

**Children, Young People & Families
Business Development & Support
Human Resources Service**

Disciplinary Policy and Procedure

For School Based Staff Under the Purview of A Governing Body

Applies to

Head Teacher



Teachers



**Locally Managed Support
Staff**



For School Based Staff Under the Purview of A Governing Body

Discipline at Work Policy and Procedure

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Disciplinary Policy and Procedure

1. Introduction

- 1.1 This procedure sets out the action, which will be taken when employer rules are breached. It is intended to encourage employees to conform to acceptable standards of conduct, and the taking of formal disciplinary action is to be used only where appropriate.
- 1.2 This policy has been the subject of consultation with recognised Trade Unions.
- 1.3 The policy and procedure conforms to the requirements of the relevant Education Acts, Articles of Government and relevant employment legislation. The procedure also conforms to both the Staffing Regulations (2003) and associated NEOST guidance. The procedure also adheres to the guidelines contained within the revised ACAS Code of Practice on Discipline and Grievance (2004).
- 1.4 This policy and procedure conforms fully with the principles of natural justice.
- 1.5 This policy and procedure should not be used to address issues where there are other existing policies and procedures for resolving problems, this includes
 - Capability issues (except where the issue is failure to comply with procedure or to follow management instruction relating to capability)
 - Issues relating to sickness absence (except where the issue is that the sickness absence is not genuine – i.e. an employee is signed off sick with the school but is working in another employment)
- 1.6 It is the responsibility of Governing Bodies and Head Teachers to ensure that all employees have access to a copy of the policy and procedure.
- 1.7 If the alleged misconduct relates to an allegation of sexual/mental/physical abuse against a pupil there are additional and special requirements for this category of misconduct that must be followed. These requirements are set out by the local Authority in a number of documents relating to the Authority's and the Police's statutory role in child protection.

2. Definitions and Abbreviations

- 2.1 Headteacher means the Headteacher of the school.
- 2.2 LA means Local Authority
- 2.3 Disciplinary Panel means the Committee of the Governing Body authorised to hear disciplinary cases, or the person or persons nominated to undertake that role, or the Headteacher; depending on the level of delegation formally agreed by the governing body.
- 2.4. Appeal Panel means the Committee of the Governing Body authorised to hear disciplinary appeals, or the person or persons nominated to undertake that role, or the Headteacher; depending on the level of delegation formally agreed by the governing body. In the case of appeals against dismissal the appeal panel **must** be comprised of three governors, in exceptional cases the appeal panel may be comprised of two governors.

- 2.5 Five days means 5 working days excluding bank holidays and school holidays, subject to 2.7 below.
- 2.6 Ten days means ten working days, excluding bank holidays and school holidays, subject to 2.7 below.
- 2.7 A working day is any working term day as defined by the LA term dates excluding the three floating occasional days set at the discretion of the school.
- 2.8 Trade Union means trade unions and professional associations that are recognised for the purposes of collective bargaining by the LA.
- 2.9 Trade Union Representatives means any representative of a trade union or any other staff representative.
- 2.10 Senior Human Resources Adviser means the Senior Human Resources Adviser of the Children, Young People and Families Service, or if appropriate another member of the Human Resources Team such as the Human Resources Manager.
- 2.11 The ACAS Code means the ACAS Code of Practice on Disciplinary and Grievance Procedures (2004).
- 2.12 Ex-employee means any employee who has ended (for any reason) their employment with the school, including those who continue to be employed by the LA at another school or central service or within a Voluntary Aided School in Oldham.
- 2.13 School Management means the senior leadership team of the school and the Governing Body.
- 2.14 The investigating officer is the SHRA or impartial member of the Senior Leadership Team appointed to investigate the alleged misconduct.

3. Employees Covered by this Policy and Procedure

- 3.1 This policy and procedure, where adopted, applies to all school employees whose employment is under the purview of the Governing Body.
- 3.2 This policy and procedure does not apply to centrally managed staff who work within the school i.e. those under the purview of the LA.

