

SODBURY VALE FEDERATION

Staff Discipline, Conduct and Grievance Policy

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2 VERSION HISTORY

Version Number	Reason for Issue	Date of Issue
01	Initial Issue For Federation	May 2022

3 Introduction

A disciplinary procedure is necessary for promoting fairness and order in the treatment of individuals, and is designed to help and encourage all employees to achieve and maintain high standards of conduct and job performance.

All staff are expected to uphold and promote the school's ethos and aims. Where the conduct of a member of staff is perceived to be inconsistent with these, this could lead to disciplinary action. Equally, opportunities will be provided for people to improve and to raise their concerns if they feel they have been treated unfairly.

This procedure applies to:

- all employees of the school, including the Headteacher
- staff in units or bases that are attached to a school.

The procedure does not apply to:

- peripatetic staff who are centrally employed by the LA
- schools meals staff employed
- employees of external contractors and providers of services (e.g. contract cleaners)

(Such staff are covered by the relevant procedures of their employing body)

The disciplinary procedure is concerned with handling allegations of misconduct and gross misconduct. No disciplinary action will be taken against an employee until the case has been fully investigated. In certain circumstances it may be deemed appropriate to suspend the individual from all school duties on full pay and without prejudice during investigations

A four stage sanction level will be used to determine the appropriate disciplinary action, depending on the seriousness of the misconduct. This will be determined by the headteacher if a member of their staff, or by Governing body in the case of the headteacher., using the guidelines detailed in Appendix 1.

The result of the investigation will be categorised using a defined terms as detailed in Appendix 2. These guidelines and terms will be used to inform which level of section is appropriate as detailed in Appendix 3..

These 4 stages are:

- Stage 1 - Formal oral warning
- Stage 2 - Written warning
- Stage 3 - Final written warning
- Stage 4 - Dismissal

Normally, the formal disciplinary procedure will be entered in Stage 1, unless:

- (i) the seriousness and nature of the alleged offence
- (ii) any current disciplinary record
- (iii) the nature of the job

indicate otherwise.

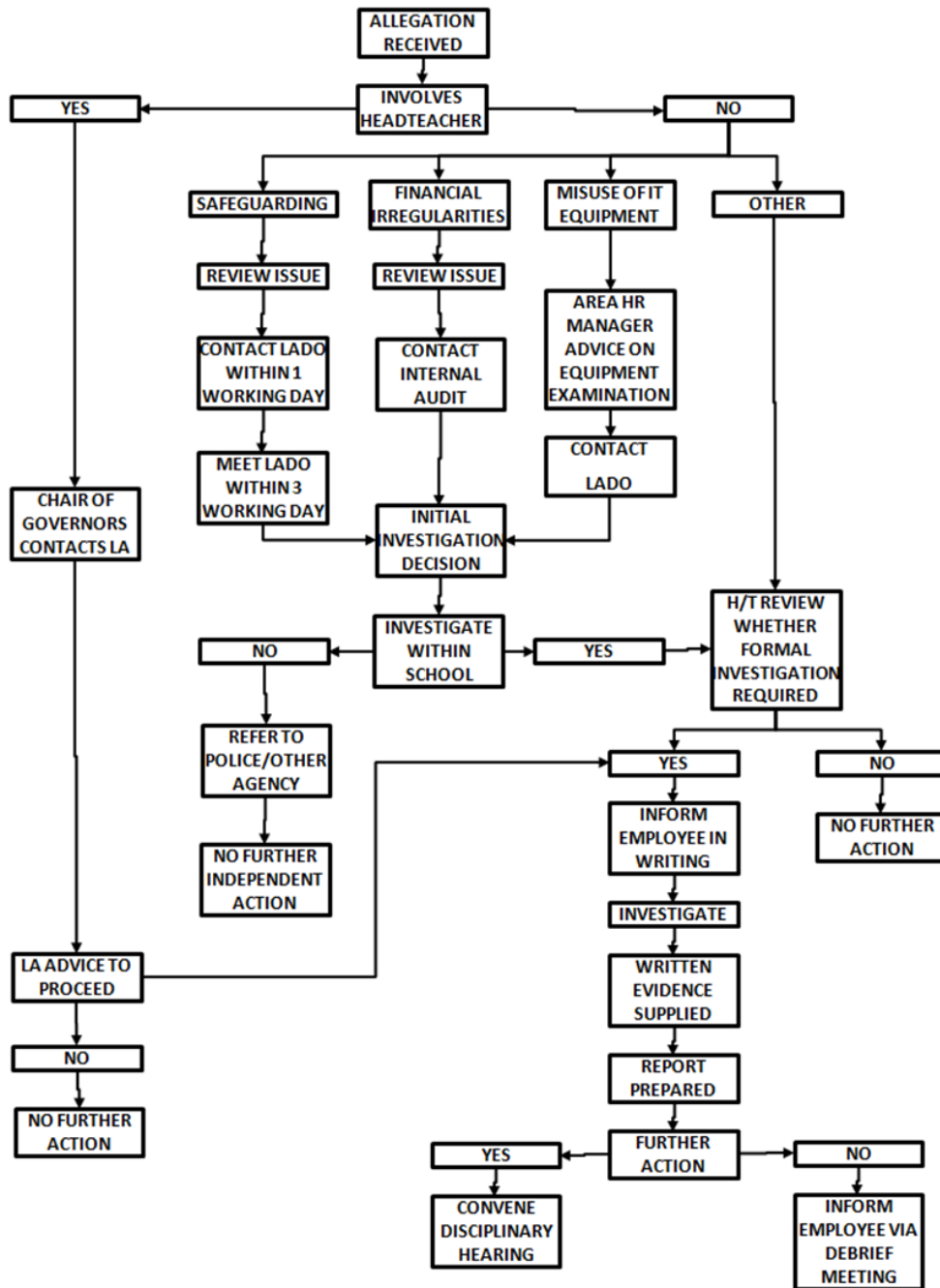
In cases of alleged gross misconduct, the procedures will be entered at Stage 5.

