

# Model Staff Disciplinary Policy & Procedure for Schools

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This disciplinary procedure is intended to help and encourage all employees to achieve and maintain acceptable standards of conduct and to make clear to all concerned the procedure to be followed by this School and Governing Body to address concerns about an individual's behaviour or conduct.

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# MODEL STAFF DISCIPLINARY POLICY & PROCEDURE FOR SCHOOLS

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This Model Policy & Procedure presupposes that a delegation is in place allowing the Headteacher to deal with accusations constituting lesser misconduct. Where this is not the case, please follow the procedure for Gross Misconduct.

## 1. INTRODUCTION

This disciplinary procedure is intended to help and encourage all employees to achieve and maintain acceptable standards of conduct and to make clear to all concerned the procedure to be followed by this School and Governing Body to address concerns about an individual's behaviour or conduct and any subsequent disciplinary action that may be taken.

The aim of the procedure is to ensure consistent and fair treatment for all members of staff within the school.

The rules relating to employee conduct, behaviour and attendance are summarised in the employment contract, Employee Code of Conduct, Codes of Practice and Professional Standards relating to specific occupations, Employee Guide, this Procedure and associated documentation.

This Procedure reflects the guidance set out in the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures (March 2015).

Where required throughout this procedure, the Chair of Governors will take appropriate action unless they are compromised, in which case the Vice Chair of Governors will take over the role and actions normally carried out by the Chair. If the Vice Chair is also compromised the Governing Body will have to select another Governor who is not compromised and minute the decision.

## 2. SCOPE

This policy and procedure will apply to staff working in the school, except those who are directly employed by the Local Authority and those working in the school via an employment agency, where a referral should be made to the Local Authority or the Agency as appropriate.

## 3. MATTERS OUTSIDE THE SCOPE OF THIS PROCEDURE

The following matters are outside the scope of this disciplinary procedure:

- Where employment is terminated:
  - By reason of redundancy;
  - By an employee reaching the end of a temporary or fixed-term contract;

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- Where any deficiencies in performance on the part of the staff member arise from a lack of aptitude or skill (in such cases the Capability Procedure will be used);
- It does not deal with sickness absence, other than unauthorised absence and abuse of the Sickness Absence Scheme (in such cases the Sickness Absence Policy should be followed).
- It does not deal with issues of behaviour until the Dignity & Respect in the Workplace Guidance has been concluded.
- Staff grievances and grievances lodged as a result of disciplinary action. If, however, action under the staff grievance procedure results in the need for disciplinary action then this disciplinary procedure will apply;
- Matters which ought to be dealt with through the Governing Body's general complaints procedure and which do not raise staff disciplinary issues for individual members of school staff;

## 4. GENERAL PRINCIPLES

This procedure is a way of helping and encouraging improvement in members of staff whose conduct is unsatisfactory and is not to be viewed as simply a means of imposing sanctions or punishment.

In all cases, the School and Governing Body will ensure that disciplinary cases are dealt with in an unbiased, open and fair way.

The principles in summary are as follows:

- Where appropriate, every effort will be made to address concerns about behaviour or conduct without recourse to formal procedures.
- No disciplinary action will be taken against a member of staff until the case has been fully investigated by a person who has no connection with the case in question.
- An Investigating Officer will be impartial and competent. Reasonable objections to an Investigating Officer relating to their ability to act impartially, or their competence for the role, will mean that the Investigating Officer may be changed.
- Where it is decided to deal with a disciplinary matter through lesser misconduct procedures, the member of staff will be informed of the allegation against them and will be given the opportunity to defend the allegation at the disciplinary hearing. This hearing may be before the Headteacher (or the Chair of Governors for allegations against the Headteacher, or where the Headteacher is involved in the investigation in another capacity) or the SD&D Sub Committee.

