



LANCASHIRE COUNTY COUNCIL

A MODEL DISCIPLINARY AND DISMISSAL PROCEDURE FOR TEACHERS IN SCHOOLS WITH DELEGATED BUDGETS (REVISED AUGUST 2019)

1. PURPOSE

1.1 This document sets out the procedure to be followed in situations involving disciplinary action against teachers

1.2 There are separate procedures covering:

- termination of contracts;
- redundancy;
- capability;
- complaints;
- grievances; long term sickness.

These may be applicable dependent upon the circumstances of the case. However, nothing in this procedure shall detract from the rights conferred upon an employee by the provisions of the Employment Act 2008.

1.3 This procedure is published as part of the staffing policies for the Governing Board of Elm Tree Community Primary School

1.4 This procedure has been produced after consultation with the recognised Teacher Associations. It is designed to maintain the high standards of the school in a manner which is professional, fair and effective

2. APPLICATION

2.1 This procedure applies to the Headteacher and to all teachers employed in Elm Tree Community Primary School. The reference to 'teacher' in this procedure includes the Headteacher except where otherwise stated.

2.2 This document sets out the formal disciplinary procedure to deal with allegations of misconduct. Counselling, reminders and other informal action, which may, on occasion, be necessary in the course of day to day operation of the school, lie outside the scope of this document. **Minor problems should be resolved without recourse to the formal procedure** and, wherever necessary, consideration should be given to providing the appropriate support and assistance.

2.3 DEFINITIONS

It is necessary at this stage to illustrate the meaning attached to specific terms:-

MISCONDUCT - This is an act or omission by a teacher, which is considered to be unacceptable professional behaviour.

It can also have very serious dimensions including those involving criminal proceedings.

INCOMPETENCE/LACK OF CAPABILITY - This refers to situations where, due to a lack of capability and/or application, a teacher fails consistently to perform his/her duties to a professionally acceptable standard.

LEVELS OF DISCIPLINARY MISCONDUCT It is not the purpose of this procedure to classify all levels of misconduct. Each incident which may give rise to the consideration of disciplinary action will be judged independently according to the particular circumstances of the case including the previous conduct of the particular teacher. However, a general guide is attached as Annex 1. Attention is drawn specifically to the fact that any act of gross misconduct could result in dismissal with or without notice.

This procedure is concerned primarily with conduct issues, although, in practice, misconduct and capability may be inter-related. Capability is not dealt with under this procedure but should be dealt with under the school's Capability Procedure.

3. GENERAL PRINCIPLES

3.1 Part 3 of the Education Act 2002 and its associated School Staffing (England) Regulations 2003 contains provisions relating to discipline and dismissal procedures. These are incorporated in these procedures.

3.2 All issues involving disciplinary and dismissal matters falling within this procedure will be treated in the strictest confidence. Any correspondence or record of action taken will be retained in the teacher's personal file and **will not be recorded in any other manner**, for example, in a school log, where there is a risk of information being disclosed to any person who does not have a genuine reason for access to the information. All reports presented to meetings involving governors of the school, other than those directly involved in the disciplinary/appeals processes, and minutes of meetings within this procedure will not specifically identify the teacher and will only be circulated to persons who have a genuine reason for access to the information.

NB: The provisions of the Data Protection Act 2018 apply.

3.3 No disciplinary action will be taken against a teacher without the teacher first being given an opportunity to answer any allegation made. In certain exceptional circumstances, in the best interests of the school, pupils and the teacher concerned, a teacher may be suspended without an opportunity to answer allegations. Whilst having serious implications for all concerned, suspension does not constitute disciplinary action. However, where suspension occurs the teacher will be informed of the reasons for the suspension. (See Section 4 and Annexes 2 and 3 for further information on suspension.)

3.4 The Employment Relations Act 1999 and the Employment Act 2008 provide the right for employees to be accompanied by a companion who may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union/association as being competent to accompany a worker. The 'companion' can address the hearing. The employee has a statutory right for the hearing to be postponed for up to five working days, if he/she can provide a reasonable alternative time within the following five day period.

3.5 There will be cases where an employee may have a disability that has a serious impact on his/her ability to conduct him/herself during the investigation meeting or disciplinary hearing. If this is the case, whatever reasonable adjustments are practicable will be made to ensure that such disadvantages are overcome.

Employees with other physical impairments will also be offered reasonable adjustments such as frequent breaks, a separate room and adjournments.

Anyone with a depressive illness, anxiety state or "stress-related" illness will be offered at least one postponement of the hearing where appropriate and where this can be accommodated within a reasonable timescale.

Other than in circumstances where the employee provides expert medical evidence that he or she is unable to understand what is being said and cannot give instructions to his or her representative, the hearing will take place. Headteachers/Governors may consider holding the hearing at a neutral venue if this is practicable to assist the employee, if medical advice recommends this. Other alternatives may be for the employee to be offered the opportunity to send in written representations or send a representative as outlined in Paragraph 3.4 in his/her place.

All requests for reasonable adjustments will be sympathetically considered on a case-by-case basis, in light of medical evidence.

3.6 A teacher has the right to attend and be represented, by, a fellow worker, a trade union representative, or an official employed by a trade union as outlined in Paragraph 3.4 **at any meeting convened under this procedure**. The Headteacher should remind the teacher of their right to representation and should ensure that the teacher is provided with a copy of the procedure. The teacher may also be accompanied by a scribe whose function is to take written notes to serve as a private record for the teacher.

3.7 The Headteacher, when presenting a report to any meeting of the Governing Board or to the Disciplinary and Dismissal or Appeals Committee (see Sections 7, 8 and 9) convened under this procedure, will have the right to be accompanied by a companion as outlined in Paragraph 3.4 solely to act as adviser to the Headteacher.

