

**NORTH YORKSHIRE COUNTY COUNCIL
EDUCATION PERSONNEL**

SCHOOLS AND COLLEGES

DISCIPLINARY POLICY

Adopted by Governors October 2006

Status of Policy

- This policy was reviewed and updated in February 2006.
- It replaces the previous policy which was called 'Discipline at Work'. Feb 1998
- Changes cannot be made to this document without the approval of the Personnel Services Manager.
- This Guidance has been the subject of consultation with all recognised Trades Unions and the LEA would strongly recommend that Governing Bodies adopt these procedures

If you have any queries about the application of this policy / procedure, please contact your designated Senior Personnel Adviser.

Scope

This policy

- Applies to teaching and support staff in schools and colleges.
For non delegated directorate services – please refer to the corporate policy.
- Sets out the legal requirements and practice required to manage disciplinary issues.
- Outlines a formal procedure for the management of disciplinary issues in the workplace

Disciplinary procedures are not appropriate in cases involving: -

- Redundancy
- Ill health
- Termination of fixed-term contracts
- Capability because of poor performance (a separate procedure should be available) – it is important to distinguish between misconduct and lack of competence.

Responsibilities:

Headteacher

Ensure that staff are aware of the school's rules in respect of conduct and that they are aware of this procedure

Governing Body

It is the duty of the Governing Body to draw up a procedure for dealing with disciplinary matters

The Authority

The Authority must report all cases to the DfES where the employee (teachers and support staff) is considered unsuitable to work with children or where they are dismissed or have left voluntarily when they may have otherwise been dismissed.

Professional misconduct of teachers must be reported to the General Teaching Council (GTC)

(Aided Schools – the Governing Body is responsible for reporting such issues to the DfES and the GTC)

This policy and procedure should be applied in accordance with the aims of the County Council's Equalities Policy Statement.

(Please refer to the NYCC Equality Statement for full text)

CONTENTS

section	Section content	page
	Status & Scope of the Policy	1,2
	Summary / checklist for handling a disciplinary matter	4,5
1	Introduction	6,7
2	Disciplinary procedures - Advice	8,9
3 3.1,3.2,3.5,3.6 3.3 3.7 3.8 3.9 3.10 3.11 – 3.19 3.20 – 3.24 3.24 -3.27	How to handle disciplinary matters <ul style="list-style-type: none"> • The investigation • Suspension • Communication • Criminal Offence • Grievance • Sickness Absence • Witnesses • The disciplinary hearing • Penalties • Appeals 	10 - 15
Appendix 1	Model Disciplinary procedure <ul style="list-style-type: none"> • Disciplinary hearing • Disciplinary action • Examples of types of misconduct and gross misconduct • Suspension • Dismissal • Appeal • Confidentiality 	16 – 22 17 18 19,20 21 21 21 22
Appendix 2	Model letter – suspension from duty	23
Appendix 3	Model letter – invitation to an investigatory interview	24,25
Appendix 4	Model letter – invitation to a disciplinary hearing	26,27
Appendix 5	Model letter – issuing a formal warning	28,29
Appendix 6	Model order of proceedings for a disciplinary hearing before a panel of governors	30 - 32

SUMMARY / CHECKLIST FOR HANDLING A DISCIPLINARY MATTER**Principles**

- The disciplinary policy is used for issues of conduct and not capability.
- Confidentiality should be respected throughout. Witnesses, however, need to be made aware that copies of their statements will be provided to the individual undergoing disciplinary proceedings and their representative and will be used as evidence in a hearing situation.
- The Governing Body is responsible for establishing the codes of behaviour and the Headteacher is responsible for ensuring that staff are aware of these and of the disciplinary policy
- Employees undergoing disciplinary proceedings are entitled to representation and to be able to have the opportunity to prepare and state their case at all stages of the procedure.
- All parties involved in these proceedings (including staff witnesses) should be made aware of the staff care network and any other appropriate support.

1. Establish that the complaint is not frivolous or too minor to justify use of the disciplinary procedure.
2. Establish who will conduct the investigation.
3. **Gather relevant facts** -
 - quickly before memories fade
 - obtain statements from witnesses
 - gather employee history
 - consider whether suspension from duty with pay is necessary
 - advise the individual concerned at an early stage of the investigation (*special considerations may apply in allegations of child abuse*).

Note:

**At every stage, it is important to take clear notes and these will be referred to during any formal hearing.
Be aware that Emails and notes relating to the case may also be used in a hearing situation.**

4. **Consider whether information is clear; determine whether the action now required is:**
 - Advice and counselling
 - Training or retraining
 - Formal disciplinary action
 - No further action
5. Formal disciplinary action - arrange hearing, including the presence of a second senior member of staff if the Headteacher / Principal is conducting the hearing or otherwise arrange for Governors panel to be present.

Advise member of staff in writing of:

- Nature of complaint (word any allegations very carefully)
- That they are required to attend a disciplinary hearing

- Time and location of hearing (give at least 10 working days notice)
- Right to be accompanied
- Provide copies of written witness statements and other documentation to be referred to at least five working days in advance of the hearing.

6. **At the hearing:**

- Introduce those present
- Explain the purpose of the hearing and the procedures to be followed
- Describe the nature of the complaint
- Give supporting evidence, including calling witnesses

Allow member of staff to state their case.

Consider and questions.

Allow the cross-examination of any witnesses.

If new evidence is available, decide whether this needs further investigation - if so, adjourn hearing.

Always adjourn before reaching a decision - balancing of facts and clarification of views may be necessary.