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- A member of staff will not be dismissed for a first breach of discipline in cases of lesser misconduct. However, should lesser misconduct be repeated it may result in the member of staff being disciplined for gross misconduct.
- Where it is decided to proceed to a hearing, the member of staff will be informed of the allegation, date, time and place of any hearing, the purpose of the hearing and the stage reached in the disciplinary procedure.
- The member of staff will be provided with the membership of the Staff Dismissal and Disciplinary (SD&D) Sub Committee prior to a hearing and advised of their right of objection to any committee member on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case.
- The member of staff will be provided, prior to the hearing, with the name of the Presenting Officer, the names of persons who will be present at the hearing and in what capacity, full details of the allegation, the evidence to be presented with supporting documentation, the names of any witness to be called and copies of written statements.
- The member of staff will have the right to be accompanied by a companion. A companion may be a work representative / official of their trade union or a work colleague during the investigation, the disciplinary hearing and the appeal hearing.
- A member of staff will have the right to appeal against any disciplinary sanction imposed by the Headteacher or Chair of Governors (in respect of lesser misconduct matters), or the SD&D Sub Committee (in respect of gross misconduct matters).
- Dismissal for gross misconduct will take place immediately following the decision of the SD&D Sub Committee or SD&D Appeals Sub Committee (if applicable). Dismissal under these circumstances will be without notice or payment in lieu of notice.
- Investigations and hearings will be conducted (all or part) in English or Welsh, or with access to translation facilities, at the request of the member of staff.

## **5. INFORMAL DISCUSSION WITH THE HEADTEACHER – OUTSIDE OF THE DISCIPLINARY PROCESS**

It is encouraged, where appropriate, for a member of staff's actions to be discussed with them as part of normal supervisory arrangements and without recourse to the formal procedures. In these circumstances, the member of staff will be given guidance and support from their line manager. This could take the form of advice, counselling, training instruction, coaching or other managerial strategies as appropriate. Such activity may be delegated to a member of the senior management team. In respect of the Headteacher however, this would be carried out by the Chair of Governors with advice and support from the HR Advisor or Challenge Advisor.

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The aim of this action is to ensure that problems are discussed so as to encourage and help the member of staff to improve and understand:

- What they need to do in relation to their conduct;
- How future conduct will be monitored and reviewed;
- The period of time over which conduct will be monitored; and
- That formal action might be taken if the conduct in question recurs.

Where the discussions and support structures which have been put in place to help the member of staff do not lead to the necessary improvement or the relevant changes in conduct, within the agreed timescale, the member of staff will normally be advised in writing of further action to be taken, which may be formal.

## 6. FORMAL PROCEDURES FOR LESSER MISCONDUCT

Responsibility for disciplinary matters where the allegation could constitute lesser misconduct is usually delegated by the Governing Body to the Headteacher.

In most circumstances, a hearing for lesser misconduct will take place with the Headteacher (or the Chair of Governors). However, there may be occasions where the matter will be referred to the SD&D Sub Committee.

If an allegation, which could constitute lesser misconduct, is made against the Headteacher, the Chair of Governors will be responsible for disciplinary action.

Lesser misconduct might include:

- Specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment etc.;
- Poor timekeeping and / or unauthorised absence e.g. absence from the workplace during school sessions without permission or in line with the school's policy;
- Refusal to carry out a reasonable instruction;
- Causing damage to property / equipment through negligence / not having due regard to school property;
- Causing unintentional superficial injury to a member of staff / pupil;
- Using inappropriate language;
- Petty theft e.g. making unauthorised private telephone calls or sending personal mail at the school's expense;
- Breach of dignity at work policies; or
- Unauthorised use of mobile phones / text messaging / social networking sites during lesson time.

## 7. INVESTIGATION

As soon as the alleged breach of discipline has been brought to the attention of the Headteacher (or the Chair of Governors) a full investigation must be carried out

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(unless the allegation involves issues of child protection - Please refer to Point 18 below).

It is not possible to be prescriptive about the time taken to undertake an internal investigation. However, investigations should aim to be completed within 28 calendar days wherever possible but this is dependent on the complexity of the case. If this is not possible the Investigating Officer will inform all parties of the delays, the reason for the delay and the likely date of completion of the investigation.

The member of staff who is the subject of the alleged breach of discipline, and all witnesses, will be interviewed and requested to provide a signed statement. Notes will be taken at all investigation meetings and a copy given to the party involved. No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected.

The member of staff will be given the opportunity to respond to the allegation and will have the right to be accompanied by a companion at an investigation interview meeting. A companion may be a representative / official of their trade union or a work colleague.

