

WATFORD GRAMMAR SCHOOL FOR BOYS



STAFF DISCIPLINARY POLICY

Headmaster's signature

5/3/18

A handwritten signature in black ink, appearing to be 'I. A. ...'.

Chair of Governors' signature

5/3/18

A handwritten signature in black ink, appearing to be 'Paul ...'.

1 INTRODUCTION

The governing body is required to set out a disciplinary procedure and rules. This procedure has been negotiated with trade unions and is recommended for adoption.

Many potential problems and difficulties can and should be resolved informally. The employee will have every opportunity to discuss the concern, to make any comments and to record them if desired. The Headmaster should be able to demonstrate that clear advice and help have been given to the employee at this informal stage and will have a record of any reprimand or informal warning given as part of the normal managerial functions.

The formal procedure is intended to be used for problems that are serious in themselves, or serious because they remain unresolved after informal steps have not achieved a satisfactory solution.

Statutory requirements make it necessary for the Authority to draw the attention of the DfE and General Teaching Council to certain cases involving teachers and other school-based employees. (see section 15)

2 PURPOSE, SCOPE AND PRINCIPLES

A disciplinary procedure is necessary for promoting fairness and order in the treatment of individuals, and is designed to help and encourage all employees to achieve and maintain high standards of conduct and job performance. Schools should have clear standards of behaviour for staff to observe, should notify staff of this procedure and take account of appropriate terms and conditions of employment.

This procedure applies to:

- all employees of the school, including the Headmaster;
- staff who are centrally employed **and** who work solely at the school;
- staff in units or bases that are attached to a school.

The procedure does not apply to:

- peripatetic staff who are centrally employed by the LA;
- schools meals staff employed by Hertfordshire Catering or by an external contractor;
- employees of external contractors and providers of services (*e.g.* contract cleaners).

(Such staff are covered by the relevant procedures of their employing body)

The disciplinary procedure is concerned with handling allegations of misconduct and gross misconduct. Where disciplinary allegations appear to be linked to sickness (including work-related stress), the ill-health procedure may be appropriate. Where there is concern about competence or poor performance, the capability procedure should be used.

All staff must have ready access to this procedure on request and are entitled to complete confidentiality in relation to personal, professional and medical information.

No disciplinary action will be taken against an employee until the case has been fully investigated. In certain circumstances it may be deemed appropriate to suspend the individual from all school duties on full pay and without prejudice during investigations (see 4.1).

Before any of the 3 stages (described below) in the procedure, the employee will:

- be advised in writing of the nature of the complaint against him or her;
- have the right to be accompanied by his/her trade union representative, his/her professional association representative or work colleague at an investigation meeting and a hearing (where appropriate);

- have a right of appeal when a penalty has been imposed.

This procedure has three levels of sanction, depending on the seriousness of the misconduct:

- Stage 1 Written warning
- Stage 2 Final written warning
- Stage 3 Dismissal

The Commissioning Manager will determine the stage at which this procedure will be entered. Stage 3 will normally be entered only where gross misconduct is alleged or where an employee already has a 'live' final written warning. A finding of gross misconduct will result in dismissal without notice, otherwise dismissal will be with contractual notice. The exception to the norm here is where an employee already has a live Stage 1 or Stage 2 warning and is then found to have committed an act of misconduct which, though short of gross misconduct, is so serious that it would alone have merited a Stage 2 warning. In these circumstances, a jump from Stage 1 or Stage 2 to Stage 3 might be appropriate.

There are two sets of circumstances in which disciplinary action can only be taken after notifying the employee's trade union or professional association official:

- where the alleged misconduct arises from trade union or professional association activity or duties; or
- where the employee who is the subject of the allegation is an accredited trade union or professional association representative (including election as the school's representative).

The appropriate union/professional association must be contacted before action is taken against an accredited representative of that union or association.

3 DEFINITION AND SEPARATION OF ROLES

There are several distinct roles to be taken during any disciplinary proceedings. It is essential that they are clearly defined and that the person carrying out the role is clearly identified.

3.1 The Commissioning Manager

This is the person who has the authority to decide whether a complaint or incident is sufficiently serious to warrant a formal investigation under this procedure. The Commissioning Manager will appoint an Investigating Officer to carry out the investigation, and will also be the person who will conduct, if necessary, the disciplinary hearing and make the judgement in the light of all the available evidence.

The Commissioning Manager will normally be the Headmaster. If the investigation is about the actions of the Headmaster, the Commissioning Manager will normally be the Chair of Governors.

3.2 The Investigating Officer/Presenting Officer

This is the person who is charged by the Commissioning Manager to carry out an investigation into the complaint or incident. He/she will consider all of the available evidence, both written and oral, and will produce a written report to the Commissioning Manager. The Investigating Officer will, if necessary, interview witnesses and others in order to produce a balanced report that can lead to a fair judgement.