Tell member of staff how they will hear decision (i.e. by reconvening hearing). Decide whether or not the complaint(s) is/are established.

To decide on appropriate sanction:

- consider the gravity of the offence
- sanctions applied in similar cases
- the member of staff's employment record and history
- mitigating circumstances
- consider the questions in paragraph 2.4 of the guidance on disciplinary procedures

When satisfied that the proposed sanction is reasonable: -

- reconvene disciplinary hearing to inform member of staff of decision and any sanction
- explain right of appeal and time limits;
- explain what improvement is expected, length of warning and consequences where there is failure to improve or repetition of misconduct.

Record the action taken and confirm in writing to member of staff.

Make a simple record and retain all documentation.

7. **Monitor member of staff's performance: -**

- establish who is responsible for monitoring and providing the support necessary
- disciplinary procedures should have the aim of encouraging improvement
- discuss progress regularly with member of staff (document progress)

1.0 INTRODUCTION

- 1.1 **This section provides guidance for Governing Bodies on good practice in disciplinary matters in order to assist them in deciding which procedures and practices are best suited to their own circumstances. It also complies with the terms of the Statutory Dismissal and Disciplinary Procedures as introduced by the Employment Act 2002 Dispute Resolution Regulations 2004. It is important to be aware that employees will be automatically regarded as having been unfairly dismissed if the employer has not followed the appropriate dismissal and disciplinary procedure. The following pages give more detailed advice on disciplinary matters, and contain a suggested model disciplinary procedure.**

☞ The summary / checklist will assist when dealing with a disciplinary matter.

- 1.2 **It is the responsibility of the Governing Body to ensure that disciplinary practices and procedures are effective, fair, clearly understood and consistently applied.**
- 1.3 Disciplinary procedures should not be seen in punitive terms. Well thought out and applied procedures can be a tool to good management and assist in staff development.
- 1.4 Under the terms of the Education Act 2002, responsibility for the conduct and discipline of staff rests with the Governing Body of schools / colleges with delegated budgets. Although the Local Education Authority continues to be the employer (other than in the case of foundation and voluntary aided schools), where a Governing Body determines that a member of staff should cease to work at that school, the LEA must comply with that determination within 14 days of receiving the notice of the final decision and this will usually result in the dismissal of the employee concerned.
- 1.5 From October 2004 employees of schools / colleges may be dismissed (with or without notice, as appropriate) from the date of notification by the Authority of the request of the Governing Body to remove the employee from the school / college, in accordance with the decision of its disciplinary hearing. If, on appeal, the decision is overturned, then re-instatement will occur.
- 1.6 Where a Governing Body decides that a member of staff should be dismissed the Governing Body will be the respondent at any employment tribunal arising out of that dismissal. **As at 2004 staff are able to make a claim for unfair dismissal if they have been employed continuously for one year or longer. Employees, irrespective of length of service, may also have a claim in common law for breach of contract for wrongful dismissal.**

- 1.7 It is important, therefore, that Governing Bodies can demonstrate that their procedures and practices are always properly applied and incorporate all principles of natural justice. Governing Bodies must ensure that the practices and procedures comply with the concept that a person is deemed to be innocent until proven guilty. In employment law, the burden of proof is based upon the 'balance of probabilities', rather than the more onerous criterion of 'beyond a reasonable doubt' applied in criminal law.
- 1.8 Governing Bodies must ensure that all employees are offered the right of appeal against the imposition of a disciplinary sanction and that the Governing Body's Code of Disciplinary Practice and Disciplinary Procedures are made openly available to all members of staff.
- 1.9 Assistance and advice on all matters relating to discipline may be obtained from the designated Senior Personnel Adviser.

Note:

ACAS publishes an Advisory Handbook, 'Discipline and Grievances at Work'.

The LEA recommends that Governing Bodies make themselves aware of the contents of this publication, which is taken into account by employment tribunals in cases of alleged unfair dismissal.

The ACAS Handbook is available on www.acas.org.uk.

Please contact your designated Senior Personnel Adviser should any clarification of the content be required.

2.0 DISCIPLINARY PROCEDURES - Advice

- 2.1 It is the duty of the Governing Body to draw up a procedure for dealing with disciplinary matters. Disciplinary procedures are not appropriate in cases involving: -
- Redundancy
 - Ill health
 - Termination of fixed-term contracts
 - Capability because of poor performance (a separate procedure should be available)

However, a proposal to terminate employment for any of the above reasons will entitle the employee(s) concerned to a Hearing and Appeal before sub-Committees of Governors. The procedures used must comply with at least the minimum requirements of the Statutory Dismissal Procedures.

- 2.2 **The disciplinary procedure must also be separate from the Grievance Procedure, which will also be determined by the Governing Body.**
- 2.3 Governing Bodies will wish to bear in mind that in establishing rules and procedures they are taking important steps in promoting concepts of fairness and justice in the treatment of staff, and in developing good employee relations.
- 2.4 In reaching decisions in each case it may be helpful to consider the following questions:
1. Has there been as much investigation as is reasonable in the circumstances?
 2. Do I genuinely believe that the member of staff has committed the alleged offence?
 3. Have I reasonable grounds on which to sustain that belief?
 4. Is the misconduct sufficiently serious to justify the disciplinary action I am contemplating?
 5. Is the proposed disciplinary action within a band of reasonable responses of a reasonable employer in the circumstances?
- 2.5 In establishing disciplinary practices and procedures, Governing Bodies should consult with representatives of all recognised Trade Unions within the school / college.

