member will be informed in writing.
- 27.6 The member of staff will be given a copy of the minutes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions.
- 27.7 If, as the result of an appeal, disciplinary action is withdrawn all details thereof will be expunged from the member of staff's personal file and they will be informed accordingly. The member of staff will be given a copy of the minutes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions.

## **28 Suspension**

- 28.1 Suspension pending disciplinary proceedings will normally only be considered where allegations relate to gross misconduct behaviour and where: -
- it appears to be necessary to exclude the member of staff from the school for the protection of pupils, other staff, property or the orderly conduct of the school; or
  - the continued presence at work of the member of staff would be an obstacle to proper investigation of the allegations made against that member of staff.
- 28.2 Suspension is a serious step and will not be used in a punitive way. Suspension will be on full pay and without loss of emoluments. The continued effect of the suspension will be kept under review and the outcome of the review reported to the member of staff and the governing body.
- 28.3 The decision to suspend can be taken by the Headteacher or the (CofG) but only the governing body can end a suspension. However, the governing body has delegated the task of ending a suspension to the Headteacher, (CofG)/the Chair of the (SD&DC).
- 28.4 The decision to suspend will be discussed with the Headteacher, (CofG) or vice chair if the chair is not available in consultation with the (CEO) of the maintaining (LA) and, where applicable, the diocesan authority, prior to

implementing any suspension or redeployment. Written notice will be given to all relevant parties following a decision to suspend.

- 28.5 If the staff member is absent due to sickness, the (SD&DC) will usually postpone the hearing. However, where the staff member may be absent for an indeterminate period, the (SD&DC) may decide to hold the hearing provided that it has informed the member of staff and their representative and has offered the member of staff the opportunity to send a representative or submit written evidence to present their case. The representative will have the same opportunity as the staff member to present evidence, call witnesses and sum up the staff member's case.

## **29 Referral to the disclosure and barring service**

29.1 The Disclosure and Barring Service (DBS) will: -

- maintain two separate but aligned barred lists – one for children and one for vulnerable adults;
- make decisions on who should be placed on these lists; and
- assess information on individual applicants and where it believes this indicates that the individual poses a risk of harm bar them from working in “regulated activity” (e.g. schools).

29.2 (WG) Circular 018/2009 “*Reporting Misconduct and Incompetence in the Education Service*” requires that where an individual is removed from “regulated activity” employers: -

- must refer information to the (DBS) when they have dismissed an individual or an individual resigns because they have harmed or may harm a child or vulnerable adult;
- think “relevant conduct” has occurred (the Safeguarding Vulnerable Groups 2006 gives a full definition of “relevant conduct”);
- consider a risk of harm is present; and/or
- have been informed of a relevant caution or conviction.

29.3 The information to be referred to the (DBS) should include any disciplinary matters that would highlight a concern relating to the harm or risk of harm to children or vulnerable adults and other information such as: -

- minutes of disciplinary hearings;
- witness statements;
- dismissal/suspension letters;
- social services records; and
- other information as requested by the (DBS).

### **30 The Education (Supply of Information) (Wales) Regulations 2009**

- 30.1 The *Education (Supply of Information) (Wales) Regulations 2009* require employers of teachers registered with the General Teaching Council (Wales) (GTCW) to report cases of misconduct and incompetence to the (GTCW) other than those cases where they are required to provide information to the (DBS). Where a referral is made to the (DBS) the (GTCW) will be informed automatically by the (DBS).
- 30.2 Employers must make a report to the (GTCW) if they cease to use a registered teacher's services on a specified ground or if they might have done so had that teacher not already ceased to provide his or her services. The specific grounds are misconduct, professional incompetence and conviction of a relevant offence. A relevant offence is an offence other than one having no material relevance to a person's fitness to be a registered teacher.

