Guidance for Academies

Disciplinary Procedure

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1. Introduction

1.1. The school values employees who work to the high standards of behaviour and conduct as specified in its Code of Conduct. The school recognises there is a need to be clear to employees, in the interests of openness and understanding, how any 'shortfall' in meeting the expected standards will be responded to.

1.2. Line Managers/Headteachers will make employees aware when they are not considered to be achieving or maintaining the expected standards of conduct or behaviour. The school's Managing Performance and Managing Attendance should be referred to where a 'shortfall' relates to respective capability concerns.

1.3. This disciplinary policy will be used where there is an allegation of a shortfall in an employee's acceptable behaviour or conduct, examples of which are listed, including gross misconduct, in the Code of Conduct.

1.4. In accordance with the principles below, this policy seeks to ensure that misconduct matters are dealt with promptly, fairly and consistently and identify any support measures that may help employees to achieve the expected standards of behaviour.

2. Scope

2.1. This policy applies to all employees in school and is subject to a collective agreement with the recognised Trades Unions.

3. Equality and Diversity

3.1. Equality and diversity underpin all school employment policies, procedures and practices. The school actively promotes equality of opportunity and values diversity among its employees. The potential equality impact of this policy has been assessed.

4. Principles

4.1. This policy pays due regard to the provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures. Where silent on any particular aspect, the provisions of the ACAS Code of Practice will be considered to apply.

4.2. Line Managers/Headteachers will adhere to the provisions of the policy to ensure cases are dealt with promptly, fairly and consistently. However, timescales within the policy may be varied as necessary or appropriate subject to agreement of all parties.

4.3. An employee will not be dismissed for a first offence (unless it is considered gross misconduct, where dismissal, without notice or payment in lieu of notice, may be determined).

4.4. Line Managers/Headteachers will ensure all conduct matters will be dealt with sensitively and with due respect for the privacy of any individuals involved.

4.5. All employees must treat any information communicated to them in connection with an investigation or conduct matter as confidential. A failure to do so could result in formal action being taken.

4.6. Line Managers/Headteachers are responsible for making sure that employees know when they are not achieving or maintaining the expected standards of conduct or behaviour. Employees will always be given an opportunity to put their case in response before any decisions are made.

4.7. Employees are responsible for ensuring they understand the requirements of the school's Code of Conduct (the Code of Conduct) for employees and any terms and conditions, rules, standards and requirements that apply to them in their job. Examples of unacceptable behaviour, which may be considered to be misconduct or gross misconduct depending on the relevance to an employee's roles/seniority, seriousness of the matter and the particular circumstances, are listed in the Code of Conduct.

4.8. Action (sanctions) under this policy will not be taken without proper investigation, appropriate to the circumstances, to establish the facts of the case (see Section 6 below).

4.9. Employees have a right to request they are accompanied at any formal hearing (see Section 5 below).

4.10. The procedure, and level of action, may be implemented at any stage if the employee's alleged misconduct or behaviour warrants it.

4.11. Governors have the authority to dismiss or impose alternatives to dismissal (e.g. demotion). This may be delegated a panel of Governors, to the Headteacher, or the Headteacher and a Governor/s in line with the school's Scheme of Delegation. The panel or individual are referred to as the Decision Maker/s.

4.12. The Headteacher will be responsible for taking disciplinary action decisions up to and including issuing a Final Written Warning (Decision Maker).

4.13. Employees have the right to appeal against any formal decision made (see Section 10 below).

4.14. Appropriate written records of formal conduct hearings and sanctions will be kept on the employee's personal file. Records will be treated as confidential and kept no longer than necessary in accordance with General Data Protection Legislation.

5. Right to be accompanied

5.1. Employees have the right to be represented by a TU Official or accompanied by a work colleague at a formal hearing and/or appeal hearing.

6. Investigation

6.1. An investigation is a fact-finding exercise to collect all the relevant information regarding the issue prior to deciding what course of action to take. The format of the investigation will be relative to the seriousness of the matter. In some cases, this may require only a concise chronology of events. Or the 'fact finding' may be more formal and involve a more detailed investigation including meeting with the employee and others, such as witnesses, relevant to the case from which a written investigation report will be produced before deciding whether the case should proceed to a formal conduct hearing.

6.2. Wherever possible an SLT member, senior member of staff or Line Manager will be appointed to carry out the investigation so that different people conduct the

investigation and the disciplinary hearing to enable as much impartiality as possible. Occasionally a Governor or independent person may be asked to carry out an investigation to allow this impartiality. Investigations will be commenced promptly and completed as quickly as possible whilst ensuring it is sufficiently thorough to be fair and reasonable.

6.3. The Headteacher will inform the employee under investigation in writing of the allegations against them and give advance warning that an investigation will be carried out to give the employee time to prepare. The employee will be notified who has been appointed as the investigator.

6.4. Investigation meetings are not formal hearings giving a right to be accompanied. However, the school recognises the value of providing support to the employee at such meetings and so will consider requests to be accompanied by a Trade Union representative or work colleague, providing this doesn't cause unreasonable delay. Similarly, where this would be a reasonable adjustment for an employee with a disability in accordance with the provisions of the Equality Act 2010.

