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**SCHOOL DISCIPLINARY POLICY AND PROCEDURE**

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## **1. Policy statement**

- 1.1. School employees are expected to abide by the highest standards of conduct and behaviour, as set out in the Disciplinary Rules (see appendix 3) and the Code of Conduct. Alleged breaches of these standards will be dealt with fairly, consistently and transparently under the Disciplinary Procedure.
- 1.2. Cases involving poor performance caused by ill-health or lack of capability are dealt with under separate procedures.
- 1.3. The Disciplinary Procedure forms a key part of the contract of employment between employees and the school/Council. The confidentiality clause (found at the end of this procedure) applies to all employees involved in the disciplinary process.

## **2. Application:**

- 2.1. This procedure applies to all staff directly employed by the school, including the headteacher.
- 2.2. Support employees whose service is terminated during or at the end of their probationary period are not covered by the Disciplinary Procedure.
- 2.3. The outcome of disciplinary hearings will be taken into account when assessing whether or not a newly qualified teacher has successfully met the standards required for statutory induction.
- 2.4. In the case of volunteers, the school will normally apply the principles of this policy when investigating allegations and determining outcomes. In the case of allegations with safeguarding implications, the school will seek advice in line with paragraph 10 below, and allegations found to be proven will be referred to the relevant external agencies in line with paragraph 7 below.

## **3. Roles and responsibilities:**

### **3.1. Employees must:**

- Comply with the standards set out in the school's Code of Conduct and Disciplinary Rules, and any local rules and regulations required for carrying out their job safely and effectively on behalf of the school.
- Comply with relevant statutory professional standards (e.g. the Teachers' Standards)
- Comply with all reasonable management instructions.
- Comply with confidentiality requirements

### **3.2. Headteachers must:**

- Manage and monitor employees' conduct.
- Deal with allegations of minor acts of misconduct informally, promptly and by appropriate counselling and instruction.
- Invoke the disciplinary process promptly where necessary.
- Remind employees of their right to be accompanied under the Procedure
- Ensure that the employee is aware of the status of any meeting or hearing held under this procedure.
- Provide the employee with a copy of this procedure if any action is contemplated under the formal stages of the procedure (i.e. other than informal action).
- Comply with confidentiality requirements

### 3.3. Governing bodies:

- Have a statutory responsibility to determine the disciplinary rules and disciplinary procedures to be followed when dealing with alleged misconduct within the school.
- Are expected, under the School Staffing Regulations made under the Education Act 2002, to delegate all decisions under the Disciplinary Procedure, including dismissal, to the headteacher.
- Have a responsibility, along with the headteacher, for determining whether the suspension of an employee is necessary. Only the governing body may end a suspension.
- Are responsible for handling allegations of misconduct against the headteacher, advised by the Service Lead for Education or his/her representative as necessary.

## **4. Right to be accompanied**

- 4.1. Employees have a legal right to be accompanied by a companion where a disciplinary meeting could result in a formal warning being issued or some other disciplinary action being taken.
- 4.2. Under this policy, employees can be accompanied or represented either by an accredited trade union representative or a work colleague of their choice, at meetings held under all formal stages of the disciplinary procedure.
- 4.3. The employee must notify the headteacher in advance of meetings and hearings of their wish to be accompanied, and the name and role of their chosen companion.

- 4.4. The headteacher has the right to request that the employee find an alternative companion if the individual is a witness in the case
- 4.5. The companion should be allowed to address the meeting to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the meeting if the worker does not wish it or prevent the employer from explaining their case.

## **5. The role of the local authority**

- 5.1. A representative of the authority may attend and offer advice at all proceedings relating to the dismissal of any teacher, where the Council is the employer.
- 5.2. The authority may offer advice to the governing body in relation to the dismissal of any teacher in a voluntary aided or foundation school, where the school has a written agreement with the authority to this effect.
- 5.3. The governing body must consider any advice offered by the authority in these circumstances.

## **6. Action in respect of trade union representatives**

- 6.1. Formal action under this procedure will not be taken in respect of an accredited representative of a professional association/trade union until the headteacher (or the HR Service Provider, if the headteacher so wishes) has informed the appropriate full-time professional association/trade union official of the disciplinary action that is being contemplated.

## **7. Referring Conduct Issues to External Organisations**

- 7.1. Where it is required to do so, the school will refer conduct issues/allegations to the appropriate external professional, public and statutory bodies. This includes referrals to the Disclosure and Barring Service and/or the Teaching Regulation Agency in relevant circumstances.

## **8. Review**

- 8.1. This policy will be reviewed regularly to ensure that it complies with current employment legislation and the requirements of the school.
- 8.2. Any future amendments to this policy will be consulted upon and negotiated with the recognised trade unions.