Where the employee is the Head Teacher, a governor or LA officer should undertake the investigation and presentation. In other cases, the Head Teacher (or where appropriate, the Deputy Head Teacher) should undertake the investigation in association with other relevant agencies, if applicable.

Where the employee is a trades union official, the matter should be discussed with the full-time official before any action is taken.

4 PROCEDURE

The procedure to be followed should an allegation be made know is dependent upon the type of allegation. The following details an overview of the process to follow should an allegation be made.



The following provides some general rules which are applicable to all cases

As detailed within the above flowchart but iterated here some allegations are deemed so serious that they may require immediate intervention by children’s social care and or the police. The LADO (Local Authority Designated Officer) should be informed in cases which meet this criteria in order that they can contract the appropriate service.

In extreme cases it is possible that suspension may be required whilst the investigation is being conducted. This will not be automatic and should only be considered where there is cause to suspect that a child or children is at risk of harm or the case is so serious that it could be ground for dismissal. This should be considered carefully and alternative options such as but not limited to the following, should be considered in preference.

- Redeployment within the school
- Providing an assistance at all times when children are present
- Moving the child or children to alternative classrooms

The LADO will be informed immediately if such a course of action is to be followed

Parents or carers of a child or children involved should be told about allegations as soon possible if they do not already know. When the LADO is involved and they determines that there is need to contact the police or social services the parents should not be contacted until the relevant agencies have agree as to the best course of action. Parents and carers should be kept informed of the investigation “in confidence” – they are bound by the reporting restrictions detailed in section 2.1 and must be made aware of this.

During the investigation there will normally have been a disciplinary interview with the employee at which he/she would be entitled to be accompanied.

If the investigation of the case indicates that a disciplinary hearing with governors is appropriate, the Headteacher will inform the employee in writing of the position.

A panel of governors will be convened to hear the case. Panel members will be sent all of the papers to be presented not earlier than 2 working days before the hearing. Panel members must not discuss any aspect of the case or the contents of the case papers with anyone, including other panel members, before the hearing.

The persons hearing the case have to be impartial. They should not have been involved in any of the preparatory work, should have no detailed knowledge of the allegations prior to receiving the papers for the hearing.

The employee must receive **at least ten working days’ advance notice in writing**, by recorded delivery or delivered by hand, of:

- the nature of the investigation and the report of the investigating officer;
- the purpose of the hearing
- the complaints or allegations
- the stage reached in the procedure
- when and where the hearing will be conducted
- who will be attending, including witnesses to be called
- the right to be accompanied by a work colleague or trade union representative
- the requirement for confidentiality
- the requirement for the employee to provide, in at least 3 working days before the hearing, all documents that he/she intends to present at the hearing. The documents must be presented in hard copy and with sufficient copies for those, except witnesses, who will attend the hearing.

