

## **Disciplinary Procedure**

**It has been agreed by the Governors of James Brindley School that the Governing Body will play an active and supportive role to the Head Teacher in relation to disciplinary hearings. Therefore, the dismissals, discipline and appeals committee will undertake and manage disciplinary procedures.**

### **1. INTRODUCTION**

- 1.1 The following procedures have been adopted by the Governing Body of James Brindley School in accordance with the requirements of paragraph 6 of the School Staffing (England) Regulations 2003 (the “Regulations”) for the governing body to establish procedures for the regulation of the conduct and discipline of staff at the school. They apply to everyone employed to work at the school in accordance with those regulations, i.e. excluding staff employed by a contractor (including the authority acting as a contractor). Decisions taken under these procedures will be taken fairly on the balance of probability rather than, as would be the case in a criminal court, beyond reasonable doubt.
- 1.2 No disciplinary warning shall be given unless the procedures have been followed in full. The governing body recognises that failure to observe these procedures could cause an employment tribunal to decide that a dismissal was unfair. However, it also provides that any part of these procedures, other than a statutory requirement, may be varied in a particular case by mutual, explicit agreement between the employee and the person(s) acting on behalf of the governing body.
- 1.3 If an employee makes a complaint relating to a disciplinary issue the separate grievance procedure which the governing body has established in accordance with paragraph 6 of the School Staffing (England) Regulations will not apply and the complaint will be dealt with through the disciplinary procedures.
- 1.4 The governing body will delegate, in accordance with the School Governance Regulations, the function of hearing disciplinary cases to the head teacher and an appropriate committee respectively (according to the division of powers set out in these procedures) and the hearing of appeals to its appeal committee. It will ensure that no-one is a member of both committees and that the latter includes at least three people and at least as many as the committee responsible for the hearing. In order to allow for the possibility that a member of either committee may have prior knowledge of or interest in the alleged misconduct, it will provide for each committee to have a reserve member or reserve members. The head teacher shall not be a member of either committee. The governing body accepts the advisability of appointing both a chair and a vice-chair of the committee responsible for disciplinary hearings when it appoints that committee and gives it delegated powers each year. The governing body will include in its delegations a requirement for the head teacher and both committees to report their actions to the governing body, having due regard to the confidentiality of their proceedings and the Data Protection Act.

- 1.5 The governing body will require its clerk or an appropriate substitute to attend and make a full record of any disciplinary or appeal hearing held by a committee under these procedures. It will expect the head teacher to arrange for a full written record to be made of any hearing conducted by him or her under these procedures. Minutes of the hearings will be available to the employee or the employee's representative if requested and should normally be provided within ten working days of the meeting. No participant should make a sound or video recording of a meeting without the consent of all the participants, including witnesses. If the content of the minutes is questioned, the person who wrote the minutes should check his or her notes of the hearing in question and, if no reason is apparent for altering them, refer the question to the head teacher or the committee (as the case may be) for verification. If a disagreement over the content remains, then the employee may append his or version of the disputed part to the original minutes, which shall remain unaltered.
- 1.6 Under the Employment Relations Act 1999 as amended an employee has the right to be accompanied at a disciplinary or grievance hearing if he or she reasonably requests to be accompanied at the hearing. The employer must permit the employer to be accompanied by one companion who is chosen by the employee and is either employed by a trade union as an official within the meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 or is an official of a trade union whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or is another of the employer's workers. Under these procedures such a companion or representative may be present at each stage of the disciplinary procedures, other than suspension, where provision is made simply for the employee to choose a witness available at short notice. Where an employee chooses to be accompanied or otherwise assisted by a representative in accordance with the legislation, the head teacher, or the clerk to the governing body as the case may be, will seek to arrange hearings, etc, in consultation with the chosen trade union official or chosen employee. These procedures are designed to decide fairly on the balance of probability whether misconduct has occurred, rather than to establish the facts beyond reasonable doubt as in a criminal case, so they do not provide for any employee to have legal representation.
- 1.7 In this procedure:-
- the 'local education authority', 'local authority' or the 'authority' means Birmingham City Council acting in its capacity as a local education authority (or such title as may be subsequently enacted);
  - references to the Strategic Director include any other officer designated by him (or by her, as the case may be);
  - 'employee' means a person employed to work at the school or in provision made by the governing body under the Education Acts, other than a person employed by a contractor, including by the authority acting as contractor;
  - the "Regulations" mean the School Staffing (England) Regulations 2009.

## 2. INFORMAL DISCUSSIONS

- 2.1 As part of their acknowledged management responsibilities, and as part of the arrangements for the supervision, support and training of employees, head teachers may from time to time discuss aspects of conduct with a member of staff on a one to one basis. Such discussions will take place informally and should not be constrained by, or come within, the scope of this procedure, nor shall counselling and advice given in this informal way count as warnings within the scope of this procedure. The status of the discussion should be made known to that member of staff. The fact that attempts have been made previously to resolve informally aspects of an employee's conduct may, however, be a valid reason for deciding that subsequent misconduct should be dealt with under the disciplinary procedure, although records of those informal attempts should not be used as evidence in any disciplinary proceedings.
- 2.2 Should information emerge during the course of informal discussions which could subsequently require the matter to be dealt with under the formal disciplinary procedure, the employee should be advised immediately. The head teacher should arrange for the matter to be investigated separately under Section 3 (below).
- 2.3 If the head teacher feels that it is necessary to record informal discussions with an employee about aspects of conduct, a written record of the conversation should be made and a copy of it should be given to the employee concerned, in the same way as notes can be made of discussions about other aspects of an employee's work such as development of teaching programmes. Informal discussions should not be recorded on the employee's personal file and any record of the conversation should be filed separately in confidence. Some people call this record an aide memoire.

