

# Disciplinary Policy and Procedure

## St Andrew's Church of England Primary School

We believe that 'Everyone is different. Everyone is special'. As Jesus taught us to love unconditionally, so we strive to nurture respect for all; to provide a rich and stimulating curriculum that considers the individual; and to care for the intellectual, social and spiritual well-being of our whole school community - encouraging positive engagement with the wider world, as affirmed through our school values and parable of the Good Samaritan.

Jesus said, "Love the Lord your God ..." and, "Love your neighbour as yourself." Luke 10:27



At St Andrew's we are committed to keeping pupils and staff safe. Our school policies are an essential part of the way we safeguard all members of our diverse school. We support democracy, the rule of law, individual liberty, mutual respect and tolerance of different faiths and beliefs. These principles help us to listen to each other and learn from each other to create a safe and rich learning environment for pupils and staff alike.

<b>Approved by:</b>	<b>FPP</b>	<b>Date: 26/9/22</b>
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The OCC model policy (last updated October 2021) on which this policy is based can be found at: <https://schools.oxfordshire.gov.uk/cms/sites/schools/files/folders/folders/documents/HR/Policies/DisciplinaryProcedure.pdf>

# **St Andrew's C of E Primary School**

## **Disciplinary Policy and Procedure**

### **1. Introduction**

This Oxfordshire model disciplinary policy and procedure for Oxfordshire Schools has been drawn up in consultation with the recognised trade unions and associations: ASCL, NEU, NAHT, NASUWT and Unison.

The school expects high standards of performance and conduct from all its employees.

When applying this model Disciplinary policy, the schools will treat the employees reasonably, consistently and fairly. It is the responsibility of the school to ensure the employee is not discriminated against. The school expects all parties to maintain confidentiality throughout the application of this policy.

Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any point within this procedure.

Schools are required to have clear procedures for the regulation of the conduct and discipline of school staff. This policy provides a fair and objective approach to handling cases of misconduct and has been developed in accordance with relevant employment law, [ACAS Code of Practice on Disciplinary and Grievance Procedures.](#) and [Disciplinary procedures for the teaching profession May 2020.](#)

### **2. Scope**

*This policy is applicable for Oxfordshire County Council (OCC) maintained schools. It is provided as advice for schools where the Governors are the employer. Academies may adapt these guidelines should they wish to, following relevant consultation with their recognised trade union representatives, where applicable.*

This policy does not apply to Volunteers, Contractors and Agency workers as they are not employees of either OCC or the School's Governing body.

It is recommended that academies who have chosen to continue to use the STPCD, Burgundy Book and the National Agreement on Pay and Conditions of Service for support staff (the Green Book) also adopt this model procedure. Where an academy adopts this procedure, the word 'school' should be taken to refer to the academy.

### 3. Key Definitions / terminology:

**Relevant body-** The term '**relevant body**' has been used throughout this procedure. In maintained schools this is the governing body. The differing structures of academies means that the academy trust will need to define the relevant body for the purpose of this procedure.

**Head Teacher-**The term '**head teacher**' has been used throughout this procedure, however depending on the size and structure of the school the head teacher's role in the procedure may be delegated to other members of the senior leadership team, school business managers or line managers as appropriate. Where the head teacher is subject to these procedures, it will be managed by the Chair of the relevant body or other nominated governor.

**Allegation** - a claim or statement that an employee has done something wrong or, in some cases, illegal.

**Balance of probabilities** - a logic that is applied to assist the relevant manager. This helps to form a view as to whether an event was more likely than not to have occurred based on the evidence.

**Gross misconduct** - is an act of misconduct which is so serious in nature that it fundamentally damages the employment relationship and may justify dismissal without notice, even on first occurrence.

**Initial assessment** - the process undertaken by an appropriate manager to establish the immediate facts/circumstances and to determine whether any further action is required.

**Investigating officer** - the manager appointed to investigate the disciplinary matter. This should be someone who is neutral and with no conflict of interest to all parties concerned.

**Misconduct** - is an act of either wilful or negligent conduct, behaviour or omission.

**Suspension or alternative arrangements** – are neutral and precautionary acts to remove the employee from work on full pay temporarily to enable a disciplinary investigation to be carried out unimpeded.

**Timescales** - all reference to 'days' in this how to guide refers to working days, regarded as Monday to Friday, excluding public holidays. If an employee works on a term time only basis, then school holidays will be excluded when applying the timescales.

**Disciplinary Hearing-** This is the meeting at which the employee and Investigating Officer state their case regarding the disciplinary issue, usually before a panel.

**Appeal Hearing-** This is the meeting at which the employee presents their grounds for appeal against the disciplinary decision to an Appeal Committee.

**Appeal Committee-** The Staff Disciplinary/Dismissal Appeal Committee of the governing body hears all appeals and makes the decision regarding whether the disciplinary decision should be upheld or overturned. The Committee usually consists of three members of the governing body who have not taken part in the decision to take disciplinary action.

**Dismissal-** The termination of an individual's employment which can be with or without a period of notice or payment in lieu of notice.