In the case of alleged gross misconduct, immediate arrangements may be made to hold a panel. The same right to representation applies.

The Director of Education or a representative has a right to attend any panel which may lead to a decision to dismiss an employee.

Evidence presented to the disciplinary panel should be supported by documentation or witnesses.

4.1 CONFIDENTIALITY

Every effort will be made to maintain confidentiality, and guard against unwanted publicity, which an allegation is being investigated or considered. Reporting restrictions apply preventing identification of any teacher who has been accused of misconduct. These apply until the accused is charged with an offence, or until the Secretary of State publishes information or decision. The restrictions also cease to apply if the accused waives their right to such anonymity by going public or authorising others to do so on their behalf or finally is a judge lifts the restrictions.

4.2 SUSPENSION

In some cases it is appropriate to suspend the person in question. The Headteacher and/or Chair of Governors should consult with their HR adviser before taking action. Suspension is always with normal pay and without prejudice to the employee. The power to suspend rests with the full governing body or the Headteacher (or the Chair, if suspending the Headteacher). The power to lift suspension rests only with the governing body. It is acknowledged that suspension can have profound implications for an employee's life and career

Suspension may be an appropriate step for the following reasons:

- a) To prevent a repetition of the alleged offence either for the sake of the pupils/students or to protect the employee.
- b) Where the presence of the employee will hamper investigations.

Suspension is not automatic, whatever the allegation, and will, in any event, be reserved only for serious allegations.

5 DISCIPLINARY ACTION

The disciplinary hearing will normally involve the following stages (note the following assumes a panel of governors will conduct the hearing).

5.1 PRE-HEARING REVIEW MEETING

In some cases, particularly where the hearing is likely to be complex, a pre-hearing review meeting may be held.

5.2 PRESENTING AND DEFENDING THE CASE

- a) Representatives to present or defend the case need a ready appreciation of all the facts and issues involved
- b) When presenting a case, it must be remembered that the people hearing the case will have limited knowledge of the case. It will be necessary for the person presenting to give the complete picture, allowing time for the panel to read and absorb documents presented

5.3 WITNESSES

When witnesses are called, their status should be established. Following this their knowledge of an involvement in the case needs to be stated. When a witness has made a written statement and this is submitted as part of the evidence, copies must be given to the employee before the hearing. Witnesses should be allowed to emphasise the important parts of the evidence that may be overlooked by someone simply reading it.

5.4 PROCEDURE FOR THE HEARING

- a) The Chair of the Panel introduces those present and describes their status, reminds those present of the purpose of the hearing; that adjournment is possible; that a written record of the meeting will be made; and that the proceedings of the hearing are confidential
- b) Opening statements may be made by both parties, explaining how the case will be demonstrated or defended, referring to the documentation to be presented and indicating the witnesses to be called
- c) The case for the employer is presented, witnesses being called as necessary. The employee or representative may ask questions of each witness and of the employer at the end of the presentation. The panel members may also question each witness and the presenting officer at the end of the presentation
- d) The response for the employee is presented, witnesses being called as necessary. The employer, and then the panel, may question each witness and the employee at the end of the presentation
- e) when all the evidence has been heard, the Presenting Officer sums up, gathering together the points of the case, not introducing new evidence. It is usual at this point to include a recommendation for a recognised disciplinary penalty and/or future action

- f) The employee or representative sums up
- g) The two sides withdraw to enable the panel to discuss the case. The panel will need to reach a conclusion on:
 - I. whether they find all or some of the allegations proven;
 - II. what level and type of sanction is appropriate
- h) The panel's decision is normally conveyed orally by the Chair of the Panel in the presence of both parties and will be confirmed in writing within three working days

5.5 PRE-AGREEMENT

It is a perfectly acceptable part of disciplinary hearings for an agreement to be arrived at prior to the hearing between both parties. This normally means an agreement that the facts are not in dispute and that both sides recognise that a decision is required.

In these circumstances, the statutory 3 step disciplinary procedure – letter, meeting, appeal – must still be followed, but the matter can be progressed more quickly. This approach will NOT apply to allegations of gross misconduct or where dismissal is a possible outcome.

In theory, the Head has a right to attend any panel of governors considering a disciplinary case. In practice, the Head normally investigates and presents the case and cannot, therefore, act as an adviser to the panel.