3.8 Where disciplinary action is being considered against a teacher who is also an accredited representative or officer of a recognised Teacher Association (see Paragraph 12.1 (h)), no disciplinary action will be taken until the Headteacher has discussed the circumstances of the case with a senior trade union representative or full-time officer of that Association. An officer nominated by the Director Children's Services should be consulted in view of the Authority's role under employment law in relation to trade unions.

3.9 The Director Children's Services or nominee will be entitled to attend at any meeting convened to consider a matter under this procedure.

- 3.10 The power to adjourn meetings convened under this procedure rests with the Chair of the meeting. Both parties will be allowed access to an adjournment, which shall not unreasonably be refused. In the event of an adjournment, the membership of the Disciplinary and Dismissal Committee will remain unchanged.
- 3.11 Any reports presented to the Governing Board under this procedure will not be dealt with by the full Governing Board, but by the Disciplinary and Dismissal Committee set up for that purpose comprising no fewer than three governors. The Headteacher cannot be a member of the Committee or the Appeals Committee. In accordance with the provisions of the Education Act 2002 and its associated School Staffing (England) Regulations 2003) the Governing Board may elect to delegate the power to make dismissal decisions to the Headteacher, (subject to the conditions outlined in Annex 4)
- 3.12 Any appeal against a decision of the Disciplinary and Dismissal Committee will be considered by an Appeals Committee of the Governing Board comprising no fewer than three governors. The Appeals Committee will include no fewer members than the Disciplinary and Dismissal Committee. No member of the Disciplinary and Dismissal Committee will be a member of the Appeals Committee of the Governing Board.
- 3.13 The Education (School Government) (England) Regulations 1999 contain provisions relating to withdrawal from governing board or Committee meetings. The general principle is that where the principles of natural justice require a fair hearing and there is any reasonable doubt about a governor's ability to act impartially, he/she should withdraw from the meeting and not vote.

3.15 **Position of the Headteacher**

Where required, specific references are made to the application of this procedure to the Headteacher

4. SUSPENSION

Note Guidelines on suspension are set out in Annex 2.

- 4.1 Suspension should not be undertaken without good reason. A teacher may be suspended from duty in the following circumstances:

- (a) where the allegations are so serious that dismissal for gross misconduct is possible
- (b) where a child or children are at risk
- (c) where a suspension is necessary to allow the conduct of an investigation to proceed unimpeded.

Where there may be a risk to the teacher him/herself it may not be in his/her interests to remain in the school.

- 4.2 Suspensions will be effected by the Headteacher. The teacher will have the right to attend any meeting convened for the purpose of suspension, to be represented as outlined in Paragraph 3.4, to be informed of the reasons for suspension at the time, and to be given an opportunity to respond. Reasons for suspension will be confirmed in writing within three working days. In certain, exceptional circumstances, it may be necessary to suspend a teacher immediately. (See Annex 2 4(b))
- 4.3 The investigation of the circumstances leading to suspension will be considered with as much urgency as possible. Where the reasons for suspension are found to be without substance, reinstatement should take place immediately. (See Annex 2 Paragraph 9)
- 4.4 The teacher will not return to the school premises without invitation or permission of the Headteacher during a period of suspension.
- 4.5 Suspension will be without prejudice, on full pay and will be the subject of a monthly review by the Headteacher.
- 4.6 Arrangements to support a teacher during a period of suspension are set out in Annex 3.

4.7 **Suspension of Headteacher**

The procedures outlined in 4.1 to 4.6 above, will apply to the suspension of the Headteacher. Suspension will be effected by the Governing Board. In accordance with the Education (School Government) (England) Regulations 1999, (Regulation 43), in cases of urgency, the Chair of Governors, or, if he/she cannot be contacted, the Vice-Chair, will have the power to suspend the Headteacher, subject to the subsequent confirmation by the Governing Board.

5. **INITIAL PROCEDURES**

- 5.1 Where a teacher's conduct gives cause for concern, a meeting will be convened at which the teacher will be given the opportunity of explaining his/her conduct to the Headteacher. At least 10 working days notice of the meeting will be given to the teacher, in writing, together with details of the misconduct to be discussed. The teacher will also be reminded of his/her right to representation at the meeting (see paragraph 3.4) and will be supplied with a copy of this procedure. The Headteacher should be accompanied, for example, by a senior member of the staff of the school or an officer of the Authority.

The Headteacher may, with the agreement of the teacher and/or his/her representative issue a disciplinary warning at the conclusion of an investigative meeting without convening a separate formal hearing.

- 5.2 At any meeting convened under this procedure, either party may request an adjournment which will not unreasonably be refused.
- 5.3 At the meeting, if the teacher gives an acceptable explanation of his/her conduct, then no further action will be taken. If no action is taken, no record of the meeting will appear on the teacher's file.
- 5.4 Should no acceptable explanation be given of a teacher's conduct, the Headteacher has to decide what further action is appropriate.

This may be to:

- (i) issue a written instruction (having regard to the terms of the teacher's contract and the normal duties/expectations of all teachers in the school)

Note:

- The issuing of a written instruction, which the teacher should acknowledge, in writing, is not disciplinary action. Wherever possible, a time limit of no more than six months should be applied and records expunged at the end of the period. The teacher should be informed, in writing, at the time this takes place.
- An instruction should only be used in any disciplinary context if it is directly relevant to the matter under consideration.

- (ii) issue a disciplinary sanction.

- (iii) refer the matter to the Disciplinary and Dismissal Committee and inform the teacher accordingly (see Section 8).

5.5 Position of Headteacher

The initial procedures will be conducted in accordance with the above, except that the Chair of Governors will act in the capacity ascribed to the Headteacher. The Chair of Governors can issue a written instruction. However, only the Disciplinary and Dismissal Committee can issue a disciplinary warning.