## 4. Aim

The aims of the Disciplinary policy and procedure are to:

- improve conduct and behaviour of an employee through early intervention and management
- help employees to understand the rules and standards required
- address disciplinary matters fairly
- address disciplinary matters in a timely manner
- achieve appropriate outcomes for the school to manage disciplinary matters and identify any organisational learning

**For information of how to manage disciplinary procedures during the pandemic, please refer to the [ACAS guidelines](#) here.**

## 5. Misconduct and Gross misconduct

### 5.1 Misconduct

Misconduct is an act of either wilful or negligent conduct, behaviour or omission that falls short of the school's / OCC's expected standards. The examples of misconduct listed here would normally, where it is a first offence, warrant formal disciplinary warnings or other action, rather than dismissal. The level of seriousness of each instance of misconduct depends upon matters including the nature of the employee's role, the work environment and whether the misconduct has happened before. This list is not exhaustive:

- Poor time keeping such as a pattern of lateness, taking unauthorised extended breaks (this could be gross misconduct if there is a serious risk to health & safety standards)
- Failure to follow a reasonable management instruction without justifiable reasoning
- Failure to comply with the OCC and school's policies, procedures, and standards of behaviour- such as behaving in an improper, disorderly, unacceptable, or unprofessional manner
- Failure to follow the OCC and school's safeguarding procedures (could be gross misconduct depending on seriousness of matter)
- Unauthorised absence i.e., being absent without prior permission or notification to school

- Inappropriate behaviour towards pupils, parents, colleagues, or members of the public
- Bullying / Harassment (could be gross misconduct depending on seriousness of matter) – Please refer to the school’s Antibullying, Harassment and Discrimination policy.
- Actions and behaviours that could affect the reputation of the school and/or the Council and/or the employee in the performance of their role.
- Refusing to do work (insubordination)

## **5.2 Gross misconduct**

Gross misconduct is behaviour or conduct that is very serious or has serious implications that may be considered as a fundamental breach of contract and justifies summary dismissal (dismissal without notice). While not an exhaustive list, examples of gross misconduct include:

- Physical abuse or violence, threatening behaviour towards staff members, members of public and / or children
- Sexual Harassment, victimisation, watching pornography and making / sharing comments of sexual, racist or otherwise discriminatory intent whilst at work or outside work and on any social media platform
- Acts considered in serious contravention to the safeguarding of children such as (but not limited to) sexual abuse, accessing child pornography, violence, failure to identify / escalate potential risks resulting in serious safeguarding risks for the child / children
- Being under the influence of alcohol or prohibited substances at work or causing disrepute to the school whilst being under the influence of alcohol or prohibited substances
- Serious breach of School’s Health & Safety policy and procedure
- Serious breach of data security policies or data protection standards
- Sabotaging school property including IT equipment deliberately or misusing school property to a significant level
- Theft, bribes, fraud, or serious falsification of records such as exam results, pay claims and / or misusing confidential information or school’s property and finances
- Any conduct at work or outside of work (criminal or otherwise) which could discredit the reputation of the School and/or the Council or result in a serious breach of trust and confidence
- Actions or behaviours that fundamentally breach the relationship of trust and confidence between the school and the employee.
- Bringing the school’s reputation to a disrepute

Where acts of gross misconduct are believed to have taken place, no decision will be taken to dismiss until appropriate procedures, as set out in this document, have been followed. This includes an investigation of the facts, holding a disciplinary hearing and giving the employee the opportunity to respond. A period of suspension may be considered in appropriate circumstances, depending on the potential risks the employee may pose when being at work.

### **5.3 . Child Protection allegations**

Where allegations involve child protection issues e.g., abuse, the head teacher must consult with the Local Authority Designated Officer (LADO) for Safeguarding within 24 hours of receiving the allegation and contact EPS / HR for further support. Any further action under the OCC / school's Disciplinary Procedure will be subject to discussion with the LADO.

### **5.4 Capability procedures**

Separate procedures will be followed where an employee is considered incapable of doing their job to the required standard due to a lack of professional capability (*see Professional Capability Procedure*) or as a result of ill health (*see Managing Sickness Absence*).

Where it is not clear whether the issues are of misconduct or incapability or both, the head teacher should seek advice from EPS or the school's HR Adviser.

## **6. Matters to consider during a disciplinary process**

### **6.1 Fair treatment of the employee during the entire process**

It is the management's responsibility to ensure the employee is treated fairly and consistently throughout the process. Throughout the process, the employee must be kept informed of the timelines and the support available to them.

### **6.2 Maintain confidentiality**

The management must keep sharing of information related to the disciplinary investigation and hearing to only those who need to know. This will usually be the employee themselves, their immediate line manager and those who are investigating or leading the investigation. If in doubt, please speak to EPS / HR.

### **6.3 Looking after employee's wellbeing and mental health**

Going through a disciplinary procedure can be very stressful for both the school leadership team and the employee subjected to the disciplinary investigation. It is therefore very important to look out for any signs of concerns especially employees with underlying mental health conditions and offering Occupational Health support or referring them to contact Employee Assistance Programme. This may help in preventing sickness absence, drop in morale, refusal to engage in the process by the employee or a potential grievance. It is encouraged that staff contact their union representative if required.

#### **6.4 If the employee wants to resign at the onset or during the disciplinary**

The employee may wish to resign if they fear the outcome of the investigation may result in a final written warning or dismissal and may wish to leave the organisation due to concerns about their future career prospects. The management should try to complete the procedure if possible, prior to the employee leaving the school.

#### **6.5 If the employee raises a grievance at the onset or during the disciplinary**

Seek advice from EPS when you receive the grievance. Try to establish whether the grievance is related to the current disciplinary or separate. It is recommended to deal with both the grievance and disciplinary at the same time especially where both are related.