- 2.6 Once procedures have been established, the Governing Body and the Headteacher / Principal should ensure that copies are readily available to all staff at the school and to the County representative of all recognised Trade Unions.
- 2.7 In common with all procedures, Governing Bodies may wish to review their disciplinary procedures regularly and involve trade union representatives and the LEA when proposing any changes.
- 2.8 **It is recommended that disciplinary procedures should: -**
- be in written form and be readily available to all staff;
 - specify to which staff they apply;
 - enable matters to be dealt with thoroughly and without unreasonable delay
 - indicate the disciplinary action which may be taken
 - specify who has the authority to take various forms of disciplinary action
 - provide for individuals to be informed of complaints against them and allow them to state their case **before** a decision is reached.
 - allow time (usually 10 working days) between informing a member of staff of a hearing and the hearing taking place.
 - recognise the right of individuals to be accompanied by a recognised Trade Union Representative or work colleague.
 - ensure that, except for gross misconduct, employees will not be dismissed for a first breach of discipline.
 - ensure a thorough investigation takes place prior to disciplinary action.
 - provide an explanation of the reasoning for any action taken.
 - allow a right of appeal and provide a procedure for this right of appeal.

Note:

Support – Employees subject to disciplinary proceedings, witnesses and other employees involved should be made aware of the staff care network

3.0 HOW TO HANDLE DISCIPLINARY MATTERS

The Investigation

- 3.1 The Governing Body needs to determine who will carry out investigations. Governing Bodies need to ensure that any one involved in an investigation is not involved in making decisions at any subsequent hearing or appeal (although they may present the case). **Any member of the decision making panel at a hearing may not participate on an appeals panel in connection with the same case.** It is important, therefore, that the number of senior staff and governors involved in investigations is kept to a minimum and that staff dismissal and dismissal appeals sub-committees are established at an early stage. All disciplinary matters are confidential and there should be no discussion outside those involved in the investigation prior to the formal hearing, in relation to the matter under investigation, as this may prejudice the outcome.
- 3.2 In carrying out investigations into alleged misconduct, Governing Bodies must ensure that only specific information is acted upon. Hearsay alone should not ordinarily constitute sufficient evidence to take disciplinary action.
- 3.3 **In cases of alleged gross misconduct, Governing Bodies have the right to suspend a member of staff, on full pay, pending the completion of investigations.** This also applies where Governing Bodies consider that the presence of the member of staff in school may prejudice the outcome of the investigation or it is otherwise in the interests of the school. Suspension is a neutral act, not a disciplinary sanction and does not imply the inevitability of ensuing disciplinary action. **Governors / Headteachers are advised to seek the advice of their designated Senior Personnel Adviser before suspending a member of staff.**

☞ *See Appendix 2 for model suspension letter.*

A member of staff under suspension should be given a management contact name and be advised of the availability of the Authority's Staff Care Network. Consideration should also be given to whether an alternative course of action to suspension may be appropriate – for example, temporary transfer to another post or short-term paid leave of absence.

- 3.4 At all times Governing Bodies will need to have regard to the Articles and Instruments of Government for the school.
- 3.5 It is important to remember that not all disciplinary investigations will lead to disciplinary hearings. Once an investigation has been completed, it may be concluded that the matter will not be appropriately dealt with through the

disciplinary procedure, or that counselling, supervision, advisory support or training / retraining may be more effective / appropriate.

- 3.6 The investigation should normally include the allegations being put to the member of staff at an early stage in the proceedings and asking for his / her comments. The member of staff should be advised in advance that he / she is entitled to be accompanied by a Trade Union Representative or work colleague and advised that anything said may be used at a subsequent disciplinary hearing. The investigator should have another member of staff present at this interview and notes of the details of the discussions should be made and a copy subsequently provided to the individual and their representative for comment.

☞ *See appendix 3 for a model letter asking a member of staff to attend an investigatory interview.*

- 3.7 **Communication** - An individual subject to an investigation should be kept informed by the investigating officer of the progress of the investigation at regular intervals, and notified of the reason for any unexpected delays.

- 3.8 **Criminal Offence** - Special care should be taken when dealing with an employee who is alleged to have committed a criminal offence, whether or not connected with his / her employment.

This should not be treated as an automatic reason for dismissal.

The main consideration should be whether the offence is one that makes the employee unsuitable for his / her type of work. In all cases, having considered all the facts, consideration needs to be given to whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure. For example, an employee should not be dismissed solely because a charge against them is pending or because they are absent as a result of being remanded in custody.

- 3.9 **Grievance** - During the disciplinary process an employee may wish to raise a grievance about the behaviour of the investigating officer. Where this happens, and depending on the circumstances, it may be appropriate for the Headteacher / Principal (unless he/she is the investigating officer) to suspend the disciplinary process for a short period until the grievance has been considered.

Consideration might also be given, where appropriate, to appointing another investigating officer. Where the Headteacher is the investigating officer, the matter should be referred to the Chair of Governors, who should liaise with the designated Senior Personnel Adviser

- 3.10 **Sickness absence** - If an employee is absent due to sickness during the disciplinary process, it is essential to determine the nature and expected duration of the absence. Where it is apparent that the sickness absence will

be for a prolonged period, consideration should be given to referring the employee to Occupational Health to establish whether it is reasonable to require the employee to engage in the disciplinary process. In the event of long-term sickness absence, it may be necessary to continue the process in the absence of the employee. Long-term sickness absence can be either several related periods of absence or one continuous period. If there is no immediate prospect of the employee returning to work, the employee would be offered the right to be represented by a Trade Union Official or work colleague.