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### 9. Informal action

- 9.1 Wherever possible, the headteacher (or relevant senior manager) will seek to deal with misconduct by informal counselling. Any resulting professional advice and/or management instruction may be confirmed in writing to the employee. Except in cases of serious or gross misconduct, the formal procedure should not be used as a first resort.
- 9.2 Where informal action does not lead to the required improvement in conduct, or the alleged misconduct is sufficiently serious, then the following formal stages of the Disciplinary Procedure will be used.

### 10. Safeguarding

- 10.1 In cases where the alleged misconduct of an employee or volunteer involves harm or risk of harm to a child or vulnerable adult, the headteacher must immediately notify the school's HR Provider, the Council's professional safeguarding lead (the Local Authority Designated Officer – LADO) and the Schools' HR Lead at the Council.
- 10.2 The headteacher should not proceed with an investigation into a safeguarding matter until advice has been received from the LADO or any other authorities that may be involved (e.g. the Police or Children's Social Care).

### 11. Investigation Stage

- 11.1 The headteacher will notify the employee that an investigation will be undertaken into the allegation(s) of misconduct, and provide him/her with a copy of this procedure.
- 11.2 The headteacher will undertake an investigation into allegations of misconduct, or nominate a senior member of staff to act as Investigating Officer. (Where possible, it is preferable that a nominated Investigating Officer undertakes the investigation, as this allows the headteacher to chair any resulting disciplinary hearing.)
- 11.3 The investigation must take priority over other work issues, and should normally be completed within **15 working days**. Where further time is required, the headteacher and employee must be notified of the expected completion date.

- 11.4 The level of investigation required will depend upon the nature and seriousness of the allegation(s).
- 11.5 **Guidance on conducting a disciplinary investigation is set out in appendix 4 of this document.**
- 11.6 When the investigation is complete the Investigating Officer will conclude that either:
- *No further action should be taken (where the allegation is not supported by the evidence); or*
  - *Counselling/management instruction or advice/training should be given (where misconduct is deemed to be of a minor nature); or*
  - *The matter should be referred for consideration at a disciplinary hearing (where misconduct is deemed serious enough to warrant a formal disciplinary sanction).*
- 11.7 The investigating officer will write to the employee to inform him/her of the outcome of the investigation.
- 11.8 Where the matter is referred to a hearing, a disciplinary hearing will be arranged without unreasonable delay.
- 11.9 Where the allegation is against the headteacher, the chair of governors may choose to investigate the matter personally, or may appoint a member of the governing body to investigate the allegation.

## **12. Suspension**

- 12.1 In cases of alleged gross misconduct, once it has been established that there is a prima facie case to answer, an employee can be suspended from work on full contractual pay at any stage of the investigation, if the headteacher (or chair of governors in the case of an allegation against the headteacher) believes that any of the following circumstances apply:
- The investigation could be compromised by the continued presence of the employee in school;
  - There is a serious risk to pupils, other employees, or to school resources or property, by the employee remaining in school;
  - The allegations relate to safeguarding issues;
  - The reputation of the school or Council could be compromised by keeping the employee at work.
- 12.2 The employee will be suspended from duty by the headteacher. The headteacher will notify the governing body immediately of the suspension.
- 12.3 The headteacher is advised to consult with the HR Service Provider before suspending an employee from duty. Where the Council is the employer, the headteacher must advise the Schools' HR Lead in the Council of the suspension and the reasons for it.

- 12.4 Suspension is not a form of disciplinary action or an indication that the allegations made are assumed to be true. In some cases it may be possible to accommodate a temporary reassignment to other duties or restriction of current duties rather than suspension. This should be considered on a case by case basis.
- 12.5 In normal circumstances, suspension or temporary redeployment will be no longer than **15 working days**. Where an extension is necessary and the Council is the employer, the School's HR Lead must be notified of the need for an extension and the reason for it.
- 12.6 The headteacher must explain the circumstances and conditions of the suspension to the employee and confirm this information in writing as soon as possible.
- 12.7 Whilst suspended, the employee must make themselves available for meetings on request. They should not make contact with anyone at the school apart from their identified school contact/trade union representative (unless specific approval to contact others has been requested and agreed).
- 12.8 **Management guidance and a checklist for suspension is set out in Appendix 5 of this document.**

### **13. Notification of Disciplinary Hearing**

- 13.1 The employee must be notified in writing at least **10 working days** before the hearing of:
- The date, time and place of the hearing.
  - Who will be conducting the hearing
  - The nature of the allegations.
  - The right to be accompanied/represented.
  - The right to call witnesses and to submit documentary evidence.
  - Whether dismissal is a potential outcome of the hearing.
- 13.2 The letter will give a date (**usually 5 working days** prior to the hearing) for copies of any written evidence to be presented at the hearing to be exchanged.
- 13.3 Employees (and their companions) should make every effort to attend the hearing. If the employee or their chosen companion is unable to attend a disciplinary hearing on the notified date and has informed the headteacher, the hearing should be rearranged within a reasonable time frame. If the employee fails to attend the rescheduled meeting, only under exceptional circumstances will a further date be agreed. Failure to attend a rescheduled meeting may result in the headteacher conducting the hearing and making a decision on the evidence available, without the employee's presence.

