

## **West Row Primary School Disciplinary Procedure**

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## General Introduction

This policy document contains the Model Disciplinary Procedures for schools maintained by Suffolk County Council.

### 1. Application of the Procedures

- 1.1 This procedure applies to all teaching and support staff in maintained schools (including those seconded to other schools or organisations) in which the governing body has adopted them for use. The schools concerned are those Community and Controlled schools which have delegated budgets under S.45 of the School Standards and Framework Act 1998, or successor legislation. The Education (Modification of Enactments relating to Employment) Order 1999 provides for the governing bodies of schools concerned to be deemed the employer for the purpose of this policy.
- 1.2 It also applies to local authority-employed 'unattached teachers' and FE staff. This policy specifies where there are differences from schools-based staff, for example, in relation to the decisions and the route for any subsequent appeal against the decision.
- 1.3 An employee working within a school but employed on another organisation's terms and conditions of employment should have any disciplinary matter managed under their appropriate policy/procedure.

### 2. Purpose

- 2.1 The overall purpose of these procedures is to promote fairness and order in the relationship between school governing bodies and the employees who come under their control. It aims to ensure that any disciplinary matter is dealt with promptly, fairly and that, if appropriate, steps are taken to establish the facts and to give the employee an opportunity to respond before taking any formal action. This includes ensuring that individuals involved in the disciplinary process are treated reasonably and equitably, with dignity and respect regardless of age, disability, gender, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief and sexual orientation.
- 2.2 Every member of staff is expected to maintain high standards of professional conduct at all times. This includes times when they are not at work and in a situation where their conduct may potentially bring the school, service or profession into disrepute.
- 2.3 These procedures take account of the ACAS Code of Practice on Disciplinary and Grievance Procedures. They also take account of the conditions of service of the groups of employees to whom they apply and, where adopted, replace any model procedures to be found in the various conditions of service.

### 3. Interpretation

- 3.1 In these procedures the term "Governing Body" means the governing body of the school concerned and any committee of the Governing Body acting with delegated authority, or any body acting in a similar way to a governing body. The terms "Director of Children

and Young People's Services" and "Head of Legal Services" includes any officer acting with appropriate delegated authority on behalf of the County Council.

Any provisions of these procedures should be interpreted in the light of the applicable legislation which confers the relevant decision making powers upon school governing bodies and determines the manner in which schools should be governed, in particular The School Standards and Framework Act 1998 (Schedules 16 and 17) and The School Staffing (England) Regulations 2009, as in force from time to time and including any successor legislation.

#### **4. Confidentiality**

- 4.1** All proceedings and documentation will remain confidential to the parties concerned and will not be disclosed to others, with the exception of official bodies which have a right to require disclosure of information or where the school has a responsibility to report or refer a case (see paragraphs 5 and 6 below).
- 4.2** In particular, all parties should be mindful of the need to preserve confidentiality on matters relating to children and young people. Wherever practicable, pupil statements and other statements referring to pupils will have their details protected by redaction, to avoid pupils being identified and/or sensitive information being shared. Save in exceptional circumstances, pupils will not be asked to give evidence at disciplinary hearings.
- 4.3** In respect of schools, the delegated committee of the Governing Body will be notified of the outcome of any formal process, once it has concluded.

#### **5. Safeguarding children and young people**

- 5.1** The County Council issues separate guidance on managing allegations of abuse relating to children or young people made against school staff. Schools must refer to this in all cases in which it is alleged that a person who works with children has: behaved in a way that has harmed, or may have harmed, a child; or, possibly committed a criminal offence against, or related to, a child; or, behaved in a way that indicates s/he is unsuitable to work with children.
- 5.2** In such cases, appropriate and prompt consideration by relevant bodies (for example, the County Council's Local Authority Designated Officer or a Multi Agency Strategy Meeting) should be allowed for before the commencement of any processes under these procedures, usually also including the consideration of suspension. In some cases, this may require consideration of a short period of 'garden leave' pending initial consideration of the allegations under safeguarding procedures.

#### **6. Referral of cases**

- 6.1** An immediate referral to the County Council's Audit Team must be made in all cases of alleged financial irregularity, fraudulent behaviour and theft or misappropriation of school property, before the commencement of any processes under these procedures.

- 6.2** A referral to the Disclosure and Barring Service and/or the National College for Teaching and Learning may be made by the school, upon the conclusion of disciplinary proceedings (and any appeal), in the following circumstances:
- (a) A referral to the Disclosure and Barring Service must be made if an employee has harmed, or poses a risk of harm to a child, and who has been removed from working in regulated activity, or would have been removed had they not left; or the employer becomes aware that the employee has received a caution or conviction for a relevant offence
  - (b) Schools (or the County Council in respect of "unattached" teachers) have a legal duty to consider whether to refer to the National College allegations of serious misconduct by a teacher when they have dismissed that teacher for misconduct, or would have dismissed them had they not resigned first.