### **7. Initial assessment**

When a disciplinary matter arises, or an allegation is made against an employee, the employee's manager or senior manager must explore the immediate facts/ circumstances. This must be completed before commencing any further action under the Disciplinary policy. This is called an initial assessment and is not part of any formal investigation process. They should contact EPS / HR for further advice and guidance if unsure on what needs to be done.

If the initial assessment identifies a safeguarding concern, then the manager must contact OCC's Safeguarding team or Local Authority Designated Officer (LADO) in the first instance. Advice in these incidences must be sought from EPS / HR as well.

The nature of the disciplinary matter will determine the appropriate manager to undertake the initial assessment. If the allegation is against the Head Teacher, the Chair of Governors is responsible for conducting the initial assessment and must seek advice from EPS. They must ensure their initial assessment is properly documented with clear rationale of their justification on whether to progress to formal investigation or whether to deal with matters informally.

The appropriate manager must look at the immediate facts/ circumstances of the case. The manager should therefore consider:

- whether it is a capability or conduct matter (Capability is when an employee is unable to achieve the expected performance standards due to lack of skill, ability or training. Conduct relates to employee's behaviour or attitude towards performing their role).
- whether this is a serious matter involving safeguarding risks and therefore requires urgent escalation to LADO
- whether this can be resolved informally by having a conversation with the employee ▪ whether it warrants for a formal investigation

*An initial assessment must be given priority. It is typically completed on the same day as the matter is identified.*

**The outcome of the initial assessment could be:**

- No further action required as there is no apparent substance to the disciplinary matter
- Informal approach / mediation (If this does not work, then formal action must be taken)
- Proceed to formal investigation

The outcome of the initial assessment should be noted down clearly including justifications for why and how a particular outcome was reached. This should be retained in the employee's local and EPS / HR records.

## **8. Stages in managing a Disciplinary procedure:**

There are usually four stages in a disciplinary procedure:

1. Informal approach
2. Formal investigation
3. Formal hearing
4. Appeal

### **8.1 Informal approach**

It is recommended that for cases of minor misconduct, where possible, attempts should be made to resolve this informally in the first instance. As per the ACAS guidelines, Informal discussions, counselling sessions or disciplinary investigatory meetings do not attract the right to be accompanied. A quiet word is often all that is required to improve an employee's conduct or performance. In some cases, additional training, coaching and advice may be what is needed. However, there may be situations where matters are more serious or where an informal approach has been tried but is not working.

If informal action does not bring about an improvement, or the misconduct is considered too serious to be classed as minor, the school management should proceed towards formal action. All conversations should be documented in detail and retained in employee's local and EPS / HR records.

If you are unsure on what to do, please contact EPS / HR.

#### **8.1.1 How to undertake an Informal approach**

**Talk to the employee** in private and confidential manner. This should be a two-way discussion, aimed at discussing possible shortcomings in conduct or performance and encouraging improvement.



Criticism should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained.

**Listen actively and carefully** to what the employee has to say about the issue. It may become evident there is no problem – if so, convey this to the employee.

Where improvement is required make sure the employee understands what needs to be done, how their performance or conduct will be reviewed, and over what period. **It may be useful to confirm in writing what has been decided.**

If, during the discussion, it becomes obvious that the matter may be more serious, the employee should be told that the matter will be continued under the formal disciplinary procedure.

Where it has been established that the issue warrants a formal disciplinary procedure, the school management must inform EPS / HR and follow their advice. The employee will be informed in writing. The letter should include sufficient information about the next steps and must be reviewed by EPS / HR before sending to employee. You must attach a copy of the Disciplinary policy and procedure along with the letter to ensure the employee reads and understands the procedure.

### **8.1.2 Things to consider prior to formal Investigation**

Many investigations may be conducted without removing an employee from their typical working environment. On occasions, the school management may need to consider taking a temporary measure while an investigation is conducted to ensure the investigation is not adversely impacted and that having the employee attend work does not provide risk to the children or working environment. These measures could be:

- 1) **Temporary reassignment or working from home-** Depending on whether the investigation is around alleged conflict or dispute between members of staff or likely to cause disruption or negative impact on the school's environment or the investigation itself, the school management may decide to ask staff to work from home during investigation or reassign them to carry alternative duties that causes minimal disruption.
- 2) **Suspension-** This requires the employee to stay away from workplace and not on duty whilst being paid their full contractual pay unless they become ill and are certified by a GP as unfit to work. In these circumstances normal sick pay entitlement will apply.

*It should be made clear to the employee(s) that suspension is temporary and not an assumption of guilt or disciplinary sanction. When considering suspension, the school management must consult EPS or their HR Advisor.*

Suspensions should be considered in situations where there is a serious allegation of misconduct and the employee: (This is not an exhaustive list)

- is considered a safeguarding risk- this should be discussed with LADO immediately
- is considered a high risk to the wellbeing or safety of other members of staff / children
- could tamper with evidence, influence witnesses or misuse data
- may likely to interfere with the investigation
- relationships have broken down significantly between the school management and employee concerned as a result of which there is a lack of trust

Where suspension is being considered, the Head teacher or Chair of Governor must complete a Suspension Risk Assessment form with support from EPS / HR to establish the risks of suspending / not suspending. LADO for safeguarding must be notified if this is a potential safeguarding matter or risk. EPS / HR Advisor will review and seek approval from OCC's HR Business Partner and the Deputy Director of Education.