### **31 Keeping records**

- 31.1 A written record should be kept throughout the disciplinary process. Sections (13.9) to (13.14) of the *"Revised Staff Disciplinary and Dismissal Procedures for Maintained Schools in Wales"* issued by the Welsh Government in Circular 013/2012. The record should include: -

- the allegations;
- all steps taken in each case;
- all meetings involving the governing body, (LA) representatives, diocesan representatives (if applicable), the member of staff or their advisor/companion/union representative;
- the investigation, including interview records, documentary evidence and the investigator's report;
- the record of the (SD&DC) hearing as well as the (SD&DC's) conclusions and the basis for them;
- any appeal made by the member of staff;
- the record of the (SD&DAC) hearing (even if it is not a full re-hearing of the case) and the (SD&DAC's) conclusions and the basis for them;
- all professional advice, including legal and personnel advice, given at any time during the process;
- any grievances raised during the disciplinary procedure; and
- subsequent developments.

### **32 Dismissal of a member of staff**

- 32.1 Whilst the governing body of a community maintained school has the responsibility to "hire and fire" staff employed to work there the (LA) holds the contract of employment. The (SD&DC) must copy the letter of dismissal to the (CEO) once the period allowed for the member of staff to appeal has expired and they have not appealed. The (LA) is required to dismiss the member of staff and should do so within 14 school days of notification of the decision by the (SD&DC) or by the (SD&DAC).

32.2 Where the school is a voluntary aided school the governing body is the employer of the staff who work there. Where a decision is taken to dismiss the member of staff, the letter of confirmation should also include notification of dismissal and any appropriate notice. The member of staff will still have the right to appeal against the decision.

### **33 Resignation of a member of staff**

33.1 A member of staff may resign while disciplinary procedures are pending or in progress. Where the allegations relate to gross misconduct and involve issues of child protection the Headteacher (or (CofG) in the case of allegations against the Headteacher) will need to advise the member of staff that the child protection and if required disciplinary procedures will continue to completion. This is necessary to ensure that the (LA) and the school fulfils its obligations under (WG) Circular 018/2009 "*Reporting Misconduct and Incompetence in the Education Service*" (see Section 13) and *The Education (Supply of Information) (Wales) Regulations 2009* (see Section 14). The school or (LA) must not enter into any compromise agreements with the employee.

### **34 Sickness of a member of staff**

34.1 In some cases, it would be deemed reasonable to rearrange a staff disciplinary investigation/hearing, with agreed timescales, where the member of staff is unavailable due to sickness. If, however, this continues, advice should be sought from the occupational health unit as to the member of staff's ability to attend a meeting. Governing bodies should be sensitive to the possibility that approaches which defer disciplinary matters may create uncertainty for the school and added stress for the member of staff.

34.2 If the member of staff is expected to be sick for an indeterminate time, it may be reasonable to go ahead with the disciplinary hearing provided the member of staff and their representative have been advised of this and the member of staff is given the opportunity to use a representative or submit written evidence to present their case. The representative must have the same opportunity as the staff member would have had to present evidence, call witnesses and sum up the staff member's case.

34.3 If the member of staff were to decline the opportunity to use a representative to present their case and their own state of health would cause an extended delay in the proceedings, the (SD&DC) should still go ahead on the basis that the member of staff had been afforded reasonable opportunity to make their case and that the hearing has to be arranged to conclude the case. However, the (SD&DC) would need to consider whether this would be consistent with the need to act fairly and within its own procedures and whether the staff member might be able to mount a claim for breach of contract or unfair dismissal.