The Investigating Officer will conclude his/her report with a view on the balance of probabilities about what happened. He/she must not, however, take a view about whether a disciplinary sanction is justified: this decision can only be taken by the person or panel conducting the hearing.

The Investigating officer is likely to be a member of the School's Leadership Team or another manager within the school. Care needs to be taken to ensure that the Investigating Officer is able to carry out the investigation impartially.

There may be circumstances, where there is no one, other than the Headmaster, with sufficient seniority or capacity to carry out an investigation. If the Headmaster has to carry out the investigation, then he/she cannot also be the Commissioning Manager: that role would need to be taken by the Chair of Governors, and any disciplinary hearing that might follow would need to be conducted by a panel of governors (not the Headmaster).

Whether the Commissioning Manager is the Headmaster or the Chair of Governors, it is always possible to appoint an Investigating Officer from outside the school, possibly from the staff of the local authority or from an independent source. There is likely to be a cost to the school if an external Investigating Officer is appointed.

3.3 The Person or Panel who conducts the Hearing

Normally, the Headmaster is the Commissioning Manager and will conduct the Hearing. If the Chair of Governors is the Commissioning Manager, then the Hearing will be conducted by a Disciplinary panel of 3 governors, not by the Chair alone. Whilst there is no requirement, legal or otherwise, to exclude the Chair from the Disciplinary Panel, it is likely that the Chair's relationship with the Headmaster will be too close to ensure demonstrable impartiality. It is, therefore, recommended that the Disciplinary Panel comprise 3 governors other than the Chair.

In the case of a hearing that is considering dismissal, it is expected that the Headmaster will have been the Commissioning Manager and will conduct the hearing (unless he/she is the subject of the hearing). Statutory guidance does, however, list the possible exceptions to this rule for a dismissal hearing. In any of the following circumstances, a dismissal hearing may be conducted by a Disciplinary Panel of governors:

- a) where the Headmaster has been directly involved in earlier disciplinary stages, either as Investigating Officer or witness [but the Headmaster may conduct a dismissal hearing if he/she has been the Commissioning Manager at an earlier stage];
- b) where the Governing Body of a school with a religious character has agreed policies and procedure that provide for governor involvement in the interests of preserving the school's religious character;
- c) where the Headmaster is subject to suspension; or disciplinary or capability procedures, including investigation; or a disciplinary sanction;

In circumstances where the Headmaster as Commissioning Manager does not hear the case, the Headmaster may jointly present the case with the Investigating Officer.

3.4 Expert Advice at the Hearing

At any disciplinary hearing, the Headmaster or Disciplinary Panel may be advised throughout the hearing, including the subsequent deliberations leading to a judgement, by a person with suitable qualifications or experience in Human Resources and or employment law.

3.5 The Employee and the Employee's Representative

The employee is the member of staff who is the subject of the complaint or allegation.

At every stage of the formal disciplinary procedure, the employee is entitled to be accompanied by and represented by a work colleague or his/her trade union/professional association representative (and by no one else).

“Representation” does not mean that the employee may take a silent or passive role in disciplinary proceedings. He/she has a duty to take an active part in all stages of the proceedings unless there are exceptional circumstances that would prevent the employee’s participation. Representatives may not answer questions on an employee’s behalf.

3.6 Witnesses

It is not necessary that every witness be present at a disciplinary hearing to answer questions but the Headmaster or Disciplinary Panel will need to assess the strength of the evidence and may request a witness to be present so that they can question them directly. There are 3 considerations:

- a) Students and other children under 18 must never attend a disciplinary hearing
- b) Employees of the school may be instructed to attend a disciplinary hearing if required
- c) Adult witnesses who are not employees of the school may be asked to attend to answer questions but cannot be compelled to do so

3.7 The Note-Taker at a Disciplinary Hearing

A written record of the proceedings is essential at every disciplinary hearing. Where the proceedings are likely to be relatively short and straightforward, the record may be taken by the Headmaster or a member of the panel. Where the proceedings are likely to be lengthy or complicated and at every dismissal hearing, a separate note-taker should be engaged for the purpose. This is likely to be the Clerk to the Governors or a member of staff at the school who has played no part in the procedure up to that point. The note-taker will make a record of the hearing but not of the confidential deliberations to determine a judgement at the end of the hearing.

3.8 Support for Participants

Involvement by anyone in disciplinary proceedings is likely to be stressful. The Commissioning Manager must consider how best to meet the school’s duty of care both to employees and to students. In particular, consideration must be given to providing support to the alleged “victim(s)” (i.e. one who believes that they have suffered as a result of the employee’s actions that are now the subject of disciplinary proceedings) and to an employee who has been suspended, pending a disciplinary investigation.

In either case, the school should identify a member of staff who can provide impartial support which could include:

- regular information about the progress of the case;
- advice on getting access to specialist counselling (which may include the school’s employee assistance programme or the Headmaster’s support service) or medical assistance;
- information about significant developments at the school: this will be particularly important for an employee who is suspended.