If the Head wishes to exercise his/her right to advise the panel, he/she must not take part in the investigation and presentation of the case.

The disciplinary hearing can determine one of the following outcomes:

- a. There is no case to answer
- b. To give a verbal warning which will be confirmed in writing and will be current for six months – Stage 1.
- c. To issue a written warning, which will be current for one year- stage 2
- d. To issue a final written warning, which will be current for two years – stage 3
- e. To instruct the LA to dismiss stage 4.

(Where an employee does not work solely in the school, the governors cannot instruct the LA to dismiss, but can instruct the LA to withdraw an employee from the school).

The panel's decision must be confirmed in writing to the employee.

The level of any warning issued will depend upon the nature of the breach of discipline and account will be taken of any current warnings.

5.6 RESIGNATION AND COMPROMISE AGREEMENTS

If the accused resigns or ceases to provide their service this in itself will not be cause or prevent the allegation being pursued in accordance with this policy.

So called “compromise agreements” where the accused agrees to resign in so that the employer does not pursue any action will not be used.

6 APPEAL

Any disciplinary action taken by the panel is subject to the right of appeal to the Governing Body’s nominated appeal panel.

6.1 APPEAL AGAINST STAGES 1 – 3

Any employee who wishes to appeal against any disciplinary decision should inform the Chair of Governors in writing **within fourteen calendar days of receipt of that decision**. A panel of different governors, no fewer than the number of governors who attended the original hearing and excluding the Headteacher, will hear the appeal. The decision of the appeal panel will be final and must be reported to the governing body

6.2 APPEAL AGAINST STAGE 4 – DISMISSAL

Any appeal arising as a result of a Stage 4 hearing, will be made in writing **within fourteen calendar days of the receipt of a decision**. The appeal will be to the governing body (with the exception of any governors previously involved). To be quorate the appeal panel must consist of at least the same number of governors as at the previous hearing.

At an appeal any disciplinary penalty imposed will be reviewed, but it cannot be increased.

At any appeal hearing the employee will enjoy the same rights as at any disciplinary hearing. The Headteacher is likely to be the Presenting Officer at an appeal hearing. The Clerk to the Governing Body, or a suitably impartial person, will arrange all appeal hearings and inform all the parties concerned. Whilst the appeal is a **re-hearing** of the original case, new evidence is permissible. If either party wishes to introduce new evidence, they should give notice to the other party **at least ten working days before the appeal hearing**. If either side produces new evidence at the appeal hearing, it is open to either side to request an adjournment for further investigation.

If new evidence of misconduct is produced at the appeal hearing, which would give rise to further disciplinary allegations, the correct course of action would be to pursue the allegations at a new disciplinary interview, not at the appeal hearing.

If the recommendation for dismissal is not upheld, the governors may decide to issue a further warning or, in appropriate cases, to demote the employee rather than dismiss. Demotion involves a change in the employee’s contract that requires his/her consent to the new arrangement.

The employee will be informed immediately at the conclusion of the hearing and the Clerk to the Governing Body will confirm the decision of the Appeal Panel/Governing Body in writing to the employee within three working days, giving the reasons for the decision.

There will be no further right of appeal for the employee following the decision of the Appeal Panel of the Governing Body. The employee will not be able to re-open the matters that have been considered by looking to invoke a different procedure, such as the Grievance Procedure.

7 MALICIOUS ALLEGATIONS

Allegations that are found to be malicious will be removed from personnel records; and any found unsubstantiated, are unfounded or malicious will not be referred to in employer references

Pupils found to have made malicious allegations may have breached the school behaviours standard. The school will consider whether to apply a sanction in such a case.

8 ILL-HEALTH PROCEDURE

Normally ill-health will not require procedural handling. However, where ill-health appears to be a factor which adversely affects an employee's conduct, the school should seek medical advice. All schools are able to get advice from the Authority's Occupational Health Unit via the Schools' HR Advice service.

9 NOTICE OF DISMISSAL

The LA is the employer and must give notice of dismissal within fourteen days of an instruction from the Governing Body.