## 3. INVESTIGATION

- 3.1 The governing body requires an immediate, short, preliminary investigation of all allegations of misconduct, in order to establish that there are reasonable grounds for a full investigation. When a separate investigation has been undertaken under another procedure or by an external organisation (such as the authority's audit section or the police) it is still necessary to investigate under this disciplinary procedure, although the disciplinary investigation may be short and will use evidence from the other investigation. In the first instance the employee against whom allegations are made should be informed that these allegations are being considered under the disciplinary procedure and invited to comment. In cases of alleged gross misconduct the employee concerned will normally be suspended as soon as the preliminary investigation has taken place (see Section 4 below).
- 3.2 The governing body requires all allegations of misconduct to be investigated promptly to establish whether or not there is a case to answer. It expects the investigation to be undertaken by someone of appropriate seniority and experience with no previous involvement in the alleged misconduct and who, where possible, has completed suitable, approved training, and who will follow the authority's guidelines on investigation (see Appendix 3). the head teacher should commission another senior manager in the school to act as investigator, but where no suitable person can be identified the head teacher may undertake the investigation, provided that the head teacher does not then hear the case. Where such allegations are reported to the chair of governors the chair should immediately seek advice from Schools Management Support. If the allegations concern the head teacher the Schools Management Support Officer should refer them to a designated officer, who

will arrange for the matter to be investigated on behalf of the governing body. When the allegations do not concern the head teacher the matter should normally be referred back to the head teacher for investigation as above. When the allegations have been identified in the report of an investigation under another procedure or an investigation by an external organisation the head teacher should consider whether any further enquiries are necessary to supplement the report of that investigation, taking into account any observations which the employee might have made when informed of the allegations during the preliminary investigation under the disciplinary procedure.

- 3.3 Where it appears that an employee's conduct has been, or is being, affected adversely by ill health, action under these procedures may be suspended pending medical advice. The head teacher/governing body will seek advice from the authority on the action to be taken in such cases.
- 3.4 Advice and guidance contained in the Birmingham Area Inter Agency Child Protection Procedures and associated guidance for schools must be followed when a member of staff is suspected or accused of child abuse.
- 3.5 The advice contained in the associated guidance for schools should also be followed when interviewing a child in respect of any allegations being investigated.
- 3.6 The authority's advice on financial misconduct on the Schools Financial Systems Portal must also be followed.
- 3.7 The employee against whom the allegation is made must be informed as soon as practicable that an investigation into his/her conduct is being made, the reason for it and when it is to start. The employee must be interviewed during the course of investigation and, prior to the interview, must be informed of his/her right to be accompanied by a chosen trade union official or chosen employee. Where there are considered to be exceptional circumstances preventing the interview taking place, advice should be sought from the authority's Employee Relations Team.
- 3.8 Other than in child protection cases, if there are witnesses to the allegations, signed and dated statements should be obtained at the earliest opportunity.
- 3.9 Where an employee is on sick leave advice should be sought from the Employee Relations Team. Normally the process of investigation should proceed as far as interviewing witnesses is concerned.
- 3.10 When the investigation is complete the head teacher (or other senior person as set out below) shall consider the results (including any adjustments that may have been made during discussions as provided in the investigation guidelines) and decide whether the facts
  - do not warrant further action; or
  - amount to a situation which can be resolved by informal discussions in accordance with Section 2 above; or
  - warrant a hearing in accordance with these procedures.

When the head teacher is due to hear the case a nominated senior member of staff (or suitable person from outside the school) shall consider the results of the investigation and take the above decisions.

- 3.11 All information collected during investigations shall remain confidential to the person(s) directly involved.

#### 4. SUSPENSION

- 4.1 The governing body recognises that suspension is not a disciplinary sanction but a neutral act, without loss of emoluments. Suspension is normally only considered in cases which, on preliminary investigation, appear to involve alleged gross misconduct or in which suspension is necessary to protect the integrity of the investigation. Advice should be taken from the Employee Relations Team as to whether any other action, such as a temporary direction to undertake other duties, might be more appropriate than suspension to the particular circumstances of the case.
- 4.2 Under the Regulations the governing body and the head teacher of a school with a delegated budget both have the power to suspend any person employed or engaged otherwise than under a contract of employment to work at the school where, in the opinion of the governing body or (as the case may be) of the head teacher, the suspension of that person is required. The governing body recognises that a decision to suspend is normally a management decision for the head teacher and that in the event of the governing body or (when there is not time to convene a special meeting of the governing body) chair of governors contemplating such a decision the governing body, or its chair as the case may be, will take advice from the Employee Relations Team in conjunction with Schools Management Support before taking action. The governing body notes that, although under paragraph 4 of the Staffing Regulations it cannot delegate its functions of suspension or ending suspension, the authority has received legal advice that the School Governance (Procedures) Regulations 2003 do permit such delegation to a single governor or a committee. The Governing Body will therefore decide whether or not to delegate the power to suspend or lift suspension to the chair of governors, and to the vice-chair of governors in the absence of the chair of governors, or to its disciplinary and appeals committees, subject to any action taken being reported to the governing body and subject to annual review of any such delegations. It has been agreed by the Governors of James Brindley School that the Governing Body will play an active and supportive role to the Head Teacher in relation to disciplinary hearings. Therefore, the dismissals, discipline and appeals committee will undertake and manage disciplinary procedures.
- 4.3 An employee who, on preliminary investigation, is suspected of gross misconduct (see 5.2 below) will normally be suspended immediately after that investigation. This should normally take place in a special meeting called in accordance with these procedures, but in the absence of the employee other arrangements should be made (advice is available from the Employee Relations Team). The governing body, by adopting this procedure, accepts the desirability of each party having a witness to a suspension whilst recognising that suspension, if appropriate, cannot be delayed and that the choice of witness will therefore be limited. The witness will not be expected to fulfil the role of a representative; the employee will be entitled to a representative in later stages of the procedure.