4. General Principles

- 4.1 This policy and procedure is to be operated in accordance with the ACAS Code and the principles of natural justice.
- 4.2. This policy and procedure is in accordance with statutory requirements and has been written with the ACAS Code in mind.
- 4.3. Where situations arise that are not anticipated by this policy, and where the ACAS Code does not offer specific guidance the principles of natural justice and the requirements of the statutory dispute resolution procedure will be followed in reaching a conclusion as to the best course of action to follow.
- 4.4. Witnesses or employees questioned as part of an investigation have the right to be accompanied by a TU representative. Where an employee is not accompanied and makes an admission that may amount to misconduct the interview must be stopped immediately and reconvened at a later date affording the employee the right to be accompanied. All employees are required by their contract of employment to co-operate with the operation of this policy. Refusal to participate in an investigation is a breach of contract.
- 4.5. The trade union or a workplace representative supporting an employee under investigation have no right to be present during the questioning of

witnesses, other than at the investigatory interview of the employee they are supporting.

- 4.6. Work based colleagues are entitled to reasonable paid time off from work to prepare for and to attend disciplinary hearings.
- 4.7. The aim of this policy is to operate within the time limits specified however it may not always be possible to achieve this due to the availability of relevant individuals. Failure to adhere the time limits shall not render the operation of the policy invalid.

5. The Roles And Responsibilities Of School Management

- 5.1 Where appropriate, school management should seek to address misconduct issues as soon as they come to light before the misconduct escalates either into more serious misconduct or becomes more serious through repetition.
- 5.2 School management should ensure that employees have access to this policy and procedure, and are informed of its adoption.
- 5.3 School management are advised, where possible, to seek guidance from Human Resources before taking the decision to suspend an employee.
- 5.4 School management must ensure that employees attending a disciplinary investigation interview or hearing, are reminded of their right to be accompanied.
- 5.5 School management must ensure that employees are informed of their right to appeal against the outcome of a disciplinary hearing.
- 5.6 School management must take all reasonable steps to ensure that the timescales specified within this policy are adhered to.
- 5.7 Where there is a reasonable belief that an employee may have difficulty in preparing a written statement, as part of this policy and procedure the school should take all reasonable steps to assist the employee in completing such a statement. This may apply in circumstances where the employee's first language is not English or where the employee has a disability that would increase the difficulty of such a task. Employees with disabilities may (where appropriate) be accompanied by other individuals (i.e. interpreters/sign reader) should this be required.
- 5.8 The Governing Body has overall responsibility for staffing issues within the school. The Governing Body has the power to delegate the responsibility for disciplinary action and dismissals to the Headteacher, an individual governor or a group of governors with or without the Headteacher.
- 5.9 Where the Governing Body has delegated the responsibility for disciplinary and dismissal procedures to an individual governor or a group of governors the headteacher has a right to attend all meetings to offer advice.
- 5.10 Headteachers who have had direct involvement in disciplinary procedures that lead to disciplinary hearings should not be involved in decisions to impose disciplinary sanctions or initial staff dismissals.
- 5.11 Where the Governing Body has delegated responsibility for disciplinary hearings to the Headteacher, this cannot be delegated on to another person by the Headteacher. In the absence of the Headteacher, both short and long term absence, this delegation applies to the Acting Headteacher.

6. The Roles And Responsibilities Of The Local Authority

- 6.1 The Human Resources Service will review this policy to ensure that it complies with statutory requirements and the ACAS Code.
- 6.2 The Human Resources Service will provide support and advice to school managers working on discipline cases as required by the school subject to the provision that the school has bought such a service from the LA.
- 6.3 The Human Resources Service will produce guidance notes for employees, managers, trade union representatives and Governors' for the operation of this policy.
- 6.4 The LA will exercise its statutory right to advise on potential dismissals where this applies.

7. Management Action

- 7.1 Where appropriate, conduct issues should be addressed by the line manager, or more senior manager, as part of the day-to-day responsibilities of a line manager.
- 7.2 Written management instructions regarding the standard of conduct expected should be given to the employee where minor, and unrepetitious, acts of misconduct occur. School managers should keep a record of such instructions which can be referred to as evidence in future hearings should management instruction and guidance fail to resolve the issue.
- 7.3 It is entirely at the discretion of the manager, having regard to the conduct issue, whether or not to attempt to deal with the issue through management instruction or whether to proceed to a formal disciplinary investigation.