Note:**Witness statements**

- Ensure they are in writing
- Consider possible reasons for fabrication
- Investigate and seek corroboration (interview witnesses)
- Make statements available to the employee (ensure witness is aware of this when they give them)
- Statements should have – date, time, place, name/s, the incident and what the witness observed.
- Where there are conflicting witness statements, the manager must decide on balance of probability.

Investigations / disciplinaries where criminal charges are pending

Investigate the facts as far as possible - come to a view and consider whether the conduct is sufficiently serious to warrant instituting disciplinary proceedings. Where the conduct requires prompt attention, the employer does not have to await the prosecution before taking fair and reasonable action.

Where an employer's investigation identifies the possibility of a criminal act – consideration should be given to notifying the police.

☞ **Reference must be made to ACPC guidance where issues of child protection are involved.**

The Disciplinary Hearing

- 3.11 The Director of Education, or their representative, has the right under the Education Act 2002 to attend for the purpose of giving advice to the Governing Body where the dismissal of a member of staff may be considered.
- 3.12 Not all disciplinary hearings will need to involve Governors. The disciplinary procedure should indicate at what level Governors will be involved. Where Governors are involved in Disciplinary Hearings and Appeals, they should operate by way of the Staff Dismissals sub-Committee and Staff Dismissal Appeals sub-Committee. Normally, a minimum of three Governors should sit on each sub-Committee. In exceptional circumstances, if this is not possible, the number attending can be reduced to two. **However, there must not be fewer Governors on the Appeals sub-Committee than on the Dismissals sub-Committee.**

- 3.13 If the Headteacher / Principal is to hear the case where formal disciplinary procedures are envisaged, it is important that the Headteacher / Principal nominates a senior member of staff to investigate the matter and present the complaint at disciplinary hearing so that the investigator does not also hear the case. A further member of staff may be present to take notes and act as a witness at any interviews conducted as part of the investigation.
- 3.14 The member of staff who is the subject of the disciplinary complaint should be informed in writing, at least 10 working days before the hearing of the complaint, that he or she is to attend a disciplinary hearing and of the procedure to be followed. The 10 working days period can be shortened by mutual agreement. The timing and venues of meetings must be reasonable. The member of staff must be informed of his or her right to be accompanied by a Trade Union Official or work colleague.

☞ *See Appendix 4 for a model letter*

The member of staff should be given copies of any documentary evidence to be produced or relied on, including written witness statements, at least five working days prior to the Hearing. Submission of late documents will be at the Disciplinary Panel's discretion.

Examples of documentary evidence that may be submitted to the Panel by both parties:

- Statement of case
 - Copy of the employee's statement of main terms and conditions of employment.
 - Copies of any relevant policies, procedures, instructions, clarification of standards etc. in connection with the allegation(s)
 - Copies of all correspondence relevant to the investigation and procedure.
 - Copies of any appropriate file notes e.g. records of conversations.
 - Copies of witness statements (signed documents).
- 3.15 The investigator may ask witnesses to attend, or may provide written statements from witnesses. Where possible, witnesses should attend unless the member of staff accepts the contents of their statement as true and does not wish to cross-examine them. Witnesses should only be present in the hearing whilst giving their own evidence and answering questions. Advice on the use of the evidence of pupils or other children/young persons can be obtained from the designated Senior Personnel Adviser.
- 3.16 The member of staff and/or their representative has the right to present his or her side of the case and also to produce witnesses and/or written statements. The representative has a statutory right to address the Hearing

but no statutory right to answer questions on the employee's behalf. Both sides may cross-examine each other's witnesses.

☞ *See Appendix 6 for a suggested order of proceedings*

- 3.17 It is possible to adjourn disciplinary hearings, for example when the member of staff becomes too distressed or angry to continue, or where new evidence comes to light which may have a material effect and requires further investigation.
- 3.18 It is strongly recommended that both parties leave the room following the presentation of their cases in order to allow the panel time to consider the evidence and reach a decision.
- 3.19 In exceptional circumstances, it may be necessary for the Hearing to take place in the absence of the employee. Should this be the case, the employee would be offered the right to be represented by a Trade Union Representative or work colleague.

Penalties

- 3.20 It is the responsibility of the Governing Body to ensure that the procedures provide for a graduated set of sanctions, which allow the seriousness of the offence to be taken into account.
- 3.21 After considering the evidence the interviewer / panel must consider what action, if any, is appropriate. Not all cases will call for formal disciplinary action. It may be appropriate to counsel the member of staff, provide support or other assistance or to give an informal oral warning. Whatever the decision, the outcome should be formally recorded.
- 3.22 Both parties should be recalled to the Hearing to be notified verbally of the decision. In any event, written confirmation of the decision should be sent to both parties within 5 working days.

☞ *See Appendix 5 for model letter*

- 3.23 **The most commonly used formal sanctions are; formal oral warning, written warning, final written warning and dismissal.** Generally, the lower sanctions should be applied first with the more severe sanctions only coming into effect if there is a further breach. It is possible, however, to proceed to any stage immediately, (e.g. for gross misconduct) depending upon the seriousness of the offence and the other circumstances of the case.

☞ *Examples of behaviour which could be regarded as misconduct or gross misconduct are stated on page 19 / 20*

3.24 **All warnings should be subject to review** and should normally be disregarded for disciplinary purposes after a period of 12 months. In exceptional circumstances where warnings are kept under review they should be disregarded after a sufficient period of good conduct. The Governing Body will need to consider their own arrangements for this, in consultation with the appropriate Trade Unions. At the expiration of review period, warnings should be reviewed by the Headteacher / Principal in consultation with the Chair of Governors and discussion with the member of staff, and their representative, if they so wish.