- 4.4 When the head teacher becomes aware of alleged misconduct which might lead to suspension he or she (having taken advice as necessary) will take the employee aside, explaining that there is a serious matter to discuss and asking the employee to accompany him or her to his or her office or other suitable place, where the head teacher will explain that a short meeting is to be called to tell the employee about a serious matter, that the employee is entitled under the disciplinary procedure to choose a witness able to attend at short notice, because it might be necessary to suspend the employee, and that the employee will have the right not to say anything in response to what the head teacher will disclose, although refusal to respond will probably make suspension inevitable. The head teacher will then ask the employee to wait in a nearby room whilst the witness, either someone on the school staff or within a few minutes' journey, is asked to come to the meeting.
- 4.5 Unless a meeting is impractical (due to the employee's absence on sick leave or other good reason) the employee will be informed in a meeting of the decision to suspend and written confirmation of the decision shall be given to the employee at the meeting or sent immediately after the suspension is notified. Where possible, the meeting to inform the employee of a suspension should have two witnesses (see 4.3 and 4.4 above), one chosen by the head teacher and one by the employee, provided that the procurement of witnesses does not delay the meeting. It is acknowledged that the employee's choice of witness will be constrained by the need to choose someone on the school premises, or within a few minutes' journey. The head teacher will outline the circumstances and invite the employee to comment, reminding the employee of the right to remain silent but explaining that silence will probably make suspension inevitable. In the case of allegations under the child protection procedures the employee will be informed simply that allegations have been made and that no details can be discussed at the meeting. Depending on the response, the head teacher may or may not adjourn the meeting before deciding whether or not to suspend the employee. The head teacher should then tell the employee of his or her decision and, when the decision is to suspend, should arrange for the employee to leave the premises.

This formal letter of suspension shall include the following:

- (a) the specific reason for the suspension, including a summary of the alleged misconduct;
- (b) the date and time from which it took effect and a statement that it may last until the disciplinary procedure is complete;
- (c) the likely duration of the school's investigation, and confirmation that the employee will be interviewed during that investigation except when allegations relating to child protection are being managed by an organisation external to the school;
- (d) a statement that suspension is a neutral act;
- (e) a statement that the suspension shall be without loss of emoluments;
- (f) the rules of suspension, for example, the employee should not return to the place of work without prior permission and should not contact any pupils. Nor should he or she contact other employees involved in the alleged misconduct, unless he or she wishes to call one or more of such employees as witnesses at a forthcoming hearing (this contact may be made by the

employee or the employee's representative and need not be made through the school). Special arrangements are to be made if the employee lives on the school site or is related to another employee, taking advice from Employee Relations as appropriate.

- (g) a statement that statutory regulations require the suspension to be reported to the governing body and an assurance that the reasons for the suspension will not be disclosed, so that any subsequent hearing will not be prejudiced.

When suspension of a head teacher takes place the chair of governors or a governor with appropriate delegated authority shall proceed in accordance with this section.

- 4.6 The Regulations require the head teacher or governing body of a community, community special, voluntary controlled or maintained nursery school, when suspending, to inform the local authority and the head teacher or (as the case may be) the governing body immediately. In the case of a voluntary aided or foundation school the requirement is to inform the head teacher or governing body (as the case may be), and if there is a relevant agreement with the local authority or the school uses the authority's personnel service to advise the local authority also. To avoid prejudicing any subsequent proceedings in which some governors will be involved the information to the governing body should be restricted to a simple statement without documentation.
- 4.7 Any such suspension may be ended only in accordance with the governing body's delegations (see 4.2 above). Those empowered to lift suspension shall inform the head teacher and where required the local authority immediately whenever they take such a decision.
- 4.8 The head teacher should keep the case under review throughout the period of suspension and maintain contact (through an agreed named person if not through the head teacher) between the school and the employee, who must be kept informed of progress. The first contact should be made within twenty working days of the suspension and at appropriate intervals thereafter. The head teacher should also, subject to the authority's advice on the constraints attached to certain types of misconduct (particularly where criminal prosecution may be or is pending), expedite proceedings under this procedure, as far as is possible and fair. When a head teacher is suspended, a nominated governor should be responsible, with advice from the Employee Relations Team or Schools Support Manager, for keeping the case under review, maintaining contact with the head teacher and expediting proceedings as set out in this paragraph. Employees in need of pastoral support should be advised to contact their union or professional association or other appropriate organisation.
- 4.9 The employee must not return to school until the governing body's decision to end the suspension is communicated to the employee in writing.

## 5. MISCONDUCT AND GROSS MISCONDUCT

- 5.1 The governing body defines misconduct (which may be gross misconduct in certain cases – see 5.2 below) as including, for example, criminal acts wherever and whenever committed, neglect of duty, child abuse, abuse of authority, disobedience of lawful instruction, insubordination, misuse of an employee's official position for personal gain, unauthorised absence from duty, physical assault, theft, malicious damage, falsification of documents including personal records and expense claim forms, abuse of alcohol or other drugs (except drugs medically prescribed, or unless the abuse is to be treated as a medical rather than a disciplinary matter in line with advice from the authority), unauthorised use or removal of the authority's or school's property and other conduct to the prejudice of efficient education in the school. The governing body recognises that great care must be taken in handling cases of suspected abuse of alcohol or drugs and that the authority's advice should be sought in each case.
- 5.2 The governing body defines gross misconduct as misconduct of such a nature that it cannot reasonably allow the continued presence at the place of work of an employee who commits such an action. It will seek, or require the head teacher to seek on its behalf, guidance from the authority on the difference between misconduct and gross misconduct in each case of possible gross misconduct in order to ensure that the disciplinary procedure is followed with proper regard to employment law.
- 5.3 No employee will be dismissed for a first breach of discipline except in cases of gross misconduct.
- 5.4 Gross misconduct will lead to dismissal without notice unless there are mitigating circumstances.
- 5.5 Where power to hear all cases under these procedures has been delegated to the head teacher (see 1.4 above), then the head teacher (or deputy head teacher acting as head teacher for the time being) will hear all cases under these procedures except for the following, which he or she will present to the governing body's committee with delegated authority to hear disciplinary cases referred to it
- allegations of misconduct or gross misconduct with which the head teacher has had some prior involvement;
  - any other cases of alleged misconduct, where after preliminary investigation the head teacher considers the case warrants such a referral.
- 5.6 There may be cases in which an employee is simultaneously the subject of allegations of misconduct and allegations of lack of capability. If the allegations are related advice should be sought from the Employee Relations Team on how to proceed; otherwise the allegations should be dealt with separately under the respective procedures.