8. Identifying the Need for Disciplinary Action

- 8.1 In the first instance it is for a member of the schools senior management team to determine whether or not the circumstances warrant a formal disciplinary investigation under disciplinary procedures. If necessary the line manager should discuss the matter with the schools Senior HR Adviser. Initiating formal action will depend largely on the following considerations:
 - i) The seriousness of the alleged misconduct
 - ii) The incidence of the misconduct
 - iii) Previous management action, including any live warnings, regarding the employees conduct

9. Decision to Suspend

- 9.1 The Governing Body and the Headteacher have the power to suspend any member of staff where in the opinion of the Governing Body or the Headteacher the alleged misconduct is sufficiently serious (i.e. potential gross misconduct) to warrant the individual's exclusion from the school or where the individual's continued presence in the school may hinder a fair and objective investigation. Governing Bodies and/or the Headteacher are advised to take advice from the schools nominated Senior Human Resources Adviser before determining to suspend a member of staff. Whilst such advice is being sought the member of staff should be sent home.
- 9.2 A suspended member of staff may not return to his/her place or work or contact colleagues or governors other than in circumstances agreed at the time of the suspension. Depending on the role of the individual employee

and the conduct issue under consideration the employee may be barred from accessing other Authority buildings or other schools in the borough during the suspension.

- 9.3 Where a member of staff requests a visit to the school premises for the purpose of preparing his/her case, he or she should write to the investigating officer beforehand setting out clearly the purposes of the visit. Such requests will not be unreasonably be refused, though they will normally take place outside of normal school hours. The decision to allow or refuse access is the responsibility of the investigating officer.
- 9.4 Where a member of staff wishes to approach a colleague to act as a witness on their behalf this request should be put in writing, setting out the reason for the request and how the witness can contact the member of staff. These written requests should be directed to the staff via the investigating officer.
- 9.4 Where the decision has been taken to suspend an employee it is the duty of the Headteacher or Governing Body to inform the LA of this at the earliest opportunity.
- 9.6 Suspension from duties will be on normal pay entitlement and is not in itself a disciplinary measure; it is a **neutral act** assuming neither guilt nor innocence. Employees under investigation should be made aware of this fact and advised to contact their trade union representative.
- 9.7 If the individual is informed of the suspension in person they should be afforded the right to have a trade union representative or colleague present, providing this will not delay the meeting. In practice this often means that the representative must be present in school at the time of the meeting – suspension meetings cannot be delayed to allow representation. The suspension must be confirmed in writing within 5 working days.
- 9.8 In circumstances where it is not possible to meet with the employee efforts should be made to inform the employee of the suspension by telephone. The suspension must be confirmed in writing.
- 9.9 The suspension of an employee will be reviewed every 15 working days by the Investigating Officer, who will inform the employee in writing, of the current position and any progress/delays that have occurred.
- 9.10 Suspensions can only be lifted, prior to a hearing outcome, by the school's Governing Body, or the Chair of Governors acting on behalf of the whole governing body.

10. General Principles of The Formal Disciplinary Process

- 10.1 An employee will be notified of the general nature of the allegations(s) against him/her, in writing, during the investigation stage, as soon as practicable, and where possible, of known specific allegations, including dates and times, provided this does not compromise the integrity of the investigation. The employee will be notified in any event of the specific allegation(s) once the investigation had been concluded and if he/she is required to attend a disciplinary hearing. It is important that employees are made aware that the allegations may change (increasing or diminishing) as a result of the investigation process.
- 10.2 An employee will be given a minimum of 10 working days notice prior to the disciplinary hearing, and so be given the opportunity to discuss the case with their representative. At the disciplinary hearing the employee will have

the opportunity to present their case, together with any witnesses they produce, before any decision is taken.

- 10.3 An employee will have the right to appeal against any disciplinary sanction imposed under the formal disciplinary procedure.
- 10.4 Those involved in the disciplinary decision making process, i.e. governors, investigating officer, Headteacher, must not have a pecuniary or non-pecuniary interest in the case beyond that which would apply to the generality of staff, governors or other potential investigating officers. In cases of repeat misconduct prior involvement in an earlier case shall not be deemed a conflict of interest.