Once the investigation has been concluded, the Investigating Officer will present the findings to the Headteacher (or the Chair of Governors) in a written report. This will be done as soon as practicable after the conclusion of the investigation. The investigation report will be based on matters of fact and not opinions; references to, or expressions of views on, the personalities of individuals will not form part of the report.

The Headteacher (or Chair of Governors) may conclude that:

- No further action will be taken;
- Matters can be dealt with by informal discussion (refer to Point 5 above);
- There appears to be sufficient evidence for a hearing before the Headteacher / Chair of Governors or SD&D Sub Committee, and the possible outcome may be sanctions short of dismissal; or
- There appears to be sufficient evidence that the allegation constitutes gross misconduct to trigger a formal disciplinary hearing before the SD&D Sub Committee.

## **8. HEARING BEFORE THE HEADTEACHER OR CHAIR OF GOVERNORS (OR SD&D SUB COMMITTEE)**

Conduct that is considered to fall within the scope of lesser misconduct has been delegated to the Headteacher to deal with. The Chair of Governors will deal with lesser misconduct allegations against the Headteacher. A hearing will take place with the Headteacher (or the Chair of Governors) supported by advice from the HR Advisor.

The member of staff will be sent a copy of these procedures and will be informed in writing of the following information:

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- The nature of the alleged misconduct;
- The stage reached in the procedure;
- The date, time and place for the hearing;
- The possible outcome of the hearing; and

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- Their right to:
  - Submit documentation which will be circulated to all parties in advance of the hearing;
  - Ask questions relating to any documentation so produced;
  - State their case in person and / or through a representative;
  - Produce witnesses; and
  - Be accompanied by a companion. A companion may be a representative / official of their trade union or a work colleague.

There are four possible outcomes following such a hearing:

- There is no evidence to support the allegations and the matter is closed;
- Informal Action;
- First Written Warning;
- Final Written Warning; or

If, during the lesser misconduct hearing, evidence presented indicates that the behaviour constitutes gross misconduct, the hearing will be adjourned and the member of staff will be informed immediately of the decision to refer the matter to the SD&D Sub Committee for their consideration.

Lesser misconduct can be dealt with in the first instance by informal action. However, there will be occasions when it will be appropriate to give a member of staff a written warning. The sanction used will depend on the circumstances of the member of staff's behaviour.

Further advice on each of these sanctions is set out below. The sanctions a member of staff could receive will be in line with the nature and severity of the allegation. However, there may be occasions where a member of staff has had repeated lesser misconduct allegations against them and has not altered or improved their behaviour. This may result in a more severe sanction being given, e.g. a final written warning. However, the lesser misconduct behaviour may be serious enough to warrant a final written warning.

## 9. INFORMAL ACTION

As a result of the hearing, the Headteacher (or the Chair of Governors), with support from the HR Advisor or Challenge Advisor, may deal with matters by giving advice, counselling, training instruction, coaching or other managerial strategies as appropriate. Such activities may be delegated to a member of the leadership team. In respect of the Headteacher, however, this will be carried out by the Chair of Governors with advice and support from the HR Advisor or Challenge Advisor. For further information please refer to Point 5 above.

## 10. WARNINGS

Written warnings will be retained on the employee's personal file and, in most cases, will be disregarded for disciplinary purposes as follows:

- First Written Warning - After 12 Months
- Final Written Warning - After 18 Months

However, there may be occasions when the employee's conduct is satisfactory throughout the period of warning only to lapse soon thereafter.

## 11. FIRST WRITTEN WARNING

If at the conclusion of the hearing, it is decided to issue a First Written Warning, the Headteacher (or the Chair of Governors), will issue the First Written Warning to the member of staff in the presence of the employee's chosen companion. In situations where the decision cannot be made on the same day, confirmation of the outcome will be made in writing within 5 school days. Where this is not practical, the time limit can be extended by mutual agreement.

The letter will contain the following information:

- The nature of the misconduct;
- The stage reached in the procedure;
- What is expected in the future; and
- The right to appeal, the time limit within which the appeal should be made (10 school days) and how the appeal should be made.