10 APPENDIX 1 - TYPES OF MISCONDUCT

10.1 8.1 MISCONDUCT

- i) Absenteeism and lateness, for example:
 - a) Failure to remain at the place of work during normal working hours without permission or sufficient cause for absence
 - b) Frequent failure to attend work punctually
 - c) Failure to notify the school immediately or as soon as reasonably practicable when absence is due to sickness
 - d) Failure to provide medical certificates in accordance with the conditions of service and current national regulations
- ii) Dishonesty – petty wrongs, for example:
 - a) Making unauthorised private telephone calls
 - b) Sending personal mail at the school's expense
- iii) Unauthorised or excessive use of school equipment such as telephones or computers
- iv) Failure to comply with the school's or County Council's policies on the use of e-mail, the internet or telephone
- v) Neglect of duty, for example:
 - a) Failure to adopt safe working practice/use protective equipment where required by law or management
 - b) Negligent use of property in such a way as is likely to cause serious damage or loss
 - c) Failure to discharge obligations placed on the employee by statute, contract of employment or reasonable instructions given by the Headteacher
 - d) Failure to exercise proper control or supervision of pupils or students
 - e) Failure to report any serious and known losses or damage to any property issued to or by the employee in connection with his/her employment
- vi) Abusive, threatening or offensive behaviour or language
- vii) Victimisation of other employees or pupils

- viii) Unlawful or unacceptable discrimination which is contrary to the schools adopted policy against other employees, pupils or members of the public
- ix) Unauthorised disclosure information classified as confidential by the Authority or the Governors of the school

10.2 GROSS MISCONDUCT

- i) Dishonesty associated with place of work or job being undertaken, which may warrant dismissal:
 - a. Theft or misappropriation of property belonging to the County Council or any other Authority, a contractor, governors, trustees, another employee, pupil or other third party
 - b. Falsification of records or expenses claims
 - c. Demanding or accepting monies or other considerations as bribe for the use of school property, provision of school services or the showing of favour on behalf of the school
 - d. Falsification of any information given on an application form for employment in order to gain advantage, whether pecuniary or otherwise
 - e. Falsification of registration of pupils
- ii) Serious misuse of school equipment (e.g. of a school computer for access to, or downloading of pornographic material)
- iii) Criminal activities during the course of employment
- iv) Wilful refusal to carry out a reasonable, lawful and safe instruction
- v) Wilful refusal to carry out the normal duties of the post
- vi) Gross negligence in unreasonably failing to attend to or to carry out the duties of the post over a prolonged period
- vii) Wilfully ignoring responsibilities/instructions thus placing other members of staff or pupils at risk of danger; for example, ignoring handling instructions/safety regulations in respect of radioactive materials
- viii) Being unfit to perform duties associated with the post as a result of taking alcohol or drugs other than in accordance with medical advice
- ix) Acts of violence in the course of employment, including:
 - x) physical violence towards other members of the school staff, parents, pupils, governors, members of the public or members/officers of the Authority

- xi) Conduct incompatible with professional role and status such as:
 - a. acts of violence;
 - b. sexual offences;
 - c. racial offences;
 - d. drug offences;
 - e. sexual relations with pupils at the school or for whom the employee has any professional responsibility;
 - f. improper communication, using information technology, with pupils/students, colleagues or other members of the school community.
- xii) Racial or sexual harassment of other employees, pupils or members of the public in the course of employment

10.3 CRIMINAL ACTIVITIES

- i) If a member of staff is being investigated for any criminal activities, for example sexual offences, fraud or downloading pornographic material, or is going to be prosecuted for criminal activities, special considerations apply. Depending on the offence in question, the issue of gross misconduct may arise and it may be appropriate to suspend, pending further investigation
- ii) If an employee is suspected of committing any criminal offence at, or in connection with his/her work then the Head will normally inform the police. If an employee is charged by the police, he/she should normally be suspended with full pay.

11 APPENDIX 2 – DEFINITIONS FOLLOWING INVESTIGATION OUTCOME

The following definitions should be used when determining the outcome of allegation investigations

11.1 SUBSTANTIATED:

There is sufficient identifiable evidence to prove the allegation

11.2 FALSE

There is sufficient evidence to disprove the allegation

11.3 MALICIOUS

There is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false

11.4 UNFOUNDED

There is no evidence or proper basis which support the allegation being made. It might also indicated that the person making the allegation misinterpreted the incident or was mistaken about what they saw. Alternatively they may not have been aware of all the circumstances

11.5 UNSUBSTANTIATED

This is not the same as a False allegation, it means there is insufficient evidence to prove or disprove the allegation/. The term does not imply guilt or innocence.

12 APPENDIX 3 – SANCTION LEVELS

The level of sanction likely to be imposed is dependent upon the seriousness of the offence; the following provides guidelines around these levels.