6.5. Depending on the circumstances of the case, an employee's **suspension** from work with pay may be necessary during the investigation. Suspensions will be carried out in accordance with the Suspension Guide, a copy of which will be provided to the employee (Appendix 3).

6.6. On completion of the investigation, the investigator will produce a report in which they will recommend to the manager whether:

(i) it is considered there is a conduct case to answer – in which case the matter will proceed to the formal procedure (see Section 8 below)

(ii) it is considered there is insufficient evidence of a conduct case to answer and therefore the employee is advised either there will be no further action, or

(iii) it is considered there remains a need to show improvements in their behaviour or conduct which will be addressed by some other action such as training or coaching support to the employee and/or management guidance issued to confirm expectations for future conduct.

7. Informal Stage

7.1. Where there are concerns about an employee's conduct or behaviour, but it is felt to be minor in nature and not related to the employee's capability, handling the matter informally and confidentially may be all that is needed to improve the employee's conduct, and thereby avoiding the need for more formal action. However, it should be noted that the informal stage may not be used at all depending on the nature/severity of allegations of misconduct.

7.2. The Line Manager/Headteacher should firstly be sure of, and collect together, all the 'evidence' they believe supports their need to raise the concern. The Line Manager/ Headteacher should then arrange a private, informal meeting for a two-way discussion with the employee with the aim of exploring the conduct issues and exploring ways for the employee's conduct to be improved. This may for example include additional training, coaching, counselling, mentoring and/or advice.

7.3. There is no right to be accompanied at this stage of the procedure given the informal nature of this stage. However, where the employee is disabled, they may ask to be accompanied where this would be a reasonable adjustment to support them during

the discussion.

7.4. The Line Manager/Headteacher must ensure that the employee understands any expectations of their conduct, any improvements that need to be made and how it will be reviewed.

7.5. A brief note of the discussion and any agreed informal action/s and review dates should be added to the employee's personal file for reference purposes and shared with the employee. This is not a formal warning or sanction.

7.6. The employee should be made aware that where informal action doesn't result in the required improvement or where the misconduct becomes more serious, the matter could proceed to the formal procedure.

8. Formal Disciplinary Hearing

8.1. On receipt of the investigation report, and following consideration of the facts presented in it, or where there has been a failure to improve following an earlier level of action, the Headteacher will decide whether there is, or remains, a case to answer. If it is reasonably believed that there is a case to answer, the Headteacher will invite the employee to attend a formal disciplinary hearing.

8.2. **Arranging a Formal Hearing**
The employee will be invited to the hearing in writing as provided for in the Formal Hearing Guide. In particular the employee will be informed of the allegations against them, the basis of those allegations and the likely range of consequences. The invitation will include confirmation of the employee's right to be accompanied at the hearing and a copy of the investigating officer's report and other written evidence. The employee must be given no less than 5 working days' notice of the hearing in writing with the investigation report/evidence. This may be extended to up to 10 working days if the employee requests time to provide their own documentation to the Decision-Maker/s.

8.3. **Holding a Formal Hearing**
Formal disciplinary hearings will be held in line with the Formal Hearing Guide by an appropriate Decision Maker/s. A representative from HR will be present in an advisory capacity.

8.4. **Deciding on appropriate action**
Following the formal hearing, on the balance of the evidence presented, the Decision Maker/s will determine what action, if any, is appropriate. Factors that should be considered to determine whether a formal sanction is justified include:

- whether the behaviour is normally considered gross misconduct
- the sanctions applied/taken in similar cases
- the employee's general work record, work experience, position, and length of service
- the employee's disciplinary/conduct record (including whether there are any current/live warnings)
- how serious the misconduct is and the impact it has/is likely to have on the school

– whether there are any special circumstances to be taken into account.

8.5. **The possible formal hearing outcomes are:**

(i) case found and formal sanction is appropriate (see Section 9, Levels of Formal Sanctions, below)

(ii) case not found - the manager may decide to take no further action

(iii) that some form of action other than formal sanction is appropriate (e.g. training).

9. Levels of Formal Sanctions:

9.1. **Level 1 - First Written Warning** - will normally remain live for a minimum of 6 months but could be given for up to 12 months in more serious cases (consideration should be given to the timing/length of school holidays). After this period the warning will be disregarded for disciplinary purposes. The warning will also state that if an employee's conduct does not improve or there is a further incident of misconduct within the 6 months, it could lead to a Final Written Warning.

9.2. **Level 2 - Final Written Warning** - if an employee has received a First Written Warning which is still live and their conduct has not improved, or if the misconduct is of a serious nature/gross misconduct, an employee may be given a Final Written Warning. This will remain usually be live for 12 months but can be given for up to 3 years as an alternative to dismissal, after which it should be disregarded for disciplinary purposes. A Final Written Warning will also state that if an employee's conduct does not improve or there is a further incident of misconduct, it could lead to further investigation and possible dismissal.

N.B. any warnings issued in relation to safeguarding issues will still be mentioned on a reference even if they are not live.