## Disciplinary Procedure

### 7. Scope

- 7.1** This procedure will be used in all cases where misconduct, omission or, in certain circumstances failure in performance is such as to warrant disciplinary action.
- 7.2** The term "misconduct" in this procedure covers instances of misconduct, omissions or failures in performance which may be reasonably attributed to wilful or negligent acts or omissions on the part of an employee. A non-exhaustive list of examples of the types of acts and omissions which might be considered under this procedure is contained in Schedule 1.
- 7.3** Where any deficiencies in performance on the part of the employee arise from a lack of aptitude or skill rather than any wilful or negligent failure to carry out his/her duties the Capability Procedure should normally be used.
- 7.4** Separate guidance exists for dealing with problems arising from alcohol dependence or substance abuse. However, significant problems of misconduct arising from behaviour whilst under the influence of alcohol or drugs, particularly in cases of failure to engage with support offered, may also be dealt with under this procedure.

### 8. Exclusions

- 8.1** This procedure does not apply where employment is terminated by reason of redundancy or incapability arising from ill-health.
- 8.2** The normal management of employees and the associated processes such as performance review/appraisal are outside the scope of this procedure. There will be occasions when it is appropriate for an employee's performance and behaviour at work to be discussed with him/her as part of the normal management arrangements. If there is any shortcoming identified, an employee will be assisted to understand the standard of behaviour or performance required. This may be confirmed by a written instruction. By the very nature of these situations, the employee will not normally be accompanied at any meetings or discussions, although they may seek the advice of a trade union

representative. Although there is no right to be accompanied at meetings in the course of normal performance management, this may be helpful and reasonable consideration will be given to any request for support from an employee's professional association. However, where the availability of a preferred representative would prevent a manager from dealing with concerns and providing appropriate support in a timely manner, it may not be possible to accommodate such a request.

## **9. Investigation**

- 9.1** If the normal management processes do not bring about the required changes in behaviour or performance, the next step will normally be consideration of action under the formal disciplinary procedure. If it is sufficiently serious, a single instance of misconduct may be such as to warrant immediate consideration under the disciplinary procedure. Schools should seek the advice of their HR service provider before instituting formal disciplinary action or suspending an employee.
- 9.2** In order to establish the appropriateness of using the formal Disciplinary Procedure, it will normally be necessary for Headteacher to conduct or commission a formal investigation. In cases relating to the Headteacher, the Governing Body may seek advice from the Local Authority and/or their HR service provider regarding commissioning an investigation, and would be responsible for commissioning any investigation. In the case of "unattached teachers", the employee's line manager or another manager within the directorate management chain will normally conduct or commission the formal investigation, referring to the Head of Service as necessary. If the employee concerned is a trade union official (as statutorily defined) the matter will be discussed with his/her branch secretary or a full time official before an investigation is undertaken. An employee who is the subject of investigation may be accompanied at any interview or similar investigatory meeting by a trade union representative or work colleague. A record should be made if the employee agrees to continue the procedure without support. The employee and any witnesses who make statements during the course of any investigation will normally be asked to check and sign any written statement of evidence.
- 9.3** The Investigating Officer's report will clearly state whether or not he/she believes there is a case to answer under the school's disciplinary procedures and, if they believe there is, the nature and seriousness of the alleged misconduct that needs to be further considered at a disciplinary hearing.

## **10. Consideration of suspension or redeployment**

In certain circumstances it may be necessary to suspend an employee while an investigation is carried out into the situation giving rise to concern. The Headteacher may suspend an employee. S/he must immediately inform the Chair of Governors and the Director of Children and Young People's Services of the action s/he has taken.

If it is necessary to suspend the Headteacher, the decision must be taken by the Chair of Governors, who must immediately inform the Director of Children and Young People's Services. In circumstances where the Chair of Governors is unable to take a decision regarding the suspension of the Headteacher, for example, where s/he is indisposed or

has a conflict of interests, the decision to suspend the Headteacher may be taken by the Vice-Chair.

The act of suspension may be carried out by an officer of the Local Authority on behalf of and on the instructions of the Headteacher, Chair of Governors or Vice-Chair as appropriate.

In the case of "unattached teachers", suspension may be carried out by the relevant Head of Service or, in their absence, a more senior officer.

#### **10.1** Suspension will normally be considered only:

- (a) Where there is a reasonable belief the employee's continued presence at work may put themselves or others at risk, or risk their employer's responsibilities to other parties;
- (b) Where there is a reasonable belief that the employee's continued presence at work may hamper or compromise an investigation process; or
- (c) Where relationships have broken down.

