TRIMLEY ST. MARTIN

Disciplinary Procedure

Trimley St Martin Primary School
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General Introduction

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

This policy does not form part of any contract of employment or other contract to provide services, and it may be amended at any time, following consultation with the recognised trade unions.

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.

1.2 It applies to staff in Pupil Referral Units maintained by the local authority in the same way. It also applies to local authority-employed 'unattached teachers'. 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 The governing bodies of Voluntary Aided or Foundation Schools maintained by Suffolk County Council may also adopt this policy, with appropriate acknowledgement that in each case the governing body is the employer.

1.4 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 identity 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

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 anybody acting in a similar way to a governing body.

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 Schedule 22 of the Education Act 2002 and The School Staffing (England) (Amendments) Regulations 2015/2009.

4. Confidentiality

4.1 All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

4.2 Employees, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

4.3 Employees will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless it is believed that a witness's identity should remain confidential.

4.4 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).

4.5 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.

4.6 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 they are 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 'agreed paid 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 Teaching Regulation Agency (TRA) may be made by the school, upon the conclusion of disciplinary proceedings (and any appeal), in the following circumstances:

6.2.1 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 or behaved or may have behaved in a way that indicated they may not be suitable to work with children, 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

6.2.2 Schools (or the County Council in respect of “unattached” teachers) have a legal duty to consider whether to refer to the TRA 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.

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.

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 their 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 may be occasions when an employee’s performance and behaviour at work needs to be discussed with them as part of the normal management arrangements. An employee will be assisted to understand the expected standard of behaviour or performance required. If confirmed by a written instruction it will be placed on the employee’s personnel file. A written instruction will not be considered to form part of the formal disciplinary procedure although it may be referred to in any future investigation and subsequent disciplinary hearing to provide context to a case. Reference to a written instruction will be purely factual. In some cases, an informal verbal warning may be given, which will not form part of the employee’s disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

8.3 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, providing their availability does not mean that the manager is unable to deal with the concerns and providing appropriate support in a timely manner.

9. Investigation

9.1 If the normal management processes do not bring about the required changes in behaviour or conduct, 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 To establish the facts, it may be necessary for the Headteacher to undertake preliminary discussions before deciding to commission an investigation. Guidance will be available from your HR provider, if required.

9.3 The purpose of an investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a disciplinary hearing.

9.4 The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents.

9.5 Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

9.6 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.

9.7 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.

9.8 If the employee concerned is a trade union official (as statutorily defined) the matter will be discussed with their branch secretary or a full time official before an investigation is undertaken.

9.9 Whilst there is no statutory right to be accompanied at any investigation interviews, the employee may benefit if accompanied by a colleague or trade union representative. Therefore, employees should always be offered the opportunity to be accompanied at an investigation meeting, provided that this will not unduly delay the investigation.

9.10 The employee and any witnesses who make statements during the course of the investigation should be given a copy and asked to check and sign them.

9.11 It should be the commissioner and not the investigator who makes the final decision as to whether or not a disciplinary hearing will be held. If their decision differs from the investigator's recommendation, the reasons for this should be written down and included as an addendum to the report.

10. Consideration of suspension or redeployment

10.1 In certain circumstances it may be necessary to suspend an employee while an investigation is carried out into the situation giving rise to concern. Any decision to suspend should be taken in accordance with the governing body's scheme of delegation.

10.2 The Headteacher may suspend an employee. They must immediately inform the Chair of Governors and the Director for Children and Young People or their nominated representative.

10.3 Subject to the governing body's scheme of delegation, if it is necessary to suspend the Headteacher, the decision must be taken by the Chair of Governors, who must immediately inform the Director for Children and Young People. In circumstances where the Chair of Governors is unable to take a decision regarding the suspension of the Headteacher, for example, where they are indisposed or has a conflict of interests, the decision to suspend the Headteacher may be taken by the Vice-Chair. In exceptional circumstances the decision to suspend the Headteacher may be taken by the Director for Children and Young People or their nominated officer from the Local Authority.

