



## Disciplinary Policy & Procedure

<b>Member of Staff Responsible</b>	HR Manager
<b>Relevant guidance/advice/legal reference</b>	Shropshire Council Local Authority
<b>Adopted by</b>	Trust Board
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This Policy/Procedure has been agreed by the following professional associations and Trade Unions representing Teachers, Headteachers and Support Staff:

- National Education Union
- National Associations of Schoolmasters Union of Women Teachers
- National Association of Head Teachers
- Association of School and College Leaders
- Unison
- GMB

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# Disciplinary Policy & Procedure

## Policy

### 1. Introduction

The 3-18 Education Trust recognises that to ensure the proper operation of Trust business and the health and safety of all staff it is important that they operate a disciplinary procedure.

The following policy and procedure will be applied fairly in all instances where disciplinary action is regarded as necessary by the Trust. This can include acts of misconduct which take place outside of work depending on the nature of the misconduct in relation to the member of staff's role and responsibilities with the Trust. In safeguarding cases, reference should be made to the school's Dealing with Allegations of Abuse Against Staff in Trust procedure. For minor acts of alleged misconduct committed by a member of staff, Headteachers/Line managers should consider the informal section of the procedure.

The Trust reserves the right to implement the procedure at any stage as set out below taking into account the alleged misconduct of a member of staff.

Where time limits are referred to during the procedure they may be varied by agreement between the member of staff (and their representative where appropriate) and the Trust.

Matters of concern which the Trust view as amounting to disciplinary offences include (but are not limited to):

- safeguarding issues;
- persistent bad timekeeping;
- unauthorised absence;
- absences that are not genuine or not for the reason provided;
- damage to the School's property;
- failure to observe the School's procedures;
- abusive behaviour;
- unreasonable refusal to follow an instruction issued by a manager;
- data protection breaches and misuse of the school's information;
- smoking in non-designated areas of the school's premises;
- alcohol and substance misuse.

### 2. Roles & Responsibilities

The Trust expects all staff and trustees to take responsibility for following this policy and procedure in cases of matters of concern relating to the conduct of a member of staff.

The definitions below should assist with understanding the roles involved in the remainder of these procedures:

- **The Member of Staff:** The person(s) who is the subject of the matter of concern
- **The Manager:** The person who is dealing with the reported matter of concern. This will normally be the Headteacher or a member of the Senior Leadership Team (SLT). It may also refer to the Chief executive Officer (CEO) of the Trust in the case of matters of concern relating to a headteacher or the **Manager** may be a Trustee of the School in matters of concern relating to the CEO.
- **The Investigating Officer:** The person appointed by the **Manager** to investigate the matter. This can be a member of SLT in the same school or from another school in the Trust. In matters of safeguarding this should always be a member of SLT from another school in the Trust (refer to KSCiE Allegations of Abuse Against Staff in the Trust Policy).
- **The Hearing Officer:** The person responsible for making a decision in a disciplinary hearing. The Hearing Officer will usually be the Headteacher. This means the Headteacher can be the **Hearing Officer** and **The Manager**, however ideally these two posts should be carried out by different individuals. Where a matter is heard by the Staff Dismissal Committee (SDC), the Chair of the SDC will take on this role.
- **The Witness:** The person(s) interviewed by the **Investigating Officer** as part of the investigation. The Witness(es) may be called by either party to the disciplinary hearing or any appeal hearing.
- **The Support Officer:** The person assigned by the Manager to support the member of staff with any questions about the process. This will usually be the School Business Manager in the school.
- **Representative:** Members of staff have the right to be accompanied at a disciplinary hearing by: a fellow worker; a trade union official employed by the union; or a trade union official or representative who is certified in writing by the union as having the necessary experience or training to act as a representative.

### Trustee's Role

Trustees must be clear about their involvement, which except for the conduct of the CEO, will be limited to being part of a Trustee's appointed committee.

Trustees must ensure they apply fairness and consistency in the treatment of all staff in applying this policy and procedure.

### Headteachers/SLT/CEO Role

The Headteacher, SLT Member or CEO will usually be the person who is dealing with the reported matter of concern as the member of staff's line manager. This is 'the manager' under the policy definitions shown above. In certain cases, the Headteacher or CEO can also be the person responsible for making a decision in a disciplinary hearing or disciplinary appeal hearing (the 'Hearing Officer'), although ideally this should be avoided where possible by another member of SLT being allocated 'the manager' role. Advice should be sought from the Trust HR Manager when allocating these roles.

Where the cause for concern relates to an act of misconduct/ gross misconduct by a member of staff towards the Headteacher, the CEO can be appointed as Investigating Officer, however consideration should be given to appointing an independent Investigating Officer to investigate the matter so the CEO can take the role of 'Hearing Officer'. In this situation, the Headteacher will be invited to attend any disciplinary hearing as a 'Witness' rather than as a 'Hearing Officer.'