### **14. Disciplinary Hearing**

- 14.1 Where dismissal is a possible outcome of the hearing, it will normally be conducted by the headteacher and at least one governor (with support from the school's HR provider). However, where the headteacher has performed the role of Investigating Officer, or has otherwise been closely involved in the investigation (e.g. as a witness) the hearing will be conducted by a panel of governors.
- 14.2 At the meeting the Investigating Officer will explain the allegations and go through the evidence that has been gathered. The employee will be given the opportunity to set out their case and answer any allegations that have been made, including presenting evidence. Witnesses can be called by either side as part of the case.
- 14.3 Both the investigating officer and employee (and their companion) can question the case put forward by the other party. The headteacher or governor panel may question any evidence presented and will be advised by the school's HR Provider.
- 14.4 The decision maker will consider all the evidence presented and determine whether there are reasonable grounds to believe that the alleged act or behaviour occurred and, if so, what level of disciplinary sanction (if any) should be applied.
- 14.5 **Guidance on conducting a Disciplinary Hearing can be found at Appendix 1 of this document.**
- 15. Confirmation of Disciplinary Outcome**
- 15.1 The panel will hold a short adjournment and, if possible, a decision will be given verbally at the end of the hearing to the employee and the investigating officer.
- 15.2 If a longer adjournment is required, the hearing will be concluded and arrangements made to notify the employee (in person or by telephone) of the outcome within **five working days**.
- 15.3 In either case, the outcome will be confirmed in writing to the employee, along with the right of appeal, within **10 working days** of the hearing.
- 15.4 The outcome of the hearing can be one of the following:
- Allegation not proven
  - Written warning (remaining on file for 12 months)
  - Final written warning (remaining on file for 12 months)
  - Dismissal with notice (remaining on file for the duration of the notice period)<sup>1</sup>

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<sup>1</sup> Only applicable where an allegation of misconduct, not amounting to gross misconduct, has been proven and there is a final written warning in effect with dismissal being the next level of disciplinary sanction.

- Summary dismissal without notice (immediate, without pay in lieu)
- 15.5 Exceptionally, there may be circumstances where the misconduct is so serious that it cannot realistically be disregarded for future disciplinary purposes. If this is the case, then the employee must be made aware that the final written warning will never be removed and any recurrence will lead to dismissal. This is in relation to safeguarding concerns.
- 15.6 Where an existing warning is already in place, the level of sanction imposed on a new occasion will be the same or higher than the one already in effect..
- 15.7 If the headteacher/governor panel decides that a warning should be issued, the written confirmation will include;
- The nature and level of the warning;
  - The reasons why it is being given;
  - The standards of conduct required in future;
  - The consequences of future misconduct;
  - The right of appeal.
- 15.8 If the headteacher/governor panel determines that the employee should be dismissed, the written confirmation will include; the date of the end of the contract, details of any notice period, the reasons for the decision, and the employee's right of appeal.
- 15.9 The headteacher/chair of the panel will, on behalf of the governing body, write to the Service Lead for Education asking that notice of dismissal be issued to the employee within 14 days of the date of dismissal (or in the case of gross misconduct, that dismissal takes place with effect from the date of the dismissal hearing).
- 15.10 The headteacher must formally report any instances of dismissal to the Governing Body (and to the Council where it is the employer). Such a report is limited to a notification of the decision only. Should an appeal be lodged it is important that members of the Governing Body have no detailed prior knowledge of the disciplinary case itself so that they can ensure an unbiased appeal hearing.

## **16. Appeal**

- 16.1 The employee may appeal against:
- The finding that they committed the misconduct
  - The level of disciplinary sanction imposed
  - The decision to dismiss
- 16.2 The employee's appeal must be made in writing to the Clerk to the Governing Body setting out the grounds for the appeal and must be received within **10 working days** of the employee being notified of the outcome.

- 16.3 An appeal hearing will be arranged without unreasonable delay and normally within **20 working days** of receiving the notice of appeal. The employee will be notified of the arrangements in writing. The employee has a statutory right to be accompanied at the appeal hearing.
- 16.4 The appeal hearing will be chaired by the headteacher or conducted by the Governing Body Appeal Panel, depending on who the decision-maker was at the disciplinary/dismissal hearing, in order to ensure no previous involvement in the disciplinary case. The headteacher/appeal panel will be advised by the school's HR provider during the hearing.
- 16.5 The outcome of the appeal will be confirmed in writing to the employee within **10 working days** of the hearing.
- 16.6 There will be no further internal right of appeal. The appeal decision may be:
- To confirm the sanction
  - To decrease the sanction
  - To remove the sanction.
- 16.7 **Guidance on how to conduct a Disciplinary Appeal Hearing can be found in Appendix 2 of this document.**
- 17. Arrangements for dealing with allegations against the headteacher**
- 17.1 The procedure for dealing with allegations of misconduct against the headteacher will be as set out above, with the following variations.
- 17.2 If it is necessary, the headteacher will be suspended from duty by the chair of governors, after consulting with the school's HR provider and the Service Lead for Education.
- 17.3 The chair of governors will appoint an investigating officer to investigate the allegation, in consultation with the school's HR provider and the Service Lead for Education. This may be an external investigator with experience of schools.
- 17.4 At any disciplinary hearing, the disciplinary case for action short of dismissal will be heard by a panel of at least three governors.
- 17.5 At any disciplinary hearing where dismissal is a potential outcome, the case will be heard by a panel of at least three governors, one of whom should be the chair or vice-chair of governors.
- 17.6 The disciplinary panel will be advised by the school's HR provider.
- 17.7 In the event of an appeal, a panel of at least three governors, with no previous involvement in the case, will consider the appeal. This will normally be chaired by the chair or vice-chair of governors.
- 17.8 Where the Council is the employer or where there is an agreement with the school for the local authority to advise on such matters, the Service Lead for