12.1 STAGE 1 – FORMAL ORAL WARNING

Where the normal managerial practice fails to bring about the required improvement in conduct or the alleged misconduct demands formal action, a disciplinary hearing will be arranged by the Commissioning Manager. This may result in the employee being given a formal oral warning. He or she will be advised of the reason for the warning and that it is a stage of the formal disciplinary procedure. A brief note detailing the reasons for the oral warning will be given to the employee **within three working days** of the hearing and a copy kept by the Headteacher on the confidential personal file of the employee. The warning will be reviewed after a maximum of twenty term-time weeks for teaching staff and six months for support staff. If a satisfactory standard has been maintained, the disciplinary record will be spent and the employee so informed in writing. Any written reply from the employee must be kept with the note of the oral warning.

12.2 STAGE 2 – WRITTEN WARNING

If the conduct continues to be unsatisfactory, or where serious misconduct is suspected, a disciplinary hearing will be arranged by the Commissioning Manager. If the decision of the hearing finds the case proved, the employee will be given a written warning which should give details of the finding against the employee. The hearing will normally be conducted by the Headteacher. The warning will be confirmed in writing **within three working days** giving details of the finding, the improvement required, the timescale and the assistance that will be given to improve. It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of the warning will be kept by the Headteacher on the confidential personal file of the employee. The warning will be reviewed after one calendar year or, exceptionally, another period specified in writing at the time of the warning. If a satisfactory standard has been maintained, the disciplinary record will be spent and the employee will be informed in writing.

12.3 STAGE 3 – FINAL WRITTEN WARNING

If there is a failure to improve, or there is a further instance of misconduct, or if the misconduct is found to be sufficiently serious to warrant only one written warning, a final written warning will be given to the employee after a disciplinary hearing. The hearing may be conducted by the Commissioning Manager. The warning will be confirmed in writing **within three working days** giving details of the findings of the hearing, the improvement required, the timescale, the assistance (if needed) that will be given to improve, will warn that dismissal may result if there is no satisfactory improvement and will advise of the right of appeal. A copy of the warning will be kept by the Headteacher on the confidential personal file of the employee. The warning will be reviewed after a period of one calendar year unless it covers serious categories of misconduct, when it may remain valid for a longer specified time. The time must be specified in writing at the time of the final warning. If a satisfactory standard has been maintained, the disciplinary record will be spent and the employee will be informed in writing.

12.4 STAGE 4 – DISMISSAL

Where allegations of gross misconduct or alleged repeated misconduct following a final warning are made, the Headteacher will normally conduct the hearing. A Disciplinary Panel of 3 governors will conduct the hearing, if the Headteacher is the subject of the allegation, or in the following circumstances:

- a) Where the Headteacher is unwilling to perform this function and was appointed to the Headship of the school prior to 1 April 2004
- b) Where the Headteacher has been directly involved in earlier disciplinary stages, either as investigator or as witness
- c) Where the governing body of a school with a religious character has agreed policies and procedures which provide for governor involvement in the interests of preserving the school's religious character
- d) Where the Headteacher is subject to suspension; disciplinary procedures (in relation to conduct or capability), including investigation; or disciplinary sanction
- e) Where the Authority has made formal representations to the Chair of the Governing Body on grounds of serious concerns about the performance of the Headteacher

If the case for dismissal is not established, a warning appropriate to the conduct may be issued.

13 APPENDIX 4 - DEFINITION AND SEPARATION OF ROLES

The following outlines the main roles taken during disciplinary proceedings. It is essential that they are clearly defined and that the person carrying out the role is clearly identified.

13.1 THE COMMISSIONING MANAGER

This is the person who has the authority to decide whether a complaint or incident is sufficiently serious to warrant a formal investigation under this procedure. The Commissioning Manager will appoint an Investigating Officer to carry out the investigation, and will also be the person who will conduct, if necessary, the disciplinary hearing and make the judgement in the light of all the available evidence.

The Commissioning Manager will normally be the Headteacher. If the investigation is about the actions of the Headteacher, the Commissioning Manager will normally be the Chair of Governors.

13.2 THE INVESTIGATING OFFICER/PRESENTING OFFICER

This is the person who is to carry out an investigation into the complaint or incident. He/she will consider all of the available evidence, both written and oral, and will produce a written report to the Commissioning Manager. The Investigating Officer will, if necessary, interview witnesses and others in order to produce a balanced report that can lead to a fair judgement.