## 12. FINAL WRITTEN WARNING

A Final Written Warning may be issued where lesser misconduct recurs despite attempts by senior managers to support the member of staff and improve their behaviour or conduct. A Final Written Warning may also be issued where a single instance of proven misconduct is considered to be of a serious nature.

Final Written Warnings may be given following a hearing before the Headteacher / Chair of Governors or SD&D Sub Committee. The decision will be confirmed in writing, within 5 school days, and will contain the following information:

- The nature of the misconduct;
- The stage reached in the procedure;
- What is expected for the future;
- That the next stage could be dismissal; and
- The right to appeal, the time limit within which the appeal should be made (10 school days) and how the appeal should be made.

Where this is not practical for decision to be confirmed in writing within 5 school days, the time limit can be extended by mutual agreement.

A record of the warning will be placed on the member of staff's personnel file.

## **13. APPEALS AGAINST FORMAL WARNINGS**

There is a right of appeal against any disciplinary sanction (refer to paragraph 25 of this procedure for information on appeals).

## **14. REFERRAL FOR CONSIDERATION UNDER PROCEDURES FOR GROSS MISCONDUCT**

There may be occasions where, at the end of an investigation into lesser misconduct matters, the evidence in the investigation report indicates that the behaviour constitutes gross misconduct. If the Headteacher (or the Chair of Governors), with support from the LA or Diocesan Officer or another agreed appropriate person, concludes that this is the case, a referral for formal disciplinary action for gross misconduct may be justified. In these circumstances the member of staff will be informed immediately of the decision made and that the matter is being referred to the SD&D Sub Committee for their consideration.

## **15. GROSS MISCONDUCT (WHERE THE ALLEGATION DOES NOT RELATE TO CHILD PROTECTION ISSUES)**

The term gross misconduct is used to mean an act, or omission, or a series of actions or omissions by a member of staff, that fundamentally repudiates the contract of employment. All gross misconduct allegations will be subject to a formal disciplinary hearing before the SD&D Sub Committee. The SD&D Sub Committee and SD&D Appeals Sub Committee must have at least the same number of governors. No governor will be a member of both Sub Committees and both Sub Committees will also have separate HR Advisors.

Where alleged misconduct is to be considered, responsibility for the arrangements to set up a disciplinary investigation rests with the Chair of Governors through the Clerk to the Governing Body.

Gross misconduct allegations are usually sent to the Headteacher or Chair of Governors). On receipt of an allegation the Headteacher (or Chair of Governors) will make an initial assessment of the situation (but not investigate) to determine the nature and circumstances of the allegation i.e. witnesses, when it occurred etc. If the conclusion is that the allegation may be true the member of staff and their trade union representative will be informed of the allegation immediately and that the formal disciplinary process is being engaged.

The Headteacher (or Chair of Governors) will arrange for the allegation to be thoroughly and fairly investigated. At this point the member of staff may be suspended by the Headteacher or Chair of Governors, on full pay and in line with the Suspension Protocol for Schools. Both the Headteacher and Chair of Governors can suspend staff but only the Governing Body can end a suspension unless the

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Governing Body has delegated this function to the Chair of Governors / the Chair of the SD&D Sub Committee and the decision has been minuted. Suspensions will be reviewed at intervals set out in this Disciplinary Procedure and the outcome will be reported to the member of staff and the Governing Body.

However, if after making the initial assessment of the allegation the conclusion of the Headteacher (or Chair of Governors) is that beyond any doubt it is impossible for the allegation to be true, the Headteacher (or Chair of Governors) may take no further action. The member of staff and their companion will be informed immediately of this decision.

Gross misconduct might include:

- Specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment etc.;
- Fraudulent acts or theft of property belonging to the LA, the school, fellow members of staff or pupils;
- Deliberate and serious damage to property belonging to the LA, the school, fellow members of staff or pupils;
- Violent behaviour including physical assault;
- Continuous bullying;
- Harassment or unlawful discrimination on any grounds;
- Physical, sexual or emotional abuse of pupils;
- Sexual misconduct at work;
- Physical violence;
- Gross negligence;
- Causing loss, damage or injury through serious negligence;
- Serious incapacity at work brought on by alcohol or other illegal substances on school premises;
- Serious insubordination;
- Deliberately accessing offensive or obscene material via internet sites, social networking sites or by messaging;
- Inappropriate texting;
- Theft or fraud in and out of the workplace;
- Dishonesty e.g. tampering with examination papers, revealing examination papers prior to examinations or altering examination results;
- Serious violation of the LA or the school's health and safety rules and standards;
- Criminal misconduct outside the workplace which reflects adversely upon the school or the member of staff's suitability to continue to be employed at the school;
- Knowingly providing false information on any matter relating to the member of staff's employment;
- Disclosure of confidential personal information;
- Serious breaches of health and safety;
- Humiliation of staff, victimisation of colleagues, parents / carers or pupils.



## 16. THE INVESTIGATION

As a possible outcome for gross misconduct hearings is dismissal, it is important that investigations into gross misconduct allegations are unbiased and thorough. Consequently, all investigations will be carried out by an appropriate person who has no connection or involvement with the case and has the relevant skills. The Chair of Governors is responsible for controlling and managing all aspects of the disciplinary process including the engagement of an appropriate investigator. The member of staff has the right to object to an Investigator on the basis of evidence that calls into question their ability to act impartially, in the circumstances of the case.

Prior to the investigation, the member of staff will be informed in writing of their rights under the School's Disciplinary Procedure, including the right to be accompanied by a companion at all meetings held in connection with the disciplinary matter. A companion may be a representative / official of their trade union or a work colleague.

Notes will be taken of the meeting. No undertaking of confidentiality can be given to witnesses, however, the overall confidentiality of the disciplinary process will be respected.

Further information and useful templates can be found in the Investigation Policy & Procedure for Schools.

## 17. THE INVESTIGATION REPORT

The report, once completed, will be given to the Headteacher and the Chair of Governors (or Chair of Governors and another Governor) who will consider the findings and decide whether, based on the findings of the report:

- there is no evidence to support the allegations and the matter is closed;
- the conduct does not amount to gross misconduct but may amount to lesser misconduct which can be dealt with by the appropriate person; or
- based on evidence, the conduct may amount to gross misconduct and is required to be referred to a Staff Disciplinary and Dismissal Sub Committee.

This discussion and decision will be minuted by the Clerk to the Governing Body. The member of staff will be advised of the outcome of the investigation as soon as possible in writing by the Clerk to the SD&D Sub Committee.

If agreement cannot be reached between the Headteacher and the Chair of Governors (or Chair of Governors and another Governor) on the way forward, it is recommended that the matter should be referred to a disciplinary hearing in front of the SD&D Sub Committee.

A copy of the investigation report, including all interview notes, will automatically be provided to the member of staff against whom the allegation has been made, as soon as possible but no less than 10 school days prior to the hearing, if the case is to proceed as outlined above.

### 18. ALLEGATIONS THAT INVOLVE ISSUES OF CHILD PROTECTION – RECEIPT OF AN ALLEGATION

Allegations involving issues of child protection will be brought immediately to the attention of the Headteacher (or Chair of Governors if the allegation is in respect of the Headteacher) and the designated Child Protection Officer in the School.

The Headteacher (or Chair of Governors if the allegation is in respect of the Headteacher) will make an initial assessment (but not investigate) to determine the nature and circumstances of the allegation, i.e. witnesses, when it occurred etc. The matter will be discussed with the Chair of Governors, Headteacher and the Lead Child Protection Officer in the Local Authority, to determine whether a referral to the Central Referral Team is required. If the allegation is about the Headteacher, the Chair of Governors will have the same discussion but without the Headteacher being present. If the conclusion of all parties is that it is impossible for the allegation to be true the Headteacher or Chair of Governors may not take any further action against the member of staff and no referral to the Central Referral Team is required. If there is any doubt, and agreement between these parties cannot be reached, the matter will be referred to the Central Referral Team.

If, however, the initial assessment by the Headteacher (or Chair of Governors if the allegation is in respect of the Headteacher), in discussion with the Lead Child Protection Officer in the Local Authority, indicates that an allegation might be true, there will be an immediate referral to the Central Referral Team, in accordance with local child protection procedures.

The member of staff will not be informed in advance that a referral is being made to the Central Referral Team in accordance with the All Wales Child Protection Procedure.

