

Crosslee Community Primary School



**Model Disciplinary and Dismissal
Policy and Procedure**

September 2022

This model policy and procedure has been produced by One Education's HR and People service. The HR and People team provides management and HR support and advice to schools and academies purchasing their services under an agreed Service Agreement. For further information please contact the HR and People team via the HROne Helpline: 0844 967 1112 (local rate from landline) or HROne Helpline Email: hrpeople@oneeducation.co.uk Website: www.oneeducation.co.uk

This policy is recommended for adoption by all maintained schools including community, voluntary controlled, community special, maintained nursery, foundation, foundation special and voluntary aided schools. It is also recommended for adoption by academies and free schools (modified as appropriate and taking into account the particular circumstances of the relevant academy or free school). Some school or academy specific provisions are included. This policy should therefore be adapted as necessary and inappropriate provisions deleted. The HR and People team can assist in adapting this policy to fully reflect a school's status including their academy or multi academy trust (MAT) status.

References in this policy to schools include a reference to academies and free schools unless otherwise stated. References in this policy to the headteacher include a reference to an academy or free school principal and references to the governing body include references to governing boards and/or trust boards as applicable.

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Amendments	To take account of changes to legislation, guidance and statutory bodies including the Data Protection Act 2018, Keeping Children Safe in Education 2019, the Teaching Regulation Agency. Some alternative paragraphs for academies. Examples of misconduct/gross misconduct (Appendix A) extended and professional standards referred to. Authority to Act provisions removed and now contained in Appendix B [with separate guidance for maintained schools in Appendix B2]. Appendices re-lettered and clarification provided around the appeal process.
Related Policies/Guidance	Child Protection and Safeguarding Children Policy, Keeping Children Safe in Education 2019, Code of Conduct, Equality Policy, School Staffing (England) Regulations 2009
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Equality Statement: - Under the public sector equality duty (PSED), all schools/academies must have due regard to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited by the Equality Act 2010; to advance equality of opportunity between those who share a relevant protected characteristic and those who do not share it and to foster good relations across all protected characteristics. This means schools/academies must take into account equality considerations when policies are being developed, adopted and implemented. The One Education HR and People team regularly reviews all policies and procedures which are recommended to schools/academies to ensure compliance with education and employment legislation including the Equality Act 2010. Consultation with schools/academies is an important part of this review process. Headteachers, Principals and Governing Bodies are asked to contact the HR and People team via the HROne Helpline if they believe there are any negative equality impacts in their school/academy in relation to the application of this policy/procedure. Schools should also contact HR and People team if they need to access this policy in a different format.

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1. Introduction

- 1.1 All school governing bodies are required to establish procedures with regard to regulating the conduct and discipline of school employees. [For maintained schools this is a requirement of the School Staffing (England) Regulations 2009] This disciplinary and dismissal policy and procedure (referred to as a procedure only hereafter) has been adopted by the governing body of this school to govern the conduct and discipline of employees employed to work at the school.
- 1.2 This procedure accords with education and employment legislation including the Employment Rights Act 1996 and the Equality Act 2010 and also takes into account the provisions of the ACAS Code of Practice 2015 on disciplinary and grievance procedures and the rules of natural justice.

2. Scope

- 2.1 This procedure applies to all employees in school whose employment is under the purview of the governing body including the headteacher. It does not apply to self-employed staff, contractors, external consultants, agency staff or governors.
- 2.2 This procedure applies to disciplinary action and dismissals relating to misconduct which includes gross misconduct. Examples of the types of conduct which could result in disciplinary action being taken against an employee are detailed in the disciplinary rules set out at **Appendix A** to this document.
- 2.3 In addition to the non-exhaustive lists of misconduct and gross misconduct detailed in **Appendix A**, the conduct of teaching staff may be assessed by reference to the “Teacher Standards” issued by the Department for Education (“DFE”) detailed annually in the School Teachers Pay and Conditions document (STPCD) or any other professional or other standards published by or associated with the DFE from time to time. Headteachers may be assessed by reference to Teacher Standards and also Headteacher National Standards for Excellence. The conduct of teaching assistants may be assessed by reference to the non-statutory core Teaching Assistant Standards issued by Trade Unions in 2015 and the revised professional standards for Higher Level Teaching Assistants (HLTA’s) published by the Training and Development Agency in 2006. Failure to meet any or all of the professional or other standards referred to may be classed as misconduct or gross misconduct depending upon the seriousness and circumstances of the alleged offence.
- 2.4 Separate procedures or guidance exist for action and dismissals relating to the following:-
 - unsatisfactory performance/capability;
 - redundancy and/or reorganisation;
 - ill health and long-term sickness absence;
 - persistent short-term sickness absence;
 - termination of a fixed term contract of employment where the term of an employee’s contract expires without it being renewed;

- failure by an employee to satisfactorily complete a probationary or statutory induction period;
- circumstances where to continue to employ an employee would involve a breach of a statutory enactment or provision.

2.5 It **may** be appropriate for this procedure to be used in certain cases where the potentially fair reason for the dismissal of the employee could fall within the category of some other substantial reason (SOSR) of a kind to justify dismissal as opposed to conduct. This may be for example, where the issues concerned are a consequence of or are related to the employee's conduct and/or where there has been an irretrievable breakdown of the relationship of trust and confidence. This may include cases where circumstances or conduct outside school impact on the employee's ability or suitability to continue in their role and cases where to continue to employ the employee would potentially cause serious damage to the school's reputation. Advice should always be taken from One Education's HR and People Service (referred to in this procedure as the school's HR Adviser) in relation to whether this procedure should be applied in cases of this nature.

3. Principles

- 3.1 This procedure is designed to help and encourage employees to achieve and maintain acceptable standards of conduct. It aims to ensure fairness, equity and consistency in the day to day management of employee conduct, the investigation of alleged misconduct and in applying formal sanctions up to and including dismissal.
- 3.2 Headteachers and line managers will try to resolve issues of minor misconduct informally. Where this approach has been unsuccessful or where misconduct is more serious meaning an informal approach is not appropriate, formal disciplinary action will be considered.
- 3.3 No formal disciplinary proceedings will be brought against an employee under this procedure until the case against them has been fully investigated.
- 3.4 No formal disciplinary proceedings will be brought against an employee before they are advised of the nature of the complaint against them, offered the right to respond to the allegation(s) and given the opportunity to state their case.
- 3.5 Disciplinary matters will normally be pursued sequentially through the stages of this procedure but **disciplinary action may be implemented at any stage in this procedure if the employee's alleged misconduct warrants such action.**
- 3.6 Unless safeguarding regulations apply or unless there are exceptional circumstances meaning it is a relevant factor to take into account, expired warnings will be disregarded in the application of this procedure. Warnings relating to safeguarding matters can never be disregarded. Unexpired warnings will be taken into account after the facts have been established in any particular case and before any disciplinary sanction is imposed. A record of all warnings, including expired warnings, will remain on an employee's personal file subject to the school's obligations under the Data Protection Act 2018 and any other relevant legislation.
- 3.7 At all stages of the formal process, including investigation meetings, disciplinary hearings and appeal hearings, the employee will be advised of their right to be

accompanied by a companion who will be either a work colleague, a person employed by a trade union or a trade union representative who has been certified in writing by the union as having experience of/ been trained in acting as a companion. Employees must make their own arrangements if they wish to be accompanied at meetings and hearings.

- 3.8 Where a case proceeds to a disciplinary hearing, the case will be heard by a person or panel independent of the investigation process.
- 3.9 No employee will be dismissed for a first incident of misconduct except in cases of gross misconduct. Dismissal for gross misconduct will be without notice or payment in lieu of notice. Dismissal with or without notice maybe the outcome in SOSR cases heard under this procedure (see paragraph 2.5).
- 3.10 Employees will be advised of their right to appeal any formal disciplinary sanction imposed under this procedure. If an employee wishes to exercise their right of appeal they must use the appeal form attached to this procedure. The panel hearing the appeal case will not have been involved in the disciplinary hearing and will also be independent of the investigation process.
- 3.11 Where reasonably possible and practicable, all meetings and hearings convened under this procedure will take place at a location, on a date and at a time which is mutually convenient to the school, the employee and the employee's companion. Meetings and hearings will normally be held during the employee's working day.
- 3.12 Where an employee is repeatedly unable or unwilling to attend an investigation meeting or a hearing under this procedure, the school may conclude that a decision will be made on the information and evidence available. In reaching such a decision, the seriousness of the disciplinary issue under consideration will be taken into account together with the employee's disciplinary record, general work record, work experience, position and length of service. Any available medical opinion as to whether the employee is fit to attend the meeting/hearing will also be taken into account. In such cases, the employee will be informed of the position in advance of the meeting/ hearing and the employee may submit their case in writing or may request in writing that their case be presented by their companion.
- 3.13 Information relating to disciplinary and appeal hearings shall remain confidential subject to safeguarding obligations. Records will be treated as confidential in accordance with the Data Protection Act 2018.
- 3.14 All person(s) involved in the investigation or hearing of disciplinary cases will be mindful of their obligations and duties under the Equality Act 2010. Reasonable adjustments will be made where required to assist an employee or their companion with a disability. If there are any language issues affecting an employee or their companion, these will be reasonably addressed so that any formal proceedings can take place fairly.
- 3.15 If an employee resigns when an investigation or formal disciplinary action is being considered or has commenced, the action/process may continue to an appropriate conclusion at the discretion of the headteacher (or the chair of governors in cases where the headteacher is the subject of the disciplinary action). Where the allegation(s) relate to safeguarding of children the action/process **must** continue and **must** be concluded. This applies even in cases where the Designated Officer (DO)

formerly known as the Local Authority Designated Officer (LADO) and/or the police decide not to pursue the matter. The outcome will be used to inform a potential referral to the Disclosure and Barring Service (DBS) and details will be included in any job references as appropriate.