The Headteacher/SLT/CEO must ensure they apply fairness and consistency in the treatment of all staff subject to this policy and procedure.

### **3. Scope**

This policy covers all staff employed by the Trust. The policy and procedure will be applied fairly and consistently in accordance with the Equality Act 2010 to such staff regardless of:

- Racial group
- Gender
- Disability (Appropriate reasonable adjustments will be made to this procedure when necessary to accommodate disability)
- Marital or civil partnership status
- Sexual orientation
- Age
- Religion or belief
- Transgender
- Trade union membership
- Contract type (i.e. it applies to full time and part time staff and to staff employed regularly on a temporary or fixed term contract, but not the non-renewal of such contract)

This procedure does not apply to staff working on a casual basis, where further employment is not offered or guaranteed.

### **4. Legislation**

**Legislation relating to this policy and procedure includes:**

- Employment Rights Act 1996
- Employment Relations Act 1999
- Data Protection Act 2018
- General Data Protection Regulation (2016/679 EU)
- ACAS code of practice on disciplinary and grievance procedures, and related guidance

This policy and procedure also consider the provisions of the School's Staffing Regulations 2009 and the ACAS Code of Practice on Disciplinary and Grievance Procedures, which provides that employers ensure their procedure:

- is compliant with the general provisions of the ACAS code
- provides a right of appeal
- is referred to as part of a member of staff's statement of terms and conditions of employment.
- allows for a member of staff to be accompanied at a formal investigatory meeting. Members of staff have the right to be accompanied at a disciplinary hearing by: a trade union official employed by the union; or a trade union

official who is certified in writing by the union as having the necessary experience or training to act as a representative; or a fellow worker.

- permits workers to take time off during working hours for the purpose of accompanying a fellow worker to a disciplinary hearing.
- Allows for the employee to offer a reasonable alternative time within five working days of the original date if their chosen representative cannot attend.

The Teachers Regulation Agency (TRA) is an executive agency, sponsored by the Department for Education (DfE) who have the responsibility for the regulation of the teaching profession, including misconduct hearings and the maintenance of the database of qualified teachers. If the School receives notification from the TRA that a teacher is prohibited from teaching this procedure will need to be followed. Please refer to Section 4 of the procedure regarding suspension.

## **5. Data Protection & GDPR**

The General Data Protection Regulation (GDPR) requires employers to comply with principles for processing personal data, including protecting against unauthorised access of personal data. Personal data that is inappropriately accessed or disclosed may constitute a data breach. The GDPR requires the Trust to keep a record of all data breaches and, where the breach is likely to result in a risk to the rights and freedoms of individuals, the Trust must notify the Information Commissioner within 72 hours of becoming aware of the breach. If the data breach results in a high risk to the rights and freedoms of individuals, those individuals must be notified without undue delay.

The Trust will process personal data collected during any investigation stage and any subsequent stages of disciplinary action in accordance with the Trust's Data Protection Policy. Data collected as part of the investigation stage and any subsequent stages of disciplinary action will be held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Trust's Data Protection Policy immediately. It may also constitute a disciplinary offence, which may be dealt with under this disciplinary procedure.

## **6. Monitoring and Review**

The HR Manager, in conjunction with the CEO, will monitor the outcomes and impact of this policy/procedure on an annual basis.

This procedure will be reviewed no later than 2 years by the HR Manager, in consultation with Trade Unions.

# **Disciplinary Procedure**

## **1. Fact-Finding**

The manager will promptly fact-find any reported matter that is reasonably suspected or believed to contravene any of the Trust's policies or procedures or matters that may otherwise be a disciplinary matter. The member of staff should be questioned about the matter(s) on a one-to one basis (at an appropriate time and in a confidential location) to gather facts to help determine the next steps. This is not an investigation meeting. If the member of staff is unhappy to proceed without representation, the manager should report the matter to the Headteacher. Where it is the Headteacher who has conducted (or attempt to hold) a fact-finding discussion, this will enable him/her to decide the next steps. This next step will depend on the seriousness of the matter of concern:

Minor matters - A constructive discussion between the manager and the member of staff should take place to determine what action, support, training and/or advice is appropriate, to enable the manager and member of staff to agree that sustained improvement needs to be made. This could be either inside or outside of the Trust's informal disciplinary procedure (see Section 2). An Investigation (See Section 3) may be deemed necessary by the manager in order to determine this view.

More serious matters – (or where informal action either inside or outside the informal disciplinary procedure (Section 2) has not led to an improvement), consideration should be given to dealing with the matter under the formal disciplinary procedure (See Section 4). The manager will usually proceed with an investigation. See Section 3.