## 6. PROCEDURES FOR HEARING CASES OF ALLEGED MISCONDUCT AND GROSS MISCONDUCT

- 6.1 If, on receipt of the report of an investigation, the head teacher decides, on the basis of the information available, that there is a case to answer and that a hearing is therefore required, the head teacher shall conduct such a hearing or, in the cases specified in 5.5 above, shall refer the case to the appropriate committee of the governing body for a hearing.
- 6.2 The local authority (through the Employee Relations Team) must be informed immediately of any allegation which, if upheld at the hearing, might lead the governing body of a community, community special, voluntary controlled or maintained nursery school to determine that the employee should cease to work at the school. The governing body of such a school recognises that, under the provisions of the Regulations, the local authority is obliged to dismiss an employee in respect of whom such a determination has been made and who works solely at the school, and that the local authority therefore has a right to be represented at any proceedings leading to such a determination. The governing body of a voluntary aided or foundation school recognises that it must also inform the local authority (through the Employee Relations Team) if provision has been made under a relevant agreement and if it wishes to ensure that the authority will meet the costs of a claim by an employee arising from the application of the school's disciplinary procedures. A service agreement on the provision of personnel services between the authority and the governing body counts as a "relevant agreement" under the Regulations.
- 6.3 A formal notice to an employee to attend a hearing by the committee or by the head teacher should be issued in writing, with an explanation of the hearing's purpose and its place in the disciplinary procedures. The letter should not only state the substance of the allegation but should also attach copies of any documents to be used at the hearing, remind the employee of the right to be accompanied and/or represented, explain the procedures to be followed at the hearing and give the names of the person(s) hearing the case. The employee should be asked to confirm that he/she will attend the hearing in person and to indicate whether he/she wishes to be accompanied by a representative (who must be either a trade union official or another of the employer's employees – see paragraph 1.6 of this procedure) and to call witnesses; he or she should be asked both to provide documentation and give the names of witnesses whom he or she has asked, or intends to ask, to appear on his or her behalf, at least ten working days before the hearing. Names of witnesses from both sides should be circulated in advance and all witnesses should be asked to provide a written statement for inclusion with the documents to be used at the hearing. A second set of papers should be enclosed for the employee's representative.
- 6.4 In order to ensure that the employee has enough time to prepare his or her response to the allegation(s) reasonable notice of the hearing should be given. This should be at least fifteen working days, with the formal notice being sent by hand delivery or a postal service guaranteeing delivery on the following day. It is helpful to agree a date with the employee's union/professional association if they are already involved in the case, before sending the formal notice to attend the hearing. The employee may suggest an alternative time and date as long as it is reasonable and is not more than five working days after the original date. The committee or head teacher (as the case may be) may reject this suggestion but will do so only if it is unreasonable, when they may proceed to hear the case in the absence of the employee or the employee's representative and will take advice from the Employee Relations Team on what is unreasonable. There is also the discretion to defer the

date of the hearing by a longer period in order to reach mutual agreement on a convenient date, having particular regard to the availability of the employee's representative.

- 6.5 The employee shall be asked both to provide documentation in his or her defence and give the names of witnesses whom he or she has asked, or intends to ask, to appear on his or her behalf, at least ten working days before the hearing. Where the hearing is before a committee of the governing body the clerk to the governing body is required to ensure that all parties to the hearing receive copies of all documents at least five working days before the hearing. Only evidence which could not be obtained at an earlier date may be provided after the times specified above. There is no requirement on the employee to submit any documentation, other than a statement from any witness who may be called by the employee. However, if the employee does not intend to submit any documentation there should be a positive statement from the employee or the employee's representative to this effect. Neither side will be able to use at the hearing any evidence not previously provided.
- 6.6 When a case is to be heard by the appropriate committee of the governing body the head teacher should present the case to the committee, unless the head teacher is the subject of the hearing, in which event the chair of the committee should seek the advice of the local authority (through one of the Schools Support Managers) on an appropriate person to present the case. If the head teacher is conducting the hearing, an appropriate senior member of the leadership team in the school should present the case (with the hearing being recorded as specified in 1.5 above). If there is no such appropriate senior member then the hearing should be conducted by a committee of the governing body.
- 6.7 The head teacher (except where he/she is the person concerned) and the local authority (through the Employee Relations Team) are entitled to attend, for the purpose of giving advice, all proceedings of the governing body (this includes committees of the governing body) which may relate to a determination that a person employed at the school should cease to work there. The governing body must consider any such advice. A head teacher wishing to give such advice should exercise this right only in the presence of the employee and the employee's representative, as giving advice in their absence could lead to a claim for unfair dismissal, or an appeal on the grounds of failure to follow the procedures. Head teachers and governors should minimise informal contact in the days preceding a hearing in order to prevent misconceptions about the purpose of such contacts.
- 6.8 The hearing will follow the procedure set out in Appendix 1. The committee will have regard to any guidance issued from time to time by the local authority on conducting a hearing, including the current guidance on behaviour at meetings (see Appendix 4).
- 6.9 The committee shall announce its decision to the parties in person or subsequently in writing as the committee shall determine. An oral announcement shall be confirmed in writing subsequently, including the right of appeal. The head teacher holding a hearing shall announce a decision in a similar way.

## 7. DISCIPLINARY SANCTIONS

7.1 If the head teacher or the committee finds at the hearing that the allegation of misconduct is substantiated, one of the following should be issued:-

a recorded warning

a written warning

a final written warning.

In deciding on the most appropriate sanction the head teacher or the committee should have regard to the facts of the case, any mitigating factors and any precedents (taking advice from the local authority's employee relations team where appropriate), acknowledging that the purpose of a disciplinary procedure is to bring about an improvement in the future conduct of an employee rather than to punish that individual.

7.2 In cases of alleged gross misconduct the head teacher (in appropriate cases) or the committee also has the option of determining that the employee under the control of a governing body of a community, community special, voluntary controlled or maintained nursery school should cease to work in that capacity, or be dismissed from a voluntary aided or foundation school, in which cases the provisions of the Regulations shall apply.