- 3.16 Where a hearing is convened to consider an allegation of gross misconduct and the outcome of the hearing could result in the permanent bar or ban on the employee working in his/her profession (because a dismissal would result in a referral to the DBS and/or a referral to the Teaching Regulation Agency (TRA) (previously the National College of Teaching and Leadership (NCTL)), any request by the employee to be represented by a lawyer at the hearing will be carefully considered. However, there is no automatic right to legal representation under this procedure and the general position is that legal representation will only be granted in exceptional circumstances. The ultimate decision will always remain with the school. Advice may be taken from the school's HR adviser in such cases.
- 3.17 Where an employee raises a grievance during the disciplinary procedure the school's grievance procedure should be followed. In exceptional circumstances, the disciplinary procedure may be temporarily suspended in order to deal with the grievance but in the majority of cases it will be appropriate to deal with both issues concurrently. This applies in particular where the substance of the grievance is connected to the disciplinary allegations or to the disciplinary process.
- 3.18 No formal action will be taken against an employee who is a trade union representative until the circumstances of the case have been discussed with a senior trade union representative or full time official of the relevant trade union. No action will be taken against an employee in respect of alleged misconduct which arises from trade union duties or activities, until the matter has been discussed with a senior trade union representative or full time official.
- 3.19 The timescales in this procedure may be amended by mutual agreement. All parties will ensure however that the investigation, hearing and appeal processes progress as quickly as is reasonably possible for the benefit of all parties concerned.
- 3.20 In exceptional circumstances, where person(s) with responsibility for hearing a disciplinary case or disciplinary appeal case determine that in order to achieve a fair and equitable process the circumstances of the particular case require a change or amendment to this procedure, it shall be within the discretion of the said person(s) to effect that change or amendment subject to prior consultation being undertaken with the school and the employee.

4. Authority to act

Maintained schools

- 4.1 A schedule of those with authority to act under this procedure in this school is attached at **Appendix B1**.
- 4.2 The schedule in **Appendix B1** takes into account the School Staffing (England Regulations) 2009 (the 2009 Regulations) which apply to community, voluntary controlled, community special, maintained nurseries, foundation, voluntary aided and foundation special schools. It takes into account the delegation of functions agreed by the governing body of this school in relation to the conduct and discipline of staff. The provisions of the 2009 Regulations relating to the authority to act and to relevant notifications are reflected in the Guidance Note attached to this procedure at **Appendix B2**.

Academies

- 4.1 A schedule of those with authority to act under this procedure in this school/academy/trust is attached at **Appendix B**
- 4.2 The above schedule takes into account the provisions in the [*detail relevant academy document(s)/scheme of delegation applicable to the authority to act and delegation of functions from the trust board to academy principal/ executive principal/ local governing bodies in relation to conduct and discipline of trust employees.*]

5. Informal steps

- 5.1 Headteachers and line managers will on occasions be required to discuss with employees aspects of their general conduct without recourse to formal procedures.
- 5.2 Following such informal discussions, the headteacher or line manager may give the employee concerned informal oral and/or written guidance and instructions as to their future conduct and the means of improving it. Any informal written guidance issued to an employee is referred to in this procedure as a Management Note of Guidance. The Management Note of Guidance should detail the conduct in issue, how the conduct should be improved, any support measures agreed and if appropriate, confirmation that the employee's conduct or performance will be monitored over an agreed period of time.
- 5.3 Informal oral instructions and guidance and Management Notes of Guidance are not regarded as disciplinary sanctions and do not form part of the formal disciplinary process. Management Notes of Guidance will remain on an employee's school personnel file indefinitely. There is no right of appeal against the issue of a Management Note of Guidance.
- 5.4 Where a governing body has a concern about the conduct of the headteacher and recourse to formal procedures is not considered appropriate, there should be an informal discussion between the headteacher and the chair of governors. Where it is appropriate and acceptable to both parties, a senior HR adviser from HR and People may also attend and participate in the discussion. A Management Note of Guidance may be issued to a headteacher by the chair of governors as a result of such informal discussions.

6. Formal steps

- 6.1 Where informal discussions have not been successful or where such an approach is inappropriate due to the nature or the alleged misconduct, it will be necessary to consider formal steps. It is recognised that discipline is necessary for the conduct of the school's affairs and for the safety and well-being of all employees and the school's pupils. If formal disciplinary action is considered necessary, it will be undertaken fairly and reasonably.
- 6.2 Any formal disciplinary action, including dismissal decisions, can only be carried out by those person(s) having authority to act under this procedure. (See paragraph 4 above and **Appendix B1**)
- 6.3 It is recommended that where dismissal may be the outcome in any particular case, schools should seek HR advice.

7. Preliminary Investigation

- 7.1 Where an alleged disciplinary matter is brought to the attention of the headteacher, the headteacher or designated person should consider the evidence available and should carry out a preliminary investigation.
- 7.2 If the matter to be investigated is thought to involve misconduct which is very serious or if it is not reasonably possible or practical to carry out a preliminary investigation (for example cases involving safeguarding issues or fraud) the matter may proceed immediately to a full disciplinary investigation.
- 7.3 The aim of a preliminary investigation is to establish whether, on the face of the evidence available, there is a case to investigate further. In appropriate cases a preliminary interview should be carried out with the employee and witnesses to obtain their version of events.
- 7.4 Preliminary interviews may be carried out by the headteacher or by an appropriate person nominated by the headteacher who will usually be a member of the school's management team.
- 7.5 The preliminary investigation should be carried out as soon as possible after the matter is brought to the headteacher's attention and a decision should be made by the headteacher as quickly as possible as to whether there is a case to answer and the matter should be fully investigated. A preliminary investigation should not normally last for more than **two school working days**.
- 7.6 In cases where the matter could be construed as gross misconduct, the headteacher should take HR advice to ascertain whether it is an appropriate to suspend the employee from duty in accordance with this procedure.
- 7.7 A preliminary investigation may result in informal action against the employee concerned by the issue of oral guidance/ instructions or the issue of a Management Note of Guidance (see paragraph 5 above).
- 7.8 Where the alleged disciplinary matter involves the headteacher, the chair of governors must be notified. The chair of governors will decide whether a preliminary

investigation is appropriate. The chair of governors, or a governor nominated by the chair of governors, may carry out the preliminary investigation but only the chair of governors may decide whether there is a case to answer, whether there should be a full disciplinary investigation and whether suspension is appropriate. It is recommended that the chair of governors seeks HR advice in such cases.

8. Allegations about safeguarding

8.1 Where there is an allegation that an employee has: -

- behaved in a way that has, or may have, harmed a child; or
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates that they would pose a risk of harm if they work regularly or closely with children.

the headteacher or safeguarding lead (as the case may be) must immediately contact the DO who has a statutory duty to ensure all allegations about safeguarding are handled properly and expeditiously. The school should also contact their HR adviser without delay.

8.2 Where appropriate, a strategy meeting will be arranged by the DO to determine whether the allegation should be investigated by the police or by some other agency or by the school under its disciplinary procedure. The strategy meeting may be attended by the relevant Local Authority officers, the police, social services and the headteacher (or a designated governor if the allegation is against the headteacher). An HR representative or other professional adviser may also attend the meeting with or on behalf of the school.

8.3 A full disciplinary investigation should not be started by the school until recommendations have been made with regard to next steps at or following the strategy meeting. To do so could potentially compromise investigations by the police or the Local Authority.

8.4 If after initial discussions with the DO, or after an initial strategy meeting, or at some later stage it is decided that it is appropriate for the school to proceed with the matter under its normal disciplinary procedures, the school should take account of the recommendations from the strategy meeting and should liaise with the DO as appropriate.