### **Considering alternatives to a suspension:**

Prior to completing the suspension risk assessment form, the school management should consider all possible alternative options before recommending suspension. Some of the alternatives to suspension could include temporarily-

- moving member of staff to different area / duties
- working from home
- changing their working hours especially where is a potential risk of conflict amongst staff members
- being placed on restricted duties
- working under supervision

### **8.1.3 Decision to Suspend:**

Once a decision to suspend has been made, the Headteacher or Chair of Governor in HR presence, should notify the employee immediately and ensure they leave the work premises with immediate effect. The employee's IT access may be withdrawn during suspension where there are concerns regarding the employee's continued access to IT systems. The suspension letter should where possible, be given on the same day or within two working days. The suspension letter should state that the suspension is precautionary, pending the outcome of the investigation and advise the member of staff of:

- The reasons for suspension (the allegations against them)
- The terms and expected duration of the suspension
- That the action of suspension does not imply guilt or that a decision about the outcome has been reached

- That the employee must be contactable, but not attend the workplace or contact work colleagues unless required to do so by management
- That the employee should not discuss the matter or breach confidentiality although they may seek advice from their recognised trade union representative
- Point of contact for the employee including support during suspension

### **During the period of suspension**

Every effort should be made to keep periods of suspension as short as possible and the decision to suspend should be kept under regular review.

Regular contact should be maintained between the employee and their manager / nominated point of contact during suspension. It is important the employee is supported during this time and can contact someone at workplace to discuss any concerns they may have. While suspended, the employee must be reminded to keep matters confidential and not to contact work colleagues, unless authorised in advance.

The manager or their nominated contact should give regular update to the employee about the suspension and inform them how long the suspension is likely to last.

During suspension, the employee is expected to remain contactable during normal working hours and available to attend any meetings necessary as part of the investigation. If they are unable to do so, they should notify their manager / nominated contact person at the earliest opportunity outlining the reasons.

Employees will be given contact information for the school's Employee Assistance Programme and encouraged to access this support.

### **Ending a period of suspension and returning to work**

Only the Relevant Body can end a period of suspension and for Community, Voluntary Controlled, Community Special and Maintained Schools, they must notify the local authority immediately.

Before a suspended employee returns to work, careful planning and consideration should be given to supporting their return.

### **Suspension of head teachers**

Where a head teacher is suspended, the Chair of the Relevant Body will deal with this with advice from EPS / the school's HR Adviser and in consultation with the HR Business Partner and Deputy Director of Education / Director of Children, Education and Families for Community, Voluntary Controlled, Community Special and Maintained Schools.

## 8.2 Formal Investigation

### 8.2.1 What is an investigation?

An investigation is a fact-finding exercise to collect all the relevant information on a matter. A properly conducted investigation can enable an employer to fully consider the matter and then make an informed decision on it.

Where an investigation is necessary, then the school management **should act promptly**. Unnecessary delay may mean memories fade.

### 8.2.2 Who conducts an Investigation?

The investigation should be carried out by an Investigating Officer (Investigator- IO) who is not related to the employee or their manager in either professional or personal capacity and must not have any connection to the allegations raised i.e., they must be neutral to ensure they investigate the matter fairly, thoroughly and without prejudice. EPS / HR maybe able to recommend IOs.

### 8.2.3 The role of the Investigating Officer (IO)

The role of an Investigating Officer is to be fair and objective so that they can establish the essential facts of the matter and reach a conclusion on what did or did not happen. An Investigating Officer (IO) should do this by looking for evidence that supports the allegation and evidence that contradicts it.

In potential disciplinary matters, it is not an investigating officer's role to prove the guilt of any party but to investigate if there is a case to answer.

### 8.2.4 Appointing an Investigating Officer

Wherever possible, a senior member of staff should act as the investigating officer. If the disciplinary matter relates to the Headteacher, then in such cases, the Chair of Governors in consultation with EPS / HR will identify an external Investigating Officer to lead the investigation. EPS Advisor / HR will support during the Investigation.

Further advice must be sought from EPS / HR.

### 8.2.5 What is to be investigated?

When it has been established that an investigation should take place, the school management and the Investigating Officer must establish the precise purpose and scope of the investigation. This should form the basis of the Terms of reference (TOR).

### **8.2.6 Terms of reference (TOR)**

The Terms of reference will usually set out:

- what the investigation is required to examine
- the facts and matters under investigation
- which policy applies
- to whom the findings should be reported and to whom to contact for further direction if unexpected issues arise or advice is needed

### **8.2.7 Arranging an investigation meeting with the employee**

The investigating officer must write to the employee inviting them to attend an investigation meeting, providing a minimum of 5 working days' notice of the investigation meeting. The timescales for the meeting, however, can be varied by mutual agreement. The employee must be notified in writing.

If the employee does not wilfully participate during investigation or refuses to attend investigation meeting without notification to the Investigating Officer, the Investigating Officer may decide to carry on with the investigation in the employee's absence. If this is to occur, the employee must be notified in writing explaining why the investigation cannot be delayed. However, if the employee is off sick or is unable to attend due to personal circumstances, all effort must be made to re-arrange the investigation meeting at a mutually convenient time.

### **8.2.8 Right to be accompanied during Investigation meeting**

According to ACAS, there is no legal right to be accompanied in a disciplinary investigation meeting, however, it is a good practice to allow it. The right to be accompanied by law is permissible in a disciplinary procedure meeting or hearing that will give or confirm a formal warning or other disciplinary action. The employee should be asked if they require any reasonable adjustments in advance to the investigation and hearing meeting.