6. FORMAL DISCIPLINARY SANCTIONS

- 6.1 Depending upon the seriousness of the conduct complained of, a formal disciplinary sanction (first written, second written, final written warnings or dismissal), may also be issued following a hearing (see Sections 5 and 8). The person(s) authorised to issue these sanctions are set out below. Governing Bodies should have regard to the statutory guidance which accompanies the 2003 School Staffing Regulations, should they wish to delegate the power to make dismissal decisions to the Headteacher. (see Annex 4)

First Written Warning - Headteacher or Disciplinary and Dismissal Committee

Second Written Warning - Headteacher or Disciplinary and Dismissal Committee

Final Written Warning – Disciplinary and Dismissal Committee or Headteacher (where the Governing Body has delegated to the Headteacher the power to issue such a warning)

Dismissal Decision – Disciplinary and Dismissal Committee or the Headteacher (where the Governing Board has delegated this authority to the Headteacher)

These sanctions are not necessarily issued to a teacher in a sequential order; any sanction may be issued for a first disciplinary offence. The sanction issued is dependent upon the seriousness of the allegation/level of misconduct (See Annex 1).

Where the Headteacher issues a sanction, he/she should be accompanied by a witness at any meeting convened under this procedure. The teacher has the right to be represented at any such meeting.

- 6.2 The person(s) issuing a formal warning must clearly advise the teacher of the consequences of disregarding the warning and of the right of appeal against the warning and the procedure for making an appeal.
- 6.3 Where a teacher is given a formal warning, whether it is a first, second or final written warning, he/she will be advised that the warning constitutes a formal stage of the disciplinary procedure and its place in the procedure explained.
- 6.4 If the conduct continues to be unsatisfactory or further offences occur, consideration must be given to further disciplinary action under this procedure.
- 6.5 There may be occasions when misconduct is considered to be insufficiently serious to justify dismissal but sufficiently serious to warrant only one written warning being issued which will, in effect, be both a first and final warning.
- 6.6 All formal warnings will be confirmed, in writing, within five working days. The teacher will acknowledge receipt of the warning in writing.
- 6.7 A copy of the warning will be retained in the teacher's file. A first written warning will be retained for a period of 6 months, a second written warning will be retained for a period of 1 year and a final written warning will be retained for a period of 2 years.

A warning will not be disregarded if a subsequent warning is issued in relation to further misconduct whether of a similar nature or otherwise which occurs whilst a warning remains 'live' on file. The original warning will run concurrently with the most recent warning. It is the date of the further misconduct which determines whether an earlier warning remains "live" and not the date of the hearing in respect of further misconduct.

Records of warnings will be expunged at the end of the stated time and any note or reference thereto should be removed from the teacher's personal file. The Protection of Children Act allows for certain types of misconduct relating to the safeguarding of children and associated warnings to remain on file for longer than the period specified. In such an event, the teacher will be informed, in writing, and the longer period will be specified. This retention will be reviewed after the term specified. Such a review will be the responsibility of the Governors.

Where a warning has been expunged, neither the warning nor the material can be subsequently used in any disciplinary hearing.

6.8 **Position of Headteacher**

The procedures relating to warnings which may be issued to the Headteacher are the same as described in Paragraphs 5 and 6 except that references to the Headteacher will be replaced by the Disciplinary and Dismissal Committee. Any warning will only be issued by the Disciplinary and Dismissal Committee following a hearing.

7. **APPEALS AGAINST FORMAL DISCIPLINARY WARNINGS**

- 7.1 A teacher or the Headteacher who has been given a formal disciplinary warning/dismissed, may appeal to the Appeals Committee, in accordance with the following procedure.

7.2 Notice of appeal, stating the grounds thereof, will be given, in writing, to the Clerk to the Governors within 10 working days of receipt of the written confirmation of the warning/dismissal.

7.3 At least 10 working days notice of the meeting will be given at which the appeal is to be considered. A meeting will be convened, unless otherwise agreed by all parties concerned, normally no later than 20 working days after receipt of the notice of appeal.

7.4 Procedure at the Hearing of an Appeal Against a formal Disciplinary Sanction/dismissal

(See also 12.3 Role of Director Children's Services and the Headteacher.)

- (a) The Headteacher or other appropriate person (the presenter of the report) should present the report to the Appeals Committee and will be entitled to call and recall witnesses as necessary. Exceptionally, the Governing Board may appoint an alternative person to present the report (e.g. an Authority officer).
- (b) The teacher and/or his/her representative will be entitled to question the presenter of the report and any witnesses called.
- (c) Witnesses should only normally be present when they are required to give evidence directly to the hearing.
- (d) The appellant and/or their representative will be entitled to make an opening statement in support of the appeal against the warning/dismissal and will be entitled to call witnesses to support their case.
- (e) The person referred to in (a) will be entitled to question the appellant and any witnesses who have been called by him/her.
- (f) The presenter of the report will be entitled to make a closing statement and thereafter the appellant and/or his/her representative will have a like right.
- (g) At any stage during the appeal members of the Appeals Committee will be entitled to question both parties and their respective witnesses.
- (h) On conclusion of the foregoing, both parties will withdraw from the meeting and the members of the Appeals Committee will reach a decision in private, which will be conveyed orally to both sides and subsequently confirmed in writing within 5 working days.
- (i) Where a lesser sanction is substituted or a warning is rescinded as a result of an appeal, the record in the teacher's file will be expunged or amended as the case may be.