7.3 All warnings will be recorded in writing and a copy given to the employee.

7.4 A warning will include the following:-

- (a) the nature of the misconduct;
- (b) the nature of the warning now issued;
- (c) the consequences of further misconduct, including, for a final written warning, a statement that further misconduct of any kind, if substantiated through disciplinary proceedings, will (without question) result in dismissal;
- (d) any support to be made available to the employee;
- (e) the duration of the warning (see 7.6, 7.7 below);
- (f) details of any current, previous warnings;
- (g) a statement that the warning will be forwarded to the local authority to be placed on the employee's personal file;
- (h) the right of appeal (see 8 below) including the period within which notice of appeal must be given and to whom that notice should be sent;
- (i) a copy of the letter to be given, should the employee so wish, to a representative

7.5 A notification of a determination to cease to work at a community, community special, voluntary controlled or maintained nursery school shall include a statement that the local authority will be advised of the determination to enable it to issue a notice of dismissal as required by law. It shall state whether the dismissal will be with or without contractual notice. It shall also give details of the right of appeal (see 8 below). A notice of dismissal from a voluntary aided or foundation school shall state whether there is to be contractual notice or not and shall give details of the right of appeal.

7.6 Records of disciplinary warnings shall be current for the following periods of satisfactory conduct:

recorded warning	six months
written warning	one year
final written warning	two years

Warnings will cease to be 'live' following the specified period of satisfactory conduct. Subject to 7.7 below they will be removed and destroyed nine months after the expiry of the warning. If the employee's misconduct is found under these procedures to have been repeated during those nine months then the employee's disciplinary record may be borne in mind at the point when it is decided which level of disciplinary sanction to issue.

7.7 In certain circumstances, however, a disciplinary record must be retained permanently on the personal file. This will apply where the disciplinary sanction is for misconduct involving issues relating to the safety and welfare of children or young people, as required by the Government's guidance on safeguarding children. It will also apply in the case of a final written warning for misconduct involving sexual misconduct, assault on a client or employee, or harassment or abuse.

7.8 Where any warning is withdrawn by appeal at any stage in the procedure, that warning shall be removed and destroyed and any lesser warning shall be substituted.

## 8. APPEALS

8.1 An employee has the right of appeal against any disciplinary sanction taken under this procedure or against a determination to cease to work at the school, or a dismissal from the school. An appeal against a decision to impose a disciplinary sanction or to determine that an employee should cease to work at the school (or be dismissed as the case may be), whether taken by a head teacher or by a committee of the governing body, shall be to the appeal committee established by the governing body.

8.2 An employee who receives a recorded or written warning or for whom it is determined that he or she must cease to work at the school may appeal against the warning or determination (as the case may be) by giving written notice of the appeal and of all the grounds on which it is made to the clerk to the governing body within ten working days of receiving written confirmation of the warning. The grounds for the appeal should be accompanied by any additional evidence to be presented in support of the appeal. If the employee so wishes there is no requirement to submit any documentation, other than a statement from any witness who may be called by the employee. However, if the employee does not intend to submit any documentation there should be a positive statement from the employee or the

employee's representative to this effect and the employee will not be able to use at the hearing any evidence not previously provided.

- 8.3 The clerk to the governing body will immediately notify the head teacher or the representative of the disciplinary committee (whichever took the decision against which the employee is appealing) of all the grounds of appeal and any additional evidence, with a request to submit any additional papers in response to the clerk within seven working days.
- 8.4 The clerk to the governing body will then arrange an appeal committee hearing as quickly as possible, to take place, other than in exceptional circumstances, within twenty working days of the employee's notice of appeal. The clerk should make every effort to agree a date with the employee's union/professional association if they are already involved in the case, before sending the formal instruction to attend the hearing. The employee may suggest an alternative time and date as long as it is reasonable and is not more than five working days after the original date. The committee may reject this suggestion if it is unreasonable and may proceed to hear the case in the absence of the employee or the employee's representative, but also has the discretion to defer the date of the hearing in order to reach mutual agreement on a convenient date, having particular regard to the availability of the employee's representative.
- 8.5 The clerk to the governing body will also seek advice from the employee relations team on the procedure for the appeal hearing, having regard to the grounds for the appeal, and shall then advise the employee and the other parties to the hearing of the appropriate procedure according to whether the appellant is seeking mitigation or is effectively asking for a re-hearing of the case in the light of the evidence. The formal notice of the hearing will include the procedure to be followed in the hearing, using either Appendix 1 or Appendix 2 (see 8.7 below).
- 8.6 The clerk to the committee shall give at least ten working days' formal notice of the hearing to all the participants, and in the same letter shall set out the order of the proceedings, remind the employee of the employee's rights at the hearing, including the right to request to be accompanied by a representative of his or her choice who is either a union official or another of the employer's employees (see paragraph 1.6 above), list the members of the appeal committee, give the names of witnesses, and confirm the options for action which the appeal committee may take (see 8.8 below). All documents relevant to an appeal hearing shall be enclosed with the letter. The witnesses may include, as appropriate to the circumstances of the case, the head teacher and/or a member of the committee which took the decision against which the employee is appealing, or the person who presented the case if that person was not the head teacher.
- 8.7 The normal procedure for an appeal hearing is set out in Appendix 2. If there is to be a re-hearing the procedure in Appendix 1 will be followed. The appeal committee will have regard to any guidance issued from time to time by the local authority on conducting an appeal hearing.
- 8.8 The appeal committee may dismiss the appeal, uphold the appeal, and/or reduce the severity of the warning or substitute a warning for a determination that an employee should cease to work at the school or a dismissal from the school.

- 8.9 The appellant may choose whether to hear the appeal committee's decision in person or receive it subsequently in writing, but this choice shall not prevent the committee from choosing to adjourn and reconvene before making a decision. An oral announcement shall be confirmed in writing by the clerk to the governing body within ten working days of the hearing. If an appeal against a determination to cease to work at a community, community special, voluntary controlled or maintained nursery school is upheld, the letter of notification will state that the local authority will be notified immediately so that it can withdraw the letter of dismissal and reinstate the appellant without a break in service. If an appeal against dismissal from a voluntary aided or foundation school is upheld, the letter of notification will include a withdrawal of the dismissal and reinstatement without a break in service.