### **35 What if a grievance is raised during a disciplinary matter?**

- 35.1 It is possible that during the disciplinary process the member of staff may raise a grievance that is germane to the case. If this happens the Headteacher (or (CofG) in the case of the Headteacher) or the (SD&DC) should consider suspending the disciplinary procedure for a short period while the grievance is dealt with first. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. The Headteacher (or (CofG) in the case of the Headteacher) or the (SD&DC), however, should be mindful of vexatious or delaying grievances and ensure that delays are minimal.
- 35.2 Where the disciplinary action contemplated by the Headteacher (or (CofG) in the case of the Headteacher) is dismissal, however, the grievance procedure will not apply because it can be considered as part of the disciplinary process. Where the action taken or contemplated is paid suspension or a warning the grievance procedure and not the disciplinary procedure will apply to any grievance.
- 35.3 Where the Headteacher (or (CofG) in the case of the Headteacher), however, takes or is contemplating other disciplinary action short of dismissal and asserts that the reason for the action is conduct or capability related, the grievance procedure does not apply unless the grievance is that the disciplinary action amounts, or would amount, to unlawful discrimination or that the true reason for the disciplinary action is not the reason given by the Headteacher (or (CofG) in the case of the Headteacher). In such cases the member of staff must have raised a written grievance in accordance with the grievance procedure before presenting any complaint to an employment tribunal about the issue raised by the grievance. If the written grievance is raised before any disciplinary appeal hearing, however, the rest of the grievance procedure does not have to be followed although the Headteacher may use the appeal hearing to discuss the grievance.

### **36 Summary**

- 36.1 In adopting this procedure the governing body has taken due regard of advice and guidance from the (LA) and the *“Revised Staff Disciplinary and Dismissal Procedures for Maintained Schools in Wales”* issued by the Welsh Government in Circular 013/2012 – Annex E: *“Flow chart for lesser misconduct and gross misconduct”*. It has also consulted the local trade union representatives.
- 36.2 The governing body will also consult further before any amendments are made to this disciplinary procedure.

**Further detailed guidance on the stages of this policy can be found in the Revised Staff Disciplinary and Dismissal Procedures for Maintained Schools in Wales guidance Circular WGC 013/2012.**

Signed by chair of governors on behalf of the governing body:

.....

Date approved: .....

Date of review .....  
**(by full governing body)**

Date sent to LA .....

## TIMESCALES FOR HEARINGS (IN SCHOOL DAYS)

### 1 General

- 1.1 Please note that a brief outline of timescales is provided in this appendix. These timescales are only indicative and it is essential that they are read in conjunction with the relevant sections in the guidance.
- 1.2 There may be a need to be flexible with timescales, e.g. where there is a large amount of paperwork or unavailability of staff. Timescales may be shortened or extended by mutual agreement between all relevant parties. Allegations received out of the school term should be addressed promptly once term recommences and earlier if possible.

### 2 Lesser misconduct – Hearing with Headteacher (or Chair of Governors in respect of the Headteacher).

- 2.1 The lesser misconduct process should generally take no more than 25 school days or five school weeks to complete (with a further 25 days for an appeal hearing if needed). The investigation should begin as soon as possible following receipt of the allegation. All times are calculated from receipt of the investigation report. Thereafter, suggested timescales are as follows: -

**Day 1.** Investigation report received and decision taken to deal with the matter informally as part of the management process or to have a hearing with the Headteacher or (CofG).

**Between days 1–5.** A mutually agreed date for the hearing before the Headteacher or (CofG) is set and a letter confirming the date is sent to the member of staff.

**Between days 5–10.** Documentation from the member of staff to be received by the school, (CofG) or the Headteacher.

**Between days 10–15.** Member of staff and Headteacher/(CofG) receive all documentation.

**Between days 15–20.** Parties have time to prepare the case.

**Between days 21–23.** Hearing takes place.

**Between days 24–25.** Written notification of outcome, detailing the right of appeal, is sent to the member of staff.



### **3 Lesser misconduct – appeal hearing**

3.1 All times are calculated from notification of the outcome of the (CofG)/Headteacher hearing: -

**Between days 1–5.** Lodge notice of intention to appeal to the clerk within five working days after receipt of notification of outcome.