8. THE DISCIPLINARY AND DISMISSAL COMMITTEE

8.1 Presentation of Reports to the Disciplinary and Dismissal Committee

(See also 12.4 Reports to Governing Board)

Where a decision has been made under Section 5.4 (iii) to refer the matter of a teacher's conduct to the Disciplinary and Dismissal Committee, the following procedures will apply:-

- (a) The Headteacher or other appropriate person will inform the teacher that a report is to be presented to a meeting of the Disciplinary and Dismissal Committee, for their consideration, and the reason(s) why this action is being taken. Thereafter, the Clerk to the Governors or other appropriate person will send a notification, in writing, to the teacher concerned informing him/her of the date, time and place of such a meeting and will send to the teacher at the time (if available) a copy of the report. The teacher will be invited to submit any documents in response to the report and will be advised that failure to attend the meeting without an acceptable reason could lead to the meeting proceeding in his/her absence. Particular consideration will need to be given to the time and place of such a meeting, to the likely length of the meeting and the suitability of the location selected.
- (b) A copy of the report together with copies of any statements, will, be sent to the teacher so as to arrive no later than 10 working days before the date of the meeting.
- (c) A teacher may, if he/she wishes, submit to the Clerk of the Governors or other appropriate person any documents concerning the report for circulation prior to the meeting. Any such documents should, wherever possible, be made available for circulation to members of the Disciplinary and Dismissal Committee at the same time as the report.
- (d) A copy of the report and any accompanying documents (including any documents submitted by the teacher) will normally be forwarded to members of the Disciplinary and Dismissal Committee at least 5 working days prior to the meeting referred to in (a) above.
- (e) The introduction of relevant additional documentary evidence at a meeting held under this procedure will be allowed.
- (f) At any meeting held under this procedure, a witness may give evidence by reference to written statements.
- (g) Should it prove necessary to adjourn the hearing to a later date, the Disciplinary and Dismissal Committee will reconvene as soon as possible, and normally in not more than a further 20 working days. (See also Section 3.8).

8.2 Procedure at the Hearing of the Disciplinary and Dismissal Committee

(See also Section 7.4, 12.3 and 12.4)

NOTE: The Director Children's Services or nominee will be entitled to attend for the purpose of giving advice.

- (a) The Headteacher or other appropriate person (the presenter of the report) should present the report to the Disciplinary and Dismissal Committee and will be entitled to call and recall witnesses as necessary. Exceptionally, the Governing Board may appoint an alternative person to present the report (eg. an Authority officer).

- (b) The teacher and/or his/her representative will be entitled to question the presenter of the report and any witnesses called.
- (c) Witnesses should only normally be present when they are required to give evidence directly to the hearing.
- (d) The teacher and/or his/her representative will be entitled to make an opening statement and present any documents to the Disciplinary and Dismissal Committee and to call and recall witnesses as necessary.
- (e) The presenter of the report will be entitled to question the teacher and any witnesses who have been called by him/her.
- (f) The presenter of the report will be entitled to make a closing statement to the Disciplinary and Dismissal Committee and, thereafter, the teacher or their representative will have the same right.
- (g) At any stage during the hearing, the members of the Disciplinary and Dismissal Committee will be entitled to question any person who has made a statement or given evidence at the hearing.
- (h) The parties will then withdraw from the meeting and the Disciplinary and Dismissal Committee will reach a decision, in private. Advice given by the Director Children's Services or representative must be considered by the Disciplinary and Dismissal Committee. The decision will be conveyed, orally, to both parties and, subsequently, confirmed in writing within 5 working days.
- (i) The options available to the Disciplinary and Dismissal Committee are as follows:
 - (i) to take no further action;
 - (ii) to issue a written instruction (having regard to the terms of the teacher's contract - see Section 5.5);
 - (iii) to take disciplinary action;
- (j) The disciplinary sanctions available to the Disciplinary and Dismissal Committee are as follows:-
 - (i) to issue a formal warning which may be a first, second or final written warning.
 - (ii) to dismiss with or without notice.
- (k) In cases of gross misconduct, where the decision is to dismiss without notice, termination of employment will take effect from the date of the decision. In the event that any subsequent appeal or consideration by the Governing Board reverses the decision, the termination of employment will be rescinded and any arrears of salary will be reinstated accordingly. Any appeal against a decision to dismiss shall not be unduly delayed and in any event, shall be heard within 20 working days of the date of the dismissal decision.

8.3 Disciplinary Action Against Headteacher

The presentation of a report to the Disciplinary and Dismissal Committee and any disciplinary action will be in accordance with 8.1 and 8.2 above.

9. APPEALS AGAINST DISCIPLINARY SANCTIONS

9.1 Any appeal against a decision made by the Headteacher or the Disciplinary and Dismissal Committee will be referred to the Appeals Committee. Appeals will be dealt with by way of re-hearing and the order of proceedings will be in accordance with Section 8.2 above. The appeal should take place no later than twenty working days from the date of the initial dismissal decision

9.2 Written notification of the date, time and place of the hearing will be given to the teacher so as to arrive not later than 10 working days before the date of the meeting and the teacher will receive, by that time, a copy of the report(s) and any statements, together with the decision of the Disciplinary and Dismissal Committee, which are to be considered by the Appeals Committee

9.3 The teacher may submit any documents concerning the decision of the Disciplinary and Dismissal Committee or the Headteacher. These should normally be made available to the Clerk to the Governors as soon as possible before the date of the meeting for circulation with the report and statements referred to in 9.2 above.

9.4 A copy of the report and statements referred to in 9.2 above will be forwarded to members of the Appeals Committee prior to the hearing.

9.5 The Appeals Committee will only have the power to confirm, to substitute a lesser sanction or to set aside the decision of the Disciplinary and Dismissal Committee as the case may be. The decision of the Appeals Committee will be reported to the Governing Board. The record in the teacher's file will be amended or expunged as the case may be and the teacher informed, in writing.

9.6 In all cases, where no appeal is lodged, the decision of the Disciplinary and Dismissal Committee will be reported to the Governing Board.

9.7 The decision of:

- (a) the Disciplinary and Dismissal Committee where no appeal is brought
- (b) the Appeals Committee,

will be final and no further rights of appeal or hearing will be allowed under this procedure. (See paragraph 11 on reference to an Employment Tribunal).