10.4 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.

10.5 The employee should be given a brief opportunity to respond to the allegations when the decision to suspend is conveyed. However, it is important that this does not inadvertently become a formal investigation meeting.

10.6 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; or

(b) Where there is a reasonable belief that the employee's continued presence at work may hamper or compromise an investigation process;

10.7 In all cases, consideration should be given to alternatives to suspension (for example, additional supervision or alternative/restricted duties, work arrangements or agreed paid 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.

10.8 Suspension does not constitute disciplinary action; it is a neutral act that makes no assumption of guilt. 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.

10.9 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.

10.10 The following advice regarding suspensions in connection with allegations linked to children's safeguarding is given in statutory guidance such as Keeping Children Safe in Education (or any document which supersedes this).

10.11 Suspension must not be an automatic response when an allegation is reported. If the school is concerned about the welfare of other children in the community or the teacher's family, those concerns should be reported to the LADO or police, but suspension is highly unlikely to be justified based on such concerns alone. Suspension should only usually be considered in a case where there is cause to suspect a child or other children at the school is or are at risk of significant harm, or the allegation warrants investigation by the police, or is so serious that it might be grounds for dismissal. However, a person should not be suspended automatically, or without careful thought being given to the particular circumstances of the case.

10.12 Schools should also consider whether the result that would be achieved by suspension could be obtained by alternative arrangements. For example, redeployment so that the individual does not have direct contact with the child concerned or providing an assistant to be present when the individual has contact with children. This allows time for an informed decision regarding the suspension and possibly reducing the initial impact of the allegation. This will, however, depend upon the nature of the allegation.

10.13 Schools should consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unsubstantiated, unfounded or maliciously intended. Schools should also consider any communication/reason for absence provided to staff members during an employee's suspension to minimise the scope for unwanted questions or adverse inferences.

10.14 Where it has been deemed appropriate to suspend the person, written confirmation should be dispatched as soon as possible, clearly giving the reasons for the suspension. The person should be informed at that point who their named contact is within the organisation and provided with their contact details.

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 another 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 as per the scheme of delegation. 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, **at least 10 full working days in advance of the hearing**, with the following information:

(a) the nature of the alleged misconduct and, 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) a summary of relevant information gathered during the investigation;

(f) a copy of any relevant documents which will be used at the disciplinary hearing;

(g) a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the school will give as much information as possible whilst maintaining confidentiality;

(h) the employee's right to produce written statements, **at least five full working days before the hearing**, and invite relevant witnesses to give evidence on their behalf;

(i) the employee's statutory right to be accompanied by a trade union official or work colleague of their choice;

(j) the possible outcome of the meeting, particularly where a possible outcome of the hearing is a determination that the person shall cease to work at the school/be dismissed.

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 later 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 Shorter 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 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 at the end of the hearing, but will in any case be confirmed in writing, normally within five working days. The employee will be informed whether 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 to address it to;

(d) If the determination is to issue a disciplinary warning, the employee will also be informed in writing of:

(i) what improvement is expected for the future;

(ii) the length of time for which the warning is active (not usually less than three months nor greater than twelve);

(iii) any other information in respect of the improvement required e.g. any review of arrangements, and whom the employee should contact for assistance;

(iv) what might happen if the matter proceeds to the next stage e.g. what the possible sanction might be.

11.6 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. If the employee's representative will not be available for more than five working days afterwards, the employee may be asked to choose someone else.

12.2 Employees must take all reasonable steps to attend a hearing. Failure to attend without good reason may be treated as misconduct. If an employee fails to attend without good reason or is persistently unable to do so (for example for health reasons), a decision may have to be taken based on the available evidence. Separate advice should be sought in respect of employees absent from work due to pregnancy or maternity leave.

12.3 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 is upheld or not. In these circumstances, the Headteacher, Panel or manager may also decide regarding the sanction that would have been applied had the employee remained in employment.

12.4 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.