**Between days 5–10.** A mutually agreed date for the appeal hearing is set and a letter confirming the date is sent.

**Between days 10–15.** Documentation from either party to be forwarded to the clerk of governors.

**Between days 15–18.** Documentation is sent to all parties by the clerk.

**Between days 19–22.** Parties prepare for the hearing.

**Day 23.** Date of appeal hearing – oral outcome given (other than in exceptional circumstances).

**Between days 24–25.** Written notification of outcome sent to the member of staff.

### **4 Gross misconduct – hearing procedure before the staff disciplinary committee**

4.1 The general timescales have allowed up to 40 school days for a hearing and a further 40 school days for an appeal hearing. These periods may be shortened or lengthened as needed. The investigation should begin as soon as possible following receipt of the allegation. All times are calculated from receipt of the investigation report. Thereafter, suggested timescales are as follows: -

**Day 1.** Investigation report received and decision taken to go to a hearing (See Section 9, paragraph 9.15 of the (WG) guidance).

**Between days 5–10.** A mutually agreed date for hearing is set and a letter confirming the date is sent by the clerk of governors to the member of staff including the following: -

- date and time of the hearing;
- purpose of the hearing and range of possible outcomes;
- the right to be accompanied by a companion or a representative of the member of staff's trade union;
- the membership of the staff disciplinary and dismissal and staff disciplinary and dismissal appeals committees;
- details of any other persons to be present and in what capacity; and
- the full details of the allegation, an outline of the evidence to be presented and the names of any witnesses to be called, etc.

Inform the person presenting the case against the member of staff of: -

- date and time of the hearing;
- the full details of the allegation;
- an outline of the evidence to be presented; and
- the names of any witnesses to be called, etc.

**Between days 10–20.** Documentation from both parties to be forwarded to the clerk.

**Between days 20–25.** Exchange of documentation between the parties undertaken by the clerk.

**Between days 26–34.** Member of staff and presenting officer to prepare the case.

**Day 33** – Papers sent to members of the (SD&DC).

**Day 35.** Date of hearing – oral outcome given if decision is agreed by committee (other than in exceptional circumstances).

**Between days 36–40.** Written notification of outcome, detailing the right of appeal, is sent to the member of staff.

## **5 Gross misconduct – appeal hearing**

5.1 All times calculated from notification of the outcome of the gross misconduct hearing: -

**Day 1–5.** Lodge notice of intention to appeal (five working days after receipt of decision by SD&DC).

**Between days 5–10.** A mutually agreed date for the appeal hearing is set and a letter confirming the date is sent by the clerk of governors to the member of staff including the following: -

- date and time of the appeal hearing;
- purpose of the hearing and range of possible outcomes;
- the right to be accompanied by a companion or a representative of the member of staff's trade union;
- the membership of the (SD&DC);
- details of any other persons to be present and in what capacity; and
- the full details of the allegation, an outline of the evidence to be presented and the names of any witnesses to be called, etc.

Inform the person presenting the case against the member of staff of: -

- date and time of the hearing;
- the full details of the allegation;
- an outline of the evidence to be presented; and
- the names of any witnesses to be called, etc.

**Between days 10–20.** Grounds for appeal and all supporting documentation to be sent to the clerk.

**Between days 20–25.** Documentation sent to the member of staff/union representative and presenting officer by the clerk.

**Between days 26–34.** Preparing a case for appeal

**Day 33** – Papers sent to the members of the (SD&DAC).

**Day 35.** Date of appeal hearing – oral outcome given if decision is agreed by (SD&DAC) (other than in exceptional circumstances).