The Investigating Officer will conclude his/her report with a view on the balance of probabilities about what happened. He/she must not, however, take a view about whether a disciplinary hearing is appropriate or whether a disciplinary sanction is justified: both of these decisions can only be taken by the Commissioning Manager.

The Investigating officer is likely to be a member of the School's Leadership Team or another manager within the school. Care needs to be taken to ensure that the Investigating Officer is able to carry out the investigation impartially.

There may be circumstances, particularly in small schools, where there is no one, other than the Headteacher, with sufficient seniority or capacity to carry out an investigation. If the Headteacher has to carry out the investigation, then he/she cannot also be the Commissioning Manager: that role would need to be taken by the Chair of Governors, and any disciplinary hearing that might follow would need to be conducted by a panel of governors (not the Headteacher).

Whether the Commissioning Manager is the Headteacher or the Chair of Governors, it is always possible to appoint an Investigating Officer from outside the school, possibly from the staff of the local authority or from an independent source. There is likely to be a cost to the school if an external Investigating Officer is appointed.

13.3 THE PERSON OR PANEL WHO CONDUCTS THE HEARING

Normally, the Headteacher is the Commissioning Manager and will conduct the Hearing. If the Chair of Governors is the Commissioning Manager, then the Hearing will be conducted by a Disciplinary panel of 3 governors, not by the Chair alone. Whilst there is no requirement, legal or otherwise, to exclude the Chair from the Disciplinary Panel, it is likely that the Chair's relationship with the Headteacher will be too close to ensure demonstrable impartiality. It is,

therefore, recommended that the Disciplinary Panel comprise 3 governors other than the Chair.

In the case of a hearing that is considering dismissal, it is expected that the Headteacher will have been the Commissioning Manager and will conduct the hearing (unless he/she is the subject of the hearing). Statutory guidance does, however, list the possible exceptions to this rule for a dismissal hearing. In any of the following circumstances, a dismissal hearing may be conducted by a Disciplinary Panel of governors:

- a) where the Headteacher is unwilling to perform the function and was appointed to the Headship of the school prior to 1 April 2004;
- b) where the Headteacher has been directly involved in earlier disciplinary stages, either as Investigating Officer or witness [but the Headteacher may conduct a dismissal hearing if he/she has been the Commissioning Manager at an earlier stage];
- c) where the Governing Body of a school with a religious character has agreed policies and procedure that provide for governor involvement in the interests of preserving the school's religious character;
- d) where the Headteacher is subject to suspension; or disciplinary or capability procedures, including investigation; or a disciplinary sanction;
- e) where the Authority has made formal representations to the Chair of Governors on the grounds of serious concerns about the performance of the Headteacher.

In circumstances where the Headteacher as Commissioning Manager does not hear the case, the Headteacher may jointly present the case with the Investigating Officer.

13.4 EXPERT ADVICE AT THE HEARING

At any disciplinary hearing, the Headteacher or Disciplinary Panel may be advised throughout the hearing, including the subsequent deliberations leading to a judgement, by a person with suitable qualifications or experience in employment law.

At any hearing where dismissal is to be considered, the following provisions apply:

- a) At any community or voluntary controlled school, the local authority must be invited to send an adviser. The school must send all of the papers for the hearing to the Area HR Manager no later than the date on which the papers are sent to the employee. This provision applies whether or not the school subscribes to the Personnel Advice service.
- b) At any voluntary aided or foundation school where the governing body has formally granted advisory rights over dismissals to the Authority, the local authority must be invited to send an adviser. The school must send all of the papers for the hearing to the Area HR Manager no later than the date on which the papers are sent to the employee. This provision applies whether or not the school subscribes to the Personnel Advice service.

- c) At any voluntary aided or foundation school where the governing body has **not** granted advisory rights to the Authority, the school may invite the Authority to send an adviser. If the school subscribes to the Personnel Advice service, then an adviser will attend the hearing (and it is likely that the school will, in any case, have already been advised by the Area HR Manager)

Whilst it is not necessary to have expert advice at every disciplinary hearing, schools that subscribe to the Personnel Advice service should seek advice case-by-case.

13.5 THE EMPLOYEE AND THE EMPLOYEE'S REPRESENTATIVE

The employee is the member of staff who is the subject of the complaint or allegation.