8.5 Where an employee has been suspended pending the outcome of a police investigation into a safeguarding issue and no further action will be taken by the police, a risk assessment will be carried out before a decision is taken whether to lift the employee's suspension. The risk assessment will include consideration of any evidence provided by the police, the DO, social services and other relevant agency and will take account of whether further investigations will be carried out by the school. It will also take account of the risks of the employee returning to their role in particular any present or future risks to children or other members of staff and potential witnesses and whether any further investigation will be hindered or compromised. It will also include consideration of the potential for serious reputational damage to the school or the Local Authority.

- 8.6 When dealing with allegations relating to safeguarding, the school will have regard to the provisions of the current DfE Statutory Guidance on “Keeping Children Safe in Education” and the school’s Child Protection and Safeguarding Children Policy.

9. Allegations involving fraud and related misconduct

Maintained schools

- 9.1 In circumstances where there are allegations of misconduct of a financial or fraudulent nature, the headteacher (or the chair of governors where the allegations involve the headteacher) should contact the Local Authority’s fraud or audit team without delay and without alerting the employee at this stage. A decision may be taken at this stage as to whether the matter should be referred to the police.
- 9.2 A case conference may be recommended to share information on the matter and to agree the approach to be taken, including the role of the Local Authority’s fraud/audit team and how they will link to the disciplinary investigation. In complex investigations further case conferences may be needed to agree and review action.
- 9.3 It may not be possible to carry out a preliminary investigation in cases of this nature and therefore the matter should proceed to a full investigation.
- 9.4 Where reasonably possible and where practicable, co-investigations may be undertaken on behalf of the school and by the Local Authority’s Audit team

Academies

- 9.1 Academies must notify the Education and Skills Funding Agency (ESFA) of allegations of fraud or theft in accordance with the provisions set out at Part 4 of the Academies Financial Handbook 2019 which sets out the financial framework for academy trusts.
- 9.2 Where there are allegations of misconduct of a financial or fraudulent nature, the employee should not be alerted to the allegations before a decision has been taken on whether it is appropriate for the matter to be referred to the police.
- 9.3 It may not be possible to carry out a preliminary investigation in cases of this nature and therefore the matter should proceed to a full investigation.
- 9.4 The ESFA may conduct or commission its own investigation into actual or potential fraud, theft or other financial irregularity. The academy will cooperate with any such investigation and where reasonably possible and practicable, co-investigations may be undertaken on behalf of the academy and the ESFA.

10. Criminal charges/convictions

- 10.1 If an employee has been charged with or is convicted of a criminal offence this is not in itself a reason for disciplinary action. A preliminary investigation should be undertaken to decide what effect the charge or conviction has on the employee’s suitability to do their job and the potential impact of the charge or conviction on the employee’s relationship with the school, work colleagues, parents and pupils.

- 10.2 In cases where following a preliminary investigation, it is thought that the conduct is sufficiently serious to warrant disciplinary action because of its impact on the employment relationship between the school and the employee, the facts should be fully investigated as far as possible. In some cases suspension may be appropriate or, depending on the nature of the charge or conviction, it may be appropriate to consider alternative work where this is available.
- 10.3 Where the matter requires prompt attention, it is **not** necessary to await the outcome of a police investigation or prosecution before instituting disciplinary action, continuing with a disciplinary investigation or before dismissing an employee. This is a matter for the school to decide in accordance with what is fair and reasonable in the circumstances. It is recommended that the police are advised of the school's intentions however and any decision taken by the school should take into account whether or not the school's actions will harm or prejudice the police investigation.
- 10.4 Where an employee has been charged with or convicted of a criminal offence and refuses or is unable to cooperate with the school in relation to disciplinary investigations or proceedings, this should not deter the school from taking action. The school should consider whether the evidence it has is sufficiently strong to justify taking action under this procedure with regard to the employee's alleged conduct. The employee should be advised in writing that unless further information is provided, disciplinary action will be taken on the basis of the information and evidence which is available and that this could lead to their dismissal.
- 10.5 In cases where the school does not have sufficiently strong evidence to justify proceeding in relation to the employee's conduct which is under investigation or which is subject to police charges, it may still be appropriate for formal action to be taken or continued against the employee prior to the outcome of the police investigation or prosecution because of the impact of the situation on the employment relationship. This may be for example where there has been an irretrievable breakdown of the relationship of trust and confidence between the school and the employee or where there is a risk of serious reputational damage to the school. It is recommended that in such cases the school takes HR advice.

11. Suspension

- 11.1 Only those person(s) with appropriate authority may suspend an employee and the necessary notifications must be made once a suspension has been effected (**see Appendix B1**). HR advice will normally be taken in cases where suspension is considered appropriate.
- 11.2 Suspension from duty will always be on full salary. Suspension is not a disciplinary sanction and is not an indication of guilt. It will not predetermine the outcome of an investigation.
- 11.3 Suspension may be effected at any stage of this procedure as considered appropriate by the headteacher or chair of governors as the case may be.
- 11.4 Suspension should not be an automatic reaction where gross misconduct is alleged. Employees should only be suspended in the circumstances outlined below and where temporary alternative arrangements (such as working from home, paid leave of absence, a move to temporary duties, a change of work location or working in a more

closely supervised environment) are not appropriate or cannot be accommodated. The circumstances when suspension may be effected are where: -

- the allegations are so serious that dismissal for gross misconduct could be a possible outcome;
- there is a risk that the alleged misconduct may be committed again;
- there is a real risk that evidence or school property has or may be tampered with;
- there is a real risk of harm to a pupil at the school, to a member of staff or to the employee;
- to allow the employee to remain at work could hinder or compromise the investigation process for example because of the risk that witnesses or pupils may be intimidated or feel pressurised;
- relationships have broken down;
- there is a real risk of serious reputational damage to the school.
- the employee is the subject of criminal proceedings which may affect their suitability to work in school and/or whether they can do their job.

11.5 In cases where a preliminary investigation is being carried out to determine whether suspension is appropriate, the employee may be asked to remain at home or to work at home or may be temporarily re-deployed during this period. If an employee objects, declines to cooperate or unreasonably obstructs a preliminary investigation, they will normally be suspended on full pay and a full investigation will commence without delay.

11.6 If the matter to be investigated is thought to involve misconduct which is so serious or if it is not reasonably possible or practical to carry out a preliminary investigation into the circumstances of the alleged misconduct whilst the employee remains on duty, the employee may be suspended immediately on full pay whilst a full investigation proceeds.

11.7 Suspension should only be for the minimum period necessary and will be kept under review. The original suspension should be reviewed within **fifteen school working days** and should be reviewed **regularly** thereafter. As a guide, it is recommended that this should not be less than every **twenty school working days**.

11.8 A suspended employee must be advised of the reasons why they have been suspended and the date from which the suspension is effective. The letter confirming these details should normally be sent to the employee within **two school working days** of the suspension.

11.9 A suspended employee should be provided with the name of a nominated person to act as their point of contact with the school. The nominated person is referred to in this procedure as the Contact Officer. The Contact Officer will normally be the employee's line manager or an appropriate member of the school's management team. The Contact Officer must have no role in the investigation or be linked with any allegation against the employee in any way. The Contact Officer will have responsibility for acting as a recognised point of contact for any issues the employee may wish to raise.

11.10 A suspended employee must be advised not to return to the school or to contact colleagues other than in circumstances agreed beforehand between the Contact Officer and the Investigating Officer. The school should ensure items belonging to the

school such as keys, IT equipment, pupils' books, pupils' work, text books etc. are obtained before the employee leaves the premises and/or make arrangements for such items to be returned.

- 11.11 A suspended employee must make themselves available in accordance with their contract of employment for investigatory interviews and hearings under this procedure. A suspended employee must not undertake alternative work whilst they remain employed by the school.
- 11.12 During the period of suspension, a suspended employee must fully cooperate with the school in relation to any requests for information connected to their job within the school. A suspended employee must also fully cooperate with any reasonable requests for them to carry out any particular duties connected with their role
- 11.13 Where it is essential for the employee to return to the school premises for the purpose of preparing their case the Contact Officer should contact the Investigating Officer beforehand, either by telephone or in writing, setting out clearly the purpose of the visit. A request to enter the school premises in these circumstances should not be unreasonably refused by the school.
- 11.14 For employees who have children who are attending the school as pupils, arrangements should be made for the pupils to be dropped off at school or to be collected from school by prior arrangement with the headteacher.
- 11.15 Where an employee falls sick during a period of suspension, the normal certification requirements and reporting and contractual sick pay entitlements will apply. The employee must provide a medical certificate/statement of fitness for work (Fit Note) for absences or due to sickness which last for more than seven days. Whilst the employee is absent due to sickness, they will receive sick pay in accordance with the relevant contractual entitlement. The school will follow its attendance management procedure as appropriate which may include a referral to the school's Occupational Health provider to ascertain the employee's fitness to attend meetings and/or hearings under this procedure. In the majority of cases it will be appropriate to deal with issues relating to the employee's sickness and issues arising under this procedure concurrently. In exceptional circumstances, the disciplinary process may be temporarily suspended in order to deal with issues relating to the employee's sickness.
- 11.16 Any annual leave arranged by an employee prior to their suspension will be honoured. Requests for annual leave made subsequent to the employee's suspension will be considered at the headteacher's (or chair of governors' in cases involving the headteacher) discretion subject to any potential detrimental effect on the investigation or disciplinary process.
- 11.17 Only the governing body has/have the power to end a suspension (**see Appendix B1**). The appropriate notifications will be made by the governing body / appropriate person when a decision is made to end a suspension.