**Between days 37–40.** Written notification of outcome is sent to the member of staff.

## DEFINITIONS OF GROSS MISCONDUCT AND LESSER MISCONDUCT

### Gross Misconduct

1.1 Gross misconduct means an act or omission, or a series of acts or omissions that fundamentally repudiates the contract of employment so that the governing body would be justified in no longer tolerating the continued presence at work of the member of staff. These acts may justify summary dismissal without notice or payment in lieu of notice. The list below is offered only by way of example to indicate how behaviour may be regarded. This is not an exhaustive list and is provided for illustrative purposes only. Judging the level of misconduct and how it should be handled has to be undertaken on the facts of each case. Examples of offences normally regarded as gross misconduct are: -

- specified conduct that is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment, etc.;
- misconduct giving gross offence including acts of indecency;
- physical, sexual or emotional abuse of pupils;
- sexual misconduct at work;
- violent behaviour including physical assault;
- failure to disclose knowledge of/suspicion of abuse/neglect/harm of a child/vulnerable adult by another employee(s) of the school or Council in line with the school's or Council's Child Protection/Safeguarding/"Whistle blowing" Policies;
- any omission or act of serious negligence which threatens the health and safety of pupils, members of staff and other users of the school site and causes unacceptable loss, damage and/or injury;
- serious incapability at work brought on by alcohol or other illegal substances on school premises;
- failure to comply with the schools no smoking policy by smoking on the school site particularly in the vicinity of flammable substances or in areas where there are identified fire hazards;
- serious acts of *"offensive, intimidating, malicious, insulting or humiliating behaviour, abuse of power or authority which attempts to undermine an individual or group of individuals (e.g. staff, parents, carers or pupils) and which may cause them to suffer stress"* i.e. continuous bullying;
- serious acts of *"improper, offensive and humiliating behaviour, practices or conduct which may threaten a person's job security, create and intimidating, unwelcome and stressful work environment or cause personal offence or injury"* i.e. harassment;
- persistent, serious or flagrant discrimination or harassment on the on any grounds;
- fighting with or threatening behaviour with intent towards another person;

- criminal or any other serious misconduct outside the workplace that reflects adversely upon the school and/or the member of staff's suitability to continue to be employed at the school;
- gross negligence;
- dishonesty (e.g. tampering with examination papers or revealing examination papers prior to examinations or altering examination results);
- knowingly providing false information on any matter relating the member of staff's employment with the school;
- fraudulent acts or theft of property belonging to the (LA), the school, fellow members of staff or pupils;
- fraudulent time – keeping, deliberate false recording of attendance or other records, abuse of sick pay regulations or defrauding the school, (LA) or member of the public in the course of official duties;
- any attempt to gain financial advantage by defrauding the school or Council;
- the receipt of money, goods, favours or excessive hospitality in respect of services rendered or to influence decisions;
- deliberate and serious damage to property belonging to the (LA), the school, fellow members of staff or pupils;
- unauthorised use of the school's vehicles, plant, equipment or machinery;
- serious acts of insubordination;
- abuse of the INTERNET and/or e-mail by transmitting and/or downloading of copyright material, threatening, obscene or libellous material, material protected by trade secrets, illegal activities or any activities which may put the school or Council at risk;
- deliberately accessing offensive or obscene material via INTERNET sites, social networking sites or by messaging;
- inappropriate texting;
- disclosure of confidential personal information; and
- serious misuse of a school's property or name.

### **Lesser Misconduct**

1.2 Lesser misconduct usually applies where such breaches of discipline do not normally result in dismissal for a first offence but may result in dismissal if repeated. Examples of misconduct may include: -

- specified conduct that is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment, etc.;
- poor timekeeping and/or unauthorised absence (e.g. absence from the workplace during school sessions without permission or in line with the school's policy);
- failure to comply with the school's sickness absence procedures;
- refusal to carry out reasonable instruction;
- negligence or abuse causing damage to property or superficial injury to a member of staff or pupil;
- neglect or unsatisfactory standards in performance of duties;
- offensive behaviour, insubordination or using abusive language;
- using inappropriate language;

- breach of dignity at work policies;
- unauthorised use of mobile telephones/text messaging/social network sites during lesson time;
- victimisation of colleagues, parents or pupils; and
- petty theft e.g. making unauthorised private telephone calls or sending personal mail at the school's expense.