#### **10.2** In all cases, consideration should be given to alternatives to suspension (for example, additional supervision or alternative/restricted duties, work arrangements or garden leave), remembering that consideration can be given to suspension at any time during the investigation. In cases of alleged gross misconduct where it is decided that suspension is not necessary, the school should record that, having considered this procedure and normal practices, it has been decided not to suspend.

#### **10.3** Suspension does not constitute disciplinary action; it is a neutral act. If it is necessary to suspend an employee during investigations, it will be on full pay. Support for an employee who is suspended may be made available as set out in paragraph 17.

#### **10.4** Suspension should not be unnecessarily protracted. The continuance of suspension should be kept under regular review and immediately lifted if the circumstances of the case no longer justify it. When suspension is lifted, it may be necessary to consider a re-integration plan before making arrangements for the employee's return to work.

### **11. Disciplinary Hearing**

#### **11.1** If it appears, after investigation, that there is a case to consider, a disciplinary hearing will be convened. In accordance with the School Staffing Regulations, a hearing may be conducted by the Headteacher or one or more governors, normally a panel of the Hearings Committee (or other authorised committee). If dismissal is a possible outcome, the hearing must be conducted by that committee of the Governing Body which is authorised to make the appropriate determination, and only by the Headteacher where the authority to dismiss has been delegated to them by the Governing Body. In the case of "unattached teachers", the hearing will be conducted by an appropriate manager within the directorate management chain or, for hearings where dismissal is a possible outcome, the relevant Head of Service or a more senior officer.

- 11.2** Where it is proposed to hold a disciplinary hearing, the employee will be informed in writing, **normally at least 10 full working days in advance of the hearing**, of:
- (a) the nature of the alleged misconduct and, where it possible to state, the warning stage which the employee has already reached;
  - (b) the date, time and place for the hearing;
  - (c) the name of the person presenting the case and witnesses;
  - (d) the name(s) of the person(s) hearing the case
  - (e) the employee's right to produce written statements, **normally at least five full working days before the hearing**, and invite relevant witnesses to give evidence on his/her behalf;
  - (f) the employee's statutory right to be accompanied by a trade union official or work colleague of his/her choice
  - (g) *where a possible outcome of the hearing is a determination that the person shall cease to work at the school/be dismissed*, the possible outcome of the meeting.
- 11.3** **All paperwork should be issued and received by the school (or Council as appropriate) as above, meaning that normally it can be circulated to all parties at least five full working days before the hearing.** Paperwork presented at a later date will only be considered in exceptional circumstances, at the discretion of the Headteacher or Local Authority Officer/chair of the panel hearing the case. Any request by the employee for the school (or Council as appropriate) to make available documents for consideration at the hearing should be made in good time, in order that the above timescales can be observed.
- 11.4** Foreshortened timescales for hearing dates and issue/receipt of paperwork may be mutually agreed, for example, where a matter arises close to the end of the school year and it is in all parties' interests to conclude matters before the school closure period.
- 11.5** The hearing will be conducted in as informal a manner as possible in accordance with the procedure laid down in Schedule 2.
- 11.6** The person or committee hearing the case may make a determination which is within their delegated powers. That determination may be communicated orally to the employee after the hearing, but will in any case be confirmed in writing, normally within five working days. The employee will be informed whether or not the allegations have been upheld. If the allegations are upheld, in full or in part, the findings and the decision will be confirmed in terms of:
- (a) the nature of the misconduct;
  - (b) the appropriate sanction i.e. a first or final warning or determination that the employee shall cease to work at the school (to dismiss in the case of voluntary aided schools or "unattached teachers");

- (c) how to appeal against the decision and/or any disciplinary sanction, the length of time within which an appeal must be lodged, and whom it should be addressed to;
- (d) If the determination is to issue a disciplinary warning, the employee will also be informed in writing of:
- (e) what improvement is expected for the future;
- (f) the length of time for which the warning is active (not usually less than three months nor greater than twelve);
- (g) any other information in respect of the improvement required e.g. any review of arrangements, and whom the employee should contact for assistance;
- (h) what might happen if the matter proceeds to the next stage e.g. what the possible sanction might be.

**11.7** Employees will be required to sign and return a copy of any such letter confirming receipt.

## **12. Postponement of hearings and non-attendance**

**12.1** The date of the hearing will be postponed by up to five working days if the employee's representative is unable to attend on the specified date.

**12.2** Employees must take all reasonable steps to attend a hearing. A hearing will not normally be held in the absence of the employee, except by mutual agreement, unless s/he fails to attend a hearing without reasonable cause, is otherwise constrained from attending (e.g. s/he is held in custody), or as described below. Separate advice should be sought in respect of employees absent from work due to pregnancy or maternity leave.

**12.3** Sickness will be considered reasonable cause for non-attendance where the employee's GP or medical practitioner has certified the individual is too ill to attend formal meetings, and further advice on this matter may be sought from the school/Council's occupational health services provider. If the employee is unable to attend due to long-term sickness absence and no alternative date can be mutually agreed, the hearing may be held in their absence.