Appeals

3.25 Any member of staff who has received a formal disciplinary sanction should have the right of appeal. Methods of setting up procedures for this have been indicated in earlier paragraphs, and incorporated in the model disciplinary procedure. Dismissal Appeals sub-Committees must be set up in accordance with the Articles of Government, and the Education (School Government) Regulations 1999.

3.26 There will be a single right of appeal against any sanction imposed. All letters of appeal should clearly set out the grounds upon which the appeal has been made i.e. whether:

- i) on the facts of the case and/or
- ii) on the sanction imposed and/or
- iii) due to procedural fault(s) and/or
- iv) new evidence has emerged

3.27 In the interests of natural justice the Headteacher / Principal (and/or whoever has presented the case) should leave the hearing with the appellant where he/she has been involved in the investigation and/or the original hearing, after presenting the case on behalf of the school management.

APPENDIX 1**INTRODUCTION**

The following describes a procedure which the Governing Body of a school might adopt as their procedure in relation to disciplinary matters. This is not prescriptive but acts as a framework for Governing Bodies to consider.

A Suggested Model Disciplinary Procedure**General**

1. This procedure is in respect of powers conferred by the Education Act 2002 relating to the regulation of conduct and discipline at a school in receipt of a delegated budget. It also complies with the terms of the Statutory Dismissal and Disciplinary Procedures as introduced by the Employment Act 2002 Dispute Resolution Regulations 2004.
2. The procedure relates to all staff for whom Governors have responsibility. However, it will not be invoked against an accredited trade union representative until the circumstances of the case have been discussed with a more senior trade union representative or a full-time official.
3. The responsibility for taking disciplinary action rests with the Governors. However, this responsibility may be exercised by the Headteacher / Principal on the Governors' behalf in respect of an Oral, Formal Oral Warning or Written Warning, in cases where the Headteacher / Principal is not the subject of the action.
4. Decisions regarding disciplinary action at the stages of Final Written Warning and Dismissal and all disciplinary action in respect of the Headteacher / Principal are taken by the Staff Dismissals sub-Committee of the Governing Body. The Staff Dismissal sub-Committee or delegated person can also impose an Oral, Formal Oral Warning or Written Warning where it considers it appropriate, or recommend counselling/support or training/retraining for the member of staff.
5. Meetings of the Staff Dismissal sub-Committee are convened by the Clerk to the Governors, at the request of the Headteacher / Principal where they consider it appropriate or, where the Headteacher / Principal is the subject of the disciplinary proceedings, at the request of the Chair of Governors. Where the Headteacher / Principal is the subject of disciplinary proceedings, the Chair of Governors will request the Director of Education to investigate on behalf of the Governing Body.

Disciplinary Hearings

6. Where, as a result of alleged misconduct, disciplinary proceedings are initiated against a member of staff then that member of staff will be given the opportunity to answer the allegations at a disciplinary hearing. **Prior to the hearing, the allegation will be put to the member of staff at an investigatory meeting for their comments.** This may be in the form of an interview with the investigating officer where the member of staff is entitled to be accompanied (*see para 8*). The member of staff will be advised that anything which they say may be used at a subsequent disciplinary hearing. The written invitation to attend the hearing will include details of the allegation(s) and the basis of the allegation(s)
7. The disciplinary hearing may be before the Headteacher / Principal or before the Staff Dismissals sub-Committee. If during a hearing the Headteacher considers that the matter would be more appropriately dealt with by the Staff Dismissals sub-Committee they must adjourn and convene a meeting of the Staff Dismissals sub-Committee and refer the matter to it.
8. The member of staff subject to any disciplinary proceedings is entitled to be accompanied by a recognised Trade Union Official or work colleague, at all stages.
9. A disciplinary hearing will be arranged within a reasonable time, as soon as possible after the alleged misconduct, but sufficient to allow a thorough investigation of the facts. A member of staff subject to disciplinary proceedings will be informed in writing of the time and date of the hearing, 10 working days or more before it takes place. The 10 working days notice can be shortened by mutual consent.
10. The Headteacher / Principal (except where they are the subject of the proceedings) and the Director of Education (or representative) has the right to attend all disciplinary hearings involving the Staff Dismissals sub-Committee for the purpose of giving advice on matters relevant to the hearing.
11. During a disciplinary hearing the Headteacher / Principal (or whoever has conducted the investigation) or Staff Dismissals sub-Committee or the employee who is the subject of the disciplinary hearing may invite the attendance of witnesses or other staff for the purpose of giving information. The member of staff will be asked to answer allegations regarding their conduct and will be able to question any witnesses and/or the investigating officer. The member of staff and the investigating officer will always be asked to retire whilst the Headteacher or the Staff Dismissals Committee consider what action, if any, is appropriate.

Disciplinary Action

12. The member of staff should be advised orally, but in any event will be informed in writing by recorded delivery of the outcome of the disciplinary hearing as soon as possible. The letter will state whether disciplinary action has been decided upon and where disciplinary action short of dismissal is involved, contain a warning that similar misconduct in the next 12 months may occasion further and more severe disciplinary action.

After a period of 12 months in which no further incident has occurred the warning will normally be disregarded in future disciplinary proceedings. In exceptional circumstances, warnings will be kept under review with a view to disregarding them after a sufficient period of good conduct. The letter will also inform the member of staff of their right to appeal against the decision, to be made within a period of 10 working days from receipt of the letter. Copies of the letter will also be sent to the Headteacher, the Chair of Governors, Director of Education and the member of staff's representative.