11. The Disciplinary Investigation

- 11.1 When management action has not produced the required standard of conduct from the employee or where the matter is serious enough to justify disciplinary investigation action from the outset, an investigating officer must be appointed to manage the investigation. Where the school has purchased the appropriate level of service from the LA the investigating officer will normally be the schools SHRA. Where the school does not purchase this level of service the investigating officer will be a senior member of school staff, or a governor, who must not be a member of the disciplinary panel.
- 11.2. The investigating officer will carry out an appropriate investigation. The investigation should be “ as much [investigation] as is reasonable in the circumstances”. The investigation will be commenced and completed as soon as is practicable.
- 11.3 The employee under investigation will be invited to record their version of events as soon as possible after the matter comes to light. They should be advised to seek the advice of their representative before submitting this information. The employee will then be interviewed with reference to their written statement to clarify any points and to provide further information should the investigating officer deem this necessary. The employee under investigation will usually be interviewed in order that they can comment on the totality of the evidence from the investigation.
- 11.4 An employee under investigation has the right to be accompanied by either a work-based colleague or trade union representative at an investigatory interview. Employees are entitled to 5 working days notice before they are required to attend a disciplinary investigation interview.
- 11.5 If during the process of the investigation, where the employee is suspended, the allegations are shown to be of a less serious nature, then the suspension can be lifted as outlined previously. This does not mean that there is automatically no case to answer – merely that the evidence does not support continuing suspension as a reasonable act of the employer.
- 11.6 Once the investigation is completed the investigating officer will make a decision as to whether to proceed to a hearing and the composition of the allegations. This decision will be communicated in writing to the employee. Prior to the hearing the investigating officer will disclose all relevant records from the investigation – witness statements, relevant policy and any other documentation that will be cited in support of the investigation outcomes. The employee may request further additional documentary evidence if the Investigating Officer deems this to be relevant to the case. Employees

under investigation will, at interview, be given the opportunity to direct the investigating officer to relevant documentation and witnesses. The investigating officers evidence will therefore represent the totality of the evidence with the exception of any witnesses agreeing to appear for the employee.

- 11.7 Where other agencies are investigating the matter, e.g. the police, or Health and Safety Executive, it may be necessary to suspend the internal investigation at the request of these agencies. Where the police are involved it is usual that internal investigation is suspended to avoid potential interference with a criminal investigation.. In these circumstances any suspension that has been enacted will remain in force pending the outcome of the external agency's investigation. However both employees and trade union representatives should be aware that a decision not to pursue a prosecution by an external agency or an extremely lengthy external investigation does not necessarily preclude the possibility of internal disciplinary action.

12. The Disciplinary Hearing

- 12.1. The purpose of the disciplinary hearing is for the Disciplinary Panel to establish if the allegations are proven, and if they are proven to apply an appropriate disciplinary sanction. The employee must be notified in writing that they are required to attend a disciplinary hearing and be given ten working days notice to prepare for the hearing (except in the case of a rescheduled date at the employees request where no minimum notice requirement will apply – the 10 days already having been served). The Investigating Officer will establish a date based on the availability of the officer and the disciplinary panel.
- 12.2. A letter notifying the employee that he/she is required to attend a disciplinary hearing must contain the following information.
- i) Date, time and venue of hearing
 - ii) The composition of the Disciplinary Panel
 - iii) Details of the allegation(s)
 - iv) The employees statutory right to be accompanied
 - v) The names of the witnesses called by the investigating officer
 - vi) Whether or not the allegation is one of gross misconduct, therefore highlighting the possibility of dismissal.
- 12.3 The employee must be provided with copies of all documents that the investigating officer intends to submit as evidence at the hearing, including witness statements.
- 12.4 The employee or their representative must provide the investigating officer with copies of all documents that the employee intends to submit as evidence at the hearing, including witness statements no later than 5 days prior to the hearing.
- 12.5 Documents not supplied in accordance with timescales outlined above will not be admissible at the hearing unless it can be proved that the document / evidence did not exist or was not in the possession of the investigating officer or employee at the relevant deadline date, or that the information could not be supplied by the deadline dates. As a general rule witness statements will not be covered by this provision as they will have been

solicited in sufficient time to comply. It is important that this provision does not allow investigating officers or employees to produce witness statements at the hearing that the other party has not had the opportunity to comment on either as a tactic to surprise the other party or to secure an adjournment. If the witness statement could have been sourced in time i.e. the witness was not out of the country, it cannot be admitted under this provision.