9.9 The Governing Board will notify the Authority, in writing, of a determination to dismiss and the reasons for it. The Authority will, within a period of 14 days (excluding weekends and public holidays) of the receipt of notification, inform the teacher of the termination of his/her contract of employment either with or without notice.

10. RECORDS

- 10.1 Documents relating to the investigation must be securely maintained, together with a written record of the outcome of the investigation and, where disciplinary action has been taken, retained on the teacher's personal and confidential file in accordance with the school's Disciplinary and Dismissal Procedure.
- 10.2 Records of warnings will be expunged at the end of the stated time and any note or reference thereto should be removed from the teacher's personal file and the teacher concerned informed, in writing, at the time this takes place (See Section 6.7).
- 10.3 If a teacher is dismissed or resigns before a disciplinary process is completed, he/she will be informed about the employer's statutory duty to report the case to the Disclosure and Barring Service (DBS) under Protection of Children Act legislation or the Teaching Regulation Agency (TRA), who are responsible for the regulation of teachers in respect of serious misconduct.

11. EMPLOYMENT TRIBUNAL

Nothing in this procedure should be read as restricting teachers from exercising their statutory rights in any way under existing employment law. Teachers should seek advice from their trade union.

12. INTERPRETATION/FURTHER GUIDANCE

- 12.1 For the purposes of this procedure the following words and expressions will have the meanings given below:-

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| (a) | Teachers | Includes full-time, part-time, permanent, temporary teaching staff, licensed and overseas trained teachers, instructors and Deputy Headteacher(s) where they are the subject of disciplinary action under this procedure. |
| (b) | Representative or Companion | Includes a fellow worker, a trade union representative, or an official employed by a trade union. |
| (c) | Headteacher | Includes a person appointed as Acting Headteacher and Deputy Headteacher exercising the functions of the Headteacher. |
| (d) | Governors | the members of the Governing Board appointed in accordance with the provisions of the Instrument of Government. Under this procedure the Governing Board will establish a Disciplinary and Dismissal Committee and an Appeals Committee comprising no fewer than three members in each case. No member of the Disciplinary and Dismissal Committee will be a member of the Appeals Committee. |

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| (e) | The Education (School Government) (England) Regulations 1999 | are the Regulations governing the proceedings of governing bodies. |
| (f) | The School Staffing (England) Regulations 2003 | Are the Regulations that determine how staff dismissal decisions should be made |
| (g) | Director Children's Services | Includes any other senior officer nominated by the Director. |
| (h) | Accredited Representative or Officer of a Teacher Association | are persons holding an office referred to in the Agreement on Facilities for Representatives of Recognised Teacher Associations (see Paragraph 3.6). |
| (i) | Day | one of the 195 days of the published school year when a teacher is required to be available for work under the School Teachers' Pay and Conditions Document. |
| (j) | Dismissal Decision | A dismissal decision for which the right of appeal exists |

12.2 The Education (School Government) (England) Regulations 1999 contain provisions relating to withdrawal from the governing board or committee meetings of persons normally entitled to attend those meetings. The general principle is that where there is a conflict between the interests of such a person and the interests of the governing board, or where the principles of natural justice require a fair hearing and there is any reasonable doubt about the person's ability to act impartially, he/she should withdraw from the meeting and not vote.

12.3 The Role of Officers and the Headteacher

- (a) **Director Children's Services** - Under The School Staffing (England) Regulations 2003, the Director or nominee will be entitled to attend any meeting of the Governing Board or Committee of the Governing Board. Where the Governing Board is making a determination as to whether a teacher should cease to work at the school, the Director Children's Services or nominee will attend for the purpose of giving advice. The Governing Board will consider any advice given before making any determination on dismissal.
- (b) **The Role of the Headteacher at the hearings of the Disciplinary and Dismissal and Appeals Committees** - The case against the teacher will normally be presented by the Headteacher. The Headteacher acting in this capacity would be party to the proceedings and clearly could neither offer advice nor withdraw with the members of the Disciplinary and Dismissal Committee when they make their decision. The Headteacher cannot subsequently act in any potentially conflicting role at a later stage (eg advising an Appeals Committee).

In the case of disciplinary action against the Headteacher, this shall apply to the presenter of the case appointed by the Governing Board.

12.4 Reports to Governing Board

When consideration is being given as to whether a report (see Paragraph 6.1) should be submitted to the Disciplinary and Dismissal Committee, it is important that no more detail than is absolutely necessary should be imparted to the Governing Board at this stage. What must be avoided at all costs is a 'trial' or detailed discussion taking place in the absence of the teacher who is to be disciplined. Accordingly, when the Clerk to the Governors or the Headteacher is attempting to set a date for the special meeting, he/she should inform the Governing Board that the report concerning the teacher is to be submitted to the Disciplinary and Dismissal Committee. An attempt by any Governor to elicit further details at that stage would be inappropriate since it could be subsequently prejudicial. The Chair of the Governors should be kept informed of general progress but not given access to detailed information in view of the fact that this might disqualify him/her on grounds of bias from chairing a meeting to consider the matter. (See Section 12.2 re impartiality).

Where it is necessary to reconvene a meeting, this should be done as soon as soon as possible, and, in any event, in not more than 20 working days. Where a meeting is reconvened membership of the appropriate Committee must be unchanged, otherwise it will be necessary for the procedure to begin again. If a Committee consists of more than 3 members it will be possible to proceed where a member(s) is unable to attend, providing the minimum of 3 members is maintained.