At this point, the Headteacher (or Chair of Governors if the allegation is in respect of the Headteacher) may suspend the member of staff, on full pay, in line with the Suspension Protocol for Schools.

After the Statutory Authorities have completed their consideration of the allegation, it will be referred back to the Governing Body to complete the Staff Disciplinary Process. This will happen even if the Statutory Authorities take the decision not to pursue a criminal investigation.

The Headteacher and Chair of Governors (or Chair of Governors and another Governor if the allegation is in respect of the Headteacher), with advice from the School's Designated Child Protection Officer and the Local Authority Lead Child Protection Officer as appropriate, will discuss:

- Whether the allegation is of a child protection nature and the behaviour constitutes gross misconduct which requires it to be independently investigated prior to any disciplinary hearing;
- Whether there is evidence of misconduct which should be treated as lesser misconduct; or
- Whether no further action is required.

If there is any doubt at all, or agreement cannot be reached as to whether the matter is a child protection issue, the allegation should be independently investigated.

## 19. INDEPENDENT INVESTIGATION

The requirement in Education Law is that the Governing Body must refer Child Protection allegations for independent investigation.

A referral for independent investigation should be made in the following circumstances:

- Where the pupil has suffered or is likely to suffer significant harm;
- Where the pupil has not suffered or is not likely to suffer significant harm **but** the allegation relates to inappropriate behaviour or poor safeguarding practice which may constitute gross misconduct;
- Where a child protection case has gone to court and a criminal conviction has been secured;
- Where a child protection case has gone to court but no criminal conviction has been secured;
- Where a child protection case has been referred to the CPS, but has not resulted in prosecution; or
- Where the Police and Social Services have concluded that there is insufficient evidence to take the issue forward through the criminal justice system.

A restriction is imposed (Regulation 7(4)<sup>25</sup>) on who can be appointed by the Governing Body as an Independent Investigator. The Independent Investigator cannot be:

- A governor of the school in question;
- A parent / carer of a current or former pupil of the school in question;
- A current or former member of staff at the school in question; or
- A person currently employed by the LA that maintains the school.

In order to make the process easier this task has been delegated to the Chair of Governors and the Governing Body's decision to this effect has been minuted. This must be done prior to the hearing of any disciplinary proceedings. The Independent Investigator's contact in relation to the running of the investigation will be with the Governing Body e.g. the Chair of Governors, and not the Local Authority or the Headteacher. The purpose of an independent investigation is to enable the Governing Body to comply with the law and to provide members of the SD&D Sub Committee with a thorough and unbiased investigation report, produced by persons with appropriate skills and training, to enable them to reach fair and unbiased decisions.

The Independent Investigator will not commence the investigation until after the Statutory Authorities have completed their investigation, unless express permission is given to commence sooner.

The Independent Investigator will set the parameters / terms of reference for the investigation and interview all witnesses in order to ensure a completely impartial and unbiased investigation is carried out. The report will not contain any conclusions or recommendations as these are matters for the SD&D Sub Committee to determine.

## **20. INDEPENDENT INVESTIGATION REPORT**

The report, once completed, will be given to the Headteacher and Chair of Governors (or Chair of Governors and another Governor if the allegation is in respect of the Headteacher). They will consider these findings and decide whether, based on the findings of the report:

- There is evidence to support a decision that the child protection allegations are well-founded, that they may constitute gross misconduct behaviour and that they will require a disciplinary hearing before the SD&D Sub Committee;
- There is evidence to support a decision that the allegation constitutes lesser misconduct behaviour which can be dealt with by the Headteacher (or Chair of Governors if the allegation is in respect of the Headteacher); or
- There is no evidence to support the child protection allegation and no further action needs to be taken against the member of staff.

If there is any doubt at all, or agreement cannot be reached by the Headteacher and Chair of Governors (or Chair of Governors and another Governor if the allegation is in respect of the Headteacher), the matter will be referred for a full hearing before the SD&D Sub Committee.

The member of staff and trade union representative will be informed of the decision as soon as reasonably practicable.

The Chair of Governors will ensure that all relevant papers, including the full investigation report, are sent to the member of staff and their companion, the person presenting the case against the member of staff, and members of the SD&D Sub Committee, as soon as possible but no less than 10 school days prior to the hearing.