Holding a Disciplinary Hearing without carrying out a disciplinary investigation - *The manager should not proceed with this course of action without firstly taking advice from the Trust's HR Manager.* Where there is agreement between the manager, the member of staff and their trade union representative that the allegation is accepted by the employee and that it is also accepted that such conduct will constitute a formal warning (short of dismissal), it is possible for all parties to agree that the manager will not commission an investigation in accordance with Section 3. This agreement will be documented in a letter inviting the member of staff to the disciplinary hearing (as set out in Section 5).

## 2. Informal Procedure

Where, upon completion of a fact-finding exercise or an investigation, the manager decides it is appropriate to deal with the member of staff's conduct on an informal basis, the informal disciplinary procedure can be followed. The informal disciplinary procedure **does not allow a disciplinary sanction to be issued** to the member of staff.

The aim is to resolve the issue informally to avoid escalating to the formal procedure. The informal procedure involves a constructive discussion, to determine what action, support, training and/or advice is appropriate, to enable the manager and the member of staff to agree that sustained improvement needs to be made. The manager should ensure that:

- the member of staff is verbally invited to an informal meeting and informed that they may be supported at the meeting if they so wish, by a work colleague, Trade Union or professional association representative. (This is not equivalent to being represented formally at a formal disciplinary hearing).
- the member of staff is informed of their inappropriate conduct and of any remedial action proposed.

- a response is invited from the member of staff.
- the member of staff is informed that a summary of the discussion will be held on their personal file.
- the note must state clearly that it relates to informal procedure only, and a copy is given to the member of staff concerned.
- the note will be removed from the file and disregarded after a period of satisfactory conduct, which should be no longer than 6 months from the date of the meeting.
- they notify the member of staff of the decision to remove from the file the note of the informal action.
- if the matter being considered is related to a safeguarding issue, they may decide to retain a copy of the note in line with KCSiE guidelines.
- if following the informal procedure there is a continuing need to address matters of conduct, they will consider whether further action is necessary under the informal procedure or whether to take action under the formal disciplinary procedure.

### **3. Investigation**

Following the fact-finding discussion with the member of staff, the manager may, if deemed appropriate, appoint a suitable person to thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the School's policies or procedures or matters that may otherwise be a disciplinary matter. This person will be known as the 'Investigating Officer' and will be supported by the HR Manager. The member of staff will be informed as soon as possible:

- who has been appointed as Investigating Officer and that they will contact the member of staff to arrange an investigation meeting
- the fact of an investigation
- that they should seek support from their Trade Union representative
- they can seek support from a named Support Officer to advise them on the process
- details of the Trust's Counselling Service should they wish to seek support

Once the investigation is complete, the member of staff should be informed in writing of the conclusion and next steps.

The role of the Investigating Officer is to establish, as far as possible, the facts of the case through collection and collation of evidence calling on assistance as necessary to do so. Whilst it is important that staff conduct matters are dealt with as quickly as possible it is also important that any investigation will be as thorough as is necessary and reasonable in the circumstances.

Investigation interviews should be carried out as soon as possible. The Investigating Officer should interview any relevant witnesses who are likely to be in a position to give direct or, when appropriate, indirect evidence. It is important that witnesses are informed that their evidence will be included in a report of the investigation which could then be subject to consideration at a formal disciplinary hearing. Care should be taken where it is necessary to interview students to ensure they are appropriately supported. The Investigating Officer will ensure that the evidence of witnesses is supported by signed and dated written statements.



The Investigating Officer will interview the member of staff whose conduct is the cause for concern. It should be clarified for the member of staff that the purpose of the interview is to simply try and establish any facts surrounding the matter(s) of concern and not to make any decisions about further action.

Each person's statement and/or record of their interview should be signed and dated by the interviewee. Anyone interviewed as part of the investigation should be advised that:

- they may have a colleague or trade union representative with them;
- the procedure and issues discussed are confidential;
- their statement may be used at any future formal disciplinary hearing;
- they may be required to attend any hearing as a witness, if appropriate;
- their statement may be included in a referral to the DBS or TRA.

The Investigating Officer will prepare a written report for consideration by The manager. The report will set out the findings arising from the investigation and will include signed statements from the interviewees and any other relevant documentation. The Investigating Officer may feel it appropriate to draw attention to any breach of relevant standards, specific rules or aspects of the Trust's code of conduct which are indicated by evidence collected but will not include in the report any recommendation or advice on action which should be taken.

The Investigating Officer will be advised by the HR Manager who will advise them on conducting the investigation, compiling the report and provision of templates to support this.