9. ALLEGED MISCONDUCT ON THE PART OF THE HEAD TEACHER

- 9.1 Any allegation about misconduct on the part of the head teacher shall be referred, through the chair of the governing body, to the Strategic Director for advice from a Schools Support Manager, who shall arrange both preliminary and full investigation of the allegation in accordance with section 3 of this procedure. If suspension of the head teacher is appropriate it shall be undertaken in accordance with the provisions of this procedure. If it is found that there is a case to answer the Schools Support Manager shall advise the governing body how to proceed in relation to the head teacher as the head teacher acts in relation to any other employee under these procedures, except that the option of referring the matter to the head teacher or deputy does not apply.
- 9.2 The chair of the governing body may present the case to the committee, calling on the investigator to give evidence, or may ask the Schools Support Manager from the authority to present the case.

10. ALLEGED MISCONDUCT ON THE PART OF TRADE UNION OFFICERS

- 10.1 Normal disciplinary standards of behaviour should apply to trade union officers. However, disciplinary action against a trade union officer can be misconstrued as an attack on the union. Such problems can be avoided by early discussion with a full-time official or senior trade union representative.

## **APPENDIX 1**

### **Conduct of Disciplinary Hearing 2009 - Procedure - All staff**

1. The employee and his/her representative and the head teacher or other person presenting the case shall attend the hearing simultaneously to present their respective cases.
2. The chairperson of the committee or the head teacher (when the head teacher is hearing the case) will perform the necessary introductions.
3. The head teacher or other person presenting the management case will present that case and may call witnesses.
4. The employee and/or the employee's representative may question the head teacher or other person presenting the management case.
5. The committee, or the head teacher (when the head teacher is hearing the case), and the local authority's representative may question the head teacher or other person presenting the management case.
6. The employee and/or the employee's representative will present the employee's case and may call witnesses.
7. The head teacher or other person presenting the case may question the employee and/or the employee's representative.
8. The committee, or the head teacher (when the head teacher is hearing the case), and the local authority's representative may question the employee and/or the employee's representative.
9. The questioning of any witnesses called will follow the procedure outlined above.
10. The head teacher or other person presenting the management case will sum up the case presented and should ensure that any advice he or she wishes to give to the committee (and which a head teacher is entitled to give to a governing body or any of its committees) is given at this stage.
11. The employee and/or the employee's representative will sum up the employee's case.
12. The head teacher or other person presenting the management case and the employee and the employee's representative will withdraw from the hearing.
13. The committee, or the head teacher where the head teacher is hearing the case, will consider the evidence presented and take a decision.
14. The committee may recall the head teacher or other person presenting the management case and the employee with the employee's representative to clear points of uncertainty on the evidence given, provided that both parties are recalled even if the point of uncertainty concerns the evidence of one party only.

## **APPENDIX 2**

### **PROCEDURE FOR CONDUCT OF DISCIPLINARY APPEAL HEARING (2009)**

1. The employee and his/her representative and the head teacher or other person presenting the management case shall attend the hearing simultaneously to present their respective cases.
2. The chairperson of the appeal committee will perform the necessary introductions.
3. The employee and/or the employee's representative will present the employee's appeal and may call witnesses.
4. The head teacher or other person presenting the management case may question the employee and/or the employee's representative.
5. The members of the appeal committee and the local authority's representative may question the employee and/or the employee's representative.
6. The head teacher or other person presenting the management case will present that case and may call witnesses.
7. The employee and/or the employee's representative may question the head teacher or other person presenting the management case.
8. The members of the appeal committee and the local authority's representative may question the head teacher or other person presenting the management case.
9. The questioning of any witnesses called will follow the procedure outlined above.
10. The head teacher or other person presenting the management case will sum up the case presented and should ensure that any advice he or she wishes to give to the committee (and which a head teacher is entitled to give to a governing body or any of its committees) is given at this stage.
11. The employee and/or the employee's representative will sum up the employee's case.
12. The head teacher or other person presenting the management case and the employee and the employee's representative will withdraw from the hearing.
13. The appeal committee will consider the evidence presented and take a decision.
14. The committee may recall the head teacher or other person presenting the management case and the employee with the employee's representative to clear points of uncertainty on the evidence given, provided that both parties are recalled even if the point of uncertainty concerns the evidence of one party only.

## APPENDIX 3

### Guidance for Investigations in Schools - All Staff

This Content is applicable to both Teachers and Support Staff

This guidance is based on the City Council's guidelines for investigations, with suitable amendments to take account of the governance of schools. In particular it is acknowledged that most schools do not have senior managers with special training in investigation skills and that many schools do not even have enough managers with the seniority and experience required who have not been involved in the alleged misconduct as witnesses or otherwise. This guidance therefore recognises that the functions of 'commissioning officer' and investigator may be undertaken by the same person, and that training, whilst desirable, is not obligatory. Head teachers and other members of the leadership team will have had the opportunity of training in aspects of management involving relevant skills, such as careful questioning. This guidance itself provides some training and should enable a senior manager in a school to conduct a satisfactory, thorough investigation acceptable to all participants and capable of withstanding the rigorous scrutiny of an employment tribunal.

A complaint about recruitment and selection procedures may contain an allegation of unfair and illegal discrimination and therefore the investigation must be conducted having regard to this possibility.

#### 1. INVESTIGATION

The governing body states in its policy that it requires an immediate, short, preliminary investigation of all allegations of misconduct, in order to establish that there are reasonable grounds for a full investigation. This guidance is concerned chiefly with a full investigation of a complex case.

The nature of the alleged misconduct will affect the type of investigation undertaken. Some incidents may be so straightforward and so obvious that, even though they are deemed gross misconduct, a short investigation will suffice. Others may not be counted as gross misconduct but involve perceptions and misunderstandings capable of different interpretations, even if there have been witnesses, and in such cases the investigation may take longer and involve more detailed enquiries.

Investigations should be completed between ten and twenty working days unless there are exceptional circumstances.