12. Full Investigation of alleged misconduct

- 12.1 Following a preliminary investigation, if the headteacher (or chair of governors in cases involving the headteacher) believes there is a case to answer and that the allegation(s) against the employee warrant a full and thorough investigation, this

should be arranged without delay. The headteacher may carry out the investigation themselves or may delegate the investigation to a nominated Investigating Officer who will normally be a member of the school's management team.

- 12.2 In cases where it is not appropriate for there to be a preliminary investigation, the matter will proceed straight to a full investigation which should be arranged without delay where reasonably possible and practicable.
- 12.3 The Investigating Officer may be supported or assisted in the investigation process by the school's HR adviser.
- 12.4 Arrangements will be made for the employee to be interviewed by the Investigating Officer. The employee shall be notified in writing and be provided with details of the allegation(s) at least **five school working days** in advance of the investigation meeting and informed of the right to be accompanied. The employee will be broadly informed of the nature of the matter under investigation and of the allegation(s) against them. It may not be possible to be specific about the exact nature of the allegations until the investigation stage is complete.
- 12.5 It is important that employees are made aware of the likely consequences of their misconduct. In particular they should be given a clear indication as to whether their misconduct could be construed as gross misconduct, and which, as a consequence may lead to their dismissal.
- 12.6 The purpose of the investigation meeting is to establish the facts of the case and to give the employee the opportunity to respond to the allegations put to them.
- 12.7 A full and impartial investigation will be conducted in order for the Investigating Officer to gather sufficient information and evidence to make an appropriate recommendation to the headteacher (or to the chair of governors in cases involving the headteacher).
- 12.8 The Investigating Officer will also carry out/supervise other necessary investigations including interviewing witnesses and other relevant parties. Witnesses should be given reasonable notice of the investigatory interview and should be advised of the purpose and confidential nature of the interview. They should be asked not to discuss the investigation with other people. Witnesses must also be advised that they may be required to attend at any subsequent disciplinary hearing.
- 12.9 Witnesses are not entitled to be accompanied at the investigatory interview but if a reasonable request is made, this should be considered and accommodated where reasonable and practicable.
- 12.10 The employee and all witnesses interviewed as part of the investigation process should be advised that handwritten notes will be taken during the investigatory interview. They should be advised that a written statement will then be provided for them to sign as a true record of the interview. All witness statements should be signed and dated as soon as possible following the conclusion of the interview.
- 12.11 The employee should be advised that agreed changes may be made to their witness statement but that they cannot retract what was said during the investigatory interview. If an employee refuses to sign their written witness statement, the

Investigating Officer may produce the witness statement and the handwritten notes of the interview in any subsequent disciplinary proceedings.

- 12.12 Where pupils are witnesses, taking into account the age and capabilities of the pupil, it is recommended that they are asked to write down their version of events as soon as possible after the event and ideally before they have an opportunity to discuss the case with other witnesses or friends. Where it is necessary to interview pupils, HR or other professional advice should be sought on how best to proceed. It is not appropriate for pupils to be called to any subsequent disciplinary hearing as a witness.
- 12.13 If, during the course of an investigation, it becomes apparent that there are safeguarding concerns with regards to children which have not been previously identified, the DO must be contacted without delay.
- 12.14 The investigation process should be completed as quickly as is reasonably possible in the circumstances.

13. Outcome of investigation

- 13.1 On completion of the formal investigation the Investigating Officer will consider all the facts, information and evidence and will then make one of the following recommendations to the headteacher (or to the chair of governors in cases involving the headteacher): -
- no further action against the employee is warranted,
 - no formal disciplinary action is warranted but that an informal oral instruction or a Management Note of Guidance should be issued to the employee,
 - the matter should be considered by the headteacher (or a committee of governors) at a formal disciplinary hearing.
- 13.2 Where the Investigating Officer recommends that no further action is warranted or that no formal disciplinary action is warranted but that an oral instruction or a Management Note of Guidance should be issued, and the recommendation is accepted, the employee will be notified in writing of the position as soon as possible by the headteacher (or chair of governors). If the employee is under suspension, appropriate arrangements should be made for the suspension to be ended and for the employee to return to school. [In community, voluntary controlled, community special and maintained nursery schools the LA must also be advised].
- 13.3 Where the Investigating Officer recommends that the matter should proceed to a formal disciplinary hearing and the recommendation is accepted, the employee will be notified of the position in writing as soon as possible by the headteacher (or chair of governors). If the employee is under suspension, the employee's continued suspension should be reviewed if appropriate and the employee advised of the outcome of that review.
- 13.4 In exceptional circumstances where the recommendation of the Investigating Officer is not accepted, advice should be obtained from the school's HR adviser.
- 13.5 On completion of the formal investigation and in readiness for the disciplinary hearing, the Investigating Officer will produce a report which should include full details of the

case and of the findings and conclusions of the investigation process. Any witness statements and other evidence should be attached to the report as appendices.

- 13.6 The Investigating Officer will present the report together with the relevant supporting documents and evidence at the disciplinary hearing. The Investigating Officer may be supported or assisted at the disciplinary hearing by the school's HR adviser.

14. Constitution of governing body committees

- 14.1 Governing body committees hearing disciplinary or disciplinary appeal cases should normally consist of **three governors**. The committee should exclude governors who are employees at the school and should only include parent governors where this is reasonably appropriate. At all hearings, a governor should be nominated to act as the chair of the relevant committee.

Maintained schools

- 14.2 If there are insufficient eligible school governors to hear a matter fairly, governing bodies may choose to collaborate in accordance with the 2009 Regulations. All collaboration agreements should be recorded in writing.

Academies

- 14.2 If there are insufficient eligible governors from the relevant Local Governing Body to hear a matter fairly, Trust Local Governing Bodies may choose to collaborate in accordance with the Trust's Scheme of delegation. All collaboration agreements should be recorded in writing.
- 14.3 In this procedure, the committee of governors hearing a disciplinary case will be referred to as the discipline and dismissal committee (the Discipline Committee). The committee of governors hearing an appeal case will be referred to as the discipline and dismissal appeals committee (the Appeals Committee).

15. The disciplinary hearing

- 15.1 Only person(s) with authority to act under this procedure may hear a disciplinary case (see **Appendix B1**). They are referred to in this procedure as the Hearing Officer(s).
- 15.2 The Hearing Officer(s) must not have had any previous involvement in the case which renders them incapable of giving the employee a fair hearing. The Hearing Officer(s) must also not sit on any subsequent Appeals Committee in connection with the case.
- 15.3 It is recommended that the Hearing Officer(s) request the assistance of the school's HR adviser to help coordinate the proceedings and to provide advice on the case including advice on procedure. The person providing this assistance is referred to in this procedure as the Clerk/Adviser.
- 15.4 At least **ten school working days** before the hearing, the Clerk/Adviser on behalf of the headteacher or the Discipline Committee will write to the employee to;
- give full details of the allegation(s) to be considered,