If the employee is allowed the right to be accompanied during an investigation meeting, they must ensure that their chosen companion is one of the following:

- a workplace colleague
- a workplace trade union representative
- an official employed by a trade union

As part of reasonable adjustments for disabled employees, the school should consider allowing someone else to attend as a chosen companion for example as support worker or someone with knowledge of the disability and its effects.

### **8.2.9 Investigating child protection allegations**

Where allegations involve child protection issues e.g., abuse or safeguarding concern / risk, the Head teacher or Chair of Governor must consult with the Local Authority Designated Officer (LADO) within 24 hours of receiving the allegation. Any further action under the school's Disciplinary procedure, will be suspended until agreement has been given by the Designated Officer for the Local Authority to proceed and in consultation with the HR Business Partner. For guidance on handling allegations of abuse made against teachers or other staff see [DfE Statutory Guidance "Keeping Children Safe in Education" - Part Four](#)

### **8.2.10 Allegations of criminal offences**

If the school becomes aware that an employee is subject to a criminal investigation, this may not in itself be a reason for disciplinary action. The school should contact EPS / HR advisor and LADO (safeguarding incident) in the first instance. It may be possible for a disciplinary investigation to run in parallel to a criminal investigation, but the school management should seek advice from the Police and EPS / School's HR team. An investigation by the school may need to be suspended where the Police advise that it may prejudice a criminal investigation. In such cases, it may be decided to suspend the employee without pay pending an investigation, however, legal / HR advice must be sought prior to any suspension without pay decision made. The employee should be kept informed.

It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action. The criminal justice system works based on guilt being 'beyond reasonable doubt' whereas under employment law an employer can decide based on the 'balance of probability'.

### **8.2.11 Absence from an investigation meeting**

If the employee against whom the disciplinary allegations are, cannot attend an investigation meeting, they must notify the IO in advance setting out the reasons. All attempts should be made to reschedule the meeting at a mutually agreeable time. If the employee is off sick, Occupational health advice should be sought to determine if the employee is well enough to participate or attend the investigation meeting. Reasonable adjustments should be considered if any, to ensure the employee is well supported and able to attend or participate in an investigation meeting.

Where an employee simply refuses to engage in an investigation without giving any justifications despite several attempts being made by the IO, the IO may decide to proceed with the investigation without the employee. However, IO must seek HR advice on this prior to proceeding in employee's absence.

### 8.2.12 The outcome of Investigation

On completion of the investigation, based on the evidence/facts and findings, the Investigating officer should prepare a report. The Investigating officer must ensure that the report is sufficiently thorough, fact / evidence based and should not present assumptions.

The investigating officer's report will make a recommendation to state whether

- no further action is needed
- the disciplinary matter may be managed using an informal approach
- the allegation(s) under investigation requires the case to progress to a formal hearing.

The investigating officer will not be responsible for deciding any appropriate sanction. This will be decided at the formal hearing.

### 8.2.13 The Investigation report and sharing information

Where the investigation involves recording statements from witness, the Investigating Officer should seek consent from the witness to be able to share information where necessary. The employee subject to a disciplinary investigation should be given a copy of any written evidence, including witness statements, where the matter proceeds to a disciplinary hearing.

## 8.3 Disciplinary hearing

Where the investigating officer recommends that the cases progress to a formal hearing as there is a case to answer, the school management must promptly arrange to schedule the hearing as soon as possible, whilst ensuring to give reasonable time to the employee to prepare.

### 8.3.1 Notifying the employee

The employee must receive an invite to the disciplinary hearing in writing giving a minimum of five working days' notice of the hearing. Details of the alleged misconduct / gross misconduct will be provided in writing to the employee along with information regarding the possible outcomes of the disciplinary hearing and the names of those who will be present including the name of the chair hearing the case.

Copies of any written evidence, which may include witness' statements, investigation report and the disciplinary policy, should be provided at the same time, along with details of the time and venue for the hearing. The employee should be notified of their right to be accompanied by a workplace colleague or a trades union representative at the disciplinary hearing.

Employees also have the right to invite witnesses to attend on their behalf and must notify the hearing panel of the names of any witnesses that will be attending as soon as possible and no later than *three working days* prior to the hearing.

The employee may submit a written response and any written evidence they would like to present at the hearing at least three working days in advance of the hearing.

### **8.3.2 Right to be accompanied**

Employees have the right to be accompanied at all formal disciplinary hearings. The employee should be asked in advance of the hearing if they require any reasonable adjustments.

The employee has the right to be accompanied by one of the following as a chosen companion-

- a workplace colleague
- a workplace trade union representative
- an official employed by a trade union

As part of reasonable adjustments for disabled employees, the school should consider allowing someone else to attend as a chosen companion for example as support worker or someone with knowledge of the disability and its effects.

At disciplinary hearings, the chosen companion (representative) can present and/or sum up the employee's case, say things to support the employee's case and confer with them during the hearing. The representative cannot answer questions on behalf of the employee.

Where an employee's representative cannot attend on the proposed date of the hearing, the employee can suggest an alternative time and date so long as it is reasonable, and it is not more than five working days after the original date.

### **8.3.3 Disciplinary hearing panel and advisers**

The disciplinary hearing panel should comprise different people to those involved in conducting the investigation. It should normally a senior member of staff with no conflict of interest and neutral to the initial investigation.