At every stage of the formal disciplinary procedure, the employee is entitled to be accompanied by and represented by a work colleague or his/her trade union/professional association representative (and by no one else).

“Representation” does not mean that the employee may take a silent or passive role in disciplinary proceedings. He/she has a duty to take an active part in all stages of the proceedings unless there are exceptional circumstances that would prevent the employee's participation.

13.6 WITNESSES

It is not necessary that every witness be present at a disciplinary hearing to answer questions but the Headteacher or Disciplinary Panel will need to assess the strength of the evidence differently if a witness is not present to answer questions. There are 3 considerations:

- a) Pupils/students and other children under 18 must never attend a disciplinary hearing
- b) Employees of the school may be instructed to attend a disciplinary hearing if required
- c) Adult witnesses who are not employees of the school may be asked to attend to answer questions but cannot be compelled to do so

13.7 THE NOTE-TAKER AT A DISCIPLINARY HEARING

A written record of the proceedings is essential at every disciplinary hearing. Where the proceedings are likely to be relatively short and straightforward, the record may be taken by the Headteacher or a member of the panel. Where the proceedings are likely to be lengthy or complicated and at every dismissal hearing, a separate note-taker should be engaged for the purpose. This is likely to be the Clerk to the Governors or a member of staff at the school who has played no part in the procedure up to that point. The note-taker will make a record of the hearing but not of the confidential deliberations to determine a judgement at the end of the hearing.

14 APPENDIX 5 – GENERAL INFORMATION/PRINCIPLES

14.1 DIFFICULTIES THAT MAY ARISE DURING DISCIPLINARY HEARINGS

Listed below are some of the more serious examples, with suggestions on how they might be handled:

- a) Failure to attend by the employee

If no adequate reason is given, consider whether the case can be heard in the employee's absence

- b) Walkout threatened by the employee

Warn that this may result in the case being heard in the employee's absence and may in itself lead to further disciplinary action. Give careful consideration to an adjournment

- c) Emotional upset

Ensure that the individual understands that the hearing will continue (possibly after a short adjournment) when he/she has achieved composure

- d) New evidence presented at the hearing

There are two possibilities:

- (i) One of the parties presents new evidence at the start of or during the hearing. The panel should accept new evidence only if there are compelling reasons that prevented the exchange of evidence in the normal timescale. If the evidence is admitted, then it might be necessary to allow an adjournment (possibly to another day) for the other party to consider and prepare a response.
- (ii) A witness reveals a crucial piece of evidence that is not known to anyone else present. The panel should adjourn the hearing in order to consider whether to admit the new evidence. If the new evidence is so significant as to affect the likely fairness of the outcome of the hearing, then the panel may adjourn the hearing to another day in order to allow the investigating officer to extend his/her investigation.

14.2 SUPPORT FOR PARTICIPANTS

Involvement by anyone in disciplinary proceedings is likely to be stressful. The Commissioning Manager must consider how best to meet the school's duty of care both to employees and to pupils/students. In particular, consideration must be given to providing support to the alleged "victim(s)" (i.e. one who believes that they have suffered as a result of the employee's actions that are now the subject of disciplinary proceedings) and to an employee who has been suspended, pending a disciplinary investigation.

In either case, the school should identify a member of staff who can provide impartial support which could include:

- regular information about the progress of the case;
- advice on getting access to specialist counselling (which may include the school's employee assistance programme or the Headteacher's support service) or medical assistance;
- information about significant developments at the school: this will be particularly important for an employee who is suspended.

14.3 SUPPORT FOR ALLEGED VICTIMS

Where an employee's conduct is investigated as a result of allegations by **another employee** of bullying, harassment, victimisation or discrimination, it is important to be sensitive to both the short-term and long-term needs of the victim of the alleged behaviour. This is necessary irrespective of the outcome of any investigation and disciplinary hearing, since the behaviour complained of may significantly affect the recipient, who will need support. Circumstances will vary but the school will need positively to monitor working relationships from the alleged victim's perspective, as well as formally or informally monitoring the conduct of the alleged perpetrator.

14.4 REFERRALS

There are statutory duties on employers to refer individual cases to national bodies in the event of a dismissal or resignation when dismissal was a likely outcome. These are:

- All dismissals (or resignations) for misconduct must be reported to the Independent Safeguarding Authority (ISA), where consideration will be given as to whether the employee is suitable to be working with children or in schools.