9.3. **Level 3 - Dismissal** - further misconduct whilst a Final Written Warning is current or where an act constitutes gross misconduct occurs, this may result in the employee's dismissal. Where the dismissal is for gross misconduct, this will be without notice (summary dismissal).

9.4. **Alternatives to dismissal** - Decision Maker/s, at their discretion, have the authority to impose alternatives to dismissal. The school reserves the right to impose formal sanctions including, but not limited to, demotion, loss of seniority, reduction in pay and/or compulsory training as alternatives to dismissal. If such an alternative is applied, it may also be accompanied by a Final Written Warning (see above).

10. Formal Procedure - Appeals

10.1. An employee who feels that a formal sanction, including a decision to dismiss under the formal procedure, was wrong or unjust, has the right of appeal against the decision.

10.2. Appeals may be raised by employees on the following grounds:

– the disciplinary procedure not being followed correctly, or

- essential evidence was not taken into account in the original decision – the employee will need to show good reason why this was not presented at the formal hearing

- the sanction was felt to be of undue severity or lack of consistent approach in other cases.

10.3. Employees should register their wish to appeal and confirm the grounds for their appeal in writing to the Headteacher or Chair of Governors (in the case of a Headteacher) using the appeal form within 5 working days of receipt of the written decision.

10.4. Appeals against all action or sanctions will be heard by a panel of Governors appointed by the Governing Body. No Governor who has been involved in any previous stages of the case should sit on the panel.

10.5. A HR Adviser will attend to advise the hearing/panel on procedure and employment questions and may ask questions for clarification.

10.6. Hearings will be arranged without undue delay and at least 10 working days' notice of the date and arrangements will be given.

10.7. The nominated Appeal Panel will arrange a hearing as soon as reasonably possible which will be conducted in line with the Formal Hearing Procedure. The right to be accompanied will be confirmed.

10.8. The appeal hearing will be a review of one or more of the grounds above.

10.9. The outcome of the appeal may be to overturn or confirm the original decision or apply a different sanction, but the original sanction may not be increased. Factors that should be considered include:

- the representations made by the employee/companion

- any new evidence/facts that have emerged; depending on the facts of the new evidence, the Appeal Panel may determine to refer the matter back for further investigation where it is considered to be of such significance to warrant this.

10.10. The appeal outcome will be confirmed in writing within 5 working days of the formal appeal hearing.

10.11. A decision at this stage of the internal procedure is final.

11. Special Cases

11.1. **Employee reports sick after the procedure instigated**: where an employee is absent due to sickness whilst a conduct matter is pending, the Managing Attendance Policy will apply as normal. The school will refer an employee to Occupational Health as soon as possible so the employee's general health can be assessed and to determine whether or not they are fit to participate in the formal procedures. Being absent from work due to sickness will not automatically stop the procedure progressing.

11.2. **Employee submits grievance after the procedure is instigated**: if an employee submits a grievance during disciplinary proceedings, this will not normally stop the

proceedings from progressing. Depending on the subject of the grievance, it may be appropriate for both the grievance and conduct to be dealt with simultaneously or alternatively the disciplinary process may be suspended in order to deal with the grievance.

11.3. **Employee charged with criminal offence**: being charged with or convicted of a criminal offence does not automatically mean the school should take formal action. Consideration has to be given to what effect the charge or conviction has on the employee's suitability to do their job. The school will determine to what extent it needs to conduct its own investigation before deciding whether to proceed to formal action under this policy and procedure. The school may not wish to wait for the outcome of any prosecution before deciding what action to take. Where an employee is unable or has been advised not to attend a formal hearing or say anything about a pending criminal matter, the school may have to take a decision based on the available evidence.

11.4. **Considering cases against an employee who is a trade union representative:** where the need to manage conduct is being considered for an employee who is a trade union representative the normal procedure will apply but to avoid any discussion or action being viewed as related to membership of a trade union, the matter should be discussed at an early stage with a relevant regional official employed by the union, after obtaining the employee's agreement.

11.5. **Losses and financial irregularity:** Educational & Skills Funding Agency (ESFA) must be notified of any instances of fraud, theft and/or irregularity exceeding £5,000 individually or cumulatively in a financial year.

11.6. **Physical, emotional or sexual abuse of a child or other vulnerable young person:** where there is an allegation which involves abuse or neglect of any child or young person the Local Authority Designated Officer (LADO) should be immediately notified to seek advice.