A Disciplinary Committee should normally consist of three members.

Selection of Governors for the Disciplinary Committee must ensure there is no potential conflict of interest. It is not appropriate for staff governors to be members of the school's disciplinary panel/committee.

The school's HR Adviser will be invited to attend and advise the panel on procedural matters only in compliance with HR policies and procedures. They will not be making decisions on behalf of the disciplinary committee or be deemed as influencing them to reach a particular outcome.



For Community, Voluntary Controlled, Community Special and Maintained Nursery Schools, where dismissal is a possible outcome, a representative of the Director of Children, Education and Families must also be invited to attend and offer advice. This is normally the HR Business Partner.

In voluntary controlled and voluntary aided schools, a representative of the diocese may have the right to attend and advise, where dismissal is being considered, depending on the any written agreement with the Relevant Body.

The school will arrange for the Clerk to the relevant body or another appropriate note taker to attend the disciplinary hearing to take notes.

Audio or video recording of disciplinary hearings is not permitted. However, it may be permitted if the hearing is taking place virtually due to exceptional circumstances and all those attending the meeting have no objection for the recording to take place.

### **8.3.4 Purpose and format of disciplinary hearings**

The purpose of a hearing is for the panel hearing the case to consider the facts and circumstances of the matters to enable them to decide what action to take, if any.

Management, employee, and employee's companion should make every effort to attend.

The panel should:

- ensure that any reasonable adjustments required for the employee are taken into consideration
- make sure someone takes notes

The school management presenting the management case should:

- explain the employee's allegations
- go through the evidence including, in appropriate cases, calling any witness

The employee should be given the opportunity to:

- set out their case
- answer the allegations
- ask questions
- present evidence
- call relevant witnesses (having given advance notice of the employee's wish to do so good notice)
- respond to any information given by witnesses

The employee's companion should be allowed to:

- set out the employee's case
  - speak for the employee but not on behalf of the employee or respond to questions on behalf of the employee
-

- talk with the employee during the hearing
- take notes

Appendix 1 provides more information about how the hearing will be conducted.

### **8.3.5 Dealing with absence at disciplinary hearing**

It is important to establish whether the absence is due to illness or injury or whether the absence is deliberate act or reluctance / refusal to participate and engage in the disciplinary procedure.

The panel may decide after reasonable attempts to engage with the employee, that they will continue with the hearing in absence of the employee. However, before making this decision, HR advice should be sought. The employee should be notified in writing and be given the justification if hearing is to take place in their absence.

Where the employee is unable to attend due to sickness or injury, Occupational Health advice must be sought to determine if the employee is fit enough to participate in the hearing and the meeting should be rescheduled accordingly. If the employee is unable to attend due to them feeling anxious or stressed about the actual meeting, all attempts must be made to assure the employee and explore whether the hearing can take place later, or as last resort if the employee is able to participate virtually either by phone call or video meeting. The employee should be encouraged to speak to their union representative or workplace companion for support and assurance.

### **8.3.6 At the end of the disciplinary hearing**

The panel should adjourn after the hearing to consider the case carefully before making a decision. At the end of the hearing, the chair of the panel should ensure to outline the next steps to the employee and when they are likely to hear the outcome.

The decision of the panel should be given to the employee in writing, usually within five working days. The employee will be notified of their right to appeal.

### **8.3.7 Deciding what action and disciplinary penalty to take**

The hearing panel may decide, based on the available information, either:

- that no action is necessary
- to issue a disciplinary warning
- to demote the employee
- to dismiss the employee

When deciding what disciplinary penalty is appropriate and what form it should take, consideration will be given to circumstances and facts of the case including:

- the employee's work and disciplinary record including any current warnings, their position and length of service
- any special or mitigating circumstances which might make it appropriate to adjust the severity of the penalty
- whether the proposed penalty is reasonable and proportionate in view of all the circumstances and in legal compliance ensuring there is no bias or unfairness towards the employee
- whether any training, additional support or adjustments to the work are necessary

### 9.3.8 Disciplinary Sanctions

Disciplinary sanctions will normally be issued in the sequence set out below. However, serious matters of misconduct may result in an immediate final written warning or the decision to dismiss, where the hearing panel considers it to be a reasonable response based on the circumstances and facts of the case.

#### First written warning

A first warning is normally issued in respect of less serious or a first act of misconduct. This will be in writing and set out the nature of the misconduct and the change in behaviour required and the right of appeal. The warning will also inform the employee that further disciplinary action may be considered if there is no sustained and satisfactory improvement or change.

A record of the warning will remain active on the employee's record for a specified period, **–for six months**, at which time it will be spent and will then be retained on their personnel file.

#### Final written warning

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve during the currency of a prior warning, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to further disciplinary action resulting in dismissal (or some other action short of dismissal) and will refer to the right of appeal. A copy of this written warning will remain active on the employee's record for a specified period, **of twelve months** at which time it will be spent with a record retained on their personnel file, subject to achieving and sustaining satisfactory conduct or performance.

#### Dismissal with notice

The decision to dismiss an employee may result if after examining the case at a hearing the panel find:

- despite previous formal warning/s, further misconduct has occurred or there has been a failure to improve despite support and reasonable adjustments provided to the employee.

- the misconduct is of such a serious nature that the panel believes dismissal is a reasonable response, for example a serious safeguarding breach
- As an alternative to dismissal, depending on the circumstances, it may be decided to demote the employee or extend their final written warning to allow the employee an opportunity to improve.