#### **4. Suspension**

Suspension of a member of staff will normally be performed by the Headteacher (see appendix 1 for suspension checklist). A member of staff may be suspended in cases where they are thought to have committed an act of gross misconduct or where misconduct may have occurred and there are grounds for doubt as to the suitability of the person to continue at work pending an investigation. In the latter case this could include where it is considered that through remaining at work the member of staff could impede a full and fair investigation.

A suspension should not be imposed automatically, however. Consideration will be given to the circumstances and the feasibility of alternative action such as temporary transfer of duties. In all cases where the suspension of a member of staff is being considered, advice should be sought from the HR Manager. Specific reasons for the suspension must be included in the letter of suspension which should be issued within one working day of the employee being suspended.

Wherever possible, a member of staff should be given the opportunity to have a representative present at any meeting where suspension is to be considered. Where this is not possible, a meeting to include a representative will then be organised to discuss the terms of suspension. In an emergency where, immediate advice is not available, the Headteacher may send a member of staff home whilst advice is sought over whether a suspension is required. As referred to in section 5, if the member of

staff is a representative/official of a recognised trade union, then prior to suspension there should be discussion with a relevant official of the union concerned.

Suspension in itself does not constitute disciplinary action and makes no assumption about the concern. During a period of suspension, a member of staff will (normally) continue to receive contractual pay in accordance with the relevant conditions of service, provided they comply with the conditions outlined in the letter of suspension. Suspensions should be reviewed regularly (for example at least monthly). Where the suspension period extends longer than 4 weeks, the suspension should be reviewed and should be reviewed monthly thereafter.

If the Trust receives notification from the TRA that a member of teaching staff is prohibited from teaching, the member of teaching staff will be immediately removed from teaching and called to a consideration of suspension meeting. The timescale will be dependent on information from the TRA.

On being suspended, a member of staff will be assigned a named point of contact at the Trust, who is not involved in the investigation, with whom the member of staff may keep in contact throughout the period of their suspension. They should also be offered support from the Trust's Counselling Service provider, the Trust's Support Officer and their Trade Union/professional associations.

If during suspension, there is a change in the member of staff's contact address or other personal circumstances, they should notify their named contact immediately. They must also be available during the period of the suspension to attend an interview at any time during normal working hours. This includes attendance at an interview with the investigating officer and any formal disciplinary hearing.

If the member of staff is certified as sick and produces a medical certificate during their suspension, this will be treated as sickness in accordance with the rules of the relevant sick pay scheme. Medical certificates should be sent to the school. The terms of the suspension will continue to apply during any such period of sickness.

If it is agreed that the member of staff should return to work following suspension careful planning is necessary to ensure that this is managed as sensitively as possible for all individuals affected.

A suspension checklist and letter will be provided by the HR Manager.

## **5. Formal Procedure**

Upon completion of an investigation, the manager will carefully consider what action to take depending on the seriousness of the matter. The manager should take advice from the HR Manager in deciding if there are reasonable grounds for a disciplinary case or there is clear evidence that an act of gross misconduct has been committed. A decision not to proceed further can also be made at this point.

This procedure allows for two formal disciplinary hearing options:

- 1) The case to be heard by a Headteacher as a lone Hearing Officer supported by an independent HR Advisor where there are grounds for a disciplinary case or in cases of misconduct.
- 2) The case to be heard by the Trust's Staff dismissal Committee (SDC) supported by an independent HR Advisor for gross misconduct matters (where dismissal is a possible outcome) or where there is clear evidence of misconduct on the part of a member of staff for whom an active final written warning issued under this procedure is in place.

In the event of a disciplinary hearing taking place the manager will give the member of staff a minimum of five working days' notice of the hearing with a letter (this should be delivered electronically (encrypted email), by hand or prepaid recorded delivery (to the member of staff's last notified home address)). Action under this paragraph will normally be taken following consultation with the HR Manager. The letter and information should include:

- a) confirm the purpose of the hearing, its possible consequences and that it will be held under the Trust's disciplinary procedure;
- b) the member of staff's right to be accompanied at the hearing;
- c) written details of the nature of their alleged misconduct; and
- d) all relevant information (including any investigation report and statements taken from any fellow member of staff or other persons that the Trust intends to rely upon against the member of staff) with a copy also provided to their representative;
- e) that any relevant information the member of staff wishes the hearing panel to consider, is sent to the Hearing Officer with not less than three working days in advance of the hearing
- f) the Trust's and the member of staff's rights to call relevant witnesses and if they intend to do so, they should give notice that they intend to do this.
- g) a copy of the Trust's Disciplinary Policy & Procedure.

Where the member of staff is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the time and/or date of the hearing will be rearranged subject to the manager being satisfied that the postponement is on medical or other grounds or that the member of staff is unavailable or is unable to be represented at the time given. A reasonable amount of time will be allowed.