13. CRIMINAL OFFENCES

- 13.1 In the event of a criminal offence being suspected on the part of a teacher, which is connected with his/her employment, the Headteacher should inform the Chair of Governors and seek the advice of the Director Children's Services or of the Head of Legal and Democratic Services. In the event of a criminal offence being suspected on the part of the Headteacher, such advice would be sought by the Chair of Governors.
- 13.2 If the allegations involve financial or accounting irregularities or circumstances which may suggest irregularities affecting cash, stores, property, remuneration or allowances, the Headteacher should inform the Chair of Governors and seek the advice of the Schools' HR Team and/or the Director of Resources so that the complaint can be investigated under the procedures normally applied for suspected financial irregularities.
- 13.3 If the allegations relate to the abuse of children, the Headteacher should seek the advice of the Schools' HR Team and/or other agencies, such as Children's Services. Serious allegations of this nature **must** be referred under Safeguarding Procedures to Children's Services. The statutory guidance contained within Part 4 of "Keeping Children Safe in Education" sets out the details of how such allegations must be handled.
- 13.4 Normally a teacher will not be the subject of any disciplinary proceedings in respect of a matter whilst it is the subject of police investigations/legal proceedings.
- 13.5 Where a teacher is convicted of a criminal offence which has a bearing upon his/her employment, he/she may, subsequently, be subject to disciplinary action in accordance with this procedure.

- 13.6 In the circumstances referred to in 13.2 and 13.3 above, a teacher may be suspended from duty. (See Annex 2)
- 13.7 Where a teacher is not available for duty by reason of being detained in custody and is, subsequently, found not guilty, any salary withheld during that period of detention will be reimbursed to the teacher. The teacher must be informed if salary is to be withheld.
- 13.8 In addition to the matter being dealt with by the police and the School/Children's Services Authority (via the disciplinary procedure), in some cases of serious misconduct, the matter may also be referred to the DBS, by the Headteacher or the local authority, or the TRA may refer matters that they become aware of to the DBS or local authority. DBS and TRA have a statutory right to remove the right of any person to work as a teacher in the UK, and this may be a course of action in cases of serious misconduct.

DISCIPLINARY AND DISMISSAL PROCEDURE FOR TEACHERS IN SCHOOLS WITH DELEGATED BUDGETS

LEVELS OF DISCIPLINARY MISCONDUCT

The lists below are merely for general guidance and should not be taken as either definitive or comprehensive. Each situation will be dealt with according to the particular seriousness of the situation.

Examples of minor misconduct

Minor time wasting
Occasional lateness
Minor instances of insubordination

Examples of serious misconduct

Persistent or serious instances of insubordination
Persistent bad timekeeping
Continued repetition of previous offences

Examples of gross misconduct

Gross misconduct, which will result in the immediate referral of an adverse report to a Disciplinary Committee and may result in dismissal, is regarded as misconduct of such a nature that it fundamentally breaches the contractual relationship between the employee and the employer.

Examples of gross misconduct all of which may result in dismissal include:-

Stealing from the employer, members of staff, pupils or parents, other offences of dishonesty;
Sexual misconduct at work;
Harassment of other employees, children or parents on the grounds of sex, ethnicity, sexual orientation, disability, religion, belief or age
Misuse of the internet, email, mobile telephone or other school facilities;
Fighting, physical assault;
Serious violation of the School's policies relating to conduct at work, eg anti-bullying policy, computer security policy etc;
Falsification of a qualification which is a stated requirement of employment or which results in financial gain;
Deliberate damage to or misuse of the school's/CSA's property;
Drunkness or being under the influence of drugs at work, (note – the County Council's Misuse of Drugs and Alcohol Policy needs to be considered in these cases);
Falsification of records or claims for personal gain e.g. work records, travel expenses etc;
Wilful disregard of health and safety regulations;
Serious negligence which causes unacceptable loss damage or injury;
Serious violation of catering hygiene regulations;
Intimidation of whistleblowers or witnesses to Hearings;
Other similar acts of misconduct may come within the general definition of gross misconduct

It should also be noted that disciplinary action may be considered in relation to acts of misconduct which take place outside of school hours, for example, in instances of criminal prosecution and/or conviction/caution for such actions. In addition, disciplinary action may also be considered as a result of a Teacher's personal use/misuse of electronic communications and social media, including social networking sites. The considerations should be the relevance of the offence to the teacher's duties, the effect on the contractual relationship with the employer and/or on colleagues/pupils/parents or whether the actions of the Teacher brings the reputation of the School into disrepute. Disciplinary measures will not automatically be appropriate in these instances.

DISCIPLINARY AND DISMISSAL PROCEDURE FOR TEACHERS IN SCHOOLS WITH DELEGATED BUDGETS

SUSPENSION

1. INTRODUCTION

In all cases where a member of staff is to be suspended under the School's Disciplinary Procedure, the following process will be followed:

2. REASONS FOR SUSPENSION

Circumstances in which suspension properly occurs include:

- (a) Where the allegation is so serious that dismissal for gross misconduct is possible.
- (b) Where an allegation of misconduct has been made against a member of staff and a suspension is necessary to allow the investigation to proceed unimpeded.
- (c) Where a member of staff is the subject of an allegation of misconduct, the nature of which could involve potential risks to children, or other employees or the member of staff him/herself.
- (d) On medical grounds where there may be a recommendation for the dismissal of the member of staff.
- (e) On completion of formal capability procedures which may result in a recommendation for the dismissal of the member of staff.
- (f) Where other exceptional circumstances arise.

Suspension should not be entered into lightly and it is not a disciplinary sanction. Automatic suspension following any allegation could be unnecessary and damaging to staff and the school. The Head **should take advice from the** Authority through the Schools' HR Team and if necessary seek legal advice. He/she can then consider the weight and balance of the circumstances and evidence available.

In circumstances where suspension is considered, the decision should be clearly documented.

3. PRIOR TO SUSPENSION

- (a) Any decision to suspend can only be made by the Head.
- (b) In all cases where suspension is being considered, the Head should advise the member of staff to seek assistance from his/her Association/Trade Union. The Head is also advised to seek advice from his/her Association.