Education (or their representative) will be invited to advise on disciplinary/dismissal and appeal proceedings for the headteacher.

## **18. CONFIDENTIALITY CLAUSE:**

As part of Disciplinary and Grievance processes those involved may have access to information that is of a personal, confidential, sensitive and/ or proprietary nature, for the purpose of fulfilling procedural obligations. For example: personal information related to staff such as names, e-mail addresses, salaries, employment information, and/or service issues, data, financial information ("confidential information").

All involved with any application of the disciplinary policy / procedure must:

- Hold all confidential information in trust and strict confidence and agree that it shall be used only for the purposes required to fulfil employment obligations, and shall not be used for any other purpose, or disclosed to any third party.
- Keep any confidential Information in a physically secure location
- Maintain the absolute confidentiality of personal and confidential information in recognition of the privacy rights of others at all times, and in both professional and social situations.
- Comply with all privacy laws and regulations, which apply to the collection, use and disclosure of personal information
- At the conclusion of any discussions, or upon demand by management, return all confidential information, including prototypes, code, written notes, photographs, sketches, notes taken, to Council possession and the responsible manager/director.
- Not disclose confidential, personal and/or proprietary information to any employee, consultant or third party unless they agree to execute and be bound by the terms of this agreement and have been approved by the school / Council / Trade Union in an official, legal capacity.

A breach of confidentiality or misuse of information could result in disciplinary action up to and including termination of employment.

## Appendix 1 – Procedure for a Disciplinary Hearing

The following people will attend the meeting;

- The headteacher or a disciplinary panel of governors will hear the case. A governor panel will appoint a chair to conduct the hearing. They may be supported by an HR adviser.
- The investigating officer<sup>2</sup> will present the case for disciplinary action and may be supported by an HR adviser.
- The employee will attend and be given the opportunity to present their case. They are entitled to be accompanied by a companion who is a trade union representative or work colleague.
- Witnesses for either party will wait separately and will attend the hearing only to present evidence and be questioned by the other party and the headteacher/panel.
- A representative from the local authority may attend to advise on proceedings where dismissal is a potential outcome (see paragraph 6 of the Disciplinary Policy).

### PROCEDURE FOR DISCIPLINARY HEARING

1. The headteacher/panel chair will explain the process, and ensure that introductions are made and that all parties have the relevant documentation.
2. The investigating officer will outline the allegation(s), present the evidence against the employee and call any witnesses.
3. The employee (or their companion) may question the investigating officer and the witnesses.
4. The headteacher/panel and their HR adviser may question the investigating officer and the witnesses.
5. The employee (or their companion) will respond to the allegations and may call witnesses.
6. The investigating officer may question the employee (or their companion) and the witnesses.
7. The headteacher/panel and the HR adviser may question the employee (or their companion) and the witnesses.

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<sup>2</sup> The investigating officer is normally a senior member of staff at the school, or from another school. In some cases the school may appoint an external investigator, with a knowledge of schools, to conduct the investigation.

8. The investigating officer will sum up the case against the employee.
9. The employee (or their companion) will sum up the response.
10. The headteacher/panel will adjourn to consider the evidence and make a decision regarding the allegation and, if proven, the appropriate disciplinary action.
11. The employee will be advised of the decision verbally at the conclusion of the hearing, or within five working days of the hearing.
12. The decision will be confirmed to the employee and the investigating officer in writing within 10 working days.

## Appendix 2 – Procedure for a Disciplinary Appeal Hearing

The following people will attend the meeting;

- The appeal panel comprising at least three governors (one of whom should be the chair or vice chair of governors) will hear the appeal. The panel will appoint a chair to conduct the hearing. They may be supported by a HR adviser.
- The disciplinary decision-maker (the headteacher or the chair of the disciplinary panel of governors who took the decision to issue the disciplinary warning or to dismiss) will present the management case for that decision. They may be supported by a HR adviser.
- The investigating officer (who presented the management case at the disciplinary hearing) may be called as a witness by the headteacher/chair of the disciplinary panel.
- The employee will attend and be given the opportunity to present their case for appeal. They are entitled to be accompanied by a companion who is a trade union representative or work colleague.
- Witnesses for either party will wait separately and will attend the hearing only to present evidence and be questioned by the other party and the appeal panel.
- A representative from the local authority may attend to advise on proceedings where dismissal is a potential outcome (see paragraph 6 of the Disciplinary Policy).