12.5 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 their conduct or performance. Unless the circumstances are exceptional e.g. gross misconduct or the employee is still in the probationary period, no employee should be dismissed without first having received at least one written warning and having had the opportunity to improve their 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 decide 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,~~ allegations or where the misconduct is serious enough that the committee hearing the case could consider dismissal as a possible sanction.

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.

13.4 Following a disciplinary hearing an outcome could be that mediation between parties is recommended.

First Written Warning

13.5 Where an employee's misconduct is such as to warrant a formal warning, and where there are no other active warnings on the employee's disciplinary record, a first written warning will normally be the appropriate sanction.

Final Written Warning

13.6 A final written warning will usually be appropriate for:

(a) misconduct where there is already an active written warning on an employee's record; or

(b) misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the employee's disciplinary record.

(c) where dismissal would be a reasonable sanction, but the committee or individual hearing the case have good reason to believe that a warning will prove to be effective.

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

Dismissal

13.8 Dismissal will usually only be appropriate for:

(a) any misconduct during the probationary period;

(b) further misconduct where there is an active final written warning on the employee's record. In such cases, 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;

(c) any gross misconduct regardless of whether there are active warnings on the employee's record. Gross misconduct will result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are set out in Schedule 1, paragraph 21. In such cases, 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). In this case the Director for Children and Young People will dismiss the employee without notice.

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 for Children and Young People (or their 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 for Children and Young People 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 for Children and Young People 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 for Children and Young People when such a hearing is convened.

Informing the Local Area Designated Officer

13.11 Upon the conclusion of all cases of safeguarding allegations that have a bearing on the safety and welfare of children a copy of the hearing outcome letter will be forwarded to the Local Area Designated Officer (LADO) who will make a determination concerning the safeguarding allegation in accordance with Keeping Children Safe in Education (or any other statutory guidance). There is no right of appeal against the LADO's decision.

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 a 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 their 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 If the employee raises new matters in their appeal further investigation may be required prior to the appeal hearing being set. In such cases, the usual time frames may be adjusted. If, as a result of this, any new information comes to light the employee will be provided with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing and the employee or their representative/companion may comment on any new evidence arising during the appeal before any decision is taken.

14.4 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.

14.5 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 employee/appellant and their representative that they will hear submissions in mitigation of the sanction.

14.6 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; not uphold the finding and therefore remove the sanction or uphold the original finding but modify the sanction (however the original sanction cannot be increased).

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. However, after the active period of the warning they should not be taken into account as part of any future disciplinary matters.

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 false 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 for Children and Young People or their nominated representative before instigating any formal disciplinary action or suspending a Headteacher.

16.2 If there is sufficient cause for concern, the Chair of Governors will, usually in conjunction with the Director for Children and Young People or their nominated representative, commission an investigation into all the material facts and circumstances of the complaint or concern. Guidance on conducting an investigation will be available from your HR provider, if required. 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 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 for Children and Young People, 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 a 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, they 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 as 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 timekeeping, 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.

(t) Covert recording of any meeting in the workplace.

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 as 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.

   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.

b) Threatened or actual physical assault or violence towards employees, pupils, governors, or others on school premises or in the course of work.

c) Serious sexual misconduct

d) Abuse against children or young people

e) Expressing personal beliefs in ways which exploit pupils' vulnerability or might lead them to break the law

f) Serious cases of harassment or bullying, including cyber bullying

g) 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.

h) Malicious or vexatious complaints against colleagues or other members of the school community

i) 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.

j) A serious breach of health and safety rules, failure to observe health and safety policies and procedures, or endangering self or others

k) Deliberate and serious damage or misuse of school or County Council's property or that belonging to others while in the course of work

l) Theft or misappropriation of cash or property belonging to the school, the County Council, fellow employees, pupils and others at school

m) 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.

n) Taking significant unauthorised leave

o) Serious insubordination, non-compliance, failure to obey a reasonable and lawful instruction or direction, or conduct intended to otherwise undermine

p) 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

q) Serious misuse of the internet or inappropriate use of electronic mail, including deliberately accessing or sharing pornographic, offensive or obscene material

r) Deliberate and wrongful disclosure of security passwords in connection with building security and computer systems

s) 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

t) Serious misuse of the school or County Council's name, equipment, materials or information, including copyright and other intellectual property rights.

u) Failure to disclose an interest in school or County Council contracts.

v) 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

w) 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.

x) Covert recording of any meeting in the workplace, i.e. when specifically instructed not to.