**12.4** It is important that every effort is made to reach a conclusion in all cases of safeguarding allegations that have a bearing on the safety or welfare of children. If an employee tenders their resignation or refuses to co-operate with the process, this must not prevent such a safeguarding allegation being followed up in accordance with safeguarding procedures. Wherever possible, the person should be given a full opportunity to answer the safeguarding allegation and make representations about it. However, it may be necessary to conduct a hearing in their absence and reach a judgement about whether the safeguarding allegation can be regarded as substantiated on the basis of all the information available. In these circumstances, the Headteacher, Panel or manager may also make a decision regarding the sanction that would have been applied had the employee remained in employment.

**12.5** In cases where it is necessary to proceed with a hearing in the absence of the employee and it is known this will be necessary in advance of the hearing, the employee will be offered the opportunity to make additional written submissions to the hearing and/or allow their representative to make statements on their behalf at the hearing. Where non-attendance is not known in advance, after consideration of the circumstances, if postponement is not considered appropriate, the hearing may proceed with consideration of any written submission from the employee already received and, where requested and available, appropriate contributions from their representative.

**12.6** Similar consideration as outlined above will be given to the need to proceed with investigatory processes in the employee's absence, where this is appropriate.

### **13. Warning Stages and Disciplinary Sanctions**

**13.1** The Disciplinary Procedure provides for the employee to be given every reasonable opportunity to improve his/her conduct or performance. Unless the circumstances are exceptional e.g. gross misconduct, no employee should be dismissed without first having received at least one written warning and having had the opportunity to improve his/her conduct. Under most circumstances, this procedure provides for an employee to receive two written warnings for misconduct of the same or similar nature, a first warning and a final warning, before dismissal is considered.

**13.2** Written warnings will normally remain in force for between six and twelve months. In exceptional cases, the person or committee hearing the case may make a determination that the warning will stay in force for a longer period. This may be appropriate where there is a history of repeated breaches of the same or similar disciplinary rules, or where the misconduct is serious enough that the committee hearing the case could consider dismissal as a possible sanction. The employee may appeal against the imposition of an extended warning period.

**13.3** In addition to the disciplinary sanction, the Governing Body of the school or the County Council may, in appropriate circumstances, take action to recover monies or property legitimately due to it. Reporting of cases to relevant bodies may also be necessary, as described in paragraphs 5 and 6 of the General Introduction to this document.

#### **First Warning**

**13.4** Where an employee's misconduct is such as to warrant a formal warning, and where there is no previous warning current, a first written warning will normally be the appropriate sanction.

#### **Final Warning**

**13.5** Where a first written warning is current any further misconduct during the currency of that warning will normally lead to a final written warning being issued. A final written warning may also be issued in circumstances where an employee is shown to have committed serious misconduct, omission, or failure in performance short of gross misconduct. It may also be appropriate where dismissal would be a reasonable sanction, but the committee or individual hearing the case has good reason to believe that a warning will prove to be

effective. A final written warning will contain a clear indication that any further disciplinary offence during the currency of the warning will normally, if substantiated at a hearing, result in dismissal without further warning.

### **Dismissal**

- 13.6** If further allegations of misconduct are brought while a final written warning is current, the committee or individual hearing the case will normally determine that the employee shall cease to work at the school (in the case of voluntary aided or foundation schools or "unattached teachers", to dismiss), unless there are strong mitigating circumstances. The committee or individual hearing the case may alternatively in appropriate circumstances determine to extend the final warning for a period between three and twelve months.
- 13.7** If the allegations against the employee are so serious that they would constitute gross misconduct (see Schedule 1, paragraph 21), the committee or individual hearing the case may determine that the employee shall cease to work at the school (in the case of voluntary aided or foundation schools or unattached teachers to dismiss), even where no disciplinary warning is current. In this case the Director of Children and Young People's Services will dismiss the employee without notice.
- 13.8** Where the employee's misconduct is not such as to constitute gross misconduct, but has, nevertheless, led to a fundamental breakdown of mutual trust and confidence such that it would be impossible or impractical to continue his/her employment, the committee or individual hearing the case may determine that the employee shall cease to work at the school (in the case of voluntary aided or foundation schools or "unattached teachers" to dismiss). In this case the Director of Children and Young People's Services will dismiss the employee with due notice. Such a case would be exceptional.
- 13.9** For school-based employees a decision that an employee shall cease to work at the school may only be taken by an appropriate committee (or individual) empowered to do so under the School Government Regulations in force at the time. The Director of Children and Young People's Services (or his/her representative) is entitled to attend any meeting of a Governing Body or its committees which may determine that an employee shall cease to work at the school. The Director of Children and Young People's Services will dismiss an employee on the instructions of a committee (or individual) which has the power to issue such an instruction.
- 13.10** This procedure provides for the right for the Director of Children and Young People's Services and/or the Head of Legal Services to attend any disciplinary hearing (including any appeal hearing) where a determination that an employee shall cease to work at the school (or dismissal) is being considered. Schools must notify the Director of Children and Young People's Services when such a hearing is convened.