Where the chosen representative is unavailable on the day scheduled for the hearing, the member of staff may request that the hearing be rescheduled to an alternative time that is reasonable and within five working days of the scheduled date.

Unless there are special circumstances mitigating against it, if the member of staff is unable to attend the rearranged hearing, the rearranged hearing may take place in the member of staff's absence. The member of staff must make all reasonable efforts to attend any formal disciplinary hearing. Where a member of staff fails to attend without proper excuse, is unable or unwilling to attend the disciplinary hearing without good cause and is unable to substitute a proposed alternative date, within five working days, then the hearing may proceed in the member of staff's absence and a decision may be made based on the available evidence. The member of staff's representative may attend in such circumstances and will be allowed the opportunity to present the

member of staff's case. In such circumstances the member of staff would be given opportunity to submit written representations and informed in writing the hearing may proceed in their absence.

If a member of staff has a disability or their fluency in English is restricted and in either case their ability to represent themselves during the disciplinary process may be affected, the member of staff should notify the manager immediately. The HR Manager will then consider what if any steps can be taken to ensure that the member of staff is not unreasonably disadvantaged during the disciplinary process.

## **6. Role of Trade Union Representative**

The member of staff's representative has the right to address the hearing to put the member of staff's case, sum up the case and respond on the member of staff's behalf to any view expressed at the hearing. The representative may also confer with the member of staff during the hearing. However, there is no requirement for the Trust to permit the representative to answer questions on behalf of the member of staff, or to address the hearing where the member of staff indicates that they do not wish this.

## **7. Notes of Meetings**

This procedure allows for the Hearing Officer to appoint a Clerical Officer to make a note of the hearing. This will reflect the content of the hearing but will not be a verbatim report.

The member of staff, or their representative, is not normally permitted to record electronically (via mobile phone, or any other such device) the sound or images of any meeting held by the Trust as part of the disciplinary process. Any breach of this provision may lead to disciplinary action against the member of staff, up to and including dismissal.

In certain limited circumstances, the Trust may permit the meeting to be recorded electronically. For example, where the member of staff is disabled, it may be appropriate as a reasonable adjustment under the Equality Act 2010. Where the Trust permits the meeting to be recorded electronically, it will take responsibility for making the recording.

## **8. The Disciplinary Hearing**

A disciplinary hearing will be conducted by either the Headteacher/CEO or the Trust's Staff Dismissal Committee depending on the seriousness of the allegation, (See Section 5). The Hearing Officer/Panel will be advised by the Trust's HR Manager.

The Investigating Officer will be asked by the Hearing Officer to present any relevant facts and material to the disciplinary hearing.

In relation to the disciplinary hearing, the Hearing Officer will ensure that:

- introductions are made, the purpose of the hearing and process to be followed is confirmed and that parties are clear they may request an adjournment at any stage of the proceedings;
- whenever possible a room is provided for the member of staff and their representative for use outside of the hearing;
- all parties are informed that they (plus potential panel) may adjourn the disciplinary proceedings if it appears necessary or appropriate to do so (including for the purpose of gathering further information). In this event, the member of staff will be informed of the likely period of any adjournment;
- if further information is gathered, the member of staff will be informed that they will be allowed a reasonable period of time, together with their representative, to consider the new information prior to the reconvening of the disciplinary proceedings;
- they present their case (or where appointed, ask the Investigating Officer to do so) setting out the grounds for complaint against the member of staff;
- they will call such witnesses (as may be necessary) and allow the member of staff, or his/her representative, to ask questions of the witnesses (where called) and of them as the Hearing Officer;
- they will examine the witnesses (where called);
- they invite the member of staff to make an oral or written statement;
- witnesses shall only be present whilst giving evidence unless the Hearing Officer directs otherwise;
- they invite the member of staff or their representative and any witnesses if there are any final points they wish to be taken into consideration;
- at the end of the hearing, the parties and any other persons present except for the supporting HR Advisor, withdraw whilst the Hearing Officer (and potential panel) deliberates;
- after deliberation, the member of staff and their representative are called back to the meeting and the outcome of the hearing is either provided verbally (to then be followed up in writing within five working days, with right to appeal), or where further time for deliberation is required and as soon as possible after the conclusion (within five working days whenever possible) of the disciplinary proceedings, the member of staff is informed of the decision in writing to include, what disciplinary action, if any, is to be taken and their right of appeal under this procedure;
- that arrangements are made for a record of the hearing to be taken. This record will not normally be a verbatim report but should aim to accurately reflect the content of the hearing and will be provided for both parties' information;

- where the allegations have not been substantiated, all papers are removed from the member of staff's file.