22. Some reasons which might justify dismissal with notice

There may be cases where the panel find that on the balance of probabilities, that the sanction of dismissal with notice may be justified. These are circumstances where the action of the employee has broken the mutual trust and confidence necessary to sustain the employment relationship and/or the employee has been issued with previous warnings on prior occasions.

SCHEDULE 2

23. Procedure for a Hearing

Hearings will be held as informal as possible, and the employee will be given every reasonable assistance to present their case. The conduct of the hearing is at the discretion of the Headteacher, Chair of the committee or manager hearing the case.

At a hearing an employee's companion and representative may make representations and ask questions but should not answer questions on the employee's behalf. The employee may confer privately with their companion at any time during the hearing.

In the case of an appeal the order of presentation set out below would normally be reversed, with the employee as appellant presenting their case first. However, by prior agreement or where the appeal constitutes a rehearing of the full case, the employer's case 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.

The role of presenting officer may be undertaken by the person who commissioned the investigation, or another appropriate individual nominated by either the Head Teacher, Chair of Governors or the Director for Children and Young People Services.

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 investigation findings

The employer representative and/or presenting officer will usually make opening statements outlining the report's findings.

The Presenting Officer may call the Investigating Officer to summarise their investigation report to include an explanation of the methodology and evidence collected in relation to all allegations and explain their rationale for the recommendation that have made in proceeding to a formal hearing.

The employee/employee representative, the presenting officer and the person or committee hearing the case may ask questions of the Investigating Officer regarding the facts of the investigation. The Investigating Officer will then be asked to leave the hearing.

The Presenting Officer will then call any witnesses, if relevant and ask them to give their evidence and may question them. The employee or their representative may then ask questions of each witness. The person or committee hearing the case may also ask questions of any witness. Each witness, after giving evidence and answering questions, will be asked to leave the hearing.

If applicable, the employer representative and/or presenting officer will then present any other information necessary to conclude the presentation of their case.

The employee/employee representative and the person or committee hearing the case may ask questions of to which the person presenting the case will respond in a fact giving capacity.

The Investigating Officer and witnesses will be asked to remain available should they be required.

3. The employee's case

The employee or their representative may make an opening statement.

They may call any further witnesses and invite them to give their evidence. The employee or their representative may ask the witness questions. The person presenting the employer's case may ask questions of each witness. The person or committee hearing the case may also ask questions of any witness. Each witness, after giving evidence and answering questions, will be asked to leave the hearing.

If applicable the employee or their representative will then present any other information as necessary to conclude the presentation of their case.

The person presenting the employer's case may ask questions. The person or committee hearing the case may also ask questions.

Where there is any documentary evidence, the employee or any witness on their behalf may explain its significance.

The witnesses will be asked to remain available should they be required.

4. Re-examination

The employee or their representative and the presenting officer 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 presenting officer may make a final statement, which may include a brief statement about their findings. The employee or their representative may then make a final statement. Final statements will only contain information that has already been examined during the hearing. Neither the person presenting the case, nor the employee is entitled to introduce new or fresh evidence at this stage. The person/committee hearing the case will not ask further questions other than for clarification purposes.

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 for Children and Young People or a representative may be present at these deliberations to advise on procedural matters. In any case where dismissal is proposed, the representative of the Director for Children and Young People will advise the committee as to the potential risks associated 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 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, normally within five working days.