- (c) In circumstances where immediate advice cannot be obtained (eg at the weekend) a reasonable course of action, as an interim measure, would be to send the member of staff home or to ask him/her to remain at home. Although, legally, this may be regarded as suspension, at this stage the proper process of suspension will not have been undertaken and the action is easily reversed, should the Head, subsequently, decide to take alternative action. If the decision is subsequently to suspend, then the normal process should be carried out immediately.

4. MEETING TO CONSIDER SUSPENSION

- (a) Where suspension is under consideration, a meeting should be arranged with the member of staff. For teachers this would normally be outside pupil contact time. The process must be handled sensitively. The member of staff has the right to be represented at the meeting by a fellow worker or trade union representative.
- (b) In exceptional circumstances, where it may be necessary to suspend immediately, every effort should be made for representation but it may not be possible to have an opportunity to be represented. In such circumstances the member of staff must be advised by the Head to consult a trade union representative as soon as possible following the meeting.
- (c) Before the meeting, the member of staff should be offered the opportunity of a brief consultation with his/her representative.
- (d) At the outset of the meeting the member of staff should be informed that a serious complaint or allegation has been made and that, at the conclusion of the meeting, suspension might occur. It should be made clear, however, that the meeting is not a formal disciplinary hearing but is for the purpose of putting forward a serious matter which may lead to suspension and further investigation.
- (e) The member of staff should be given as much information, including reasons for any proposed suspension, as is appropriate in the circumstances.
- (f) In the case of an allegation involving an external agency (eg Safeguarding, Police, Audit) this should be consistent with not interfering with an investigation about the allegation. The member of staff should be informed that the agencies will undertake their own investigation and interview procedures.
- (g) The member of staff should be given an opportunity to make representations concerning the suspension. However, in view of the need for a subsequent investigation there will be no discussion of the detail of the case to avoid prejudicing the outcome of the investigation or the position of the member of staff.
- (h) The member of staff should be informed that he/she will be given a subsequent opportunity to put forward his/her side of the case at a separate meeting should the matter proceed into the School's Disciplinary and Dismissal Procedure.

- (i) If, as a result of the meeting, the Head considers that suspension is necessary along with a full investigation of the allegations, the member of staff should be advised that he/she is suspended from duty on full pay. The member of staff should be assured that he/she remains an employee of the Authority/School.
- (j) If the Head considers that suspension is unnecessary or decides to take an alternative course of action (eg leave of absence), no action will be taken to suspend, but other action may subsequently follow.

NOTE: There may be circumstances where it is considered inappropriate to convene a meeting.

5. AT THE CONCLUSION OF THE MEETING

- (a) The member of staff should be advised of the following:-
 - (i) the need to seek advice from a trade union if not accompanied.
 - (ii) arrangements for support and contact from within the School (Contact Officer) who can offer help and guidance during the disciplinary process. (See Annex 4 - Support for staff during a period of suspension).

Note: where there is a need to suspend on a Friday or immediately before a holiday period, special consideration should be given to the support arrangements.
 - (iii) He/she will be required to be available for contact by management during the period of suspension.
 - (iv) In order not to prejudice the objectivity of the investigation, he/she is not permitted to attend the workplace or make professional contact with, or discuss the case with colleagues or other staff without permission.

If there is a need to contact other members of staff to gather evidence on behalf of the member of staff this should be done by his/her representative where applicable.
 - (v) What his/her colleagues will be told concerning the reason for his/her absence and about the nature of any contact. This is particularly important in cases of a sensitive nature and will allay continued suspicions or doubts if he/she returns to work on the conclusion of any investigation/disciplinary action.

- (b) The member of staff should be informed that his/her suspension will be confirmed in writing, that the period of suspension will be kept under review on

a monthly basis and that he/she will be informed by the Contact Officer of progress relating to the investigation. Wherever possible the member of staff should be given an outline of the steps to be taken to investigate the matter and the timescales involved.

- (c) The member of staff should be asked to return any school/pupil books or keys, as appropriate, and, under supervision, collect any personal belongings which he/she might need during the period of suspension.

6. **REVIEW OF SUSPENSION**

All suspensions must be kept under review on a monthly basis by the Head. The aim should be to ensure that suspensions are kept as short as possible. It is unfair on a member of staff to delay the process of investigation and resolution of any disciplinary issues. Any internal investigation following an external investigation should normally commence no later than 20 working days following the conclusion of the external case.

7. **ACTION AFTER A DECISION TO SUSPEND**

- (a) The Head should consider carefully, and keep under review, decisions as to who is informed of the suspension and the investigation and to what extent confidentiality can or should be maintained, according to the circumstances of a particular case. In a situation where a matter becomes common knowledge or the subject of general gossip, it may be desirable to provide an accurate statement for public information. The Head and other staff should not speak to the media about the suspension or the allegations, without first seeking advice from the Schools' HR Team and the Press Office on this matter as necessary.
- (b) The following paragraphs 7(c), (d), and (e) are applicable in safeguarding cases and guidance should be sought from the Schools' HR Team.
- (c) The School should consider the extent to which it is necessary to make a statement to parents of children, having considered the need to avoid unwelcome publicity.
- (d) Where a pupil or parent has made an allegation, they should be informed of the suspension, in confidence. Where the pupil is under 18, his or her parents should normally be informed (in the case of allegations relating to Safeguarding Procedures this should be agreed with the relevant Agencies).
- (e) In certain circumstances, it may be necessary for the Head to provide immediate reassurance to parents and children and there may be a need for information to continue to be provided during the course of an investigation to parents, children and other colleagues.

8. APPLICATION OF THE ABOVE TO THE HEADTEACHER

- 8.1 In cases where the Head is the subject of allegations and is suspended, the same principles embodied in Sections 2 to 7 of these procedures will apply. Suspension will be effected by Chair of Governors.
- 8.2 The implications for the continued management of the school need to be considered at this stage by the Governors including the arrangements for an Acting Head.