13. The types of disciplinary action which may be taken are: -

- Oral Warning
- Formal Oral Warning
- Written Warning
- Final Warning
- Determination that the member of staff be Dismissed

In the case of continuing misconduct of a member of staff, any disciplinary action will ordinarily be expected to graduate from a lower level of action to a higher level. However, it is possible to proceed directly to a higher level where the seriousness of the circumstances warrants it. In taking such decisions the Staff Dismissals Committee will take full account of the advice of the Director of Education.

EXAMPLES OF TYPES OF MISCONDUCT

This is not meant to be an exhaustive list of those instances that could be construed as misconduct, but is provided as an example of the types of behaviour that could be regarded as such.

Misconduct

- Unjustified refusal of a lawful and reasonable instruction.
- Lateness, unauthorised absence, failure to notify sickness absence.
- Insubordination or verbal assault whilst at work.
- Unacceptable standards of personal conduct.
- Personal misconduct outside of work, sufficient to impact upon an employee's position at work.
- Negligence in the performance of duties and responsibilities (except where due to incapability).
- Unauthorised use of the School/College/County Council's resources, or information gained whilst in the employment of the School/College/County Council (except where employees are protected under the provisions of the County Council's Whistleblowing Policy/Public Interest (Disclosure) Act 1998).
- Threat of violence.
- Negligence in carrying out duties in accordance with relevant policies and procedures.

Note:

Incidences described above would normally result in an oral or written warning, however continued/repeated incidences of misconduct may lead to dismissal.

14. **Gross Misconduct**

In cases of gross misconduct the Staff Dismissals sub-Committee may determine that a member of staff shall be dismissed even though the steps listed in paragraph 13 have not been exhausted. The Director of Education must be consulted prior to making a determination to dismiss a member of staff. The Staff Dismissals sub-Committee may determine that the nature and/or seriousness of the offence justifies summary dismissal. If Governors are unsure as to whether or not a particular offence could constitute gross misconduct, advice should be sought from the LEA.

EXAMPLES OF TYPES OF GROSS MISCONDUCT

This is not meant to be an exhaustive list of those instances that could be construed as gross misconduct, but is provided as an example of the types of behaviour that could be regarded as such.

Gross Misconduct

- Theft or attempted theft, fraud or fraudulent falsification of accounts, or other official records, including time-recording, overtime and expenses claims
- Deliberate damage to the School / College / County Council's or another employee's property.
- Misuse of the Organisations name or property
- Falsification of records or documents
- Physical or indecent assaults either within or outside of work, sufficiently serious to affect an employee's position at work.
- Acceptance of gifts and hospitality outside the County Council's Policy.
- Serious breach of confidentiality (subject to the County Council's Whistleblowing Policy/Public Interest (Disclosure) Act 1998).
- Sexual, racial or personal harassment of a wilful and sustained nature.
- Being incapable of work, or of working safely due to the influence of alcohol or drugs.
- Negligent or wilful failure to comply with legal requirements of the School / College / County Council's or Directorate's various policies and procedures such as Health and Safety, Equalities, Data Protection, or any other legal or statutory requirement.
- Serious negligence which causes or might cause unacceptable loss, damage or injury.
- Behaviour which has brought the School / College / County Council or its services into serious disrepute.
- Serious insubordination.
- Repeated refusal of a lawful and reasonable instruction.
- Serious personal misconduct outside of work, which is deemed to make the continuation of employment untenable.
- Significant departure from the school / college's procedures and / or provisions of the Education Act 1996 (Sections 548 – 550) and any successor legislation/statutory guidance on the use of physical intervention.
- Sexual offences against children and young people e.g. abuse of trust, grooming, accessing inappropriate internet sites, use of mobile phone, e-mail or other communication for indecent purposes.

Note: Incidences of alleged gross misconduct may result in immediate precautionary action (suspension) pending investigation, and ultimately may lead to dismissal.

15. **Suspension**

In cases of alleged gross misconduct, the Headteacher, following consultation with the Chair of Governors and the Director of Education's representative, has the right to suspend a member of staff, on full pay, pending the completion of investigations. This also applies where it is considered that the presence of the member of staff in school may prejudice the outcome of the investigation or it is otherwise in the interests of the school. Suspension is a precautionary act, not a disciplinary sanction and does not imply the inevitability of ensuing disciplinary action. A member of staff under suspension will be given a management contact name and be advised of the availability of the Authority's Staff Care Network. Consideration will also be given to whether an alternative course of action to suspension may be appropriate – for example, temporary transfer to another post or short-term paid leave of absence.

16. **Dismissals**

In the event of a decision to dismiss, the Governors will request the Authority to remove the employee from the school/college and the Authority will be required to comply within 14 days. The dismissal (with or without notice, as appropriate) will take immediate effect upon notification by the Authority. If, on appeal, the decision is overturned then re-instatement will occur.

17. **Appeals**

A member of staff has the right of appeal against any formal disciplinary action taken against them and must be informed of this right. Appeals against disciplinary action will be to a Dismissal Appeals sub-Committee consisting of not less than three members of the Governing Body who have taken no part in the decision to take disciplinary action.

- 17.1 The conduct of the proceedings of the Dismissal Appeals sub-Committee will be similar to those of the Staff Dismissal sub-Committee described above. The appeal will be by way of a complete rehearing.
- 17.2 The appellant should be advised orally, but in any event will be informed in writing as soon as possible of the decision of the Dismissal Appeals sub-Committee which will be either to uphold or overturn the decision of the Headteacher or the Staff Dismissal sub-Committee to which the appeal relates, or may be to substitute a lesser form of disciplinary action as specified in paragraph 13 above.
- 17.3 A member of staff wishing to lodge an Appeal must write to the Clerk to the Governors asking to exercise the right of appeal and stating their grounds for

appeal within 10 working days from receipt of the notice of the decision of the Staff Dismissals sub-Committee. Receipt will be deemed on the first working day after posting. Other than in the most exceptional circumstances, if no appeal is lodged within that time the right to appeal is lost.