SCHEDULE 3

Table of substantive changes to policy from 2014 onwards

Date	**2014**
Section	Change(s) made
4 Confidentiality	Additional paragraphs reinforcing the importance of confidentiality and expressly prohibiting the electronic recording of any meetings or hearings.
5 Safeguarding children and young people	'Garden leave' changed to 'agreed paid leave'. See also changes to 10 Consideration of suspension and redeployment
6 Referral of cases	National College of Teaching and Leadership changed to Teaching Regulation Agency
8 Exclusions	Additional clarification re 'written instruction'
9 Investigation	Additional clarification re the purpose of the investigation Recognition that although there is no statutory right to be accompanied at investigation interviews, it may be beneficial to the investigation to allow it Clarification that it is the decision-maker, not the investigator, who decides whether a disciplinary hearing will take place
10 Consideration of suspension or redeployment	Specific reference to the governing body's decision-making planner Requirement to give the employee an opportunity to respond briefly to the allegations, whilst ensuring that such discussion doesn't inadvertently become the investigation interview Signification additional commentary about careful use of suspension
11 Disciplinary hearing	Additional clarification on what will be shared with the employee ahead of the hearing, including the possible outcome of the hearing in all cases
12 Postponement of hearings and non-attendance	Strengthened wording re expectation of attendance by the employee Removal of wording that hearing will not normally be held in the absence of the employee Removal of wording that sickness will be considered reasonable cause for non-attendance when supported by a GP or medical certificate

13 Warning stages and disciplinary sanctions	Wording relating to first and final warnings, and dismissals amended for greater clarity Wording relating to alternatives to dismissal amended to include removal of TLR payments from teachers
14 Appeals	New paragraph about dealing with new matters raised by the employee during appeal process
15 Records and lapsed warnings	Additional wording that lapsed warnings should not be taken into account as part of any future disciplinary matters
23	Table of substantive changes
Schedule 2 24 Procedure for a hearing (was previously Section 23)	Additional clarification on the role of the employee's companion Clarification that the role of the investigator is to present his/her findings only, not to present the case for the school.
Date	**2019**
1 Application	Removal of reference to FE staff in relation to the local authority.
6 Referrals	Two sub-sections to 6.1. No change to the wording.
10 Consideration of suspension	Minor grammatical change to 10.1 and 10.3 to read as 'decision-making'
14 Appeals	Minor change to add 'a' to the final sentence in 14.1
21 Examples of potential gross misconduct	NEW example added to address covert recording of meetings in the workplace.
Schedule 2 Procedure for a Hearing	Clarification re who can make opening and closing statements at a hearing.
Schedule 2	Clarification of order of questioning of presenting officer, employee / employee representative and any witnesses.
Date	**May 2021**
Whole Document	Adapted wording to be gender neutral.
Referral to Disclosure & barring Service 6.2.1	Additional wording to include behaviour indicates may not be suitable to work with children.
7.3	Clarified that capability process should be used "where formal action is appropriate."

9.2 & 16.2	Added reminder that Investigators can seek guidance on conducting an investigation from the school's HR provider.
9.9	Employees given right to be accompanied at an investigation meeting (already custom and practice).
9.11	Clarity on investigation roles.
10	Clarity on who can make decisions surrounding suspension.
10.9	Expanded explanation that suspension is a neutral act, that makes no assumption of guilt.
12	Typo in title – corrected 'noon' to 'none'.
13.11	Addition of the LADO role.
14.2	Clarified that 14 calendar days are allowed for receipt of appeal
16.2	Wording to clarify procedure for Head Teachers.
24	Clarification of the role of the presenting officer.
Schedule 2: 2	Clarity of presenting officer and role of Investigating Officer additional wording added
3	Clarity of employee case. Additional wording added
5	Clarity on final statement process.
8	Additional guidance on length of time for communication.
Date	**September 2024**
1 and 3.1	Clarity on application and interpretation of procedures
11.2	Removal of the word 'normally'
11.5	Clarified wording
14.2	Removed word 'calendar'
14.3	Clarified wording around bringing a representative or companion
Schedule 2	Clarified wording around bringing a representative or companion
7	Clarified wording
22	Reworded section to clarify