## **21. APPOINTMENT OF INDEPENDENT NON-GOVERNOR MEMBER - CHILD PROTECTION ALLEGATIONS**

As required in law, the SD&D Sub Committee and the SD&D Appeals Sub Committee will be made up of at least two Governors plus an Independent Non-Governor with voting rights. The Appeal Sub Committee will have the same number of Governors as the first Sub Committee.

The Independent Non-Governor with voting rights must not be:

- A governor of the school in question;
- A parent / carer of a current or former pupil of the school in question;
- A current or former member of staff from the school at which the person subject to the disciplinary hearing is employed;
- An employee of the LA that maintains the school; or
- Related to any other member of either committees.



## 22. DISCIPLINARY HEARING (GROSS MISCONDUCT)

A disciplinary hearing will be held as soon as it can be arranged by the Clerk to the SD&D Sub Committee even if the member of staff has subsequently resigned. Where the member of staff is on sick leave please seek the advice of your School's HR Advisor.

The member of staff will be informed in writing of:

- The date, time and place for the disciplinary hearing, seeking agreement to dates from members of the Sub Committee, the member of staff, any witnesses appearing in person and the LA and Diocesan Authority (if appropriate);
- The purpose of the hearing and the range of possible outcomes;
- The right of a member of staff to be accompanied by a companion. A companion may be a representative / official of their trade union or a work colleague;
- The membership of the SD&D Sub Committee;
- The name of the person presenting the case against the member of staff;
- The full details of the allegation, the evidence to be presented and the names of any witnesses to be called, etc.
- Who is to be the Advisor to the SD&D Sub Committee; and
- The date by which all relevant documentation should be received by the Clerk prior to the hearing.

The Clerk will arrange for the Investigating Officer's report and appendices to be distributed to the member of staff and their representative prior to the hearing, including up-to-date procedures, as soon as possible but no less than 10 school days prior to the hearing.

The staff member will be afforded the right to object to any member of the SD&D Sub Committee on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case. Any objections to be made within 5 school days of notification of the membership of the SD&D Sub Committee.

## 23. THE HEARING

The hearing will be conducted in a fair manner with all parties having the opportunity to present evidence and call and question witnesses. There will also be an opportunity for the Presenting Officer and the member of staff and / or their companion to summarise their case. The Clerk to the Governing Body will be present to record the hearing.

Once this part of the hearing is completed there will be an opportunity for the SD&D Sub Committee to receive HR / legal advice. Once this is received members of the Sub Committee will be left alone with the Clerk to discuss the evidence and make their decision.

# MODEL STAFF DISCIPLINARY POLICY & PROCEDURE FOR SCHOOLS

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Having considered all the evidence and taken into account advice provided, the SD&D Sub Committee may conclude that:

- The allegation is unproven and there is no action to be taken;
- The alleged behaviour constitutes lesser misconduct and a First Written Warning or a Final Written Warning should be issued; or
- The allegation of gross misconduct is proven and, depending on the severity of the misconduct, an appropriate sanction shall be imposed, which may be summary dismissal.

Where possible, the decision will be given verbally at the end of the hearing. If for some reason this is not possible, the Sub Committee's decision will be given in writing to the member of staff within 5 school days after the hearing. At this point, the member of staff will also be informed of their right to appeal and the timescales within which this must be made.

## 24. POSSIBLE SANCTIONS

- Specified training and development;
- Issue of formal warning (where the alleged behaviour constitutes lesser misconduct); or
- Demotion to a lower-graded position (if practical and appropriate as a sanction short of dismissal) and loss of salary; or
- Dismissal of the member of staff with or without notice.

## 25. DISCIPLINARY APPEAL HEARING

A member of staff is entitled to appeal against a decision of the SD&D Sub Committee. The notice of the intention to appeal needs to be lodged with the Clerk to the SD&D Appeals Sub Committee within 10 school days of receipt of the SD&D Sub Committee's decision. The appeal notice will need to include the grounds for the appeal.