## 9. Disciplinary Action

Where, following a disciplinary hearing, the Hearing Officer/Panel reasonably believes that the member of staff has committed a disciplinary offence, the following action may be taken:

- a) no formal action (advice on the member of staff's future conduct may be necessary and an archive record may be retained on the personal file. Action may be considered under the informal procedure)
- b) the allegations are proven in full or in part and that no further action will be necessary
- c) the allegations are proven in full or in part and that a formal warning (see section 10 for warning sanctions) may be issued (a formal warning cannot be issued where the alleged offence has only been dealt with under the informal procedure. See Section 2):
- d) the member of staff is summarily dismissed.
- e) the member of staff is dismissed with notice.

Where the decision of the Hearing Officer is to issue the member of staff with a warning, a letter confirming the decision to the member of staff (which should be copied to the member of staff's representative and to the Trust's HR Manager) should include:

1. confirmation of the status of the warning
2. a summary of the reasons for the decision;
3. a statement of the consequences of the member of staff failing to achieve the desired improvement (i.e. that further misconduct is liable to result in further disciplinary action under this procedure; or in the case of final written warning, to the possibility of dismissal).
4. Confirmation of any training and support provided and expectations of the employee moving forward.
5. confirmation of the duration of the warning and period for which the warning will be reviewed.
6. confirmation of the member of staff's right of appeal against the decision
7. confirmation that a record of the hearing will be prepared and if it is not practicable to attach to the letter, it will be provided as soon as possible (normally within five working days wherever possible). This will reflect the content of the hearing but will not be a verbatim report.

Where the member of staff has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) within the timescale of a final written warning, the Trust may elect to dismiss with notice or payment in lieu of notice.

Where the Trust reasonably believes that a member of staff has committed an act of gross misconduct, the member of staff may be summarily dismissed without notice.

Where a member of teaching staff is dismissed, a referral to the Teaching Regulations Agency (TRA) will be considered. If a referral is made the teacher will be informed in writing.

If a member of staff is dismissed as a result of safeguarding concerns, a referral to the Disclosure and Barring Service (DBS) will be considered. If a referral is made the member of staff will be informed in writing.

Where a final written warning is given to a member of staff, the School may also impose on the member of staff, in line with any provision in the contract of employment, a transfer to a job of a lower status.

The above sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal.

## 10. Warnings

**Formal verbal warning** - Where the Hearing Officer is satisfied that the member of staff's conduct has been below the required standard, a formal verbal warning may be issued and confirmed in writing. The record of this warning will be retained on the personal file and the record will no longer be considered as current after a period of six months' satisfactory conduct. The member of staff's conduct will not be deemed to have been satisfactory if any further warning has been issued within the six-month period.

**Formal written warning** - In more serious cases, or where one or more recorded verbal warnings have not resulted in the required improvement in conduct within the active period of a formal verbal warning, a formal written warning may be issued. The record of this warning will be retained on the personal file and will no longer be considered as current after a period of 12 months' satisfactory conduct. The member of staff's conduct will not be deemed to have been satisfactory if any further warning has been issued within the 12-month period.

**Formal final written warning** - A formal final written warning may be issued where one or more recorded warnings have not resulted in the required improvement in conduct within the active period of a previous active warning, a formal written warning may be issued or in circumstances where the misconduct is sufficiently serious to warrant such action. The letter to the member of staff must make it clear that any further unsatisfactory conduct could result in dismissal. The record of this warning will be retained on the personal file and will no longer be considered as current after a period of two years' satisfactory conduct. Conduct will not be deemed to have been satisfactory if any further warning has been issued within the two-year period.

**Review of warnings-** Other than in the case of a final written warning, where it will be indicated that any recurrence of this or other misconduct may lead to dismissal, it will be appropriate for future disciplinary purposes only to remove and disregard a warning on a member of staff's record after the stated period of satisfactory conduct.

During the periods of time referred to above, the member of staff's conduct should be monitored. This monitoring should result in a review meeting half way through the period and at the end of the review period. Immediately prior to the review meeting, a written report on the member of staff's conduct should be provided for consideration at the meeting. If the review indicates that there has been a satisfactory improvement in conduct, a note to that effect should be placed on the member of staff's personal file. If the review indicates insufficient improvement in conduct further training/support

and/or investigation and/or disciplinary steps may need to be initiated in accordance with this procedure.

When deciding what disciplinary action is to be taken against a member of staff after an earlier formal warning (or warnings), the Hearing Officer will consider all relevant factors including periods of satisfactory service, the length of time which has elapsed since any disciplinary action, any instructions previously issued, and any pattern in conduct which is a cause for concern.