### PROCEDURE FOR APPEAL HEARING

1. The chair of the appeal panel will explain the process, and ensure that introductions are made and that all parties have the relevant documentation.
2. The decision-maker will outline the allegation, present the evidence against the employee (as presented at the original disciplinary hearing), the reasons for the decision to uphold the case and to issue a warning/dismiss the employee. They will call witnesses relevant to the appeal as required.
3. The employee (or their companion) may question the employee and any witnesses.
4. The appeal panel and their HR adviser may question the decision-maker, the investigating officer and any other witnesses.
5. The employee (or their companion) will explain their case for appeal and may call witnesses.

6. The decision-maker may question the employee (or their companion) and their witnesses.
7. The appeal panel and their HR adviser may question the employee (or their companion) and their witnesses.
8. The decision-maker will sum up their case.
9. The employee (or their companion) will sum up their case.
10. The appeal panel, together with their HR adviser will adjourn to consider the appeal decision.
11. The appeal decision will be given verbally at the conclusion of the appeal hearing or within five working days of the appeal hearing.
12. The decision will be confirmed in writing to the employee and the disciplinary decision-maker within 10 working days.

## Appendix 3 - Disciplinary Rules

**The list below is not exclusive or exhaustive.** It is intended to give examples of the types of conduct which could warrant categorisation as “misconduct” or “gross misconduct”. Gross misconduct is defined as alleged actions which are of such a nature that the continued presence of the employee at the place of work cannot be tolerated whilst the matter is being investigated and, if proven, could lead to summary dismissal.

It is important to note that misconduct or gross misconduct can arise out of either an act or an omission on the part of the employee, such that negligence amounting to a breach of contract will be included under the term misconduct.

**Each instance of alleged misconduct will be investigated thoroughly, and the circumstances surrounding the alleged action will determine whether it will be treated as misconduct or gross misconduct.** It is expected that the employee will be suspended from duty when an allegation is being treated as potential gross misconduct for the purposes of the disciplinary procedure.

### 1. General Conduct

Employees are expected to conduct themselves at all times in a manner which supports the ethos of a school, and will maintain public confidence in their integrity and the service provided by the school.

### 2. Examples of Misconduct

In certain circumstances the examples below may be considered to constitute gross misconduct:

- 2.1 Poor timekeeping or persistent lateness
- 2.2 Smoking on the school’s premises or when on duty outside the school (e.g. on school trips)
- 2.3 Failure to comply with sickness absence procedures
- 2.4 Failure to observe school ICT standards, policies, and guidance on the use of IT facilities. Installing or using unlicensed software on a school computer
- 2.5 Using school or Authority computers to access wider facilities (e.g. the Internet, social network sites) without authorisation, or to access non-work sites, especially those with material unsuited to use within a school (e.g. pornography, illegitimate drugs related etc.)
- 2.6 Knowingly being an accessory to, condoning or failing to report a serious disciplinary offence.
- 2.7 Unlawful discrimination against another employee or a member of the public in the course of duty.
- 2.8 Unauthorised absence from work (excluding lawful industrial action)

- 2.9 Wilful failure to comply with school policies, including the code of conduct
- 2.10 Wilful failure to comply with a reasonable instruction from a member of senior management or line manager
- 2.11 Persistent rude or insubordinate behaviour towards colleagues or members of management
- 2.12 Acting in an aggressive or threatening manner.
- 2.13 Harassment or intimidation which is not sufficiently serious enough to fall into the category of gross misconduct.
- 2.14 Use of foul or abusive language
- 2.15 Misuse or unauthorised use of school facilities (to include telephones, photocopiers, computers and other equipment)
- 2.16 Persistent minor breaches of health and safety requirements or failure to observe agreed working procedures
- 2.17 Unauthorised removal of school property, or that of any of its employees or pupils
- 2.18 Wilful damage to or waste of school property
- 2.19 Being unfit for duty due to consumption of either alcoholic drink or drugs, or consuming these on school premises whilst on duty. (Note 1: where dependency is suspected or intoxication is due to legitimately prescribed drugs, the ill-health procedure should be observed). See [\(S093\) Alcohol Misuse Management Guidelines v1.0](#)
- 2.20 Unauthorised use or disclosure of confidential information (including that stored electronically) gained through employment at the school, or failure to protect such information from being disclosed. (This could also be regarded as gross misconduct)
- 2.21 Failure to disclose a pecuniary interest when asked to do so by the Governors, or when that interest could come into conflict with the work of the school (e.g. relationships with contractors)
- 2.22 Off-duty conduct which could conflict with the interests of the school or the Authority, or bring the school or the Authority into disrepute (to include criminal offences committed whilst off-duty)