### **Summary Dismissal - Gross misconduct**

Summary Dismissal is when an employee is dismissed instantly without notice or pay in lieu of notice (PILON), usually due to gross misconduct.

### **Dismissal of staff in Community, Voluntary Controlled, Community Special and Maintained Nursery Schools**

Where the governing body decides to dismiss an employee, it must notify the local authority in writing of its decision and the reasons for it. If the person concerned is employed solely at the school (and does not resign) the local authority must, before the end of the period of fourteen days from the date of the school's notification either:

- terminate the person's contract with the authority, giving such notice as is required under that contract; or

- terminate such contract without notice if the circumstances are gross misconduct.

## **9 Appeals**

Employees have the right to appeal against disciplinary action to an Appeal Committee and must do so in writing to the Clerk to the relevant body, within 10 working days of receiving the written outcome of the disciplinary hearing.

Employees must make clear the grounds of their appeal providing full details. Examples of reasons to appeal may be the level of sanction issued was unreasonable; a serious flaw or fault in the findings or procedures followed.

The appeal will be a review of the disciplinary decision and not a rehearing. It will examine the grounds of the appeal, the procedures followed and the reasonableness of the outcome.

Appeals should be arranged promptly. The employee will be invited to attend the appeal meeting in writing and will usually be given a minimum of five working days' notice. The employee has the right to be accompanied by a work colleague or trade union representative.

At the appeal the employee will be given the opportunity to state their case and provide any supporting evidence. The head teacher or the chair of the disciplinary panel will set out the management case for the disciplinary decision.

Both parties will be given the opportunity to ask questions and to invite any relevant witnesses. Witnesses would not normally attend an appeal hearing where it is a review of the disciplinary decision.

The decision of the appeal panel will be put in writing to the employee usually within three working days of the appeal hearing. The decision of the appeal panel is final.

See Annex 2 for full details of conducting an appeal hearing.

### **Appeal Committee**

The Appeal Committee must be made up of Governors with no previous involvement with the case. In maintained schools the committee must consist of at least three Governors.

### **Avoiding delays**

Prolonged, unresolved disciplinary matters can be stressful for employees and other parties and can cause a great deal of disruption to the school and pupils.

It is in everyone's interests for matters to be resolved as quickly as possible.

The head teacher and school managers will make every effort to deal with matters promptly and without unreasonable delay.

If the employee's representative cannot attend on a proposed date, the employee must provide alternative times and dates of their availability, so long as these are reasonable and not more than five working days after the original date. Alternatively, employees can nominate another representative.

Employees and their representatives must take all reasonable steps to avoid delays, make every effort to attend the meetings required under this procedure and to provide any information requested, promptly and in advance of any meetings.

If an employee is unable to attend a meeting because of circumstances beyond their control, they should inform the school as soon as possible.

Employees will be expected to participate and attend all meetings, unless a GP or Occupational Health Physician advises that they are not fit to do so. In these circumstances other arrangements may be agreed with the employee to ensure matters can still proceed such as for them to provide a written statement and/or for a representative to act on their behalf. The employee's absence will be managed in accordance with the school's Managing Sickness Absence Procedure.

A decision to proceed in the employee's absence can be made if:

- the meeting has already been rearranged once and the employee fails to attend for a second time without reasonable justification and notification provided in advance

- the employee fails to attend without explanation, or there is evidence that the employee has not made sufficient attempts to attend
- the employee is on long-term sick leave and medical opinion is that s/he will be unable to attend meetings in the near future. In these circumstances alternative arrangements will be discussed with the employee e.g., the employee can supply written information instead, virtual meeting or ask a representative to attend on their behalf.

## **10 Referrals to the Disclosure and Barring Service**

Schools are required to refer to the DBS anyone who has harmed or poses a risk of harm to a child and who has been removed from working (paid or unpaid) in regulated activity or would have been removed had they not left. The DBS will consider whether to bar the person. See [DBS Barring Referral Guidance](#) to understand when a referral may be appropriate and for a copy of the referral form.

## **11 Regulation of teacher misconduct**

In cases of serious teacher misconduct the school will make a referral to the National College for Teaching and Leadership (NCTL), which is an executive agency of the Department for Education. The employee will be notified that such a referral will be made

NCTL is responsible for regulating the teaching profession in England and will investigate cases of serious teacher misconduct and decide whether to refer a case to a professional conduct panel. The panel then investigates whether a prohibition order should be issued.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/401887/Teacher-misconduct-Disciplinary-Procedures-for-the-teaching-profession.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/401887/Teacher-misconduct-Disciplinary-Procedures-for-the-teaching-profession.pdf).

## **12 Grievances raised during the disciplinary process**

Where an employee who is subject to formal disciplinary proceedings, wishes to raise a grievance about any related matters, this will not lead to the disciplinary process being postponed as they will have the opportunity to raise their concerns at the formal hearing.

If an employee wishes to raise a grievance or whistleblowing matter that is unrelated to the disciplinary proceedings, it will be dealt with separately and concurrently in accordance with the school's grievance or whistleblowing procedure.

## **13 Equality Monitoring and accessibility**

If any aspect of this procedure causes difficulty on account of any disability that you or your companion/representative may have, or if you need assistance because English is not your first language, you should raise this with your manager or EPS / HR.

The Council confidentially monitors any complaints arising during restructuring and redundancy process to ensure this policy is operated fairly and consistently.