17.4 The Clerk to the Governors will arrange a Dismissal Appeals sub-Committee meeting within 15 working days of the date of receipt of the request for appeal, unless mutually agreed otherwise.

17.5 The decision of the Dismissal Appeals sub-Committee will be final.

CONFIDENTIALITY

All proceedings should be strictly confidential.

Where the Governing Body decide to suspend or dismiss a member of staff, only the operative decision should be published or made public in any way.

APPENDIX 2

**MODEL LETTER
SUSPENSION FROM DUTY**

Private & Confidential

Dear Mr/Mrs/Miss/Ms

(Date)

SUSPENSION FROM DUTY

Acting on behalf of the Governing Body of the School, I am writing to you as a result of

PROVIDE EXPLANATION OF THE ALLEGATION

Given the serious nature of the allegation, I am suspending you from duty in accordance with the agreed Disciplinary Procedure of the Governing Body.

You will remain on full pay while an investigation is carried out. The suspension is a neutral act and does not imply that any conclusion has been reached by your employer in respect of the allegation/s. If sufficient evidence of misconduct is found, then the matter will progress to a formal disciplinary hearing at a later date.

During the period of suspension you will not be required to attend for work and must not under any circumstances attempt to make contact with pupils or staff at the school without first obtaining the approval of the Headteacher or myself.

If you wish to speak to anyone about this matter is available and can be contacted at/onIf you wish to take advantage of the Authority’s confidential counselling and support service, the Staff Care Network is available on (01609 532807).

I will contact you as soon as possible in order to take matters forward.

Yours sincerely

APPENDIX 3**MODEL LETTER
INVITATION TO AN INVESTIGATORY INTERVIEW****Private & Confidential**

Dear Mr/Mrs/Miss/Ms

(Date)

INVESTIGATORY INTERVIEW

Acting on behalf of the Governing Body of the School, I am writing to you as a result of

PROVIDE EXPLANATION OF THE ALLEGATION.....

In order to investigate these issues, you are invited (alt: required) to attend an investigatory interview at **time** on **date** in **location**. Please let me know if you or your representative are unable to attend, together with the reason.

At this interview you will have the opportunity to respond by making a statement or making any other comments that you so wish.

You have the right to be accompanied by a recognised Trade Union official or work colleague.

I must emphasise that this interview is part of a fact-finding process. It is not a formal hearing. I should, however, make you aware that if the investigation finds sufficient evidence of misconduct, then the matter may progress to a formal disciplinary hearing at a later date. You should also be aware that notes will be taken of what you say at the investigatory meeting and may be used in evidence at any subsequent Disciplinary Hearing or Appeal. You will be provided with a copy of the notes and be given the opportunity to comment upon them.

Please confirm that you will be attending by signing the attached copy letter and returning it to me by **date**.

Yours sincerely

I acknowledge receipt of the above letter.

Signed:

Name (print)

Dated:

I confirm that I will / will not attend the investigatory interview.

My representative will be (name)

Status of representative (Recognised Trade Union Representative or colleague)

APPENDIX 4**MODEL LETTER
INVITATION TO A DISCIPLINARY HEARING**

Please note that this letter must be received by the member of staff at least 10 working days before the date of the Hearing. If the employee cannot attend the meeting because of difficulties of representation, deferral of the meeting should normally occur.

Private & Confidential

(Date)

Dear Mr/Mrs/Miss/Ms

DISCIPLINARY HEARING

I am writing to you following the investigatory interview held on **date** regarding alleged misconduct on your part.

I am concerned about ***(item, failure, problem, etc.)*** e.g. your conduct on ***(date)***; your standard of work relating to ***(subject)***; your inability to ***(nature of problem)***. Or: It has been alleged that (give details of allegation).

You are, therefore, invited to attend a disciplinary hearing - in accordance with the agreed Disciplinary Procedure of the Governing Body on ***(date)*** at ***(time)*** for the purpose of discussing these matters. The hearing will be held by (name) with (name) in attendance and (name(s)) will also be called as witnesses.

As this is a matter which may result in disciplinary action being taken against you, you may be accompanied at the hearing by a Trade Union representative, or a work colleague. If you wish to be so represented, I should be grateful if you would let me have the name and status of your representative as soon as possible. It is also open to you to bring witnesses to this hearing. Please provide details of any witnesses likely to attend.

At least five working days before the date of the hearing, you will be provided with copies of any documentation to be used by the school/college. I would be grateful if you or your representative could provide me with any documentation you wish to submit, within the same timescale.

Please acknowledge receipt of this letter by signing the attached copy and returning it to me in the stamped, addressed envelope provided.

Yours sincerely

I acknowledge receipt of the above letter.

Signed:

Name (print)

Dated:

I will / will not attend the hearing.

My representative will be (name)

Status of representative (Recognised Trade Union Representative or colleague)

APPENDIX 5**MODEL LETTER
ISSUING A FORMAL WARNING**

(date)

Dear Mr/Mrs/Miss/Ms

DISCIPLINARY HEARING

I refer to the disciplinary hearing held at **(place)** at **(time)** on **(date)** which you attended. The hearing was held in accordance with the Governing Body's Disciplinary Procedure. You were represented by **(name)**. (You did not wish to be represented).