- inform them of the date, time and venue for the disciplinary hearing,
 - inform them of the potential disciplinary sanction(s) which may be applied,
 - remind them of the right to be accompanied by a trade union representative or colleague.
- 15.5 At least **five school working days** prior to the hearing, the employee will be given a copy of the Investigating Officer's report and copies of any documents or evidence to be used to support the school's case. The employee will provide the Clerk/Adviser with a copy of any report or written submission and any documents or other evidence that they will be relying upon at least **five school working days** before the hearing. No "new" documents may be presented by either party at the hearing.
- 15.6 A list of witnesses to be called during the hearing must also be provided to the Clerk/Adviser by both parties at least **five school working days** before the hearing. No "new" witnesses may be called at the hearing.
- 15.7 The allegation(s) against the employee will be presented to the Hearing Officer(s) by the Investigating Officer or by the Investigating Officer's HR or other professional adviser.
- 15.8 The procedure to be followed at disciplinary hearings is outlined at **Appendix C**. The conduct of the proceedings shall be at all times in accordance with the rules of natural justice and will afford full opportunity for both parties to state their case, call witnesses and to cross examine each other and witnesses. The Hearing Officer(s) has/ have the right to ask questions of all parties.
- 15.9 The employee's companion may address the disciplinary hearing and confer with and advise the employee but may not answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from presenting their case.
- 15.10 If the employee's companion is unable to attend on the date proposed for the hearing, an alternative date may be proposed by the employee so long as it is reasonable and is no more than **five school working days** after the date originally proposed.
- 15.11 If an employee or their representative is unable to attend the hearing **for reasons that were unforeseeable at the time the hearing was arranged** (e.g. illness) then the school will arrange another hearing. Any sickness absence should be covered by a Fit Note. The employee may be referred to Occupational Health to obtain a medical opinion as to their fitness to attend a hearing and a further date for the hearing will be arranged within a reasonable period of time. The disciplinary hearing will not be postponed indefinitely. It may reasonably be decided that a rearranged hearing should go ahead and a decision taken in the employee's absence if the employee is unable or unwilling to attend on a second occasion. In these circumstances, the employee's companion will be given an opportunity to make representations on the employee's behalf. If the employee's companion is also unable to attend the rearranged hearing, the employee will be given the opportunity to submit written representations and questions to the Hearing Officer(s).
- 15.12 If an employee fails to attend the hearing **without good cause**, the Hearing Officer(s) has/have the discretion to proceed in the employee's absence taking into account all the circumstances. If the Hearing Officer(s) decide that the hearing should be rearranged to an alternative date, the employee should be informed that unless a

satisfactory explanation is offered and accepted, the matter **will** be considered on the second occasion in their absence if they fail to attend again. The employee should also be advised that their failure to attend the original hearing without good cause will be treated as a separate disciplinary matter.

16. Outcome of the disciplinary hearing

- 16.1 The Hearing Officer(s) will consider all the evidence and determine whether on the balance of probabilities, they genuinely and reasonably believe the alleged misconduct occurred and that the allegation(s) is/are substantiated.
- 16.2 Where the allegation(s) is/are **not substantiated** and the employee is found not to have committed misconduct, the Hearing Officer(s) will dismiss the allegations and instruct that no further action be taken against the employee. In these circumstances, all records will also be removed from the employee's personal file unless the allegation(s) relates to safeguarding issues.
- 16.3 Where the Hearing Officer(s) find(s) the allegation(s) is/are **substantiated**, all the circumstances of the case will be considered when reaching a decision about what, if any, disciplinary sanction should be applied.
- 16.4 The Hearing Officer(s) will take into account the nature and seriousness of the misconduct, the impact of the misconduct, the rules or standards of behaviour/conduct which have been breached, precedent, the employee's record at the school, the employee's position, length of service and any relevant circumstances, including relevant mitigating circumstances.
- 16.5 Where an employee is found to have committed misconduct and the allegation(s) is/are substantiated, the Hearing Officer(s) may take the following forms of disciplinary action: -
- first written warning;
 - final written warning;
 - final written warning together with action short of dismissal;
 - dismissal with notice (or with payment in lieu of notice);
 - dismissal without notice (or payment in lieu of notice).

First written warning

A first written warning will: -

- set out the nature of the misconduct and the reason for the warning,
- state the improvement required;
- inform the employee that failure to improve conduct or behaviour or any further allegation of misconduct could lead to more serious formal action being taken which may include dismissal; and
- refer to the right to appeal within **ten school working days** of notification of the outcome of the hearing using the appeal form at **Appendix D**.

A copy of a first written warning will be kept on the employee's personal file. It will normally be disregarded for disciplinary purposes after **twelve months**.

Final written warning

A final written warning will: -

- set out the nature of the misconduct and the reason for the warning;
- state the improvement required;
- state that failure to improve behaviour or conduct or a further allegation of misconduct may lead to dismissal; and
- refer to the right to appeal within **ten school working days** of notification of the outcome of the hearing using the appeal form at **Appendix D**.

A final written warning will be issued where there is a failure to improve or change behaviour in the timescale set in a first written warning or where the offence is very serious but does not warrant dismissal.

A final written warning may also be issued where an allegation of gross misconduct is substantiated but there are significant mitigating factors/exceptional circumstances which the Hearing Officer(s) consider sufficient to reduce the sanction to a final written warning.

A copy of a final written warning will be kept on the employee's personal file. It will normally be disregarded for disciplinary purposes after **twelve months**.

Action short of dismissal

Where dismissal would normally be considered but there are significant mitigating circumstances or exceptional circumstances, action short of dismissal **may** be considered by the Hearing Officer(s) **in conjunction with a final written warning** as follows: -

- a disciplinary transfer to equivalent work; or
- a disciplinary demotion to an alternative post with loss of pay

The above sanctions will only be considered in cases where the employee is willing to accept and to agree to the variation of their contract of employment and where equivalent work or an alternative post can be identified. There is no requirement for the school to create an alternative position where one does not already exist.

A **disciplinary transfer** is a permanent transfer, within the school, to a post of comparable status and seniority to that currently held by the employee and at the same level of remuneration. The new post will be within the experience and expertise of the employee concerned. There will be no loss of remuneration.

A **disciplinary demotion** is a permanent transfer within the school to an alternative post of lower seniority and status to that currently held by the employee but within the expertise and experience of the employee concerned. There will be a consequent loss of remuneration. The terms and conditions of service applicable shall be those attached to the new substantive post.

Dismissal

Written confirmation of dismissal will include; -

- the nature of the misconduct;
- a summary of the evidence presented to the Hearing Officer(s) in relation to the allegation(s) against the employee;
- the conclusions and findings of the Hearing Officer(s) with respect to the allegation(s);
- the reason(s) for the decision to dismiss;
- whether the dismissal is with or without notice;
- reference to the right to appeal within **ten school working days** of the employee being advised in writing of the outcome of the disciplinary hearing using the appeal form at **Appendix D**;
- confirmation (in community, voluntary controlled, community special and maintained nursery schools only) that the Local Authority will be notified of the outcome of the hearing and that the Local Authority will write to the employee to notify them of the termination of their employment and to confirm the date of termination;

Employees may be dismissed where the Hearing Officer(s) has/have determined that the allegation(s) against the employee has/have been substantiated, that the substantiated allegation(s) constitute a fair reason for the employee's dismissal and that dismissal is fair and reasonable in all the circumstances.

Dismissal with notice or with payment in lieu of notice

This will be the outcome where the misconduct has occurred during the period of a live written warning.

This may also be the outcome in SOSR cases heard under this procedure where the Hearing Officer(s) has/have determined that there is a substantial reason to justify the dismissal of the employee concerned and that dismissal with notice or with payment in lieu of notice is fair and reasonable in all the circumstances.

Dismissal without notice or payment in lieu of notice

This will be the outcome where the conduct is so serious that it amounts to gross misconduct and it is appropriate to dismiss summarily, even where it is a first offence.

This may also be the outcome in SOSR cases heard under this procedure where the Hearing Officer(s) has/ have determined that there is a very serious and substantial reason to justify the dismissal of the employee concerned and that dismissal without notice or payment in lieu of notice is fair and reasonable in all the circumstances.

17. Referral to Statutory Regulatory Authorities

- 17.1 Where an allegation(s) against an employee is/are substantiated it may be necessary to make a referral to the appropriate Statutory Regulatory Authority.

- 17.2 Schools are legally required to refer cases to the DBS in cases where an employee has been dismissed on the grounds of misconduct which has harmed, or placed at risk of harm, a child or a vulnerable adult.
- 17.3 Where an employee is dismissed in the above circumstances or would have been dismissed had they not resigned, retired, been made redundant or transferred to a post not involving a regulated activity, and where the circumstances of the case meet the relevant thresholds, the details of the case must be referred to the DBS.
- 17.4 **Teachers** who are dismissed on the grounds of misconduct relating to: -
- unacceptable professional conduct;
 - conduct that may bring the profession into disrepute; or
 - a conviction, at any time, of a relevant criminal offence;

must be referred to the Teaching Regulation Agency which will consider whether a prohibition order is appropriate. Referral also applies where a teacher would have been dismissed (on the basis of evidence gathered in the investigation) had they not resigned, retired, or otherwise left their post.