### **Alternatives to dismissal**

- 13.11** In some cases, alternatives to dismissal may be considered at the Headteacher's, Panel's or manager's discretion, which will usually be accompanied by a final written warning. Examples include, but are not limited to:

- (a) Demotion
- (b) Transfer to another department or job
- (c) Recommendation for mediation between parties.

In all cases, advice should be taken from the school's HR service provider.

## 14. Appeals

- 14.1** An employee is entitled to appeal against any disciplinary sanction imposed. If the sanction has been imposed by the Headteacher, the appeal will be to a committee of the Governing Body. Where the sanction has been imposed by a committee of the Governing Body, the appeal will be to the Governing Body's Appeals Committee. For "unattached teachers", the appeal will be to another manager, normally more senior manager to the manager who conducted the initial disciplinary hearing.
- 14.2** An employee who wishes to appeal against a disciplinary sanction must lodge notification of his/her intention to appeal along with full grounds for their appeal (including any supporting documentation) within 14 days of the date of written notification of that sanction, as directed in the letter of notification.
- 14.3** A date for an appeal hearing will normally be arranged and notified to the parties within 14 days of an appeal being registered. All parties will normally be given at least 10 days' notice of the date of the appeal. Any further submissions from those responding to the appeal should normally be provided to the school (or the manager hearing the appeal) at least five working days before the appeal hearing, to enable them to be circulated to the parties in good time before the hearing.
- 14.4** The main grounds for an appeal are likely to be, although are not limited to:
- (a) if the employee wishes to contest the finding and/or the disciplinary sanction;
  - (b) if new relevant evidence not available to the original hearing becomes available;
  - (c) if there is an alleged lack of fairness in the original hearing.

If the appeal is against the finding and the sanction imposed by the original hearing, the appeal will normally constitute a complete re-hearing. If the appeal is against the disciplinary sanction only, the Appeal Committee (or manager in the case of "unattached teachers") may agree with the appellant and his/her representative that they will hear submissions in mitigation of the sanction.

- 14.5** The procedure for the conduct of an appeal is set out in Schedule 2. An Appeal Committee (or manager in the case of "unattached teachers") may uphold the original finding and sanction; uphold the original finding but modify the sanction (only in the most exceptional case will the severity of the original sanction be increased); or not uphold the finding and therefore remove the sanction.

## **15. Records and lapsed warnings**

- 15.1** Advice given in the course of normal performance management and records of any allegations, complaints and subsequent investigatory or disciplinary processes all form part of an employee's employment history. As such, it is important that proper records are retained, in accordance with the data protection legislation and the recommendations within the ACAS Code of Practice. Furthermore, where an allegation relates to the safety and welfare of children, there is a requirement to retain a clear and comprehensive summary of any allegations made, details of how and who followed up the allegation and any resolution and conclusion. This record must be retained at least until the person attains normal retirement age or for a period of 10 years from the date of the allegation if that is longer. This includes people who leave the organisation.
- 15.2** As such, although a disciplinary warning may be deemed to have 'lapsed' after the period of the warning has expired, the record of the disciplinary matter should not be removed from the employee's employment history/personal file held by the school. This applies equally to cases where a disciplinary complaint against an employee is withdrawn, or is found to have been mistakenly initiated, although a clear record of this outcome should be prominent in the papers retained.
- 15.3** Allegations that are found to be malicious should be removed from the employee's employment history/personal file held by the school, and any that are unsubstantiated, are unfounded or malicious should not be referred to in employer references.

## **16. Headteachers**

- 16.1** In locally managed schools the responsibility for the conduct and discipline of employees at the school will be part of the headteacher's responsibility. Where there is a concern or complaint about misconduct on the part of the Headteacher, it will normally be the responsibility of the Chair of Governors to initiate any necessary action. Chairs of Governors should seek the advice of the Director of Children and Young People's Services before instigating any formal disciplinary action or suspending a headteacher.
- 16.2** If there is sufficient cause for concern, the Chair of Governors may request the Director of Children and Young People's Services to carry out an investigation into all the material facts and circumstances of the complaint or concern. This investigation will be carried out in confidence. The Chair of Governors and one other governor (who should not later be a member of a committee which hears the case) will consider the report of the investigation and any recommendations of that report and will decide what action is to be taken.
- 16.3** If the Chair of Governors and the one other governor decide to take no action after due consideration of the Director of Children and Young People's Services report, they will report their decision and the reason for that decision (but not the details of the investigation) to the full Governing Body.
- 16.4** If the governors considering the report decide that the matter should be considered under the formal disciplinary procedure, the matter will be considered by the Hearings

Committee of the Governing Body. The procedure will be conducted as for all other employees.