The Supporter – who has a different role from that of the employee’s trade union or professional association representative – should be briefed at the outset by the Commissioning Manager about his/her role. The Commissioning Manager should also inform the employee about the role of the Supporter.

4 STEPS LEADING TO A DISCIPLINARY HEARING

4.1 Suspension

It should be clearly acknowledged that suspension can have profound implications for an employee's life and career. The Headmaster and/or Chair of Governors should consult with their HR adviser before taking action. Suspension is always with full pay and without prejudice to the employee. The power to suspend rests with the full governing body or the Headmaster (or the Chair, if suspending the Headmaster). The power to lift suspension rests only with the governing body. Suspension may be an appropriate step for the following reasons:

- a) To prevent harm to students or to protect the employee
- b) Where the presence of the employee will hamper investigations

Suspension is not automatic, whatever the allegation, and should, in any event, be reserved only for serious allegations.

Where a serious allegation has come to light but there is no corroborating evidence at the outset, consideration should be given to the following short-term alternatives to suspension:

- Working from home.
- Paid leave of absence.
- Working in a different location.
- Working in a more closely supervised environment.

Such alternatives should be used for no more than one week to allow time for a preliminary assessment of the evidence that is readily available. Where the allegation concerns safeguarding children, a risk assessment must be discussed with the LADO. Once this assessment has been made, the decision as to whether to suspend can be taken.

Wherever possible, a meeting with the employee and his/her representative should be held, at which the allegations and the reasons for considering suspension will be discussed. Discussion should include the arrangements for keeping in contact with the employee, including ongoing advice and support during the period of suspension and for appealing against the suspension.

If the period of suspension is brief only, leading quickly to reinstatement or to a disciplinary hearing under this procedure, an appeal against suspension will not be necessary. However, in a number of cases, investigation of the allegations, particularly by outside agencies, may be lengthy. In such cases, it is suggested that from the outset arrangements for reviewing the suspension and appealing against it should be clear. Since it will normally be the Headmaster who has imposed the suspension (and since the Headmaster alone may not lift a suspension), it would not be appropriate for the Headmaster alone to hear such an appeal. It is suggested that a panel of three Governors (one of whom may be the Headmaster), hear an appeal against suspension. If the circumstances that led to suspension under the above criteria no longer obtain, the panel will make a recommendation to the governing body that the suspension be lifted.

The smooth conduct of the suspension depends largely on the initial moves made by the Headmaster on the first day. Where allegations are made which involve the abuse (neglect, physical injury, sexual or emotional abuse) of a pupil, it is important to know what to do quickly so that rumour is managed and those with a right to information and support are dealt with sensitively. The role of the LADO is crucial (and must comply with statutory guidance).

4.2 Allegations about Safeguarding Children (Child Protection)

Allegations about the safeguarding and protection of children must be handled in accordance with statutory guidance and the procedures of the Hertfordshire Safeguarding Children Board (HSCB) which are detailed in the School's Child Protection policy. The relevant statutory guidance is in part 4 of "Keeping Children Safe in Education" (2016) and appendix 5 of "Working Together to Safeguard Children" (2015).

These procedures are no longer limited to allegations involving "significant harm/risk of significant harm". Any allegation that an employee or volunteer has:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child;
- behaved towards a child or children in a way that indicates that he or she would pose a risk of harm to children.

The role of the LADO is crucial in handling all allegations of this kind (not just in relation to schools). The Designated Officer has a statutory duty to ensure that allegations about safeguarding are handled properly and expeditiously.

The key points for a Commissioning Manager – either the Headmaster or the Chair of Governors – to follow are:

- a) Read and understand Part 4 of "Keeping Children Safe in Education."(2016)
- b) Inform the Designated Officer **within one working day** of any allegation that comes to the school's attention and that meet the criteria above, the information to include the name of the employee and the name, address and date of birth of the student(s), where relevant.
- c) Whilst a preliminary assessment of the available evidence can be made in order to inform the referral in b) no attempt should be made to carry out an investigation
- d) A strategy meeting, normally arranged within 2 working days of the allegation, will determine whether the allegation should be investigated by the police or by some other agency or by the school under its disciplinary procedure
- e) If the matter is handed back to the school, whether at the first strategy meeting or at some later stage, the school must take account of the recommendations of the strategy meeting and must liaise with the LADO about the next steps.

4.3 The Investigation

Alleged instances of misconduct should be acted upon promptly.

Following a complaint or allegation, it will, in many cases, be clear that a formal investigation is required. However, in some cases, a preliminary assessment of the readily available evidence will be appropriate to determine what has happened and whether a formal investigation is required. Once a decision has been made, normally by the Headmaster, that a formal investigation is needed, the employee should be informed in writing of the nature of the complaint.

The first stage of the process is to conduct a formal impartial investigation of the alleged misconduct, in order to establish the facts as far as possible and whether or not there is a case to answer.