18. Appeal against disciplinary sanction

- 18.1 An employee is entitled to appeal against any formal disciplinary sanction imposed under this procedure. Appeals will be heard by the Appeals Committee.
- 18.2 The Appeals Committee may request the assistance of the school's HR adviser to help coordinate the appeal and to provide advice on the case to the Appeals Committee including advice on procedure. The person providing this assistance is referred to in this procedure as the Clerk/Adviser to the Appeals Committee
- 18.3 An employee who wishes to exercise their right of appeal must do so by completing and returning an appeal form, a copy of which is attached at **Appendix D** within **ten school working days** of being advised in writing of the outcome of the disciplinary hearing. The appeal form, outlining the grounds of appeal, should be sent to the Clerk/Adviser to the Discipline Committee who will liaise with the Clerk/Adviser to the Appeals Committee or the chair of the Appeals Committee as appropriate.
- 18.4 **Appeal hearings will be structured around the grounds of the employee's appeal and will not normally be a full re-hearing of the case.** The employee should make clear on the appeal form if they are requesting a full rehearing of the case and should state the reasons why. The chair of the Appeals Committee will determine whether a full re-hearing is reasonable in all the circumstances or whether the appeal should be structured around the grounds of the employee's appeal. The employee will be notified of the position in writing within **five school working days** of the appeal being received by the Clerk/Adviser to the Discipline Committee.
- 18.5 The possible grounds of appeal are: -
- appeal against the facts (there has been an error of judgment on a point of fact);
 - appeal against the decision (the disciplinary sanction was too severe);

- appeal on procedural grounds (the disciplinary procedure has not been applied properly);
 - new information is available (new evidence has come to light which was not available at the original disciplinary hearing).
- 18.6 Appeals will be heard without unreasonable delay and not normally later than **six school working weeks** from the date the appeal form is received by the Clerk/Adviser to the Discipline Committee.
- 18.7 A written response to the employee's appeal will normally be prepared on behalf of the school. The response may be prepared by the Investigating Officer(s) or the Management Representative (or both) as the case may be (see paragraphs 18.11 and 18.12 below.)
- 18.8 The Clerk/Adviser to the Appeals Committee will write to the employee at least **ten school working days** before the appeal hearing providing details of: -
- The date, time and location of the appeal hearing;
 - The names of the Appeals Committee members;
 - The name of the chair of the Appeals Committee;
 - The employee's right to be accompanied by a companion.
- 18.9 Both parties must forward copies of any reports, written submissions or other supporting documentation or evidence they wish to rely upon at the appeal hearing to the Clerk/Adviser in order that the Clerk/Adviser can serve these on the other party at least **five school working days** before the appeal hearing. Both parties must also provide the Clerk/Adviser with a list of any witnesses they intend to call at the appeal hearing so the other party can be notified by the Clerk/Adviser at least **five school working days** before the appeal hearing. No "new" documents may be presented by either party at the appeal hearing. No "new" witnesses may be called at the hearing.
- 18.10** The employee will present their appeal case and may be accompanied by their companion. The employee will only present evidence which is directly relevant to the specified grounds of appeal and may only call witnesses who are relevant to their grounds of appeal. The procedure to be adopted in appeal hearings is set out at **Appendix E**.
- 18.11 The response on behalf of the school at the appeal hearing will normally be presented by the person responsible for deciding the outcome of the disciplinary case which is the subject of the appeal. This will normally be the headteacher or the chair of the Discipline Committee. For the purposes of this procedure, they will be referred to as the Management Representative. The Management Representative may be supported/assisted by the HR adviser who supported them at the disciplinary hearing. The Investigating Officer may be called as a witness and may be supported by the HR adviser who supported them at the disciplinary hearing.
- 18.12 In cases where the appeal is a full re-hearing of the case, the school's case will be presented by the Investigating Officer who may be supported/assisted by the HR or other professional adviser who supported them in relation to the disciplinary investigation. The headteacher or the chair of the Discipline Committee (as appropriate) may be called as a witness at the appeal hearing and if required, they may be supported by the HR adviser who acted as Clerk/Adviser to the Hearing Officer/Discipline Committee at the disciplinary hearing. Where the appeal hearing is

a full rehearing of the employee's case, the procedure to be adopted is as set out in **Appendix C**.

18.13 The Appeals Committee will review the original disciplinary decision taking into account the employee's grounds of appeal and the case presented by the Management Representative. The decision of the Appeals Committee will be one of the following: -

- appeal **upheld** (original decision overturned);
- appeal **not upheld** (original decision confirmed);
- **a lesser disciplinary sanction imposed.**

An appeal **must not** result in an increase in the original disciplinary sanction.

18.14 The decision of the Appeals Committee will be confirmed to the employee in writing normally within **five school working days** of the date of the appeal hearing.

18.15 If a decision to dismiss the employee is overturned by the Appeals Committee, the employee will be reinstated (or re-engaged) immediately and their pay will be backdated to the date it was stopped.

18.16 The decision of the Appeals Committee is final. There is no further right of appeal.

18.17 In the case of community, voluntary controlled, community special and maintained nursery schools, the Appeals Committee will advise the Local Authority if the original decision is overturned in dismissal cases.

19. Keeping written records

19.1 It is important and in the interests of the school and the employee that records are kept at all stages of the formal investigation and disciplinary process. It is not necessary to take verbatim notes but written records should accurately reflect what has been said.

19.2 Copies of notes made by or on behalf of the school at investigation meetings and at hearings should be provided to the employee as soon as possible after the relevant investigation meeting/hearing. In certain circumstances, it may be necessary for some information to be withheld or for information to be redacted, for example if this is necessary to protect the identity of a pupil or witness.

19.3 No-one may record an investigation meeting or hearing under this procedure unless the prior agreement of all parties has been obtained. It may be appropriate for the Clerk/ Adviser to the relevant governing body committee to record the disciplinary or appeal hearing in order to assist with the production of minutes of a hearing and in these circumstances, provided permission has been given by all parties, the recording will be destroyed once the minutes have been completed.

Appendix A - Disciplinary Rules

Employees need to be aware of the standards required from them in the course of their normal day to day duties and the possible consequences of any failure to adhere to or maintain these standards. Listed below are examples of the types of conduct/behaviour which could result in disciplinary action being taken by the school. These examples do not constitute an exclusive or exhaustive list.

Misconduct involves an employee breaking rules about behaviour or conduct. It is conduct that falls below required or expected standards. There may be occasions when negligence or a failure to act amounts to misconduct. Misconduct may be of a minor or of a serious nature and may result in a first or final written warning being issued to the employee. Cumulative or repeated acts of misconduct may lead to dismissal with notice or with payment in lieu of notice.

Gross Misconduct is very serious misconduct. It is behaviour, or sometime negligence, which is so bad that it destroys the relationship of trust and confidence that should exist between and employer and an employee. An allegation of gross misconduct may lead to suspension, pending an investigation and where the allegation is substantiated, to summary dismissal (i.e. dismissal without notice or payment in lieu).

There may be situations where misconduct which would normally be regarded as gross misconduct and which would normally lead to summary dismissal, may warrant less serious action. Similarly, there may be situations in which misconduct which would not normally lead to summary dismissal warrants such action given the particular circumstances. The following examples are therefore for guidance only. The school will exercise its discretion in categorising breaches of discipline having regard to all the circumstances of the particular case. Advice should always be taken from the school's HR or other professional adviser in relation to categorising breaches of discipline.

Misconduct

Examples of misconduct where a form of warning may be issued, or where cumulative or repeated acts could lead to dismissal are as follows:

- Failure to comply with attendance and time-keeping requirements,
- Failure to follow procedures for booking and returning from leave,
- Absenteeism and unauthorised absence from the workplace.
- Refusal or failure to follow a legitimate management instruction,
- Insubordination,
- Failure to comply with the school's policies and procedures,
- Abuse of the school's policies and procedures,
- Conduct which could bring the school into disrepute,
- Negligence in the performance of duties,
- Breach of relevant professional standards,
- Misuse of the school's property or facilities.
- Neglect of health e.g. committing an act or adopting conduct which may impede recovery and return to work whilst absent from work due to sickness,
- Failure to declare any other work being undertaken whilst employed by the school during the employee's contractual working hours or failure to declare any work being undertaken at any time which may affect an employee's suitability to work at school and/or which may constitute a breach of professional standards and/or which may have a negative impact on the school.
- Any conduct outside of the school which impacts on the employee's employment with the school.
- Failure to disclose allegations of wrongdoing made outside of the employee's employment with the school
- Data protection breaches for example unauthorised use or disclosure of confidential information or failure to protect such information.
- Any other act of misconduct of a similar gravity.