## **17. Advice and Support to Employees**

- 17.1** In most cases employees subject to allegations or complaints being dealt with under this procedure will seek the advice and support of their trade union or professional association. However, employees may address questions about procedure, the conduct of investigations or hearings, or other related matters to the Headteacher, the Chair of Governors or the Director of Children and Young People's Services, where they are directly responsible for those procedures.
- 17.2** It will normally be appropriate to make arrangements for a nominated individual to keep the employee informed of developments and to offer support, particularly in cases where the investigation is prolonged, the employee is suspended from duty, or has been offered and accepted leave of absence, pending investigations. This should be arranged through a suitable senior member of the School's staff or an officer of the County Council who is not involved in the investigation or procedure in any other way. The name of a nominated individual will normally be notified to the employee.
- 17.3** Employees, including witnesses, should also be encouraged to access support available through the school/County Council's participation in any well-being service, for example, the Employee Assistance Programme, or their own GP, as necessary.

## **18. Grievance complaints**

- 18.1** If an employee wishes to raise a grievance during the disciplinary process, this should be addressed in writing to the Chair of Governors of the school (or relevant Head of Service in the case of an "unattached teacher"). They will decide what action should be taken and their decision in this matter will be final. Depending on the nature of the grievance, this may be to temporarily suspend the disciplinary process to allow the grievance to be considered. Complaints about the conduct of the disciplinary process will not normally be dealt with under the grievance procedure, but can be raised during the disciplinary hearing and any subsequent appeal. If action taken by the Chair of Governors is the subject of the grievance, s/he will delegate the matter to another governor for consideration and decision.
- 18.2** In cases where the grievance raised is unconnected to the disciplinary matter, it may be appropriate for this to be considered under grievance procedure running in parallel with disciplinary procedures.

## **19. Criminal offences**

An allegation of a criminal offence committed outside of work will not be treated as an automatic reason for disciplinary action. Consideration needs to be given to what effect any warning, caution, charge or conviction has on the employee's suitability to do their job and their relationship with their employer, work colleagues and the school community. Where it is felt necessary to investigate the matter, consideration will be given to whether or not this can be completed before the outcome of any criminal

investigation/prosecution is known. In all cases, advice should be taken from the LA and the school's HR provider.

**SCHEDULE 1****20. Examples of potential Misconduct**

It is not possible to specify all forms of behaviour that will result in disciplinary action. Each case must be judged in the light of the circumstances and context surrounding it. Varying circumstances may well allow different disciplinary actions or no disciplinary action at all to be taken for what are similar offences

The following examples give an indication of the Governing Body's/Local Authority's position as to the types of behaviour which constitute misconduct. The examples are not exhaustive and omissions from the list are not in themselves grounds for appeal. There is some overlap between the examples below and those listed in Schedule 2 (examples of Gross Misconduct). This allows for appropriate consideration of the seriousness of the alleged misconduct/gross misconduct. The appearance or absence of an example in one schedule or the other should not substitute proper consideration of circumstances surrounding each case, or be in itself grounds for appeal.

Employees should, so far as is reasonably practicable, be familiar with the working rules and procedures relating to their own school/department and their particular area of work. These rules may be in the form of codes of practice, school policies and procedures, induction material, manuals, posters, notices and periodic memoranda and failure to have due regard to these may be grounds for disciplinary action in relation to general misconduct or professional negligence.

**Examples of potential Misconduct**

- (a) Professional negligence, misconduct, omission or, in certain situations failure in performance to a reasonable and acceptable standard.

Examples include: breaches of safeguarding procedures; failure to report or properly comply with school procedures for reporting allegations of abuse; failure to observe proper professional boundaries in staff-pupil relationships; failure to exercise reasonable care for the safety and welfare of oneself, other employees, pupils, governors, members of the public or others on school premises; actions causing loss, damage or injury through negligence; failure to use public funds in a proper and lawful way or observe basic 'value for money' tests.

- (b) Failure to observe school/department rules and procedures or those relating to the employee's area of work

Examples include: those relating to time-keeping, attendance, signing in/out, proper reporting of sickness absence, smoking

- (c) Persistent lateness or absence

- (d) General misconduct

Examples include rudeness, insolence, drunken or aggressive behaviour, use of foul or abusive language, sexist, racist or other offensive behaviour.