## **GOVERNING BODY STAFF DISCIPLINARY COMMITTEES: TERMS OF REFERENCE**

### **1 Introduction**

- 1.1 The governing body is required to set up a (SD&DC) and a (SD&DAC) at its annual general meeting. The (SD&DC) will hear the disciplinary matter and the (SD&DAC) will consider any appeal. At all meetings set up to hear a disciplinary matter or an appeal the member of staff must be offered the right to be represented by a work colleague or their trade union.

## **STAFF DISCIPLINARY AND DISMISSAL COMMITTEE**

### **2 Composition**

- 2.1 To consist of three governors (excluding staff/teacher governors) with a quorum of three. The governing body will also name a reserve. If two or more of the panel are unable to attend then the full governing body will meet to agree a new panel.
- 2.2 In respect of staff disciplinary concerns which involve safeguarding concerns then an independent governor will be appointed to the panel either in addition or to replace one of the existing governors. The full governing body will meet to make the appointment of the independent governor as and when required.

**N.B. it is recommended that the Chair of Governors does not serve on this committee.**

### **3 Frequency of Meetings**

- 3.1 This committee will meet as required.

### **4 Purpose**

- 4.1 The main responsibilities of the committee are to deal with discipline, dismissal and redundancy issues. This committee will also hear and deliberate on matters relating to capability in accordance with agreed policy.

### **5 Terms of reference (all delegated powers)**

- 5.1 In accordance with school policies to: -
- consider all disciplinary matters brought to governors by the Headteacher;
  - consider disciplinary matters brought by the Chair of Governors against the Headteacher;
  - hear appeals brought by staff in “non – dismissal” disciplinary action taken by the Headteacher;
  - consider the dismissal of staff on the grounds of redundancy following the advice of the Headteacher and Chief Education Officer;

- determine the dismissal of staff on grounds of ill-health; and
- consider capability matters in line with agreed policy.

## **STAFF DISCIPLINARY AND DISMISSAL APPEALS COMMITTEE**

### **2 Composition**

- 2.1 To consist of three governors (excluding staff/teacher governors and those who were present at the first hearing) with a quorum of three. The governing body will also name a reserve. If two or more of the panel are unable to attend then the full governing body will meet to agree a new panel.
- 2.2 In respect of staff disciplinary concerns which involve safeguarding concerns then an independent governor will be appointed to the panel either in addition or to replace one of the existing governors. The full governing body will meet to make the appointment of the independent governor as and when required.

**N.B. it is recommended that the Chair of Governors does not serve on this committee.**

### **3 Frequency of Meetings**

- 3.1 This committee will meet as required.

### **4 Purpose**

- 4.1 The main responsibilities of the committee are to deal with appeals relating to discipline, dismissal, redundancy and capability issues in accordance with agreed policies.

### **5 Terms of reference (all delegated powers)**

- 5.1 In accordance with school policies to: -
- consider the appeals of all staff relating to disciplinary issues;
  - consider the appeals of all staff relating to dismissal;
  - consider the appeals of all staff who have been identified for redundancy; and
  - consider the appeals of all staff relating to capability.



## Template for Investigatory Report

**Report to:** Head Teacher (or Chair of Governors)

**Subject:** Investigation into allegation of ..... by <name of employee and post title>

**Report by:** <name of investigating officer>

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### **1 Introduction**

1.1 Outline the allegations and whom the allegations are made against, i.e. the employee being disciplined.

### **2 Background**

2.1 Information which may be considered necessary, other than the alleged incident(s) themselves. Also detail those who were involved in the investigation and their roles, i.e. witnesses.

### **3 Sequence of Events**

3.1 An outline of events, in chronological order, detailing when the incident(s) happened.

### **4 Findings**

4.1 This will be the main part of the report which will detail what the Investigating Officer has found during the course of the investigation and what the findings are with respect to each allegation made. This section will need to make reference to any attached appendices, i.e. supporting documentation, witness statements, etc.