12. Further Advice

12.1. For further advice, please contact HR Consultancy for Schools.

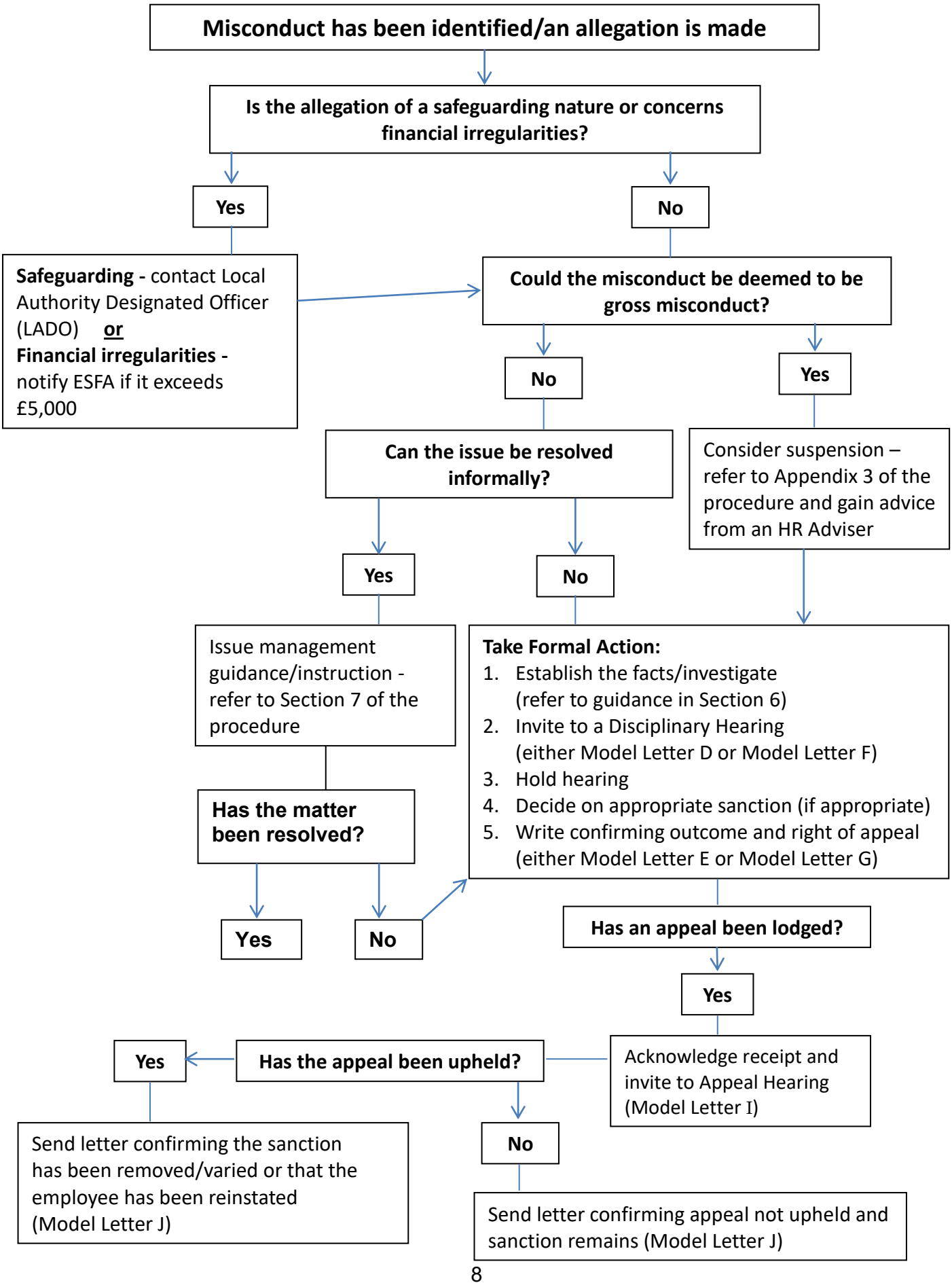
13. Policy Review

13.1. The school reserves the right to vary the content and provisions of this policy and related collective agreement in consultation with the relevant recognised Trade Unions.

HR/HH/djc
April 2019

APPENDIX 1

FLOW-CHART



APPENDIX 2

Formal Hearing Guide

1. Principles

1.1. The Headteacher/Governors will make the arrangements for meetings and may be supported by a HR Adviser. This includes writing to the employee, arranging the meeting venue and arrangements for a note-taker.

1.2. Employees have the right to be accompanied by a work colleague or trade union representative at a formal meeting and/or appeal. Where the employee is disabled, consideration must be given to any reasonable adjustments requested to the arrangements for the formal meeting/appeal to support that employee.

1.3. All parties must make every effort to adhere to the timescales set out and avoid undue delays. However, timescales may be varied subject to agreement of all parties.

1.4. Where the employee is not employed to work during the school closure periods, 'working days' shall mean a designated term-time or Teacher Education Day. Where the employee is part-time, meetings should be arranged to take place on his/her normal working day, unless this is impossible or an alternative day is mutually beneficial.

1.5. Wherever possible, the outcome of a formal meeting/appeal held under the policies will be verbally advised on the day of the meeting. The outcome will be confirmed in writing within 5 working days.

1.6. An appeal against decisions taken will be heard by a panel of Governors, who have the authority (or delegation) to act/make decisions and have not previously been involved in the case.

2. Delegation of Authority

2.1. **Investigation**
Careful consideration should be given at this stage to who conducts the investigation into any disciplinary matter as **the investigating officer should not normally be the person who hears the case at any future hearings.** Investigations may be undertaken by the Headteacher, a line manager, SLT member or other suitable person designated by the Headteacher. In some cases, the Headteacher may appoint an investigating officer external to the school, e.g. a Deputy Headteacher from another school or nominate a Governor to act as the Investigating Officer.