### **3. Examples of Gross Misconduct**

The following acts, and offences will be regarded as gross misconduct. Gross misconduct is an act or failure to act that is of such a nature or so serious that, if proven, could lead to summary dismissal (dismissal without notice):

- 3.1 Actions or omissions which place children at risk of harm or result in actual harm.
- 3.2 Illegal copying of computer software, breaching copyright agreements
- 3.3 Making false statements or omissions to gain employment or other benefit at work (e.g. failure to disclose criminal convictions when legitimately required to do so, making false statements about qualifications)
- 3.4 Falsification of, damage to or tampering with timesheets or expenses claims, or other financial documents, amounting to fraud.
- 3.5 Deliberate falsification of pupil or school records or marks
- 3.6 Serious harassment, bullying or intimidation (including incitement), on the grounds of race, sex or disability, or on other grounds
- 3.7 Fighting and/or serious physical assault
- 3.8 Sexual misconduct at work
- 3.9 Persistent wilful failure to comply with a reasonable instruction from a member of senior management, or with explicit school policies
- 3.10 Serious breaches of health and safety requirements
- 3.11 Being under the influence of alcoholic drink or drugs where this is in direct contravention of a management instruction, in breach of a position of responsibility and trust, or constitutes a health and safety hazard
- 3.12 Theft, or attempted theft, of money or property from the school or its employees or pupils
- 3.13 Malicious damage to school property
- 3.14 Serious criminal offences which undermine the employee's ability to perform his or her job
- 3.15 Omission or conduct liable to lead to a serious loss of confidence in the school
- 3.16 Use of the employee's position for an improper use

## **Appendix 4 – guidance for headteachers and school senior managers on the investigation stage**

When an allegation of misconduct is made, an investigation must take place before deciding whether any action under the disciplinary procedure is necessary.

The investigation stage is a crucial part of the process. If an employee is ultimately dismissed and the case is taken to employment tribunal, one of the tests of fairness is whether or not a *reasonable investigation* has taken place. Further information on workplace investigations can be found on the [Acas website](#)

The investigation should be carried out by someone who will not be responsible for making a decision in any disciplinary hearing.

The investigation should be initiated *after* any initial actions have been implemented, such as discussions with relevant agencies or the LADO and/or consideration of suspension from duty (see appendix 5).

Any allegation of misconduct where there is potential harm to children must be thoroughly investigated until a conclusion is reached and recorded (even if the employee resigns before or during the process). All records must be kept in accordance with Keeping Children Safe in Education.

### 1. Appointing an investigating officer

- 1.1. If the headteacher is going to hear any potential case for disciplinary action, then they should not be involved in the investigation. The headteacher should appoint an **investigating officer**, who will normally be a member of senior management in the school. The headteacher should then step away from the investigative process to avoid potential bias.
- 1.2. The investigating officer should not have been previously involved in or a witness to the alleged misconduct.
- 1.3. In some cases, it may be helpful to use an **external investigator**. If this is a consideration, the headteacher should seek advice on this from the school's HR provider and/or the local authority.
- 1.4. If the headteacher is an important witness to the misconduct or has already had significant involvement in the matter, then any potential case for disciplinary action should be heard by a panel of governors. In this case the **headteacher** may choose to conduct the investigation in person.
- 1.5. In the case of allegations against the headteacher, **the chair of governors should appoint a suitable person** to investigate the matter. The chair should seek advice from the school's HR provider and/or the local authority.

### 2. The purpose of the investigation and the role of the investigator

- 2.1. An investigation is a fact-finding exercise to collect all the relevant information on a matter. A properly conducted investigation can enable an employer to fully consider the matter and then make an informed decision on it.
  - 2.2. Making a decision without completing a reasonable investigation can make any subsequent decisions or actions unfair, and leave an employer vulnerable to legal action.
  - 2.3. The role of an investigator is to be fair and objective so that they can establish the essential facts of the matter and reach a conclusion on what did or did not happen. They should remain impartial, guard against making assumptions and should avoid giving personal opinions, getting involved in arguments, or making personal remarks
  - 2.4. An investigator should do this by looking for evidence that supports the allegation *and* evidence that contradicts it. In potential disciplinary matters, it is not an investigator's role to prove the guilt of any party but to investigate if there is a case to answer.
  - 2.5. The investigating officer should familiarise themselves with the disciplinary procedure and refer to it, as necessary, throughout. Check the timescale for completing the investigation (normally 15 working days). It is helpful to use the template investigation plan and investigation report.
3. Documentary and other evidence
    - 3.1. Gather key documents and other evidence. This might be, for example, relevant school procedures, correspondence, timesheets, receipts etc.
  4. Statements/interviews with witnesses
    - 4.1. Identify potential key witnesses and plan the areas of questioning.
    - 4.2. Meet with witnesses individually, as soon as possible after the alleged misconduct, giving them the option to be accompanied if they wish (as long as this is not by another potential witness).
    - 4.3. When meeting with witnesses, explain the need for confidentiality, that the information they provide may be made available to all parties involved in the disciplinary matter, and that they may be called upon during any formal hearing to provide evidence and answer questions.
    - 4.4. Record the questions witnesses are asked and what their response is. Witnesses may be asked to write out a 'statement' and sign and date their response, or the investigating officer may record the details of the interview and ask them to sign as a written record of the meeting.
  5. Investigation interview with the employee
    - 5.1. Arrange to meet with the employee, ensuring that they are aware of their right to be accompanied by a work colleague or trade union representative, and provide them with a copy of the disciplinary procedure. The meeting with the