If, from the outset, there is a suspicion of child abuse or such a suspicion arises during the course of the school investigation, the investigation must be put on hold and the Designated Officer informed, as described in section 4.2.

The employee should be informed in writing of the nature of the complaint and receive copies of any letters or documents, which led the Commissioning Manager to believe an investigation was necessary. Normally this will occur at the outset of the investigation, except where the Commissioning Manager believes that the conduct of the investigation might thereby be prejudiced. In those circumstances the employee will be informed at the earliest suitable time.

Where the complaint or allegation concerns the Headmaster, the Chair of Governors should seek advice from the school's HR adviser.

4.4 Conducting the Investigation

- a) The Investigating Officer will impartially investigate thoroughly the facts of the matter, including the employee's version of events. The employee may be accompanied by his/her trade union representative or a work colleague at an investigatory interview, although this is not a statutory right. Any information gained by the Investigating Officer when questioning the employee will be noted and will be presented in any subsequent disciplinary proceedings
- b) The investigation should be completed as quickly as is reasonably possible in the circumstances after the employee has been informed of the investigation
- c) All those questioned must be told that if their evidence is to be accepted, it will need to be in either the form of a signed written statement and that the employee concerned will receive a copy, or by oral testimony at a formal hearing attended by the employee affected. Those completing a written statement may be required to attend. During an investigation, it may be necessary to question a large number of people, not all of whom will be called to give evidence
- d) When statements are taken, the dates and any names quoted should be written out in full. All written statements should be signed by the interviewee with the date of the interview
- e) Evidence from staff must be in the form of written statements.
- f) In cases involving sexual misconduct or harassment, ensure a manager of the same gender as the person allegedly offended against is brought in to assist any investigation (it may be necessary to bring in a manager from outside the school in order to meet this requirement)

4.5 Statements from Pupils

- a) This is a delicate area where the search for truth needs to be conducted in such a way as to avoid causing emotional harm to the pupil whose evidence is required. Care needs to be taken to ensure that the pupil does not, as far as possible, feel intimidated by the process. This is particularly true for a pupil who might have been the subject of the alleged misconduct
- b) An important requirement for the protection of children is that children should not be interviewed more than once. If, therefore, a child has already been interviewed by the police or by a social care agency in the course of an investigation into the same or similar allegations, then the interview statements must be requested from the other agency and used in the school's investigation

- a) Where a formal investigation is underway, the parent/carer of the student should always be informed and invited to attend the interview with their child. The parent/carer should be informed that an incident is being investigated and that the pupil's evidence may be used if it proves necessary to hold a formal disciplinary hearing. The pupil will not be required to attend the hearing to give evidence in person
- b) Where the Investigating Officer is not well-known to the pupil, for example, if the Investigating Officer is from outside the school, consideration should be given to asking the school's Designated Safeguarding Lead (DSL) for Child Protection to carry out this part of the investigation. The point here is that the student should feel able to speak frankly and, as far as is possible, in a situation that is not intimidating. The DSL will have received specialist training that will assist the search for the truth.
- c) In any event, when interviewing pupils, the Investigating Officer should be accompanied by a second adult, whose role is to ensure that a complete and accurate record is taken.
- d) The Investigating Officer, taking into account the age and capabilities of the pupil, should ask the pupil to write down an account of what happened. Where this is not practicable, the investigating officer should write the account for the student and check carefully that the account accurately records what the pupil wishes to say. It is likely to be particularly helpful for the Investigating Officer to prepare questions in advance
- e) The Investigating Officer, in questioning the student, should aim to seek clarification of what the pupil saw and experienced. Leading questions must be avoided, but it is important to record the pupil's account of what happened, where and when and who else might have been present during the incident under investigation.
- f) The pupil's account must, like any witness statement, indicate the time, date and place at which the account was written plus the names and roles of all those present at the interview

4.6 **Financial Irregularity**

Staff should be able to raise concerns properly and without prejudice to their personal position.

Any member of the teaching or support staff wishing to complain about financial management, financial malpractice or fraud should report his/her concern direct to the Headmaster.

The Headmaster will investigate all such concerns with respect for staff confidentiality, with the aim of notifying the informant of the outcome of the investigation as quickly as possible.

Exceptionally, where a member of staff believes that the matter cannot be resolved in this way, he/she should report it directly to the Chairman of the Governing Body, who will inform the ESFA or the police if appropriate.

4.7 **Misuse of School Computers and Allied Equipment**

- a) If there are suspicions that an employee is misusing school computers (e.g. by accessing or downloading inappropriate material), the Headmaster will carry out an initial assessment of the circumstances, without alerting the employee at this stage.
- b) The LADO will determine whether the matter should be referred to the police.