The allegation made against you by **(name)** was that you **(details of allegation)**.

You have agreed that the complaint made against you is accurate and have admitted such action. **(alternatively, give details of response)**. (In the case of some complaints not being upheld, details of these should be entered, together with reasons why they were not upheld).

Having considered your response the Governing Body considers that the complaint is accurate and you did commit such action.

I write to confirm the decision of the Staff Dismissal sub-Committee on **(date)**, that you should receive a formal oral warning/written warning/final warning. This letter is to be taken as that warning in accordance with the Governing Body's Disciplinary Procedures.

I must advise you that in future you are required to comply with all of the proper procedures in respect of **(subject of complaint)**. Should there be any further incidents of this nature, or other serious misconduct or failure to undertake the duties and responsibilities of your job, further disciplinary steps will be taken.

(include here details of agreed future action to be taken by other parties, such as Governors or Principal, to achieve improvements).

I must advise you that you have the right of appeal against this decision and that if you wish to exercise this right you should do so by writing to me within ten working days of receipt of this letter, either personally or through your nominated representative. Receipt of this letter shall be deemed to be the first working day after posting. Any appeal would be heard by the Dismissal Appeals sub-Committee of the Governing Body, where you may appear with or without a representative.

I should be grateful if you would return the attached duplicate copy to me, signed, to indicate that you have received this letter and fully understand that you have been given a formal oral warning/written warning/final warning in accordance with the Governing Body's Disciplinary Procedures.

- A. A copy of this letter will be placed on your personal file. In accordance with the Governing Body's Disciplinary Procedures, this warning will normally be disregarded in any further disciplinary proceedings once a period of one year has elapsed from the date of this letter.

OR

- B. A copy of this letter will be placed on your personal file. In view of the serious nature of the complaints proven against you, this warning will not be disregarded after the usual one-year period, though the possibility of disregarding it will be kept under annual review.

Yours sincerely,

I acknowledge receipt of this letter and I understand that I have been given a
 **(state the sanction given)**
in accordance with the Disciplinary Procedures of the Governing Body.

Signed:..... **(print name)**

Date:

APPENDIX 6**MODEL ORDER OF PROCEEDINGS
FOR A
DISCIPLINARY HEARING BEFORE A PANEL OF GOVERNORS**

Set out below are two alternative "running orders" for disciplinary hearings both of which have been used extensively across the County in recent years. They are also suitable, with little amendment, for other formal employee hearings in cases such as grievances or redundancies. They are very similar to each other and Governors should feel free to use whichever they prefer. Of course, it is open to Governors to use different procedures but it is recommended that one of the two below should be strongly considered as they are both established models which both the trade unions and the Local Education Authority have long experience of using. If the situation is suitable, then a less formal approach could be adopted. For example, if the member of staff admits that they are guilty of misconduct, and the facts of the case are not in dispute, then it would not be necessary to follow every step.

MODEL A

1. Chair of meeting asks those present to introduce themselves and confirms everyone is aware of how the hearing will be conducted.
2. Management state their case, including calling any witnesses they wish (who are excluded until called). Any management witness may be questioned by the employee/representative and then the panel following which they should withdraw.
3. The employee or their representative state their case, including calling any witness they wish (who are excluded until called). Any staff side witness may be questioned by the management representative and then the panel following which they should withdraw.
4. The employee or their representative may ask questions of management representative.
5. The management representative may ask questions of the employee or their representative.
6. The panel may ask questions of either party.
7. The management representative is asked to briefly sum up the case, introducing no new evidence.
8. The employee or representative is asked to briefly sum up the case, introducing no new evidence.

9. Both parties withdraw whilst the panel deliberates. A representative of the Director of Education or the Headteacher may remain for the purpose of giving advice, as long as that individual was not presenting management's case during the hearing or conducting the disciplinary investigations.
10. Both parties may be called back together should the panel wish to clarify any matter. The employee will be informed in writing of the panel's decision but should also, if possible, be called back into the hearing, along with management's representative, to hear the panel's decision.

Note:

Either party may request a brief adjournment at any time during the hearing; it should be the decision of the Chair of the panel as to whether or not such an adjournment is granted.

MODEL B

1. Chair of meeting asks those present to introduce themselves and confirms everyone is aware of how the hearing will be conducted.
2. Management state their case, including calling any witnesses they wish (who are excluded until called). Any management witness may be questioned by the employee/representative and then the panel following which they should withdraw.
3. The employee or their representative may ask questions of management's representative.
4. The panel may ask questions of management's representative.
5. The employee or their representative state their case, including calling any witness they wish (who are excluded until called). Any staff side witness may be questioned by the management representative and then the panel following which they should withdraw.
6. The management representative may ask questions of the employee or their representative.
7. The panel may ask questions of the employee or their representative.
8. The management representative is asked to briefly sum up the case, introducing no new evidence.
9. The employee or representative is asked to briefly sum up the case, introducing no new evidence.

10. Both parties withdraw whilst the panel deliberates. A representative of the Director of Education or the Headteacher may remain for the purpose of giving advice, as long as that individual was not presenting management's case during the hearing and did not conduct the disciplinary investigation.
11. Both parties may be called back together should the panel wish to clarify any matter. The employee will be informed in writing of the panel's decision but should also, if possible, be called back into the hearing, along with management's representative, to hear the panel's decision.

Note:

Either party may request a brief adjournment at any time during the hearing; it should be the decision of the Chair of the panel as to whether or not such an adjournment is granted.

ENDS

IEB Reviewed October 2009

Next review date: October 2012