In cases involving the Headteacher the investigation would normally be carried out by the Chair of Governors or a nominated Governor.

2.2. **Action short of dismissal**
By adopting these procedures the **Governing Body delegates responsibility for matters of discipline relating to employees based at the school to the Headteacher**. For the avoidance of doubt, this includes the imposition of all disciplinary sanctions short of dismissal, but powers of suspension and dismissal could also be delegated to the Headteacher (refer to 2.3 below).

Where it would not be appropriate for the Headteacher to impose a disciplinary sanction, e.g. where he/she is the investigating officer or is a key witness, the Chair of Governors or other nominated Governor may lead the hearing and issue a sanction.

By adopting these procedures the **Governing Body delegates responsibilities for matters of discipline relating to the Headteacher to the Chair or to one or more Governors**. For the avoidance of doubt, this includes suspension and the imposition of all disciplinary sanctions short of dismissal.

2.3. **Dismissal**
All employees other than the Headteacher - under the School Staffing (England) Regulations 2009 the Governing Body may delegate its power to dismiss its staff to either:

(a) a Dismissal Panel comprising one or more Governors and the Headteacher;

(b) a Dismissal Panel comprising one or more Governors (ideally three Governors);

(c) the Headteacher.

Headteacher - under the School Staffing (England) Regulations 2009 the Governing Body may delegate its power to determine that the Headteacher should be dismissed to one or more Governors.

For ease of understanding, those who have delegated authority to dismiss will be referred to in these proceedings as Decision-Maker/s.

2.4. **Appeal**
For the purposes of appeal rights, the Governing Body must delegate decisions to one or more Governors not involved in the original determination. The Headteacher may not sit on an Appeal Panel.

3. Right to be accompanied

3.1. Employees have the right to be accompanied by a work colleague or represented by a trade union representative at a formal hearing and/or appeal. The Headteacher/Governors must be informed in advance of who will be attending.

3.2. The colleague/TU representative is allowed to address the formal hearing, to put and sum up the employee's case, respond on their behalf to any views expressed at the formal hearing and confer with them during the formal hearing. They may also request an adjournment and ask questions of anyone present. The colleague/TU representative does not have the right to answer questions on the employee's behalf, address the formal hearing if the employee does not wish it or prevent the employer from explaining their case.

3.3. A formal hearing and/or appeal should not be unreasonably delayed because their chosen companion is unavailable. If an employee's companion is not available at the time a hearing is scheduled and will not be available for more than 5 working days afterwards, the Headteacher/Governors may ask the employee to choose someone else to support them.

3.4. Consistent with the fact that formal hearings and appeal hearings are internal proceedings, external representatives such as solicitors or family members will not be permitted to attend, excepting where this is accepted as a reasonable adjustment for an employee with a disability in accordance with the provisions of the Equality Act

2010 or where a potential dismissal could lead to a referral to the DBS or NCTL for consideration of barring.

4. Inability to attend Formal Hearings or Appeal Hearings

4.1. **Non-attendance at formal hearing/appeal:** where an employee or their companion are unavailable to attend a formal hearing/appeal, they may propose a new date no more than 5 working days from the date of the original hearing/appeal date.

i) if the employee does not attend the hearing/appeal without good reason, it should be re-arranged but the employee will be advised that if they do not attend the rearranged hearing/appeal, a decision may be made in their absence based on the evidence available. They may submit a written statement to be taken into consideration;

ii) the Headteacher/Governors hearing the case may consider rescheduling when they believe it is justified to do so.

4.2. **Sickness absence at hearing/appeal date:** where an employee cannot attend on the scheduled hearing day due to sickness, they must provide medical certificate to certify their absence. Being absent from work due to sickness in this circumstance will not however automatically stop a formal hearing/appeal from taking place. The school may arrange for the employee to see Occupational Health as soon as possible for them to assess their health generally and whether or not they are fit to participate in these procedures. Due regard will be taken of Occupational Health advice and any information the employee may wish to provide from their GP.

4.3. **Employee facing criminal charges or convictions:** if an employee is unable to attend the hearing because he or she is detained in police custody, attempts should be made to find out as much as possible about the situation, including the likely length of absence. As circumstances will differ between cases, advice should be sought from a HR Adviser.

5. Letter confirming arrangements for a formal hearing/appeal hearing

5.1. A letter confirming the arrangements for the employee to attend a formal hearing/appeal must be sent in line with any timescales set by the applicable policy with no less than 5 working days' notice to give the employee time to prepare.

5.2. The letter should include:

- details of the time and venue for the hearing/appeal
- who will be present and their role
- the procedure to be followed – see agenda
- confirmation of the employee's right to be accompanied at the hearing
- sufficient information about the issue (e.g. the alleged conduct/ performance/attendance), concerns and the possible consequences of the planned hearing/appeal (including if dismissal may be an outcome), to enable the employee to prepare to answer the case
- copies of the appropriate policy, any written evidence, including the Investigation Report where undertaken, or evidence from the informal approach, as attachments
- confirmation that if disabled, the employee may request reasonable adjustments.

6. Attendees at formal hearings / appeal hearings

6.1.