4.8 **Conclusion of the Investigation**

- a) The Investigating Officer will give a report of his/her investigation to the Commissioning Manager. If there is no evidence of misconduct, no further action will be taken and the employee will be informed of this in writing as soon as possible. The employee, who may be accompanied by a work colleague or his/her trade union or professional association representative, should be offered a debriefing meeting within a reasonable period.
- b) If, after investigation, there is evidence of misconduct, the Commissioning Manager will arrange a disciplinary hearing

5 **ARRANGING A DISCIPLINARY HEARING**

There needs to be flexibility with dates when arrangements for a hearing are made, especially where a trade union or professional association representative is expected to attend. This flexibility ensures the employee's fundamental right to representation.

The room to be used for the hearing should be large enough to accommodate the panel, both parties and a witness (if any). Tables are needed so that all present can write comfortably. The room should preferably be quiet and not overlooked. Two other rooms or quiet areas should be available for the two parties during adjournments.

Hearings should normally be held during normal working hours, but, where this is not possible, the hearing should begin as soon as possible after the end of the school day.

The employee must receive **at least ten working days' advance notice in writing**, by recorded delivery or delivered by hand, of:

- the nature of the investigation and the report of the investigating officer;
- the purpose of the hearing;
- the complaints or allegations;
- the stage reached in the procedure;
- when and where the hearing will be conducted;
- who will be attending, including witnesses to be called;
- the right to be accompanied by a work colleague or trade union representative;
- the requirement for confidentiality;
- the requirement for the employee to provide, in at least 3 working days before the hearing, all documents that he/she intends to present at the hearing. The documents must be presented in hard copy and with sufficient copies for those, except witnesses, who will attend the hearing.

The persons hearing the case have to be impartial. They should not have been involved in any of the preparatory work and should have no detailed knowledge of the allegations prior to receiving the papers for the hearing.

Where a panel of governors is to hear the case, panel members will be sent all of the papers to be presented not earlier than 2 working days before the hearing. Panel members must not discuss any aspect of the case or the contents of the case papers with anyone, including other panel members, before the hearing.

6 **STAGES IN THE FORMAL DISCIPLINARY PROCESS**

Normally, the formal disciplinary procedure will be entered in Stage 1, however this is dependent upon:

- (i) the seriousness and nature of the alleged offence;
- (ii) any current disciplinary record;
- (iii) the nature of the job;

However, in cases of alleged gross misconduct, the procedures will be entered at Stage 3.

At the outset, the employee must be advised in writing of the Stage being implemented. Any decision in connection with this is open to subsequent challenge and must, therefore, be capable of justification. It is important, particularly in relation to serious allegations that may lead to dismissal, that the Commissioning Manager can demonstrate that he/she considered separately:

- a) whether he/she found all or some of the allegations proved;
and
- b) what level and type of sanction is appropriate.

6.1 Stage 1 – Written Warning

If the conduct appears unsatisfactory, or where serious misconduct is suspected, a disciplinary hearing will be arranged by the Commissioning Manager. If the decision of the hearing finds the case proved, the employee will be given a written warning which should give details of the finding against the employee. The hearing will normally be conducted by the Headmaster. The warning will be confirmed in writing **within three working days** giving details of the finding, the improvement required, the timescale and the assistance that will be given to improve. It will warn that action under the next stage will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of the warning will be kept by the Headmaster on the confidential personal file of the employee. The warning will be reviewed after one calendar year or, exceptionally, another period specified in writing at the time of the warning. If a satisfactory standard has been maintained, the disciplinary record will be spent and the employee will be informed in writing.

6.2 Stage 2 – Final Written Warning

If there is a failure to improve, or there is a further instance of misconduct, or if the misconduct is found to be sufficiently serious to warrant only one written warning, a final written warning will be given to the employee after a disciplinary hearing. The hearing may be conducted by the Commissioning Manager. The warning will be confirmed in writing **within three working days** giving details of the findings of the hearing, the improvement required, the timescale, the assistance (if needed) that will be given to improve, will warn that dismissal may result if there is no satisfactory improvement and will advise of the right of appeal. A copy of the warning will be kept by the Headmaster on the confidential personal file of the employee. The warning will be reviewed after a period of one calendar year unless it covers serious categories of misconduct, when it may remain valid for a longer specified time. The time must be specified in writing at the time of the final warning. If a satisfactory standard has been maintained, the disciplinary record will be spent and the employee will be informed in writing.

6.4 Stage 4 – Dismissal

Where allegations of gross misconduct or alleged repeated misconduct following a final warning are made, the Headmaster will normally conduct the hearing. A Disciplinary Panel of 3 governors will conduct the hearing, if the Headmaster is the subject of the allegation, or in the following circumstances:

- a) Where the Headmaster has been directly involved in earlier disciplinary stages, either as investigator or as witness
- b) Where the Headmaster is subject to suspension; disciplinary procedures (in relation to conduct or capability), including investigation; or disciplinary sanction

If the case for dismissal is not established, a warning appropriate to the conduct may be issued.

If the decision is dismissal, then the employee will be informed immediately and advised of the right of appeal. The decision of the Headmaster (or Governing Body Disciplinary Panel), the reasons for it and the appeal arrangements will be confirmed in writing to the employee within three working days.