- 12.6 All witnesses must produce a statement outlining the evidence they intend to give. This ensures under natural justice that both parties have full sight of the evidence prior to the hearing. The investigating officer or the employee may question their own witnesses. The chair of the disciplinary panel may intervene and limit the questioning where he/she feels it is not relevant to the case.
- 12.7 The hearing may be postponed for up to maximum of 5 working days if the employee's representative or the employee is unable to attend on the given date. If the employee's representative is still unable to attend on the second date the disciplinary hearing will go ahead in the presence or absence of the employee and their representative.
- 12.8 The disciplinary panel may adjourn the hearing at any time for further evidence to be gathered or for witnesses to be called to answer questions.
- 12.9 On completion of the proceedings the disciplinary panel will normally announce to both parties:
 - i) Whether the allegation/allegations were found to be proven
 - ii) the disciplinary sanction, if any, to be imposed
 - iii) the employees right of appeal against that action
 - iv) that all the above information will be confirmed to the employee in writing within 5 working days
- 12.10 In the event that the employee cannot comply with 12.7 above, the disciplinary panel will inform the parties that the decision will be given in writing and indicate the date by which the decision will be sent out.

12. Appeal hearing

- 13.1. Appeal hearings will normally be heard by a level of senior management more senior than the members of the original disciplinary panel. The panel for appeals against dismissal will be as described by the schools delegation for such hearings or as described by statute if this is different.
- 13.2. No new evidence will be considered at appeal hearings unless there is an over-riding requirement of natural justice to allow such evidence. All new evidence must be submitted to the Appeal Panel at least 5 days before the hearing. The Appeal panel must ensure that this is supplied to the original investigating officer for comment in advance of the hearing. New evidence supplied at the hearing itself will only be allowed if the party introducing it can demonstrate that the evidence could not have been supplied earlier.
- 13.3. Once an appeal is lodged the appeal panel will consider the documentary evidence and records of the original disciplinary panel and determine which, if any, witnesses the panel wish to call. Only the appeal panel can call witnesses to attend an appeal hearing. The responsibility for ensuring witnesses attend lies with the employee or investigating officer depending on who the witnesses were appearing for. The investigating officer is

responsible for the attendance of witnesses that they have interviewed but did not call to the first disciplinary hearing.

- 13.4. The appeal panel will hear representations from
 - i) the chair of the disciplinary panel and original investigating officer
 - ii) the employee and their representative
 - iii) Witnesses called by the appeal panel.
- 13.5. The appeal panel will question the witnesses they have called. The parties may also question witnesses on the same basis as outlined for disciplinary hearing.
- 13.6. At the conclusion of the representations and witness evidence the panel will withdraw to reach a conclusion.
- 13.7. The range of conclusions available to the panel are
 - i) To reduce the disciplinary sanction applied either in terms of level of warning or length of warning
 - ii) To uphold the disciplinary sanction
- 13.8. The decision of the appeal panel should be communicated verbally to the parties, if possible, and must be communicated in writing to the employee within 5 days of reaching a decision.
- 13.9. If the appeal panel cannot reach a decision immediately following the hearing they must arrange a time to reconvene to reach a decision and inform the parties of this date and the anticipated date when the written decision will be sent out. The appeal panel must then reconvene make a decision and communicate this in writing to the parties within 5 days or the reconvened meeting.

14. Employees Required to Attend An Investigatory Interview or a Disciplinary Hearing

- 14.1 All employees (whether as appellants or witnesses) are contractually obliged to make themselves available to attend investigatory interviews and disciplinary hearings when required to do by management, whether they are at work or not. (e.g. absent from work due to sickness or suspension).
- 14.2 An employee must notify the Investigating Officer if he/she is unable to attend an Investigatory Interview or hearing.
- 14.3 If the employee is subsequently unable to attend a rearranged hearing then they can:
 - iv) have his/her representative attend on his/her behalf
 - v) submit his/her response in the form of a written statement, or
 - vi) both

In these circumstances the representative cannot answer questions on behalf of the employee.

- 14.4 Although every reasonable effort will be made to ensure the employee is present, the disciplinary hearing may still go ahead in the absence of the employee or their representative. The outcome of the hearing may be a decision to impose a disciplinary sanction, which in cases of gross misconduct may include summary dismissal.