- **Work Colleague or Trade union representative or TU official** to be confirmed in advance
- **HR Adviser** to advise the Headteacher/Governor on procedural matters/ precedent/ask questions for the purpose of clarification
- **Investigating Officer** may attend where required. (In some cases, the Investigation Report and written statements will be relied upon as evidence, although it may be helpful for the Investigating Officer to be available at the time of the hearing to answer questions of clarification. This would be discussed and agreed by all parties prior to the hearing)
- **The Decision-Maker/Chair of the decision-making panel** would normally attend for appeals
- **Note-taker** the Clerk to Governors or Headteacher's PA will note the proceedings. (If they are not available or it would not be appropriate, the school should provide an alternative note-taker)
- **Witnesses** to be confirmed in advance and attending only whilst giving evidence/answering questions

All attendees must treat any information communicated to them in connection with any matter discussed during the hearing/appeal as confidential.

7. Order of proceedings Formal Hearings or Appeals

7.1. See model Procedure for a Formal Hearing. This may be amended to suit the particular circumstances.

PROCEDURE FOR A FORMAL HEARING

Note: *The arrangements for the meeting will be made by the Decision-Maker/s, with advice from a HR Adviser. The procedure to be followed will be amended to suit the particular circumstances.*

1. Pre-meeting of the Decision-Maker/s**,** Clerk (to take notes for the Decision-Maker/s) and HR Adviser to clarify any procedural matters.

2. Hearing: In addition to those attending the pre-meeting:

   - Employee and trade union representative/work colleague

   - Management (Presenting Officer and/or Investigating Officer; accompanied by HR Adviser, if appropriate)

   (Any witnesses will be called as required and will be present only during the time in which they give their evidence and answer questions.)

(a) The Decision-Maker/s will introduce those present, explain the order of business and confirm the reason for the meeting (i.e. allegation(s) being considered/grievance and resolution sought).

All parties will be reminded of the confidential nature of the proceedings, that the Clerk will take notes for the Decision-Maker/s and that the employee and/or their work colleague or trade union representative may take notes for their own use. Either party may request an adjournment through the Chair of the meeting.

(b) Management will put forward the case by going through the evidence and calling their witnesses, who will either read their witness statements or they may be taken as read.

(c) The employee and/or their work colleague or trade union representative may ask questions of management/management's witnesses.

(d) The Decision-Maker/s and HR Adviser may ask questions of management/ management's witnesses.

(e) The employee/their representative will state their case.

(f) The employee/their representative will call any witnesses, who will either read their witness statements or they may be taken as read.

(g) Management may ask the employee and their witnesses questions - these should be answered by the employee or witness not the representative.

(h) The Decision-Maker/s and HR Adviser may ask the employee and their witnesses questions - these should be answered by the employee or witness not the representative.

(i) Management may sum up but will introduce no new factors.

(j) The staff member/their representative may sum up but will introduce no new factors.

(k) The employee/their representative and management withdraw while the Decision-Maker/s consider their decision, taking advice as appropriate from the HR Adviser.

(l) Wherever possible the employee/their representative and management will be recalled and informed of the decision, and the employee will be informed of the right of appeal. The employee will also be informed that the decision will be confirmed in writing within 5 working days of the meeting.

Notes:

- HR Advisers may attend formal meetings, ask questions at any point and advise the Decision-Maker/s as appropriate.

- The note-taker will take a summary note to support the Chair/Panel's consideration. A copy of the note can be provided to the employee on request.

- The employee and their companion are welcome to make their own notes. Due consideration will be given to any reasonable adjustments requested by an employee with a disability.

- Audio recordings of meetings will not normally be permitted given the belief that recording can make participants feel uncomfortable and therefore less willing to contribute.

- All records will be retained confidentially and in accordance with the provisions of the applicable policy but also in line with the General Data Protection Regulations.

RECOMMENDED PROCEDURE FOR APPEAL HEARING

Note: *The arrangements for the hearing will be made by the Decision-Maker/s, with advice from a HR Adviser. The procedure to be followed will be amended to suit the particular circumstances.*

1. Pre-meeting of Governing Body representatives, Clerk (to take notes for the Governors' panel) and HR Adviser to clarify any procedural matters.

2. Hearing: In addition to those attending the pre-meeting:

   - Employee and representative as Appellant

   - Headteacher and other management as Respondent (accompanied by a HR Adviser as appropriate)

   (Any witnesses will be called as required and will be present only during the time in which they give their evidence and answer questions.)

Order of Business:

(a) Chair to introduce the members of the Panel and others present and to outline the order of business.

(b) Chair to remind those present of the confidential nature of the proceedings.

(c) Chair to clarify that that the Clerk will take notes for the Governors and that the employee and/or their work colleague or trade union representative may take notes for their own use. Either party make request an adjournment through the Chair of the meeting.

(d) The Chair will either read or circulate to all those present a copy of the decision against which the Appeal is being made.

(e) The Appellant will state his/her case and may call witnesses.

(f) The Respondent may ask questions of the appellant and witnesses.

(g) The Governors and the HR Adviser may ask questions of the Appellant and witnesses as appropriate.