In the case of a final written warning a review meeting should be held following a period of one year and again one month before the period terminates. If the Headteacher decides not to remove the warning following the final review meeting, the member of staff may request a written statement of the reasons for the decision and is entitled to appeal against the decision to the relevant Trust committee appointed for this purpose under this procedure.

Other than where on an appeal the Headteacher decides that a final written warning should remain in force for a specified period, the Headteacher should review the warning at intervals of two years and inform the member of staff of their decision. At each such review, if dissatisfied with the Headteacher's decision, the member of staff can appeal as above.

Where it is decided to remove and disregard a disciplinary warning for future disciplinary purposes, a note recording this decision will be placed on the member of staff's personal file. A copy will be sent to them for information.

If, for any reason, the member of staff is absent from work for a period of one month or more during the period of an active warning, then the duration of any warning will be automatically extended by the amount of time that they are absent.

**Expired warnings** will be retained on a member of staff's personnel record as it may be necessary to take account of the warning when considering future conduct, for example establishing a pattern of behaviour or an awareness of the relevant rules. Documentation relating to the expired warning will not normally be retained unless there is a justification for this (for example if concerns/allegations relate to safeguarding).

Written records of the investigation, report, hearing and sanction will be retained on a member of staff's file. It will only be considered as a current record for the duration of any disciplinary sanction.

Where no action is taken, records will be retained on file for six months.

It should not be considered that there is a graduated system of warnings which will apply in all cases. Depending on the nature of the offence, it may be appropriate to issue a warning at any of the levels described.

## **11. Appeal**

A member of staff may appeal against any disciplinary sanction imposed against them, apart from an informal oral warning. The appeal will be by way of a rehearing of the evidence, including any new evidence arising. Where possible, this should include only where evidence is disputed.



The written appeal should be made to the Clerk of the relevant committee/panel appointed by Trustees for this purpose. The panel will be advised by a HR Advisor who must not have been involved in any earlier part of the disciplinary process.

The panel members must not have been involved in the decision to impose the disciplinary sanction on the member of staff. The Chair of the appeal panel is obliged to consider any representations made by the member of staff, the member of staff's representative and those of the Investigating Officer, the Hearing Officer who conducted the disciplinary hearing and imposed the disciplinary sanction and the Headteacher/CEO (where they attended as a witness rather than as a Hearing officer). Should any new evidence be introduced on appeal, the member of staff will be given the opportunity to consider it and raise comments.

Once the relevant issues have been thoroughly explored, the appeal panel will decide whether to uphold the disciplinary sanction. If the appeal panel upholds the member of staff's appeal they shall arrange for all records of the disciplinary sanction from the member of staff's record to be removed. If the appeal panel does not uphold the member of staff's appeal, or partially upholds the member of staff's appeal, they should confirm that the disciplinary sanction issued by the relevant panel/ committee remains in place or confirm a lesser disciplinary sanction.

When lodging an appeal, the member of staff should state:

- a) the grounds of appeal; and
- b) whether they are appealing against the finding that they committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.

The member of staff must provide written notice of the appeal within five working days of being informed of the disciplinary sanction being imposed against them.

Appeal hearings will normally take place within ten working days of receipt of the member of staff's written notice of appeal and held within the member of staff's normal working hours.

The Clerk to the relevant appeal panel will confirm to the member of staff the following information in writing (this can be by email):

- a) the date of the appeal hearing and who will be in attendance
- b) the member of staff's right to be accompanied at the hearing;
- c) that any new information the member of staff wishes the appeal panel to consider, is sent to the Clerk to the relevant appeal panel not less than five working days in advance of the appeal hearing
- d) the panel's or the member of staff's rights to call relevant witnesses and if they intend to do so, they should give notice that they intend to do this.

The Clerk will arrange for the panel to convene in liaison with availability of other parties and ensure that the original evidence and any new evidence is circulated to all parties five days before the appeal hearing.

In relation to the appeal, the Chair of the appeal panel will ensure that:

- introductions are made, the purpose of the appeal hearing and process to be followed is confirmed and that parties are clear they may request an adjournment at any stage of the proceedings
- whenever possible a room is provided for the member of staff and his/her representative for use outside of the hearing
- that all parties are informed that the panel may adjourn the proceedings if it appears necessary or appropriate to do so (including for gathering further information). In this event, the member of staff will be informed of the likely period of any adjournment
- the Hearing Officer (normally the Headteacher) is invited to present the case (calling such witnesses as may be necessary which can include the Investigating Officer and the Headteacher where the Headteacher is not the Hearing Officer)
- the member of staff is invited to present the case (calling such witnesses as may be necessary)
- the Hearing Officer may ask questions of the witnesses (where called), the member of staff and, where the member of staff's representative gives evidence, of the representative
- the member of staff or his/her representative is invited to re-examine the witnesses (where called)
- members of the panel may ask questions of the parties or witnesses at any stage
- that witnesses shall only be present whilst giving evidence unless the Chair of the appeal panel directs otherwise
- the Hearing Officer is invited to sum up the case
- the member of staff or his/her representative will be invited to sum up the case
- at the end of the hearing, the parties and any other persons present except for the HR Manager, withdraw whilst the panel deliberates.
- If the panel believes it is necessary to recall any witnesses or call for further evidence on specific points at the end of the hearing, then both parties must be recalled
- as soon as possible after the conclusion of the hearing, the decision will be confirmed in writing within five working days. The Trust's decision at the appeal is final
- that arrangements are made for a record of the hearing to be taken. This record will not normally be a verbatim report but should aim to accurately