**STAFF DISCIPLINARY AND DISMISSAL COMMITTEE (SD&DC) – PROCEDURE FOR DISCIPLINARY HEARING**

**1 GENERAL PRINCIPLES: -**

1.1 The Chair of the (SD&DC) will ensure that: -

- the allegations of misconduct are clearly outlined;
- both parties keep to a sensible time framework;
- both parties have the opportunity to state their case, ask questions, present evidence and call witnesses;
- sufficient time is devoted to questioning and discussion, using an adjournment if necessary, to ensure so far as is practicable, all the facts are established;
- all persons present at the hearing are treated with respect;
- the main points are summarised to ensure that nothing has been missed;
- the decision is based upon an assessment of all matters raised and can be regarded as the action of a “reasonable employer” having regard to all the circumstances; and
- the matters of fact that have been relied on are clearly recorded in order that they can be made available to an appeal hearing.

**2 THE ROLE OF THE PERSON(S) ADVISING THE (SD&DC)**

2.1 All parties should agree on whether the person(s) advising the (SD&DC) gives advice in private or in front of all parties and this should be fully recorded in writing by the clerk to the (SD&DC). The role of the person(s) advising the (SD&DC) should be to: -

- provide advice on legal or procedural issues but not express opinions on the merits of the case, the people involved or the evidence; and
- seek, through their advice, to ensure that deliberations of the governing body are sound to avoid the case ending in an employment tribunal.

**3 PROCEDURE FOR DISCIPLINARY HEARING**

3.1 Where there has been an allegation of child abuse and the member of staff concerned is being charged with gross misconduct it is likely that the independent investigator will be invited to attend the disciplinary hearing by one of the parties involved. Where this occurs the independent investigator will present his/her report and then both parties and the governing body will have the opportunity to ask questions of the independent investigator to clarify matters raised in the report. The party that goes first will be the party that invited the independent investigator to attend.

3.2 The Headteacher (or Chair of Governors) to put his/her case in the presence of the member of staff and to call such witnesses as s/he wishes.

- 3.3 The member of staff (or his/her representative) to have the opportunity to ask questions of the Headteacher (or Chair of Governors) and his/her witnesses.
- 3.4 The Headteacher (or Chair of Governors) to have the opportunity to re – examine his/her witnesses.
- 3.5 The Committee may ask questions of the Headteacher (or Chair of Governors) and his/her witnesses.
- 3.6 The member of staff (or his/her representative) shall reply to the issue(s) raised, in the presence of the Headteacher (or Chair of Governors) and may call witnesses.
- 3.7 The Headteacher (or Chair of Governors) to have the opportunity to ask questions of the member of staff and his/her witnesses.
- 3.8 The member of staff (or his/her representative) to have the opportunity to re – examine his/her witnesses.
- 3.9 The Committee may ask questions of the member of staff (or his/her representative) and his/her witnesses.
- 3.10 The Headteacher (or Chair of Governors) to have the opportunity to sum up his/her case.
- 3.11 The member of staff (or his/her representative) to have the opportunity to sum up his/her case.
- 3.12 The person(s) advising the Committee to do so as required above either in private or in open forum.
- 3.13 The Headteacher (or Chair of Governors) and the member of staff (or his/her representative), any witnesses and the person(s) advising the Committee to withdraw.
- 3.14 The (SD&DC), with the Clerk to the Governors, to deliberate in private only recalling the Headteacher, the member of staff and the person(s) advising the Committee to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.
- 3.15 The (SD&DC) to announce the decision to the parties personally or in writing as may be determined, but in any case, written confirmation is to be sent within seven working days of the hearing.
- 3.16 Where the disciplinary matter is found against the member of staff the member of staff must be informed of his/her right to appeal and that this should be submitted to the Headteacher in writing within five working days of written notification of the decision of the (SD&DC).