(h) The Respondent will state his/her case and may call witnesses.

(i) The Appellant may ask questions of the Respondent and witnesses.

(j) The Governors and the HR Adviser may ask questions of the Respondent and witnesses as appropriate.

(k) The Respondent may re-examine the witnesses.

(l) The Appellant or representative will conclude with a summary of the case but will introduce no new factors.

(m) The Respondent will conclude with a summary of the case but will introduce no new factors.

(n) The Appellant and Respondent will withdraw while the Governors consider the case taking advice as appropriate from the HR Adviser.

(o) The Governors will consider the case and the action open to them and reach a decision.

(p) Appellant and Respondent will be recalled and informed of the decision by the Chair. Notification of the decision will be confirmed in writing within 5 working days of the meeting.

(q) A formal minute will be made of the outcome of the hearing.

(r) The decision must be confirmed to the Appellant in writing within 5 working days.

Notes:

- HR Advisers may attend the hearing, ask questions at any point and advise the Decision-Maker/s as appropriate.

- The note-taker will take a summary note to support the Chair/Panel's consideration. A copy of the note can be provided to the employee on request.

- The employee and their companion are welcome to make their own notes. Due consideration will be given to any reasonable adjustments requested by an employee with a disability.

- Audio recordings of meetings will not normally be permitted given the belief that recording can make participants feel uncomfortable and therefore less willing to contribute.

- All records will be retained confidentially and in accordance with the provisions of the applicable policy but also in line with the General Data Protection Regulations.

APPENDIX 3

SUSPENSION GUIDE

1. Introduction

1.1. The purpose of this guidance is to provide advice on the suspension of employees from their normal duties and workplace as provided for under the Schools Disciplinary Policy to enable an investigation into alleged conduct and/or behaviour to proceed unhindered or to protect the interests of the school and its employees.

1.2. The school reserves the right to apply the principles set out in this guidance to suspension in other situations as appropriate (e.g. medical or health and safety suspension).

2. Scope

2.1. This guide applies to all employees employed by the school (unless an employee's contractual terms and conditions provide otherwise).

3. Equality and Diversity

3.1. Equality and diversity underpins all the school's employment policies, procedures and practices. The school actively promotes equality of opportunity and values diversity among its employees. The potential equality impact of this policy has been assessed.

4. Principles

4.1 An employee may be suspended from his/her normal duties or workplace while receiving full pay, usually pending an investigation into allegations of misconduct. Suspension is intended by the school to be a neutral act and not to represent any finding of fault in the employee or an assumption of guilt or be seen as a prejudgement of the outcome of the matter.

4.2 The school accepts it has a duty to act reasonably, fairly and consistently in suspending an employee.

4.3 The decision to suspend an employee from duty will not be taken lightly.

4.4 Suspension may only be carried out by the Headteacher or the Chair of Governors (in allegations involving the Headteacher).

4.5 Before deciding to suspend an employee, careful consideration will be given to all the circumstances, the nature of the complaint or allegation made against an employee, and the alternatives to suspension (such as temporary redeployment or working from home). There must be good reason to believe the employee's continued presence in the workplace could create further problems. Where possible provide evidence of this and record your decision.

4.6 In cases of where there are allegations of a safeguarding nature the following alternatives should be considered (from Keeping Children Safe in Education 2018):

- redeployment within the school so that the individual does not have direct contact with the child or children concerned
- providing an assistant to be present when the individual has contact with the children
- redeployment to alternative work in the school where the individual does not have unsupervised access to children
- moving the child or children to classes where they will not come into contact with the member of staff, making it clear that this is not a punishment and the parents have been consulted
- temporarily redeploying the member of staff to another role in a different location for example to an alternative school or work for the Local Authority or academy trust or working from home if appropriate.

4.7 Any suspension will be as brief as possible, kept under review (normally every 20 working days) and the employee updated on the progress of the conduct investigation and any delays that may arise, which would affect the duration of the suspension.

4.8 Employees who are suspended will receive normal pay in line with their planned working arrangements.

4.9 All employment matters relating to an individual employee remain confidential.

4.10 Due consideration should be given to the potential permanent professional reputational damage to the employees that can result from suspension where an allegation is later found to be unsubstantiated or maliciously intended.

5. Prior to decision to suspend an employee

5.1 As soon as possible after an alleged misconduct or gross misconduct is identified, the employee should be spoken to and given the opportunity to comment/give their initial response on the alleged misconduct before the decision to suspend is taken. However, in the case of safeguarding allegations discussions must take place with the LADO prior to any decisions or actions being taken. (Also note**:** Internal Audit must be informed of any potential or actual loss or financial irregularity or suspected irregularity before discussing with the employee. This should be done by the officer discovering the loss or financial irregularity.)

5.2 Children's Social Care Services or the Police cannot require the school to suspend a member of staff or volunteer (taken from Keeping Children Safe in Education 2018), although the school should give appropriate weight to their advice. The power to suspend is vested in the school. However, where there is a POT meeting or initial evaluation concludes that there should be enquiries by Children's Social Care Services and/or investigation by the Police, designated officers should canvass Police and Social Care Services for views about whether the accused member of staff needs to be suspended from contact with children, this will form part of the consideration for suspension. Police involvement does not make it mandatory to suspend a member of staff, this decision should be taken on a case-by-case basis having undertaken a risk assessment.