- (e) Expressing personal beliefs in ways which exploit pupils' vulnerability or might lead them to break the law
- (f) Cases of harassment or bullying, including cyber bullying
- (g) Cases of discrimination, harassment or victimisation contrary to the law and/or the school's equalities policies, including giving instructions or bringing pressure to bear on others to do so or malicious complaints against or victimisation of employees using school procedures e.g. harassment, disclosure of malpractice etc.
- (h) A breach of health and safety rules, failure to observe health and safety policies and procedures, or endangering self or others
- (i) Misuse of school or County Council's property or that belonging to others while in the course of work
- (j) Use of paid time or the school or County Council's materials or facilities for purposes unrelated to the job.
- (k) Taking unauthorised leave
- (l) Insubordination, non-compliance, failure to obey a reasonable and lawful instruction or direction, or conduct intended to otherwise undermine
- (m) Bringing the school, service or profession into serious disrepute, including failure to observe reasonable standards of ethics and behaviour (or appropriate professional standards) within and outside work, or to have proper and professional regard for the ethos, policies and practices of the school or County Council. This might include information on social networking sites, particularly where this involves malicious, defamatory or abusive communication
- (n) Misuse of the internet or inappropriate use of electronic mail
- (o) Wrongful sharing of security passwords in connection with building security and computer systems
- (p) Unauthorised or inappropriate disclosure of confidential information, failure to observe data protection principles or the use of such information or official contacts for personal interest or gain
- (q) Misuse of the school or County Council's name, equipment, materials or information, including copyright and other intellectual property rights.
- (r) Failure to disclose an interest in school or County Council contracts.
- (s) Deliberate failure to disclose unspent criminal convictions or, in respect of employment exempt from the terms of the Rehabilitation of Offenders Act (i.e. employment with children or young people), failure to disclose any Police warning, caution, bind-over or conviction before and during relevant employment.

## 21. Examples of potential Gross Misconduct (which may justify dismissal without notice)

As stated above, it is not possible to specify all forms of behaviour that will result in disciplinary action. Each case must be judged in the light of the circumstances and context surrounding it. Varying circumstances may well allow different disciplinary actions or no disciplinary action at all to be taken for what are similar offences

The following examples give an indication of the Governing Body's/Local Authority's position as to the types of behaviour which constitute gross misconduct. The examples are not exhaustive and omissions from the list are not in themselves grounds for appeal. There is some overlap between the examples below and those listed in Schedule 1 (examples of Misconduct). This allows for appropriate consideration of the seriousness of the alleged misconduct/gross misconduct. The appearance or absence of an example in one schedule or the other should not substitute proper consideration of circumstances surrounding each case, or be in itself grounds for appeal.

In addition, employees should, so far as is reasonably practicable, be familiar with the working rules and procedures relating to their own school/department and their particular area of work. These rules may be in the form of codes of practice, school policies and procedures, induction material, manuals, posters, notices and periodic memoranda.

### **Examples of potential Gross Misconduct**

- a) Serious professional negligence, misconduct, omission or, in certain situations failure in performance to a reasonable and acceptable standard.
- b) Examples include: serious breaches of safeguarding procedures; failure to report or properly comply with school procedures for reporting allegations of abuse; failure to observe proper professional boundaries in staff-pupil relationships; abuse of a position of trust; serious failure to exercise reasonable care for the safety and welfare of oneself, other employees, pupils, governors, members of the public or others on school premises; actions causing loss, damage or injury through serious negligence; serious failure to use public funds in a proper and lawful way or observe basic 'value for money' tests.
- c) Threatened or actual physical assault or violence towards employees, pupils, governors, or others on school premises or in the course of work.
- d) Serious sexual misconduct
- e) Abuse against children or young people
- f) Expressing personal beliefs in ways which exploit pupils' vulnerability or might lead them to break the law
- g) Serious cases of harassment or bullying, including cyber bullying
- h) Serious cases of discrimination, harassment or victimisation contrary to the law and/or the school's equalities policies, including giving instructions or bringing pressure to bear

on others to do so or malicious complaints against or victimisation of employees using school procedures e.g. harassment, disclosure of malpractice etc.

- i) Malicious or vexatious complaints against colleagues or other members of the school community
- j) Serious offences involving the misuse or illegal possession of drugs, and/or serious cases of being under the influence of alcohol or drugs at work.
- k) A serious breach of health and safety rules, failure to observe health and safety policies and procedures, or endangering self or others
- l) Deliberate and serious damage or misuse of school or County Council's property or that belonging to others while in the course of work
- m) Theft or misappropriation of cash or property belonging to the school, the County Council, fellow employees, pupils and others at school
- n) Fraud or dishonesty, including falsely reporting sickness absence, falsification of work records, timesheets, travelling and subsistence or similar claims, or serious use of paid time or the school or County Council's materials or facilities for purposes unrelated to the job.
- o) Taking significant unauthorised leave
- p) Serious insubordination, non-compliance, failure to obey a reasonable and lawful instruction or direction, or conduct intended to otherwise undermine
- q) Bringing the school, service or profession into serious disrepute, including failure to observe reasonable standards of ethics and behaviour (or appropriate professional standards) within and outside work, or to have proper and professional regard for the ethos, policies and practices of the school or County Council. This might include information on social networking sites, particularly where this involves malicious, defamatory or abusive communication
- r) Serious misuse of the internet or inappropriate use of electronic mail, including deliberately accessing or sharing pornographic, offensive or obscene material
- s) Deliberate and wrongful disclosure of security passwords in connection with building security and computer systems
- t) Serious unauthorised or inappropriate disclosure of confidential information, failure to observe data protection principles or the use of such information or official contacts for personal interest or gain
- u) Serious misuse of the school or County Council's name, equipment, materials or information, including copyright and other intellectual property rights.
- v) Failure to disclose an interest in school or County Council contracts.