employee should be recorded; it may be helpful to have a note taker present (this would be the responsibility of the school to arrange).

5.2. In the meeting with the employee, they should be informed of the allegation(s) against them. They should be advised of any witness account but there is no requirement to identify them at this stage or show any witness statement.

5.3. The employee should be given the opportunity to respond to the allegation(s) and the investigating officer should ask questions to clarify their response and/or probe areas already identified as requiring further information.

5.4. Ask the employee if there is any evidence they think the investigating officer should take into account, or any witnesses that they feel would have important information for the investigation.

5.5. After the meeting, provide the employee with a copy of the notes of the meeting. The employee should be asked to sign as a true record or provide comments to add to the notes made. If the employee refuses to sign, the investigating officer should note this, but can still use the record as part of the investigation.

5.6. After interviewing the employee, if new information has emerged, the investigating officer may wish to meet some witnesses again, or arrange to meet with further witnesses.

## 6. Writing the investigation report

6.1. It may be helpful to complete parts of the investigation report as the investigation proceeds.

6.2. An investigation report should cover all the facts that were and were not established, and whether there were any mitigating circumstances that also require consideration. To exclude any information may leave an investigation open to accusations of bias and filtering evidence to suit their findings.

6.3. Establish the pattern of events, matters of fact and those still in dispute. Seek to resolve any matters of dispute and any conflicting statements prior to making a decision.

6.4. When deciding what happened it is helpful to arrange the evidence into:

- Uncontested facts: Where the facts are not in dispute, they can simply be reported as factual.
- Contested facts: Where the facts are contested or contradictory they should determine what, on the balance of probabilities, took place (see below).
- Unsubstantiated claims: Where an investigator is unable to substantiate an allegation they should consider if further investigation is reasonable or report that they are unable to draw a conclusion.

6.5. At the conclusion of the report, recommend either;

- **formal action** (i.e. there is a case to answer and it should be considered at to disciplinary hearing); or
- **informal action** (this may be management instruction or professional advice, mediation, additional training or other action); or
- **no further action.**

6.6. If formal action is recommended, the investigating officer should believe that, in the light of all the available evidence, on the balance of probabilities there was an act of misconduct or a failure of duty serious enough to warrant a formal disciplinary sanction.

6.7. If the decision is that there is a case to answer, the investigating officer should write to the employee advising them of the decision. If the decision is such that a disciplinary hearing could result in a decision to dismiss (i.e. the case is potentially gross misconduct or where a final written warning is in place), the employee should be informed of this.

## 7. The disciplinary hearing

7.1. The investigating officer should arrange a mutually convenient date and location for all parties to attend the hearing, and advise witnesses where and when they are required.

7.2. The decision maker should send out the notification of the hearing to the employee, giving adequate notice of the right to attend and be accompanied. The employee should be provided with a copy of all the documents to be relied upon at the hearing. The employee should be asked to provide, in advance of the hearing, a copy of any documents they will refer to in the hearing, and the names and positions of any witnesses they wish to call.

7.3. The investigating officer is responsible for putting together the pack of documents for the hearing and preparing the presentation of the case on behalf of the management of the school.

7.4. The school is responsible for ensuring a note taker is present at the hearing. Separate HR support will be available to advise both the investigating officer who is presenting at the hearing and to the decision maker.

### Investigation Plan template

[Amend as required]

<b>Investigator</b>	
<b>Terms of reference</b>	
<b>Provisional time-frame</b>	
<b>Policies and procedures to review and follow</b>	
<b>Issues that need to be explored/clarified</b>	
<b>Sources of evidence to be collected</b>	
<b>Persons to be interviewed</b> (including planned order of interviews)	
<b>Investigation meetings further arrangements</b> (When/where/notes to be taken by)	
<b>Persons to supply own statement</b>	
<b>Investigation meetings to be completed by</b>	
<b>Collection of evidence to have been completed by</b>	
<b>Further considerations</b>	

### Investigation report template

[adapt to suit the particular circumstances of the investigation]

<b>Introduction</b>	<b>Investigation authorised by:</b> [Name and role]
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	<b>Investigator:</b> [Name and role]
	<b>Date investigation began:</b>
	<b>Terms of reference:</b> [include if they were amended and how]
	<b>Background to the investigation:</b> [Brief overview of the matter]