5.3 The suspension meeting must be held in private and the Headteacher may be accompanied by a HR representative.

5.4 Whilst the employee has no statutory right to be accompanied to a suspension meeting, it is recognised that there is a need to be sensitive to reactions from the employee including shock, stress or distress and it may be appropriate therefore to offer the employee the opportunity to be accompanied at the meeting by a work colleague or their trade union representative if available. However, the unavailability of a representative will not delay convening the suspension interview or the suspension itself.

5.5 The employee should be advised that they will be invited to an investigation meeting in due course. However, any comments made by the employee should be noted for the record and the employee should be advised at the start of the meeting that this may form part of any subsequent investigation.

5.6 In all cases the rationale and justification for such a course of action should be recorded including what alternatives have been considered and why they were rejected.

6. Decision and process of suspending an employee from work

6.1 There must be a good reason for suspension. Consideration should be given to alternatives to suspension such as redeployment or working from home. The following list is not exhaustive but provides an indication of the types of situation when suspension may be appropriate:

- where it would not be possible to carry out a thorough or impartial investigation with the employee still at work, e.g. where there are reasonable grounds for concern that evidence has been/could be tampered with, destroyed or witnesses pressurised before a formal meeting
- where gross misconduct is suspected or alleged, although this does not of itself justify suspension pending investigation. There should be a reasonable suspicion of gross misconduct and the Headteacher should undertake an initial investigation before making the decision to suspend
- where there is cause to suspect there is a risk of harm to a child or children at the school
- cases where the school is made aware of that the Secretary of State has made an interim prohibition order in respect of an individual who works at the school (taken from Keeping Children in Safe in Education 2018)
- where there is a perceived risk of harm to the employee or others
- where there are risks to the school's property.

The Headteacher will inform the employee verbally of the decision to suspend them as soon as reasonably practicable. This will be confirmed in writing without unreasonable delay. Where the employee is not available or cannot be contacted the decision to suspend will be communicated in writing.

6.2 The advice to the employee who is suspended will be as follows:

- why they are being suspended from duty, and that this will be confirmed in writing

- that their suspension from duty is a neutral act to allow the investigation to be undertaken and does not represent any finding of fault at this stage and is not a form of disciplinary action

- that the employee will continue to receive pay for planned work during the period of suspension. An employee's pension will not be affected by suspension

- to remain contactable and available during normal working hours so that they can attend meetings as required

- to inform the Headteacher of any change in their contact details immediately while they are suspended

- booked leave or requests for annual leave during a period of suspension should be made to the Headteacher before such leave is taken in view of potential impact on availability for the investigation

- that the matter should be kept confidential and only discussed with those involved in the disciplinary process such as their representative, the investigator, HR representative involved in the case or the Headteacher

- they should not attempt to influence any colleagues or potential witnesses involved in the disciplinary proceedings or discuss the matter with them. It may be necessary in some circumstances for a suspended employee to be prohibited from contact with named employees or witnesses. They should be advised that a failure to comply may result in further action being taken against them in accordance with the Schools Disciplinary Policy

- that the suspension will be reviewed regularly (normally every 20 working days) by the Headteacher, in consultation with the appropriate HR representative (if necessary) and that they will be kept updated/informed in writing

- to return any school property or equipment (keys, laptop, ID badge, etc.) and limiting IT access if/as necessary

- a named contact will be provided to the employee under suspension.

6.3 Normal sickness reporting rules apply during the period of suspension. If, at any stage during the suspension, it appears that there is a significant medical factor involved, the employee will be referred to Occupational Health.

6.4 It may be advisable to discuss with the employee how the employee's absence from work will be communicated to internal and external colleagues and parents/careers.

7. Ending of suspension / Action following suspension

7.1 An employee's suspension will end when one of the following occurs:

- the Headteacher decides that there is no case for the employee to answer and that they do not need to attend a disciplinary hearing

- the investigation can continue without the employee being suspended and the employee can return to work in their substantive post, or, possibly after full discussion and agreement with the employee, in a different location or capacity

- the investigation has been concluded and the allegations are considered less serious than originally outlined

- the disciplinary procedure has been completed.

7.2 The suspension can only be ended by the Governing Body. However, in certain circumstances the Governing Body may decide that it is in agreement for the Chair of Governors to undertake these functions on behalf of the Governing Body.

7.3 The Headteacher/Chair of Governors must advise the Governing Body as soon as reasonably practicable of any suspension and the ending of a suspension.

7.4 Where an employee returns to work following suspension, arrangements must be discussed with the employee concerning:

- whether any additional support is needed in the short-term such as coaching, training or counselling

- the process for catching up with workload and the workplace in general such as important notices, decisions and events etc. that you may have missed, especially if there is a change in role/Year Group

- what message about the employee's return is given to colleagues, etc.

8. Further Advice

8.1. For further advice, please contact HR Consultancy for School