- w) False statements or failure to disclose relevant information in applications for employment, including any personal incapacity which may be incompatible with the satisfactory discharge of the duties and responsibilities of the job
- x) Deliberate failure to disclose unspent criminal convictions or, in respect of employment exempt from the terms of the Rehabilitation of Offenders Act (i.e. employment with children or young people), failure to disclose any Police warning, caution, bind-over or conviction before and during relevant employment.

## 22. Some Reasons Which Might Justify Dismissal With Notice

As distinct from gross misconduct, for which the normal sanction is dismissal without notice, dismissal will normally only take place after due warning through the disciplinary procedure. However, there are a limited number of circumstances which fall short of gross misconduct where the governing body may determine that an employee shall cease to work at the school without prior warning being issued. These are circumstances where the action of the employee has broken the mutual trust and confidence necessary to sustain the employment relationship. The following is a non-exhaustive list of circumstances which may give rise to such a determination:

- (a) Behaviour of a serious or criminal nature outside employment the nature of which makes continued employment impossible.
- (b) Committal to prison for an offence which is of such a kind, or entails a sentence of such length, as to make continued employment impossible.

Depending on the seriousness of such matters, dismissal without notice may also be considered.

**SCHEDULE 2****23. Procedure for a Hearing**

Hearings will be held in as informal a manner as possible and the employee will be afforded every reasonable assistance to put his/her case. The conduct of the hearing is at the discretion of the Headteacher, Chair of the committee or manager hearing the case, but s/he will allow the parties every reasonable opportunity to present their case.

In the case of an appeal the order of presentation set out below would normally be reversed, with the employee as appellant presenting his/her case first. However, by prior agreement or where the appeal constitutes a re-hearing of the full case, the case against the employee may be presented first as at the initial hearing. Chairs of appeal committees or managers hearing appeals should ensure that all parties have a common understanding and agreement on the order of presentation.

**1. Introduction**

The Headteacher, Chair of the appropriate committee or manager hearing the case will ensure that those present are introduced to each other and that they are aware of the procedure to be followed.

**2. Presentation of the Allegations**

The person presenting the case against the employee may make an opening statement outlining the case. The person or committee hearing the case and the employee responding to it may ask questions.

S/he will then call any witnesses and ask them to give their evidence. The employee or his/her representative may then ask questions of each witness. The person or committee hearing the case may also ask questions of any witness. The person presenting the case may then re-examine the witness.

Where evidence is presented in the form of documents, the person presenting the case or an appropriate witness will explain the nature and significance of the documents.

**3. The Employee's Case**

The employee or his/her representative may make an opening statement. The person or committee hearing the case and the person presenting the case against the employee may ask questions.

S/he may call any further witnesses and invite them to give their evidence. The person presenting the case against the employee may ask questions of each witness after s/he has given his/her evidence. The person or committee hearing the case may then ask questions. The employee or his/her representative may re-examine the witness.

Where there is any documentary evidence, the employee or any witness on his/her behalf will explain its significance.

#### 4. Re-examination

Both parties will be asked if they wish to re-examine any evidence. The person or committee hearing the case may also do so at its discretion.

#### 5. Final Statements

The person presenting the case against the employee may make a final statement. The employee or his/her representative may then also make a final statement.

#### 6. Adjournment

Either party may ask for an adjournment at any stage. The decision to adjourn is at the discretion of the Chair, who will consider a request in the light of the reason given for it.

#### 7. Consideration of the Case

All parties will withdraw. The Headteacher or the committee will deliberate. The Director of Children and Young People's Services and/or the Head of Legal Services may be present at these deliberations to advise on legal and procedural matters. In any case where dismissal is proposed, the representative of the Director of Children and Young People's Services will advise the committee as to whether s/he concurs with the committee's decision.

If it is necessary to recall either party or any witnesses, to resolve a point of uncertainty, both parties will be invited to be present, whether or not the point of doubt concerns one party or both.

#### 8. Decision

If possible the decision will be communicated orally to the employee after the hearing. The decision will be confirmed in writing to the parties involved as soon as possible after the hearing.