The appeal will be heard by the SD&D Appeals Sub Committee within 30 school days of receipt of the appeal notice. Appeal hearings will focus on the issues set out in the appeal notification, therefore the appeal process will not ordinarily take the form of a complete re-hearing. However, under certain circumstances e.g. where new evidence comes to light or the first hearing process is alleged to be flawed or biased, it may be appropriate to rehear part, or all, of the case. This decision will be taken by members of the SD&D Appeals Sub Committee with advice from the HR Advisor. The member of staff will be given notice of the date and time of the appeal hearing.

Agreeable times and dates will be arranged for all parties concerned where possible.

The SD&D Appeals Sub Committee will, after considering all the facts presented to it, including any new evidence, come to one of three conclusions:

- Uphold the decision of the SD&D Sub Committee;

- Impose a lesser penalty; or
- Conclude that no disciplinary action should be taken against the member of staff.

The SD&D Appeals Sub Committee cannot impose a more severe penalty than that imposed by the Headteacher / Chair of Governors or SD&D Sub Committee in lesser misconduct cases, or the SD&D Sub Committee in gross misconduct cases.

The decision of the SD&D Appeals Sub Committee will be final and the staff member will be informed in writing within 5 school days. Where this is not practical for decision to be confirmed in writing within 5 school days, the time limit can be extended by mutual agreement.

If, as a result of an appeal, disciplinary action is withdrawn, all details thereof will be expunged from the member of staff's personal file and they will be informed accordingly. Informal action or support may still be recommended.

## 26. SUSPENSION

There may be instances where suspension from the school with pay is necessary while investigations are carried out. Examples include potential gross misconduct cases, health and safety concerns or where there are risks to an employee or pupil(s), property or responsibilities to other parties.

The HR Advisor must be consulted before a decision to suspend is made. This is especially important where there are safeguarding concerns, where specialist advice from Children's Services or other agencies e.g. Police, may be required before taking any action. The HR Advisor must notify the Director of Education & Children's Services where a decision is made to suspend a member of staff.

Suspension must not be an automatic response when an allegation is reported; all options to avoid suspension should be considered prior to taking that step, including undertaking a risk assessment. If the case manager is concerned about the welfare of other children in the community or the member of staff's family, those concerns should be reported to the Local Authority Designated Officer (LADO) or Police. Suspension is highly unlikely to be justified on the basis of such concerns alone.

In exceptional circumstances, suspension may also be considered where there are **reasonable** grounds for believing that evidence has been tampered with, destroyed or witnesses pressurised during the investigation process or prior to the disciplinary hearing.

Suspended employees should be advised that this is not considered as disciplinary action.

It is in the interests of all parties to progress the investigation and disciplinary hearing (if appropriate) as quickly as possible.

All suspensions must be kept under review and brought to a conclusion at the earliest possible opportunity. (NB: in some cases, account will have to be taken of the requirements of professional codes and standards governing children).

Only the Headteacher or the Chair of Governors may suspend a member of staff. However, that suspension may only be lifted by the Governing Body (unless this responsibility has been delegated i.e. to the Chair of Governors, the Chair of the Staff Disciplinary & Dismissal Sub Committee or the Staff Disciplinary & Dismissal Appeals Sub Committee). Any such delegation must be minuted.

If a suspension is lifted the Governing Body must immediately inform the School's HR Advisor.

For further information and guidance please refer to the Suspension Protocol for Schools.

## **27. SUMMARY**

In adopting this procedure, the Governing body has taken due regard of advice and guidance from the LA and the Disciplinary and Dismissal Procedures for School staff Welsh Government Circular No. 002/2013 (2013).

The Governing Body will also consult further before any amendments are made to this Disciplinary Procedure.

## **28. ENSURING EQUALITY OF TREATMENT**

This policy must be applied consistently to all employees irrespective of race, colour, ethnic or national origins (including citizenship), language, disability, religion, belief or non-belief, age, sex, gender reassignment, sexual orientation, parental or marital status/civil partnership, pregnancy or maternity.

If you require this publication in an alternative format please contact People Management on 01267 246100 or e-mail:

[PMPBusinessSupportUnit@carmarthenshire.gov.uk](mailto:PMPBusinessSupportUnit@carmarthenshire.gov.uk)

**This Policy is also available in Welsh**