- 14.5 If, during the course of the formal disciplinary process the employee concerned raises a grievance that concerns the matters under disciplinary investigation this grievance should be considered as part of the disciplinary process and the investigating officer should consider this grievance in their investigation. If the grievance is unrelated this should be dealt with as a separate matter under the grievance policy and procedure. "Grievances" raised after the conclusion of the investigation, that are linked to the substance of the investigation, should be considered at the disciplinary hearing without further investigation as these are not truly speaking grievances but rather the employee's defence. The statutory procedures are clear that the statutory grievance procedure does not apply to potential or actual dismissals; these are dealt with through the statutory dismissals procedure.
- 14.6 Any behaviour, which subsequently proves, after investigation to be frivolous, malicious or vexatious, will result in disciplinary action taken against the perpetrator. This includes further action stemming from the submission of spurious grievance or claims with the purpose of frustrating the disciplinary process.

15. Disciplinary Action

- 15.1 Disciplinary sanctions need not be sequential. For example, if a single breach of discipline is considered to be serious but not serious enough to warrant dismissal, a final written warning may be given even though the employee may not have received a previous written warning.
- 15.2 Before arriving at a decision, the disciplinary panel will consider the seriousness of the offence, any mitigating circumstances and the employee's previous employment record in as much as this relates to the allegations under consideration. Once the panel have determined that the allegation(s) are proven they may take into account any existing warnings on file.
- 15.3 Where a "reasonable belief" in the employee's blameworthiness of the misconduct alleged is established, based on the evidence submitted, and on the "balance of probabilities", the following disciplinary penalties may be applied.

i) First Written Warning

A formal written warning will normally be issued to an employee whose conduct is considered to be of a serious nature or if previous unheeded warnings have not prevented further acts of misconduct.

The normal time period for application of such a warning is 6 to 12 months.

A First Written Warning will usually be followed by a Final Written Warning should an employee commit a subsequent act of misconduct.

ii) Final Written Warning

A final written warning will normally be give for a more serious offence, or in the case of repeated additional offences for which a previous written

warning has already been issued and is still in force. The normal time period for such a warning is 12 to 18 months.

iii) Dismissal

Employees who commit further acts of misconduct who are subject to a live Final Written Warning may be dismissed. Dismissal may be applied as the first and only sanction in cases of gross misconduct.

iv) Summary Dismissal

In cases where gross misconduct has been established, an employee may be summarily dismissed. In the case of summary dismissal the employee's contract will be terminated immediately and he/she will not be entitled to notice or pay in lieu of notice.

In the case of summary and ordinary dismissal the school must inform the HR service of this decision in order that the HR service can effect the termination.

16. Referrals to the General Teaching Council and the Teacher Misconduct Team (DCSF)

- 16.1 In cases where a teacher is dismissed on the grounds of gross misconduct or resigns during the course of a suspension/investigation the LA has a statutory duty to refer all information relating to that dismissal or resignation to the DCSF Misconduct Team, who will consider whether or not the individual should be allowed to hold registered teacher status.
- 16.2 In cases where the dismissal is for reasons, which do not relate to the safety and welfare of children the DCSF refers the case to the General Teaching Council (GTC) for consideration.
- 16.3 The duty to report also applies where the employee leaves employment before the conclusion of the disciplinary process. In these cases the disciplinary panel should consider the evidence and make a determination on the case.

17. Records, Documentation and Notification

- 17.1 The school should keep appropriate records of Disciplinary Hearings and decisions. The ACAS code recommends that such records should include:
 - a) The nature of the alleged misconduct
 - b) A copy of the written statements, and other documentation relating to the case
 - c) School Management's response
 - d) A record of the action taken
 - e) A record of the reasons for the action taken
 - f) Whether there was an appeal, and if so the outcome.
 - g) A record of any relevant subsequent developments.
- 17.2. All paperwork relating to a disciplinary should be kept by the school or centrally by the LA Human Resources team for the remainder of the employment and for a period of 6 months post termination / resignation. Expired disciplinary sanctions that fall short of dismissal will not be referred to in any employment references.

18. Sources of Information and Support For Schools

- 18.1 LA Human Resources Advice and contact details are available on the OMBC intranet or by contacting the Children, Young Peoples and Families Human Resources Service.
- 18.2 ACAS Code of Practice on Disciplinary and grievance Procedures 2004, available from www.acas.org.uk.
- 18.3 Legal Action Group, www.lag.org.uk, provide a range of legal advice publications / periodicals which are used by Citizens Advice Bureau's in advising clients. ***Employment Law an Advisers Handbook*** (though written from the point of view of advising employees) is a very accessible source of information.