Gross misconduct

Examples of misconduct which may be regarded as gross misconduct are:

- Unauthorised removal of school property,
- Stealing from the school, its governors, pupils, employees, parents contractors or members of the public and other offences of dishonesty,
- Fraudulent practices,
- Sexual offences (including serious misuse of the internet),
- Acts of discrimination, harassment or victimisation against another member of staff, pupil, parent or other person during the course of the employee's employment on the grounds of any of the protected characteristics in the Equality Act 2010,
- Any deliberate act of bullying, harassment or intimidation towards another person,
- Violent or threatening behaviour or verbal abuse towards other people (including members of staff, pupils, parents, contractors, members of the public and governors) whether on or off school premises and including at any school related event,
- Fighting/physical assault upon another employee or person,
- Any behaviour which has or may have harmed a child,
- Any behaviour which involves a criminal offence against a child,
- Any behaviour which indicates that an employee is unsuitable to work with children,
- Deliberately accessing internet sites containing pornographic, offensive or obscene material,
- Abuse of trust in relation to pupils within the school,
- Establishing inappropriate relationships with children or young people, including through social networking sites,
- Making any sexual or other inappropriate contact with any pupil at the school whatever the age of the pupil and by whatever means,
- Breach of the school's Child Protection and/or Safeguarding policies,
- Failure to notify the school of any change in personal circumstances which may bring into question the employee's suitability to work in a school or to work with children.
- Other offences which seriously threaten the security of the pupils, members of the public, employees or property of the school or which seriously damage public confidence in the school,
- Bringing firearms or offensive weapons onto school premises,
- Wilful refusal to carry out reasonable and lawful management instructions,
- Serious breach of relevant professional standards,
- Serious breaches of confidentiality,
- Falsification of school records or reports,
- Falsification of pupil's records or reports,
- Falsification of time sheets or subsistence and expenses claims,
- Falsification of sickness self-certification or medical forms,
- Deliberate misuse of data and/or deliberate interference with computerised information,
- Inappropriate access to or disclosure of employee or pupil or third-party data,
- Serious data breaches or breaches of the school's policy on data protection,
- Falsification of qualifications,
- Provision of false information relating to employment/applications,
- Malicious damage to or abuse of property belonging to the school, its pupil, members of staff, governors, parents, contractors or members of the public,
- Serious breaches of health and safety legislation and/or the school's health and safety policy,
- Serious drug/alcohol related offences including being unfit for duty due to the influence of alcohol or other intoxicants or consuming these whilst on the school premises or at any time during the course of employment,
- Smoking on the school premises,

- Serious breaches of the school's internet/data/ social media,

- Using social media to post derogatory or offensive comments about the school, work colleagues or third parties with whom the school has an operational relationship,
- Serious breaches of the school's code of conduct,
- Failure to disclose any relevant criminal offences prior to employment and any criminal convictions which occur during employment,
- Gross negligence,
- Gross insubordination,
- Undertaking any other paid employment during a period of sickness absence without the prior agreement of the headteacher or undertaking any other paid employment whilst absent without authorisation.
- Covertly recording hearings or meetings or colleagues,
- Any other act of misconduct of a similar gravity.

The above lists are neither exclusive nor exhaustive and there may be actions which do not appear above but may nevertheless become the subject of disciplinary action. It is impossible to list every type of action which could result in disciplinary action being taken. The above lists are to give employees an understanding of the type of act which could result in disciplinary action and of the consequences of such acts.

In determining the seriousness of the misconduct, particular regard will be given to the circumstances of the individual case. Factors which can influence a decision as to the seriousness of the offence may include;

- The type, degree and frequency of the misconduct,
- The consequences arising from the misconduct, and
- The level of responsibility of the employee concerned.

Careful consideration will be given to the above factors in each case. As indicated in this procedure, what is regarded as misconduct in some cases may, in others and depending on the circumstances, be regarded as gross misconduct. Schools should take advice from their HR adviser in relation to whether a breach of discipline should be categorised as misconduct or gross misconduct.

Appendix B1 - Authority to Act

	Action relating to all employees other than Headteacher/Principal	Action relating to a Headteacher/Principal	Notifications
Suspension	Governing Body or Headteacher	Governing Body	Headteacher/Governing Body and Local Authority.
Ending Suspension	Governing Body	Governing Body	Headteacher and Local Authority
Preliminary Investigation	Headteacher or designated member of management team	Chair of Governors or Nominated Governor	Headteacher/Chair of Governors
Full Investigation	Headteacher or nominated Investigating Officer (member of SLT)	Chair of Governors or Nominated Investigating Officer (nominated governor)	Recommendations to Headteacher/Chair of Governors. Local Authority to be notified if action proposed against Headteacher following report of concerns
Disciplinary Hearing	Headteacher as Hearing Officer or three governors sitting as the Discipline Committee.	Three governors sitting as the Discipline Committee	Local Authority can send representative if proceedings relate to dismissal of a teacher. Local Authority to be notified of determination to dismiss and must dismiss within 14 days.
Appeals	Three new governors sitting as the Appeals Committee	Three new governors sitting as the Appeals Committee	Local Authority to be notified if original decision to dismiss is overturned.

Appendix B2 - Guidance

Guidance Note for Maintained Schools in relation to the authority to act provisions and the powers and duties of the Local Authority referred to in paragraph 4 and Appendix B1.

1. General

The provisions in paragraph 4 of the disciplinary policy apply in maintained schools where a school's delegated budget has not been suspended. In cases where a school's delegated budget has been suspended, HR or other professional advice should be obtained. In schools where an Interim Executive Board (IEB) is in place, the IEB takes on the responsibilities of the governing body and therefore references to the governing body in paragraph 4 of the disciplinary procedure and Appendix B should be read as references to the IEB.

References in paragraph 4 and Appendix B1 to the chair of governors will include a reference to the vice chair of governors in cases where the decision-making responsibilities of the chair of governors have been delegated to the vice chair of governors.

The provisions in paragraph 4 do not affect any rights the Local Authority **may have** to suspend or to take disciplinary action against an employee in cases where the employee concerned is not under the day to day management of the school or in cases where the Local Authority has good cause to believe that a refusal to suspend or to discipline an employee by the headteacher or governing body is unreasonable in all the circumstances.

2. Investigation of disciplinary allegation(s)

Disciplinary investigations against employees must only be initiated by the **headteacher** (by delegated power) or by the **chair of governors**. If the headteacher initiates a disciplinary investigation, the investigation may then be delegated to an appropriate person who will normally be a member of the school's management team.

Disciplinary investigations against the headteacher must only be initiated by the **chair of governors**. The chair of governors is advised to take advice from the school's HR adviser before any disciplinary action is initiated. The chair of governors may delegate the investigation to a nominated governor(s) to carry out the investigation.

The person with delegated authority to carry out the investigation is referred to in the procedure and **Appendix B1** as the Investigating Officer. The Investigating Officer may be supported by the school's HR adviser.

Where the Local Authority has expressed serious concerns about the performance of a headteacher and has previously made a written report of its concerns to the governing body and to the headteacher in accordance with the School Staffing (England) Regulations 2009, **the governing body must notify the Local Authority in writing** of any action it proposes to take in the light of its report.

3. Suspension

Only the **governing body or the headteacher** (by delegated power) is authorised to suspend an employee of the school. It is strongly recommended that schools seek HR advice before any suspension.

Only the **governing body** is empowered to end a suspension

Community, voluntary controlled, community special, maintained nursery schools

- where the governing body carries out a suspension, the governing body must immediately inform the Local Authority and the headteacher;
- where the headteacher carries out a suspension the headteacher must immediately inform the Local Authority and the governing body;
- where the governing body ends a suspension, it must immediately inform the headteacher and the Local Authority.

Foundation, voluntary aided and foundation special schools

- where the governing body carries out a suspension, the governing body must immediately inform the headteacher;
- where the headteacher carries out a suspension the headteacher must immediately inform the governing body;
- where the governing body ends a suspension, the governing body must immediately inform the headteacher.

4. Dismissal decisions

Under the School Staffing (England) Regulations 2009 the school's governing body has the statutory power to dismiss any member of staff at a school.

The governing body may delegate dismissal decisions to; -

- the headteacher; or
- one or more governors; or
- one or more governors and the headteacher.

Where the governing body has delegated dismissal decisions to one or more governors provided the matter does not directly concern the headteacher, the headteacher may attend and offer advice at disciplinary proceedings and the governors must consider that advice.

The governing body may only delegate dismissal decisions relating to the headteacher to one or more governors.

It is recommended that **dismissal** decisions are delegated by governing bodies to the **headteacher** unless the matter; -

- directly concerns the headteacher; or
- the headteacher has investigated the allegations or has otherwise been significantly involved in the case;

In these circumstances, dismissal decisions should be delegated to a **committee of three governors** not including the headteacher.

5. Disciplinary hearings

Where the headteacher has delegated authority and provided the headteacher has not investigated the allegations or otherwise been significantly involved in the case, the headteacher will conduct the formal disciplinary hearing and will decide the outcome of the case **including any decision to dismiss**.