A copy of the letter will be sent to the Chair of Governors within 14 calendar days. The Chair of Governors will then formally confirm dismissal by letter to the employee.

7 THE DISCIPLINARY HEARING

NB: Everything that follows in this section assumes that a Panel of Governors will conduct the hearing. This is to ensure that the additional tasks required of a panel are explained. However, in most instances, other than at an appeal stage, the Headmaster will conduct the hearing (see paragraph 6.4 for exceptions).

7.1 Pre-Hearing Review Meeting

In some cases, particularly where the hearing is likely to be complex, it may be useful to hold a pre-hearing review meeting. The purpose of this meeting is to clear up any procedural matters before the hearing itself. The Commissioning Manager will decide whether such a meeting is appropriate and will, if agreed by all parties, meet with the Presenting Officer and the employee's representative together with the Commissioning Manager's expert adviser. A pre-hearing review meeting cannot take place unless both sides are present.

7.2 Presenting and Defending the Case

- a) Representatives to present or defend the case need a ready appreciation of all the facts and issues involved
- b) When presenting a case, it must be remembered that the people hearing the case will have limited knowledge of the case. It will be necessary for the person presenting to give the complete picture, allowing time for the panel to read and absorb documents presented

7.3 Witnesses

When witnesses are called, their status should be established. Following this their knowledge of an involvement in the case needs to be stated. When a witness has made a written statement and this is submitted as part of the evidence, copies must be given to the employee before the hearing. Witnesses should be allowed to emphasise the important parts of the evidence that may be overlooked by someone simply reading it.

7.4 Procedure for the Hearing

- a) The Chair of the Panel introduces those present and describes their status, reminds those present of the purpose of the hearing; that adjournment is possible; that a written record of the meeting will be made; and that the proceedings of the hearing are confidential
- b) Opening statements may be made by both parties, explaining how the case will be demonstrated or defended, referring to the documentation to be presented and indicating the witnesses to be called
- c) The case for the employer is presented, witnesses being called as necessary. The employee or representative may ask questions of each witness and of the employer at the end of the presentation. The panel members may also question each witness and the presenting officer at the end of the presentation

- d) The response for the employee is presented, witnesses being called as necessary. The employer, and then the panel, may question each witness and the employee at the end of the presentation
- e) When all the evidence has been heard, the Presenting Officer sums up, gathering together the points of the case, not introducing new evidence.
- c) The employee or representative sums up
- d) The two sides withdraw to enable the panel to discuss the case
- e) The panel will need to reach a conclusion on:
 - i) whether they find all or some of the allegations proven;
 - ii) what level and type of sanction is appropriate
- i) The panel's decision is normally conveyed orally by the Chair of the Panel in the presence of both parties and will be confirmed in writing within three working days

7.5 Difficulties that may arise during Disciplinary Hearings

Listed below are some of the more serious examples, with suggestions on how they might be handled:

- a) **Failure to attend by the employee**
If no adequate reason is given, re-arrange the meeting. If this happens persistently consider whether the case can be heard in the employee's absence
- b) **Walkout threatened by the employee**
Warn that this may result in the case being heard in the employee's absence and may in itself lead to further disciplinary action. Give careful consideration to an adjournment
- c) **Emotional upset**
Ensure that the individual understands that the hearing will continue (possibly after a short adjournment) when he/she has achieved composure.
- d) **New evidence presented at the hearing**
There are two possibilities:
 - (i) One of the parties presents new evidence at the start of or during the hearing. The panel should accept new evidence only if there are compelling reasons that prevented the exchange of evidence in the normal timescale. If the evidence is admitted, then it might be necessary to allow an adjournment (possibly to another day) for the other party to consider and prepare a response.
 - (ii) A witness reveals a crucial piece of evidence that is not known to anyone else present. The panel should adjourn the hearing in order to consider whether to admit the new evidence. If the new evidence is so significant as to affect the likely fairness of the outcome of the hearing, then the panel may adjourn the hearing to another day in order to allow the investigating officer to extend his/her investigation.
- e) **Overlapping Disciplinary and Grievance Issues**
An employee may raise a grievance after disciplinary proceedings have started against him/her. The Commissioning Manager should consider suspending the disciplinary case for a short period – no more than one week – to consider the

implications of the grievance on the disciplinary. If the grievance has been raised before the appeal stage of the procedure and the matters of grievance are linked to those of the disciplinary, then the grievance should be considered within the disciplinary procedure. If the grievance concerns matters that are unrelated to the disciplinary, then a separate process under the Grievance Procedure will need to start. In almost all cases, the grievance should be considered after the completion of the disciplinary. The exception here would be where there is a long delay in the progress of the disciplinary – perhaps because police proceedings are awaited.

8 DISCIPLINARY RECORDS

All schools are required to follow the statutory guidance detailed in Part 4 of “Keeping Children Safe in Education” (2016).