##### 1.1 Role of the commissioning officer

When a complaint is received or an incident takes place which requires a full and detailed investigation an appropriate senior manager in the school, usually the head teacher, will undertake the function of a 'commissioning officer'. The commissioning officer will be accountable for commissioning the investigation, receiving the report which should include a summary, conclusions and agreed recommendations, and making arrangements for appropriate subsequent action. In schools where insufficient senior managers are available to separate the roles of commissioning officer and investigator both roles may be performed by the same person.

The commissioning officer will act on behalf of the governing body and in cases where the conduct of an employee is being investigated will be at an equivalent or higher grade than that employee. The commissioning officer will normally be the head teacher, but in cases in which the head teacher has been involved, for example because he or she is the person against whom the allegations have been made or because he or she has been the person against whom the alleged misconduct has

been perpetrated, another person should take the lead. When the head teacher's conduct is to be investigated, the procedure provides for the chair of governors to ask the appropriate Schools Support Manager to make the necessary arrangements. When the head teacher has been otherwise involved he or she should ask another member of the senior management team to act. If such a person is not available, the head teacher may approach the Schools Support Manager or Employee Relations Team for advice and assistance.

### 1.2 Key activities undertaken by the commissioning officer

- To identify a suitable investigator (see comments above about the practicality of separating the roles of investigator and commissioning officer).
- Consideration needs to be given to the suitability of the investigator, including ability, availability, impartiality, training/experience and also to ensure that there are no conflicts of interest, real or apparent. Preferably, investigators should have undertaken appropriate training.
- The investigation may be undertaken by the line manager or by a person from outside the school. Advice on the appointment of an independent investigator may be obtained from the Schools Support Manager or Employee Relations Team.
- To give a thorough brief (known as the terms of reference) to the investigator.
- To assist the investigator with access to key documents pertinent to the case.
- To identify, where necessary, a key person within the school as a link for the investigator.
- To monitor progress of the investigation and ensure timescales are met.
- To receive the investigation report and, where appropriate, to decide whether the case should be referred to the head teacher or the governing body's disciplinary committee and, if so, to present that case in accordance with the disciplinary procedure.

### 1.3 Terms of reference

The terms of reference should include:

- The nature of the allegation/complaint, including details of any specific incidents.
- Any relevant background information.
- The remit of the investigation (the aspects that need to be investigated and any that should be disregarded for the purposes of the investigation).
- A list of people to be interviewed initially. If there are witnesses to the allegations they should be interviewed by the investigator and will be expected to provide a signed and dated statement, except for pupils, who should be interviewed in accordance with the guidance for schools associated with the authority's Child Protection Procedures. The investigator may decide during the course of the investigation to interview more people. An employee making an allegation of harassment or with some other grievance will be encouraged to name witnesses for interview and the investigator must make every effort to ensure such interviews take place.

- Any relevant documents known at this stage that should be considered.
- Time limits for the investigation and writing of a report, including interim review dates to ensure that the terms of reference remain relevant as the investigation progresses.

#### 1.4 Responsibilities of the commissioning officer on completion of an investigation

- Once an investigation is complete, the commissioning officer will meet with the investigator
- The commissioning officer will determine whether he or she is satisfied with the substance of the report, that there is a direct correlation between the report and the conclusions/recommendations and that there is no bias. Where the roles of commissioning officer and investigator are combined, the person undertaking the investigation should consider his or her own report critically before proceeding further, taking advice from the Employee Relations Team if he or she feels that questions might be raised over the findings.
- If the commissioning officer is not satisfied with the substance of the report (for example, there are questions over the findings) or if there are any issues requiring clarification, he or she will discuss these directly with the investigator.
- Changes can be made to the report and recommendations as appropriate and agreed by the commissioning officer
- The commissioning officer will then take ownership of the report and is accountable for agreeing an action plan to implement the recommendations. When the commissioning officer is acting on behalf of the chair of governors, the commissioning officer will make recommendations to the chair of governors, who will be responsible for agreeing an action plan.
- In cases of grievance or harassment the commissioning officer is responsible for arranging to meet with the complainant to discuss the result of the investigation and any proposed actions.
- The commissioning officer may determine that disciplinary action is appropriate and, if so, should present the case in accordance with the disciplinary procedure.

## 2. CONDUCTING AN INVESTIGATION

### 2.1 Purpose

An investigation is a structured, impartial process of evidence gathering in response to a specific allegation(s) regarding personal conduct. It should be carried out with terms of reference as described above.

### 2.2 Good practice

All investigations should:

- Have timescales set in advance by the commissioning officer (as a target completion date rather than a rigid standard).
- Be conducted as soon as possible after the date in question
- Be conducted by someone with the necessary knowledge to understand the situation and implications and who also has the necessary degree of impartiality.

- Have a balanced approach and be conducted in a spirit of openness and fair play which avoids any bias.
- Be conducted using techniques which are sensitive to the individual situation and employees involved.
- Be undertaken in a logical and rigorous manner.
- Seek to explore rather than pre-judge.
- Seek to elicit facts (find out what actually happened rather than arouse emotional reactions on what it is thought happened).
- Be initiated and concluded in a timely manner, but not so as to compromise quality.
- Be based on a process which is respectful to everybody involved (the complainant, witnesses or individual who is implicated).
- Be seen as a learning process where appropriate feedback is given and harnessed for the good of the service.

### 2.3 Role of the investigator

- Where possible to have received prior training in investigation skills and techniques
- To plan the investigation required in order to establish the facts of the case.
- To identify and gather relevant documents which provide facts concerning the alleged incident.
- To ensure relevant statements are taken which provide facts concerning the alleged incident.
- To produce and present to the commissioning officer a full report of the investigation, the facts established and make recommendations for remedy as appropriate.

### 2.4 Key considerations

- Be aware of your own potential biases and assumptions and avoid any preconceived ideas.
- Develop an understanding and/or acceptance that different perspectives exist in the same situation.
- Have an understanding of equality legislation.
- Understand any policy of the school, such as the anti-harassment policy, under which the investigation is being conducted.