9. OUTCOME OF INVESTIGATION

- 9.1 At the end of the investigation, If the outcome results in a disciplinary charge, further action will be in accordance with the School's Disciplinary and Dismissal Procedure.
- 9.2 Where it is decided not to proceed with any form of disciplinary action, a suspension should be lifted immediately by the Governors. The Head should meet the member of staff, accompanied by his/her representative or fellow worker, to discuss his/her return to work.

In the case of the Head, this will be undertaken by the Chair of Governors and the Principal Human Resources Manager (Schools).

- 9.3 The opportunity should be provided for informal counselling. This could be used to give appropriate, support and reassurance and where necessary to help rebuild the confidence of the member of staff. There may also be a need for specific guidance and sympathetic consideration may need to be given to other employment options, in consultation with the Schools' HR Team.
- 9.5 On the conclusion of any investigation and any related disciplinary proceedings, in the case of Safeguarding cases, the parents of the child/children who made the allegations and the child/children themselves should be informed of whether any action has been taken. This should be prior to the return of the member of staff to duty if he or she has been suspended.
- 9.6 In some circumstances, consideration should be given to the broader disclosure of details of the outcome. This consideration should give reasons, for example where the issues:
- are of general importance;
 - have become common knowledge;
 - have been the subject of general gossip;
 - there is a need to provide accurate details for public information

The Authority's Press Office will be able to offer appropriate advice.

DISCIPLINARY AND DISMISSAL PROCEDURE - FOR TEACHERS IN SCHOOLS WITH DELEGATED BUDGETS

SUPPORT FOR STAFF DURING A PERIOD OF SUSPENSION

1. INTRODUCTION

The support described in this Annex is applicable to staff during a period of suspension or during a period of leave of absence/medical absence when these are alternatives to suspension.

It is recognised that there is a need for management, both at the School and Authority level, to provide some means of support to staff who are the subject of allegations of misconduct at work, or who have been suspended for alleged misconduct under the School's Disciplinary Procedure. In such circumstances, the member of staff involved may experience feelings of worry and depression; they may also feel isolated from their workplace and colleagues.

It is important that staff are made aware of what is happening in relation to the disciplinary investigation, as lack of information may also lead to further stress and ill health. In addition, it must be understood that the allegations may have placed the member of staff in a difficult situation in relation to his/her family.

2. CONTACT OFFICER

- (a) The main role of the Contact Officer is to provide information to the member of staff as to the progress of the investigation. It may be appropriate for the Principal Human Resources Manager (Schools) to act as an Authority Contact Officer in circumstances where the headteacher is suspended from duty.
- (b) Although it is the aim that all investigations should be conducted as speedily as possible consistent with establishing the full facts, the Contact Officer will make arrangements for the member of staff, or his or her Association/Trade Union representative, to be contacted regularly with information on progress and developments on the case. These arrangements should not preclude the member of staff, or his or her representative contacting those conducting the investigation at any time.
- (c) The Contact Officer will also make arrangements for the School to maintain contact and communication with the suspended member of staff (See Section 3).
- (d) In some cases, it may be appropriate to ask the member of staff whether the support of the local authority's medical adviser would be helpful, or to respond to a request for such further support. The Contact Officer will supply the relevant telephone numbers and arrange for access to such services at the request of the member of staff or his/her Trade Union representative.

3. MAINTAINING LINKS WITH THE SCHOOL

With the agreement of the member of staff, the School the Contact Officer will act as a link providing him/her with information about developments at the School in general, if he/she so wishes.

4. **ROLE OF TRADE UNION REPRESENTATIVE**

The Trade Union representative will normally act as a liaison between the Contact Officer and the member of staff and, as necessary, between the School and the member of staff.

Trade Unions usually have access to their own or other independent welfare counselling services, and the representative can arrange for access to such services at the request of the member of staff.

ADDENDUM TO DISCIPLINARY PROCEDURE

School Staffing (England) Regulations 2003 – Delegation to Headteacher of authority to make initial dismissal decisions.

These Regulations allow for Governing Bodies to delegate authority to make dismissal decisions to Headteachers. Therefore, the Headteacher becomes responsible for all disciplinary action up to and including dismissal. The provisions for this are set out in Section 1 of the Statutory Guidance accompanying the Regulations.

Governing Bodies will need to take a decision as to whether they wish to delegate this responsibility. They need to bear in mind that the statutory guidance accompanying the Regulations specifies a series of circumstances where such an arrangement may not be appropriate. These are as follows

- A Headteacher who is unwilling to accept this function and who has hitherto not been required to do so. The position could be reviewed on the appointment of a successor Head.
- Where the Headteacher has been directly involved in the disciplinary process leading up to the consideration of dismissal – for example, through investigating the alleged misconduct. Experience shows that this is invariably the case and therefore, referral for consideration by the Discipline and Dismissal Committee preserves the integrity of the disciplinary process. However, in large Schools, it may be possible to delegate the responsibility for investigation to another member of the management team, thereby leaving the Headteacher available to consider, what disciplinary action, up and including dismissal, should be taken. Appeals against disciplinary action should still be considered by the Appeals Committee.
- Where the Governing Board of a school with a religious character (i.e. Voluntary Aided, Foundation and Voluntary Controlled Schools) has agreed that Governor involvement will serve to preserve this character. Therefore, advice should be sought from the relevant Diocesan Authority.
- Where the Headteacher is themselves subject to disciplinary or capability procedures.
- Where the CSA may have made representations to the Chair of Governors on grounds of serious concerns about the performance of the Headteacher.

Where a Governing Board does decide to delegate the authority to make dismissal decisions (and issue a final written warning), they are strongly advised to consult with staff and their professional associations before finally confirming their decision.