N.B. “Schools and colleges have a legal duty to refer to the DBS anyone who has harmed, or poses a risk of harm, to a child or vulnerable adult; where the harm test is satisfied in respect of that individual; where the individual has received a caution or conviction for a relevant offence, or if there is reason to believe that the individual has committed a listed relevant offence; and that the individual has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left.”

Disciplinary records should be kept on the employee’s confidential personal file. It is important that a full record of the outcomes of any disciplinary process is kept so that accurate and fair information can be passed to prospective employers and others who legitimately request information for reference purposes.

Where a disciplinary sanction has expired – i.e. is “spent”, as described in Section 6 above – this means that the sanction cannot be used in the “totting-up” of sanctions that would take an employee from Stage 1 to Stage 2 to Stage 3, even though the sanction might still need to be declared in a reference. However, there are 3 points to be made here:

- a) Spent disciplinary sanctions must only be declared to a prospective employer if the reason for the sanction concerns safeguarding children. Sanctions for other reasons will not be declared to prospective employers after they are spent.
- b) A sanction may be used in the totting-up process even after it is spent in circumstances where there is a repeat pattern of behaviour; e.g. an employee takes unauthorised leave on the last day of term, receives an appropriate warning, then repeats the offence as soon as the warning is spent.

9 RESIGNATIONS AND COMPROMISE AGREEMENTS

Paragraphs 167 to 169 inclusive of “Keeping Children Safe in Education” sets out specific requirements in relation to handling allegations concerning the safety and welfare of children and young people.

- 9.1 Allegations concerning the safety and welfare of children must be followed to a conclusion **even if the employee has resigned**. The ex-employee will be given the same opportunity to participate in the investigation as he/she would have been as an employee, but the school must reach a conclusion whether or not the ex-employee co-operates in the proceedings.
- 9.2 “Compromise Agreement” is a legal device by which an employer agrees not to pursue a disciplinary process and an employee agrees to resign. A compromise agreement is often accompanied by an agreed reference for prospective employers. Where there are allegations concerning the safety and welfare of children, a compromise agreement must not be used. In any case it is not possible for the school to avoid referring appropriate cases to the DBS or the NCTL.

10 DISCIPLINARY RULES

The following lists are neither exclusive nor exhaustive and there are occasions when items in either list could be described as misconduct, serious misconduct or gross misconduct. Some of these examples may not be applicable to all categories of employees (e.g. A (v) (d) may more properly apply to teaching staff). The judgement of misconduct must ensure that no one person is treated more favourably or less favourably than another. The School may seek advice from Human Resources.

10.1 Misconduct

- i) Absenteeism and lateness, for example:
 - a) Failure to remain at the place of work during normal working hours without permission or sufficient cause for absence
 - b) Frequent failure to attend work punctually
 - c) Failure to notify the school immediately or as soon as reasonably practicable when absence is due to sickness
 - d) Failure to provide medical certificates in accordance with the conditions of service and current national regulations
- ii) Dishonesty – petty wrongs, for example:
 - a) Making unauthorised private telephone calls
 - b) Sending personal mail at the school's expense
- iii) Unauthorised or excessive use of school equipment such as telephones or computers
- iv) Failure to comply with the school's policies on the use of e-mail, the internet or telephone
- v) Neglect of duty, for example:
 - a) Failure to adopt safe working practice/use protective equipment where required by law or management
 - b) Negligent use of property in such a way as is likely to cause serious damage or loss
 - c) Failure to discharge obligations placed on the employee by statute, contract of employment or reasonable instructions given by the Headmaster
 - d) Failure to exercise proper control or supervision of pupils or students
 - e) Failure to report any serious and known losses or damage to any property issued to or by the employee in connection with his/her employment
- vi) Abusive, threatening or offensive behaviour or language
- vii) Victimisation of other employees or pupils
- viii) Unlawful or unacceptable discrimination which is contrary to the schools adopted policy, against other employees, pupils or members of the public
- ix) Unauthorised disclosure of information classified as confidential by the Governors of the school

10.2 Gross Misconduct

- i) Dishonesty associated with place of work or job being undertaken, which may warrant dismissal:
 - a) Theft or misappropriation of property belonging to the Academy, County Council or any other Authority, a contractor, governors, trustees, another employee, pupil or other third party