Where the headteacher does not have delegated authority or where the headteacher has delegated authority but has investigated the allegations or has otherwise previously been significantly involved in the case, a committee of three governors not previously involved in the case will conduct the formal disciplinary hearing and will decide the outcome of the case including any decision to dismiss.

6. Local Authority rights and obligations

Community, voluntary controlled, community special, maintained nursery schools

The Local Authority has a statutory entitlement to send a representative to all proceedings relating to the dismissal of a **teacher** and to offer advice. If the Local Authority decides to send a representative they must be allowed to attend and any advice offered must be considered by the governing body or the headteacher when reaching a decision. All decisions made by the governing body or headteacher in the light of the Local Authority's advice should be fully documented.

Where the governing body or the headteacher makes a determination that an employee employed at the school should be dismissed, the Local Authority must be notified in writing of the fact that it has made such a determination and the reasons for it.

If the employee is employed to work solely at the school, the Local Authority must terminate the employee's contract of employment with or without notice as appropriate within **fourteen days** of the date the notification was issued by the governing body or by the headteacher. If the person concerned is not employed to work solely at the school, the Local Authority must require the person to stop working at the school.

Foundation, voluntary aided and foundation special schools

The Local Authority does **not** have any statutory entitlement to advise the governing body or headteacher in relation to the dismissal of teachers but it **may** do so where there is an agreement between the governing body and the Local Authority providing for it to do so. In these circumstances any advice given by the Local Authority must be considered by the governing body or headteacher when reaching a decision and the position should be fully documented.

In Church of England and Roman Catholic Church schools, if there is an agreement in place with the diocesan authority to give it the same rights as the Local Authority in relation to the dismissal of employees, any advice offered to the governing body or to the headteacher by the diocesan authority should be considered and the position fully documented.

This guidance note takes into account the provisions of the School Staffing (England) Regulations 2009)

Appendix C - Conduct of Disciplinary Hearings

- 1 The Hearing Officer/Chair of the Discipline and Dismissal Committee or the Clerk/Adviser will introduce all the parties present.
- 2 The school's case will be presented by the Investigating Officer/HR adviser in the presence of the employee and their companion. The Investigating Officer/HR adviser will call any witnesses on behalf of the school.
- 3 The employee and/or their companion will have the opportunity to ask questions of the Investigating Officer/HR adviser and witnesses
- 4 The Hearing Officer(s) will have the opportunity to ask questions of the Investigating Officer/HR Adviser and witnesses.
- 5 The witnesses called on behalf of the school will leave the hearing when they have given their evidence and answered all questions.
- 6 The employee and/or their companion will put their case in the presence of the Investigating Officer/HR Adviser. The employee and/or their companion will call any witnesses in support of the employee's case.
- 7 The Investigating Officer/HR Adviser will have the opportunity to ask questions of the employee and their witnesses.
- 8 The Hearing Officer(s) will have the opportunity to ask questions of the employee their witnesses.
- 9 The witnesses called by the employee will leave the hearing when they have given their evidence and answered all questions.
- 10 The Investigating Officer/HR Adviser will have the opportunity to sum up the school's case. The employee and/or their companion will also have the opportunity to sum up the employee's case. The summing up will be without interruption.
- 11 Both parties and their representatives will withdraw.
- 12 The Hearing Officer(s) supported by the Clerk/Adviser will deliberate in private. The parties may be recalled to clarify points of uncertainty on procedure or on evidence already given. If recall is necessary, both parties will return notwithstanding the fact that the point of clarification/procedure is only relevant to one party.
- 13 If the Hearing Officer(s) is/are able to reach a decision within a reasonable time, both parties and representatives will be recalled and the Hearing Officer(s) or the Clerk/Adviser acting on behalf of the Hearing Officer(s) will inform the parties of the decision, the disciplinary action to be taken (if any), and the employee's right of appeal (if appropriate) The hearing will end at this point.

If the Hearing Officer(s) is/are not able to reach a decision within a reasonable time, the parties will be recalled and advised of that fact and the hearing will be closed. The decision will be notified to the employee and/or their companion within five school working days of the hearing.

Important Notes

- The Hearing Officer(s) may adjourn the hearing at any stage if this appears necessary or desirable. If adjourning is for the purpose of enabling further information to be obtained, the Hearing Officer(s) will specify the nature of the information required and any adjournment should normally be for a stated period.
- The Hearing Officer(s) will have discretion as to the admissibility of any evidence/witness.

Appendix D – Appeal Against Disciplinary Action

Please complete this form in full if you have been disciplined and wish to appeal against this decision. You may complete it personally or with your permission, your representative may complete it on your behalf.

Please return this form, together with any supporting documents to the Clerk/Adviser to the Hearing Officer/Discipline and Dismissal Committee **within 10 school working days** of being advised in writing of the outcome of the disciplinary hearing.

You must clearly state why you wish to appeal and specify why you disagree with the disciplinary decision. Please indicate below the grounds for your appeal:

- a) Appeal against the facts
- b) Appeal against the decision
- c) Appeal on procedural grounds
- d) New information is available

In all cases, you must give full details of your reasons on Page 2 of this document. If you are appealing on the grounds that new information is available, you should also explain why this information has only just become available.

Please note that appeal cases will normally be structured around the grounds of your appeal and therefore will not be a rehearing of the original disciplinary case.

If, however, you wish to apply for a full rehearing of your case you must provide detailed reasons for your request in the space below. Your request will be considered by the chair of the Appeals Committee and you will be notified of the outcome within five working days following receipt of your appeal.

Please complete this section only if you are applying for a full rehearing of your case

My reasons for applying for a full rehearing of my case are as follows (Continue on a separate sheet if necessary):

Name 1.	
Contact number	
Address	
Name 2.	
Contact number	
Address	
Name 3.	
Contact number	
Address	
Name 4.	
Contact number	
Address	

If this form has been completed on behalf of the employee he/she must read it and/or have it read to him/her before he/she signs it.

Signature of Employee:	
Signature of Representative:	
Date:	

Appendix E - Conduct of Appeal Hearings

- 1 The Chair of the Appeals Committee or the Clerk/Adviser to the Appeals Committee will introduce all the parties present.
- 2 employee and/or their companion will put the employee's case in the presence of the Management Representative/HR Adviser. The employee and/or their companion will call any witnesses.
- 3 The Management Representative/HR Adviser will have the opportunity to ask questions of the employee and his/her witnesses.
- 4 The Appeals Committee will have the opportunity to ask questions of the employee and their witnesses.
- 5 The witnesses called by the employee will leave the hearing when they have given their evidence and answered all questions.
- 6 The Management Representative/HR adviser will present the school's case in the presence of the employee and their companion. The Management Representative//HR adviser will call any witnesses.
- 7 The employee and/or their companion will have the opportunity to ask questions of the Management Representative/HR adviser and witnesses on the evidence given.
- 8 The Appeals Committee will have the opportunity to ask questions of the Management Representative/HR Adviser and witnesses.
- 9 The witnesses called on behalf of the school will leave the hearing when they have given their evidence and answered all questions.
- 10 The employee and/or their companion will have the opportunity to sum up the employee's case. The Management Representative/HR Adviser will have the opportunity to sum up the school's case. The summing up will be without interruption.
- 11 The parties and their representatives will withdraw.
- 12 The Appeals Committee, supported by the Clerk/Adviser will deliberate in private. The parties may be recalled to clarify points of uncertainty on procedure or on evidence already given. If recall is necessary, both parties will return notwithstanding the fact that the point of clarification/procedure is only relevant to one party.
- 13 If the Appeals Committee is able to reach a decision within a reasonable time, both parties and representatives will be recalled and the chair of the Appeals Committee or the Clerk/Adviser to the Appeals Committee will inform the parties of the decision, which may be to uphold the appeal, disallow the appeal or to impose a lesser disciplinary sanction. The employee will be advised (if appropriate) that there is no further right of appeal. The hearing will end at this point.
- 14 If the Appeals Committee is not able to reach a decision within a reasonable time, the parties will be recalled and advised of that fact and the appeal hearing will be closed. The decision will be notified to the employee and/or their companion within five school working days of the appeal hearing.

Important Notes

- The Chair of the Appeals Committee may adjourn the hearing at any stage if this appears necessary or desirable. If adjourning is for the purpose of enabling further information to be obtained, the Chair of the Appeals Committee will specify the nature of the information required and any adjournment should normally be for a stated period.
- The Appeals Committee will have discretion as to the admissibility of any evidence/witness.
- Witnesses called by either party must be relevant to the grounds of appeal.
- Where the appeal hearing is a full rehearing of the employee's case (see section 18.12 of this procedure), the procedure to be adopted in the appeal hearing will be as set out in Appendix C. References to the Chair of the Discipline and Dismissal Committee in Appendix C should be read as references to the Chair of the Appeals Committee.