### 2.5 Process

2.5.1 Ensure you have terms of reference from the commissioning officer.

2.5.2 Produce a plan, considering the following:-

- Are the terms of reference clear?

- Are you clear about the expectations of the complainant?
- Are there any policy implications?
- What are the potential equality issues/dynamics?
- Who needs to be interviewed, in what order and where?
- Who will confirm the interview arrangements (including advising interviewees who are employees of the school of their right to request to be accompanied by a chosen representative who is either a trade union official or another employee of the school)?
- Who will ask questions and who will take notes?
- What questions should you ask and not ask?
- What other information will be helpful?
- What is the expected timescale?

### 2.5.3 Conduct structured interviews and gather evidence (see Annex A)

### 2.5.4 Statements from witnesses

The investigator will consider whether it is appropriate to produce statements by recording questions and answers. In doing this you will need to have regard for confidentiality and the difficulty that may be created if these are made available to all parties. If statements are taken they must be checked, agreed and signed. Annex A gives a suggested format allowing the interviewee to confirm that the account is accurate, make amendments or attach additional comments. If the interviewee makes changes or comments which you do not recall, a record should be made to that effect on the statement.

2.5.5 Review your plan and revise as required in the light of emerging evidence and practical considerations.

### 2.5.6 Collate and analyse the evidence

- Consider all the facts and evidence presented to you and analyse what can clearly be demonstrated as being factually correct.
- Make judgements on the 'balance of probability', i.e. given what you have found, how likely is it that the action(s) in question have occurred? You do not need to establish the case 'beyond reasonable doubt'.

## 2.6 Writing the report

A suggested format for reports on investigations is given as Annex C. Although each report is unique, there are some common rules to follow:

- Always include background information on the service within which the incident allegedly took place. The report may be used eventually in an internal appeal process or by an Employment Tribunal, so it is useful to set matters in context.

- Keep it simple, well structured and rigorously written. Make clear which facts are incontrovertible, i.e. what happened, who was involved, when it happened and where, why and how. Draw attention to any differences in the accounts given of the same event.
- Number documents and statements gathered and for ease of reference use those numbers when referring to them.
- Consider the use of tables to compare the response of witnesses to standard questions. This makes it easy to absorb evidence and form a reasonable belief regarding the weight of evidence or balance of probability of what actually occurred.
- Careful proof reading is needed. Avoidable typing errors, spelling mistakes etc. will reflect badly on the rigour with which the investigation was conducted.
- Special consideration must be given when an employee requests access to the report and the report contains information about a third party. There could be a breach of the Data Protection Act 1998 if information is released about a third party. Simply removing the third party's name from the report may be all that is required, but this is not always the case. A balance must be struck between the right of the individual to access and the right of the third party to privacy. With this in mind it is helpful to write the report in a way that enables it to be issued to all parties. Advice on confidentiality may be obtained by contacting the Employee Relations Team.
- If statements have been taken there is no requirement to send them out with the report. However, they will still need to be typed, verified and signed so that they are available if there is a request to see or use them at a later date.

### 3. PUBLISHING THE REPORT

- Once completed, the report should be presented to the commissioning officer for consideration and action as appropriate.
- Ensure the report is marked 'Private and Confidential' to ensure that only the commissioning officer has access to it in the first instance.
- The commissioning officer will decide whether to support the findings or whether there are further issues to be explored or clarified by the investigator and will meet with the investigator to discuss the report. Changes can be made to the report and recommendations in agreement with the commissioning officer.
- The commissioning officer will then take ownership of the report and ensure that the recommendations in it are carried out.
- The commissioning officer will also be responsible for telling the complainant that the investigation has been completed and what is to happen.
- All sensitive information should be treated confidentially and meet the requirements of the Data Protection Act 1998. If there is to be a disciplinary case the report will not be released to the complainant, because of the confidentiality of disciplinary proceedings.

## **APPENDIX 4**

### **Behaviour in Meetings and Hearing**

#### **This Content is applicable to both Teachers and Support Staff**

#### **Guidance for Behaviour at Meetings and Hearings**

Any person attending any kind of meeting or hearing in any capacity must comply with acceptable professional standards of behaviour and consequently should adhere to the following Code. Although this protocol is applicable to conduct within formal and informal meetings or hearings, the expectation is that the same standards will apply outside of meetings and hearings. One companion/ representative may accompany the employee and speak on his or her behalf at formal meetings and hearings. The agreement of the Chair is required if the employee seeks additional support (for example, with learning disabilities) or a request is made for an observer to attend.

1. Everyone due to attend the meeting/hearing must make every effort to be punctual in order that the meeting/hearing may begin promptly.
2. The meeting/hearing will be conducted in accordance with the relevant provisions of any procedure adopted by the governing body or by the general procedure for meetings for meetings as recommended by the Employee Relations Team unless the Committee, Head Teacher/Manager and Employee agree variations.
3. Whilst these meetings/hearings are conducted formally they form part of internal procedures not legal proceedings and therefore all persons present should avoid using legal terminology without providing an explanation understandable to a lay audience.
4. All statements, questions and responses must be addressed through the person chairing the meeting/hearing
5. Each person invited to speak by the Chair will be permitted to make his or her contribution uninterrupted by any other person present.
6. All persons present will act respectfully towards every other person present and will not act in a manner that demeans, insults, threatens or intimidates him or her including an attempt to make an audio or video recording of the proceedings. All statements, questions and responses, challenges to statements, complaints or criticisms must be made politely and quietly.
7. All statements, questions and responses must be related to the facts of the case and not be personal in nature. There should be no reference to personal views on any person or in relation to the issue nor should reference be made to previous issues that do not form part of the case under consideration.
8. The meeting/hearing will be conducted with due regard to the needs of the participants for refreshment and rest and will be adjourned as appropriate either for a short break or for conclusion on another day.
9. If any person present fails to comply with this Code then the Chair will warn him or her that further non-compliance may lead to him or her being asked to leave the meeting/hearing. Any further breach of the Code may then lead to the Chair [Committee] deciding that the person should be asked to leave the meeting/hearing or that the meeting/hearing should be adjourned for a period of time to be determined by the Chair [Committee].