- b) Falsification of records or expenses claims
 - c) Demanding or accepting monies or other considerations as bribe for the use of school property, provision of school services or the showing of favour on behalf of the school
 - d) Falsification of any information given on an application form for employment in order to gain advantage, whether pecuniary or otherwise
 - e) Falsification of registration of pupils
- ii) Serious misuse of school equipment (e.g. of a school computer for access to, or downloading of pornographic material)
 - iii) Criminal activities during the course of employment
 - iv) Wilful refusal to carry out a reasonable, lawful and safe instruction
 - v) Wilful refusal to carry out the normal duties of the post
 - vi) Gross negligence in unreasonably failing to attend to or to carry out the duties of the post over a prolonged period
 - vii) Wilfully ignoring responsibilities/instructions thus placing other members of staff or pupils at risk of danger; for example, ignoring handling instructions/safety regulations in respect of radioactive materials
 - viii) Being unfit to perform duties associated with the post as a result of taking alcohol or drugs other than in accordance with medical advice
 - ix) Acts of violence in the course of employment, including:
 - physical violence towards other members of the school staff, parents, pupils, governors, members of the public or members/officers of the Authority
 - x) Conduct incompatible with professional role and status such as:
 - acts of violence;
 - sexual offences;
 - racial offences;
 - drug offences;
 - sexual relations with pupils at the school or for whom the employee has any professional responsibility;
 - improper communication, using information technology, with students, colleagues or other members of the school community.
 - xi) Racial or sexual harassment of other employees, pupils or members of the public in the course of employment

10.3 Criminal Activities

- i) If a member of staff is being investigated for any criminal activities, for example sexual offences, fraud or downloading illegal material, or is going to be prosecuted for criminal activities, special considerations apply. Depending on the offence in question, the issue of gross misconduct may arise and it may be appropriate to suspend, pending further investigation
- ii) If an employee is suspected of committing any criminal offence at, or in connection with his/her work then the Headmaster will normally inform the police. If an employee is charged by the police, he/she should normally be suspended with full pay

11 CASE UNFOUNDED

If the case against the employee is unfounded, the employee will be informed of this at the Disciplinary Hearing and it will be confirmed in writing.

12 APPEALS

12.1 Appeal against Stages 1 – 3

Any employee who wishes to appeal against any disciplinary decision should inform the Chair of Governors in writing **within fourteen calendar days of receipt of that decision**. A panel of different governors, no fewer than the number of governors who attended the original hearing and excluding the Headmaster, will hear the appeal. The decision of the appeal panel will be final and must be reported to the governing body

12.2 Appeal against Stage 4 – Dismissal

Any appeal arising as a result of a Stage 4 hearing, will be made in writing **within fourteen calendar days of the receipt of a decision**. The appeal will be to the governing body (with the exception of any governors previously involved). To be quorate the appeal panel must consist of at least the same number of governors as at the previous hearing.

At an appeal any disciplinary penalty imposed will be reviewed, but it cannot be increased.

At any appeal hearing the employee will enjoy the same rights as at any disciplinary hearing. The Headmaster is likely to be the Presenting Officer at an appeal hearing

The Clerk to the Governing Body, or a suitably impartial person, will arrange all appeal hearings and inform all the parties concerned.

Whilst the appeal is a **re-hearing** of the original case, new evidence is permissible. If either party wishes to introduce new evidence, they should give notice to the other party **at least ten working days before the appeal hearing**. If either side produces new evidence at the appeal hearing, it is open to either side to request an adjournment for further investigation.

If new evidence of misconduct is produced at the appeal hearing, which would give rise to further disciplinary allegations, the correct course of action would be to pursue the allegations at a new disciplinary interview, not at the appeal hearing.

If the recommendation for dismissal is not upheld, the governors may decide to issue a further warning or, in appropriate cases, to demote the employee rather than dismiss. Demotion involves a change in the employee's contract that requires his/her consent to the new arrangement.

The employee will be informed immediately at the conclusion of the hearing and the Clerk to the Governing Body will confirm the decision of the Appeal Panel/Governing Body in writing to the employee within three working days, giving the reasons for the decision.

There will be no further right of appeal for the employee following the decision of the Appeal Panel of the Governing Body. The employee will not be able to re-open the matters that have been considered by looking to invoke a different procedure, such as the Grievance Procedure.

13 ILL-HEALTH PROCEDURE

Normally ill-health will not require procedural handling. However, where ill-health appears to be a factor which adversely affects an employee's conduct, the school should seek medical advice. All schools are able to get advice from the Authority's Occupational Health Unit via HR.

14 SUPPORT FOR ALLEGED VICTIMS

Where an employee's conduct is investigated as a result of allegations by **another employee** of bullying, harassment, victimisation or discrimination, it is important to be sensitive to both the short-term and long-term needs of the victim of the alleged behaviour. This is necessary irrespective of the outcome of any investigation and disciplinary hearing, since the behaviour complained of may significantly affect the recipient, who will need support. Circumstances will vary but the school will need positively to monitor working relationships from the alleged victim's perspective, as well as formally or informally monitoring the conduct of the alleged perpetrator.

15 **REFERRALS TO STATUTORY BODIES**

There are statutory duties on employers to refer individual cases to national bodies in the event of a dismissal or resignation when dismissal was a likely outcome. These are:

All dismissals (or resignations) for misconduct/gross misconduct which relate to safeguarding offences should be reported to the DBS where the case meets the 'Harm test'. See

<https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs>

- All teachers – not other staff – who are dismissed (or resign) because of incompetence must be reported to the National College of Teaching and Learning (NCTL).