<b>Process of investigation</b>	<b>The investigation process:</b> [Explain how the investigation was authorised]
	<b>Evidence collected:</b> [List all evidence collected]
	<b>Evidence not collected:</b> [List all evidence that could not be collected and why]

	<b>Persons interviewed:</b> [List all people interviewed]
	<b>Persons not interviewed:</b> [List any witnesses that could not be interviewed and why]
	<b>Anonymised statements:</b> [If any, explain why and provide details of any enquiries into witness]

<b>The investigation findings</b>	<b>Summary of written and physical evidence:</b> [name and summarise each document contained, set out how the evidence supported or did not support your findings and why]
	<b>Summary of witness evidence:</b> [name and summarise each witness statement, quote from statement where relevant, set out how the witness statement supported or did not support your findings and why]
	<b>Facts established:</b> [detail what the investigation has established]
	<b>Facts that could not be established:</b> [detail any part of the investigation that was inconclusive]

	<b>Mitigating factors:</b> [detail if there were any mitigating factors uncovered that are relevant to the investigation]
	<b>Other relevant information:</b> [detail any other information that is relevant to the matter]

<b>Conclusion</b> [if required]	<b>Recommendation:</b>  <b>Formal action/Informal action/No action required</b>
	<b>Further details on recommendation:</b> [such as the type of action suggested for example, formal disciplinary meeting, and if there are any other recommendations related to the matter. In disciplinary matters, the investigator should not recommend a possible sanction. This should only be considered at a disciplinary hearing]
	<b>Investigator’s signature:</b>  <b>Date:</b>

<b>Supporting documents</b>	[List all documents collected as part of investigation and included in report]
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## Appendix 5 – suspension guidance and checklist for managers

1. Where suspension is deemed to be appropriate the headteacher (or chair of governors) should meet with the employee as quickly as possible to advise them of their suspension, the reasons for it and the conditions of their suspension. This should be confirmed in writing to the employee at the meeting or as soon as possible afterwards. Whilst there is no entitlement for the employee to be accompanied at this meeting, if their chosen work colleague or trade union representative is available, they may choose to be accompanied
2. Where the allegation is received outside of normal working hours and further advice is needed, or more time is needed facilitate an initial inspection of the facts before making a decision on whether to suspend, the school may ask the employee to undertake alternative duties or remain away from school for one or two days to allow this to happen.
3. It is important not to enter into any detailed discussion about the misconduct allegations as this will be discussed when the employee attends an investigation meeting (where they can choose to be accompanied). The employee should be asked to return any school property/access cards/keys etc. before they leave the workplace.
4. Suspension is not a disciplinary sanction and it is important that discussions about suspension are conducted confidentially and in a respectful and sensitive way. The letter given to the employee will identify a named contact within the school that they can communicate with during the period of suspension.
5. Suspension can be ended during an investigation, or on completion of an investigation where the investigating officer determines that the misconduct allegations are either not substantiated or are no longer viewed to be sufficiently serious to warrant suspension.
6. Only the governing body can end a suspension. This would normally be done by the chair of governors on the advice of the investigating officer. It is not necessary for a suspension to continue until a disciplinary hearing takes place (where one is scheduled). However, if the outcome could be a finding of gross misconduct then the employee should remain suspended.
7. The school should minimise the amount of time employees are suspended from the workplace. Investigating officers are expected to conduct disciplinary investigations swiftly as a matter of priority and to keep the suspension decision under review.

### 8. Checklist for suspension of school staff

No.	Point to consider	Notes
1.	Is the nature of the allegation clear?	
2.	Does an initial investigation suggest that there is a prima facie case for gross misconduct (i.e. that there is substance to the allegation and that it is serious enough to warrant a full investigation)?	

No.	Point to consider	Notes
3.	Has HR been consulted for advice?	
4.	If the allegation involves actual or potential harm to children, has the LADO been consulted?	
5.	Does the allegation involve potentially criminal activity? If so, have the Police been consulted?	
6.	Has the person whose behaviour is complained of been allowed to provide an initial response?	
7.	Has the initial response been recorded, signed, and dated?	
8.	Is it safe for any child if the person complained of remains at school? Is this a low, medium or high risk?	
9.	Are there any risks to any adults at school if the person whose behaviour is complained of remains at work? Is this a low, medium or high risk?	
10.	Are there risks of the behaviour continuing if the person remains at school?	
11.	Have all explanations been properly considered and questioned appropriately at this initial stage?	
12.	Are there risks of evidence being destroyed if the person whose behaviour is complained of remains at school?	
13.	Are there any risks to property/buildings/site if the person whose behaviour is complained of remains at school?	
14.	Are there any current disciplinary warnings in place that may be relevant?	
15.	Have alternatives to suspension been considered i.e. working elsewhere in school/from home?	
16.	Is the proposed suspension reasonable in all the circumstances?	
17.	Should the person be suspended?	