reflect the content of the hearing and will be provided for both parties' information.

Where there is an appeal against a dismissal, a member of staff will not be entitled to be paid or reinstated (unless they are entitled to notice) between the date of dismissal and the conclusion of the appeal process. If, however the decision to dismiss is overturned on appeal, the member of staff will be reinstated with immediate effect and they will be paid for any period between the date of the original dismissal and the successful appeal decision. Their continuous service will not be affected.

## **12. Gross Misconduct**

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the member of staff and the Trust. If a member of staff commits an act of gross misconduct, the Trust will be entitled to terminate summarily the member of staff's contract of employment without notice or pay in lieu of notice.

Matters that the Trust view as amounting to gross misconduct include (but are not limited to):

- theft, fraud and unauthorised possession of Trust/school property;
- other offences of dishonesty;
- unauthorised absence;
- falsification of a qualification that is a stated requirement of the member of staff's employment;
- falsification of school records including reports, pupil records or examination results, personal expense claims or self-certification forms, whether for personal gain;
- making a false declaration or failing to disclose information in relation to being disqualified from the provision of childcare
- data protection breaches, disclosure of School documents, and other confidential information to unauthorised third parties;
- indecency;
- physical violence, bullying, using explicit/offensive language;
- deliberate damage to or misuse of school property;
- gross insubordination;
- the use or distribution of illegal drugs while at work;
- serious incapability at work brought on by alcohol;
- possession, custody or control of illegal drugs on the School's premises;
- serious breach of the School's rules, including, but not restricted to, health and safety rules and rules on computer use;
- gross negligence;
- conviction of a criminal offence that is relevant to the member of staff's employment or adversely affects the reputation of the school/trust;
- misuse or abuse of social media in and outside work;
- deliberately accessing pornographic, offensive or obscene material;
- conduct that brings the School's name into disrepute; and

- discrimination and/or harassment.

Other acts of misconduct may come within the general definition of gross misconduct.

### **13. Miscellaneous**

If a member of staff who is an accredited representative of a trade union recognised by the Trust is suspected of having committed a disciplinary offence, the Trust will take no action under this procedure (with the exception of suspending the member of staff in a case of suspected or known gross misconduct) until the Trust has had a chance to discuss the matter, with the prior agreement of the member of staff, with a relevant official of that trade union.

## **Consideration of Suspension Meeting – Checklist**

### **Introductions**

- Following appropriate consideration of the facts established so far and discussion and advice from the HR Manager – allegations are viewed as serious misconduct.
- Clarification that the meeting is not a disciplinary hearing.
- Brief overview of allegations/issues.
- Opportunity for member of staff to say anything at this point about the allegations. Remind them that this is not an investigation interview.

### **Potential for Brief adjournment to consider anything said.**

### **Confirmation of Suspension:**

- Confirm immediate suspension.
- Confirm suspension will be on full pay.
- Confirm the allegations/issues are seen as serious misconduct and therefore not appropriate for individual to be in school. Further explanation of reason for suspension (for example – belief that suspension needed to allow an appropriate, impartial investigation).
- Confirm a Support Officer will be appointed and provide counselling service details.
- Confirm individual would need to be available for interview as part of an investigation and potentially any formal disciplinary interview. Confirm Investigating Officer will be in contact in due course to arrange an investigation interview.
- Confirm if a formal disciplinary is necessary an appropriate committee convened in accordance with the Disciplinary Procedure will hear the case.
- Individual should not contact School or discuss allegations/issues with anyone within school, governors or parents etc. Seek support from Trade Union or discuss with Support Officer.
- If individual needs to collect anything, it can either be collected on their behalf or arrange a time for individual to come to school to get it. Confirm return of any keys, identity cards etc.

- Confirm address (home and email) details held are correct and that confirmation of suspension in writing along with a copy of the school disciplinary procedure will be sent as soon as possible.
- Check understanding and anything else individual may wish to say.
- Communication to other staff – member of staff is not able to be in school at the moment.
- Close Meeting.