**STAFF DISCIPLINARY AND DISMISSAL APPEAL COMMITTEE (SD&DAC) –  
PROCEDURE FOR DISCIPLINARY APPEAL HEARING**

**1 GENERAL PRINCIPLES: -**

1.1 The Chair of the (SD&DAC) will ensure that: -

- the allegations of misconduct are clearly outlined;
- both parties keep to a sensible time framework;
- both parties have the opportunity to state their case, ask questions, present evidence and call witnesses;
- sufficient time is devoted to questioning and discussion, using an adjournment if necessary, to ensure so far as is practicable, all the facts are established;
- all persons present at the hearing are treated with respect;
- the main points are summarised to ensure that nothing has been missed;
- the decision is based upon an assessment of all matters raised and can be regarded as the action of a “reasonable employer” having regard to all the circumstances; and
- the matters of fact that have been relied on are clearly recorded in order that they can be made available to an appeal hearing.

**2 THE ROLE OF THE PERSON(S) ADVISING THE (SD&DAC)**

2.1 All parties should agree on whether the person(s) advising the (SD&DAC) gives advice in private or in front of all parties and this should be fully recorded in writing by the clerk to the (SD&DAC). The role of the person(s) advising the (SD&DAC) should be to: -

- provide advice on legal or procedural issues but not express opinions on the merits of the case, the people involved or the evidence; and
- seek, through their advice, to ensure that deliberations of the governing body are sound to avoid the case ending in an employment tribunal.

**3 PROCEDURE FOR DISCIPLINARY APPEAL HEARING**

3.1 Where there has been an allegation of child abuse and the member of staff concerned is being charged with gross misconduct or has been given a disciplinary warning for lesser misconduct it is likely that the independent investigator will be invited to attend the disciplinary appeal hearing by one of the parties involved. Where this occurs the independent investigator will present his/her report and then both parties and the governing body will have the opportunity to ask questions of the independent investigator to clarify matters raised in the report. The party that goes first will be the party that invited the independent investigator to attend.

3.2 The Headteacher (or Chair of Governors) to put his/her case in the presence of the member of staff and to call such witnesses as s/he wishes.

- 3.3 The member of staff (or his/her representative) to have the opportunity to ask questions of the Headteacher (or Chair of Governors) and his/her witnesses.
- 3.4 The Headteacher (or Chair of Governors) to have the opportunity to re – examine his/her witnesses.
- 3.5 The Committee may ask questions of the Headteacher (or Chair of Governors) and his/her witnesses.
- 3.6 The member of staff (or his/her representative) shall reply to the issue(s) raised, in the presence of the Headteacher (or Chair of Governors) and may call witnesses.
- 3.7 The Headteacher (or Chair of Governors) to have the opportunity to ask questions of the member of staff and his/her witnesses.
- 3.8 The member of staff (or his/her representative) to have the opportunity to re – examine his/her witnesses.
- 3.9 The Committee may ask questions of the member of staff (or his/her representative) and his/her witnesses.
- 3.10 The Headteacher (or Chair of Governors) to have the opportunity to sum up his/her case.
- 3.11 The member of staff (or his/her representative) to have the opportunity to sum up his/her case.
- 3.12 The person(s) advising the Committee to do so as required above either in private or in open forum.
- 3.13 The Headteacher (or Chair of Governors) and the member of staff (or his/her representative), any witnesses and the person(s) advising the Committee to withdraw.
- 3.14 The (SD&DAC), with the Clerk to the Governors, to deliberate in private only recalling the Headteacher, the member of staff and the person(s) advising the Committee to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.
- 3.15 The (SD&DAC) to announce the decision to the parties personally or in writing as may be determined, but in any case, written confirmation is to be sent within seven working days of the hearing.

**N.B. The (SD&DAC) must not impose a more severe penalty than that given by the (SD&DC) but it can: -**

- **confirm the decision of the (SD&DC);**

- **impose a lesser penalty; or**
- **conclude that no action should be taken against the member of staff.**