19. Sources of Information and Support for Employees

- 19.1 LA Human Resources Advice, details are available on the OMBC intranet or by contacting the Children, Young People and Families Human Resources Service.
- 19.2 ACAS Code of Practice on Disciplinary and Grievance Procedures 2004, available from www.acas.org.uk.
- 19.3 Trade union representatives, www.nut.org.uk, www.nasuwat.org.uk, www.naht.org.uk, www.atl.org.uk, www.unison.org.uk, www.gmb.org.uk.
- 19.4 Teacher Support Line (08000 562 561), www.teachersupport.info
- 19.5 The General Teaching Council (08700010308), www.gtce.org.uk

20. Interpreting the Policy

- 20.1 In the event of a dispute regarding the interpretation of the policy advice must be sought from the LA Human Resources Service. The LA may seek national or local employers' organisation advice before issuing any guidance.
- 20.2 Any advice regarding interpretation will automatically become incorporated into this policy and will be binding on all schools that have adopted it. This is to ensure consistency in practice across all schools.

POLICY ADOPTION AND REVISION DETAILS			
LEAD ADVISER	Andy Collinge	LEA REVIEW	
SIGNED OFF BY		GOVERNORS	
LEA DATE		REVIEW	
ADOPTED BY			
SCHOOL ON			
EFFECTIVE DATE			

Appendix A

Conduct of a Disciplinary Hearing

Preliminaries

- a) The employee will have been notified in writing of the allegation(s) and the right to representation.
- b) Those present will be as follows:
The disciplinary panel to hear the case
Investigating Officer - to present the case
Employee (and representative)
Witnesses called by either side (not in the room until called)

The following may be present if applicable
Director of Children, Young Peoples and Families representative- advisory capacity
Headteacher - advisory capacity
- c) The employee, representative and the investigating officer will enter the room together, when invited to do so.

The Hearing

1. A member of the disciplinary panel introduces all parties, and outlines the procedure.
2. The investigating officer presents the facts of the case and may call witnesses.

Questioning of witnesses proceeds in the following order

Investigating Officer questions the witness
Employee or Representative question the witness
Disciplinary Panel members may question the witness
Directors representative may question the witness

Witnesses leave the room at the conclusion of their evidence and examination.

3. The employee/representative may seek clarification from the investigating officer.
4. Members of the disciplinary panel and the Directors representative) may seek clarification from the investigating officer.
5. The employee/representative has the opportunity to respond and may call witnesses.

Questioning of witnesses proceeds in the following order

Employee or representative question the witness
Investigating Officer question the witness
Disciplinary Panel members may question the witness
Directors representative may question the witness

6. The investigating officer may seek clarification from the employee.
7. The disciplinary panel and the directors representative may seek clarification from the employee.
8. The investigating officer sums up the management case (no new evidence may be introduced).
9. The employee/representative sums up (no new evidence may be introduced)..
10. All retire from the room except the disciplinary panel and the Director's representative (and Head teacher if present in an advisory capacity).
11. The disciplinary panel consider the evidence and determine whether the allegation(s) are proven before considering any previous live disciplinary record. Only when considering what level of disciplinary action is appropriate should previous proven live disciplinary matters be taken into account.
12. Before reaching a decision, the disciplinary panel may recall the parties to clarify points and/or adjourn for further investigation if required.
13. The employee/representative and the investigating officer are invited to return and are informed of the decision and, in proven cases, the employee's right of appeal.
14. The decision and the right of appeal are confirmed in writing within 5 working days.

APPENDIX B

Conduct of a Disciplinary Appeals Hearing

Preliminaries

- a) Those present will be as follows:
The appeal panel to hear the case
Investigating Officer & Chair of Disciplinary panel - to present the case for the disciplinary panel decision
Appellant (and representative) – to present the case for the appeal
Witnesses called by the appeals panel

The following may be present if applicable
Director of Children, Young Peoples and Families representative- advisory capacity
Headteacher - advisory capacity

- b) The appellant, representative and the investigating officer will enter the room together, when invited to do so.

The Hearing

1. A member of the appeal panel introduces all parties, and outlines the procedure.
2. The appellant presents the grounds for the appeal and their case for overturning the original disciplinary decision.
3. Witnesses called by the appeal panel that originally gave evidence in support of the appellant are called at this point.