## 14 Equality and Diversity Impact measure

This policy has been subject to an Equality Impact Assessment in accordance with the Council's Equality, Diversity and Inclusion Framework and is not considered to unduly impact upon any protected group. The Council will regularly monitor and review the impact of this procedure.

### VARIATION OF PROCEDURES

This policy is not contractual, however, changes arising to individual employee's terms and conditions of employment as a result of application of this policy are contractual. The Disciplinary policy and procedure may be varied by the Council from time to time. Examples of variation include the need to comply with new legislation or best practice guidance. Should the Council decide not to apply the procedure, either in its entirety or in part, that will not amount to a breach of contract.

Changes to the procedure will be made in line with the relevant consultation process with the recognised trade unions and through raising employee awareness.

#### VERSION CONTROL

**This version now supersedes any previous versions.**

Date approved and published: October 2021 (Version 1.0)

Date to review policy: July 2024 (unless subject to legislative change)

Date Consulted with recognised Trade Unions: March 2021

- [DfE Statutory Guidance "Keeping Children Safe in Education"](#)
- [Department of Education - Staffing and Employment Advice for Schools](#)

## Appendix 1

### Roles and Responsibilities

**Relevant Body-** Relevant Bodies are required to have clear procedures for the regulation of the conduct and discipline of school staff and to ensure staff are aware of these procedures.

**The *School Staffing (England) Regulations 2009*** require governing bodies of maintained schools to decide whether to delegate any part of the disciplinary procedure. Disciplinary decisions, including dismissals, can be delegated to:

- the head teacher or
- one or more governors or
- one or more governors acting together with the head teacher.

Where disciplinary matters are delegated to one or more governors and the issue does not directly concern the head teacher, the head teacher may attend and offer advice in all proceedings and this advice must be considered.

The relevant body may decide to delegate part of this procedure, for example the authority to issue a first written warning to the head teacher but can decide that any matter that might require more serious disciplinary action should be referred to a committee of governors.

**It is recommended that decisions to dismiss should not be delegated to one person acting alone.**

- Academy trusts have full discretion regarding delegation of staff dismissal decisions.
- As and when required, an Appeal Committee must be formed to hear appeals from employees against disciplinary action issued to them such as formal warnings and dismissal. An appeal committee must be no smaller than the committee which made the original decision. Governors appointed to this committee must have had no previous involvement in the disciplinary matter. See section on appeals.
- Relevant Bodies must record formal adoption of this procedure and the authority they have delegated in relation to disciplinary and dismissal decisions.
- In the event of the head teacher being subject to disciplinary action, the Relevant Body will be responsible for administering this procedure.



**Head teacher**

- Working with the Relevant Body the head teacher is responsible for the overall management of standards in the school and for ensuring this procedure is fairly and consistently applied in all cases.

**Local authority**

For Community, Voluntary Controlled, Community Special and Maintained Nursery Schools a representative of Oxfordshire County Council's Director for Children, Education, must be consulted at all formal stages of the disciplinary procedure where dismissal may result.

**Line managers**

Line managers are responsible for managing the performance of their staff, ensuring they make staff aware of the standards expected, their key priorities and to promptly manage underperformance or misconduct.

Where line managers believe formal disciplinary action is required, they must consult with their head teacher who will, following initial enquiry, decide whether the circumstances warrant the application of this formal procedure.

**HR advice**

The school's HR Adviser should be consulted for advice on the application of the formal stages of this procedure and should attend formal hearings to provide advice, especially when dismissal is being considered.

## Appendix 2

### Conducting a Disciplinary Hearing

1. The Chair introduces those present.
2. The Chair invites the person presenting the case against the employee to identify the areas of alleged default and to bring forward any witnesses or witness statements.
3. The Chair invites the employee and their representative to ask questions.
4. The Chair and any other members of the hearing panel ask questions of the person presenting the case.
5. The Chair invites the employee and/or representative to respond in full to the case presented against them and to bring forward any witnesses or witness statements.
6. The Chair invites the person presenting the case against the employee to ask any questions.
7. The Chair invites the members of the panel, if appropriate, to ask questions of either party and asks any questions her/himself. Either party is invited to address to the chair any comment arising from the question or the reply.
8. The Chair invites the person presenting the case to summarise it. No new evidence should be presented at this stage.
9. The Chair invites the employee or their representative to summarise their case. No new evidence should be presented at this stage.
10. The Chair asks both parties to withdraw while they or the sub-committee give consideration to the case and come to a conclusion. If the sub-committee needs to clarify any point with one or both of the parties, both parties should be recalled.
11. The Chair will call back both parties either to announce the decision or to advise that a decision will be communicated in writing usually within three working days.

## **Appendix 3**

### **Conducting an Appeal Hearing**

1. The Chair invites the employee to present their case for appeal.
2. The Chair invites the head teacher/school respondent to ask questions.
3. The Chair invites members of the appeal panel to ask questions of the employee.
4. The Chair invites the head teacher/school respondent to respond to the case presented.
5. The Chair invites the employee to ask questions.
6. The Chair invites members of the appeal panel to ask questions of the employer.
7. The Chair invites the employee to summarise the case.
8. The Chair invites the head teacher/school respondent to summarise the case.
9. Both parties withdraw leaving the panel to reach a decision.
10. All parties reconvene for decision to be communicated, or if necessary, informed that the decision will be communicated in writing within three working days.