Questioning of witnesses proceeds in the following order

Investigating Officer or Chair of Disciplinary Panel (not both) question the witness
Appeal Panel members may question the witness
Directors representative may question the witness

4. The Investigating Officer / Chair of Disciplinary Panel may seek clarification from the Appellant.
5. Members of the disciplinary panel and the Directors representative may seek clarification from the Appellant.
6. The Investigating officer / Chair of the disciplinary panel put forward the case for the disciplinary decision.
7. Witnesses called by the appeal panel that originally gave evidence in support of the investigating officers case are called at this point.

Questioning of witnesses proceeds in the following order

Appellant or representative (not both) question the witness

Appeal Panel members may question the witness

Directors representative may question the witness

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8. The appellant or representative may seek clarification from the investigating officer / chair or the panel.
9. The appeal panel and the directors representative may seek clarification from the investigating officer/ chair of disciplinary panel
10. The appellant or representative is afforded the opportunity to summarise their case (no new evidence may be introduced).
11. The investigating officer / chair of disciplinary panel sums up (no new evidence may be introduced).
12. All retire from the room except the appeals panel and the Director's representative (and Head teacher if present in an advisory capacity).
13. The appeals panel consider the evidence and determine whether to uphold the decision of the disciplinary panel and if so whether the level of disciplinary sanction was appropriate.
14. Before reaching a decision, the appeals panel may recall the parties to clarify points and/or adjourn for further investigation if required.
15. The employee/representative and the investigating officer / chair of disciplinary panel are invited to return and are informed of the decision. There is no further right of appeal.
16. The decision is confirmed in writing within 5 working days.

Appendix C - EXAMPLES OF MISCONDUCT

Gross Misconduct

1. Harassing, bullying or abusing employees, or members of the public, for any reason including reasons relating to sex, race, disability, sexuality, religious or political convictions, or age, including actions in contravention of the Council's Equal Opportunities Policy and any type of discriminatory behaviour.
2. Possessing, using, displaying, or dealing in illegal drugs
3. Drunken, disorderly, indecent or immoral conduct, including wilful assaults or fighting with fellow employees, clients or members of the public during working hours
4. Other conduct outside work which could result in a loss of trust in an individual as an employee, or a conviction which renders it unlawful for the employee to carry out their duties e.g. a Schedule 1 Offender in a post which comes into unsupervised contact with children; loss of a driving licence whilst in a driving post.
5. Malicious damage to Council property at any time, or theft of money from other employees or members of the public.
6. Fraud or deliberate financial irregularity involving the Council's money or resources. Abuse of leave entitlements, the Council's sick pay scheme or similar procedure.
7. Unauthorised use of the Council's premises, property, or equipment
8. Unauthorised use or misuse of Council information. This would include issues involving confidentiality and the Data Protection Act 1998
9. Misuse or unauthorised use of the Council's computer systems/equipment e.g. e-mail and internet facilities, personal use, including contravention of the Council's guidelines for acceptable use of the Internet
10. Deliberate and serious breach of safety rules and instructions
11. Gross negligence in performing duties which causes or might cause unacceptable loss, damage or injury e.g. loss of a vehicle/destruction of confidential documents/broken bones
12. Sexual misconduct whilst working or on Council property or with any person in or under the Council's care including professional misconduct or sexual offences involving a service user. In particular this includes persons (defined under the Children's Act 1989 as being "in need") under the age of 21 years, and vulnerable adults
13. Serious breach of the Council's Code of Conduct for Employees
14. Bringing the Council into serious disrepute
15. Failure to declare an interest when involved in Recruitment or similar activity where discretion can be applied.
16. Deliberately disobeying a reasonable lawful contractual instruction from management, or serious act of insubordination.

Misconduct

Frustration

The following is likely to result in the termination of the contract of employment on the grounds of frustration:

1. Claiming false qualifications, or other material fact, age or previous experience, or good health essential for an appointment with the Council
and

2. Failure to disclose a conviction detrimental to the performance of the employee's job (including a spent conviction) and any bind over order or caution if the employee's job involves access to children under 18 years or children under 21 years assessed as being "in need" under the Children's Act 1989.

Misconduct

- i. Unsatisfactory timekeeping
- ii. Absence without permission
- iii. Unsatisfactory standards of work not related to capability
- iv. Failure to follow recognised procedures, e.g. holiday and sickness notification
- v. Rudeness or incivility to clients, members of the public or fellow employees.

This is not an exhaustive list.