



# WELLSPRINGS PRIMARY SCHOOL

## Staff disciplinary policy

January 2022

### Wellsprings School Vision statement



This is a Somerset County Council model policy and has been formally consulted with the recognised Trade Unions.

### 1. INTRODUCTION

1.1 This procedure applies to all staff employed in Wellsprings School.

1.2 The procedure recommends appropriate management levels for different levels of action, but this will vary dependent upon persons available who are suitably trained.

1.3 The procedure takes due account of the ACAS Code of Practice – Disciplinary and Grievance Procedures which came into effect in August 2017; The School Standards and Framework Act 1998; The School Staffing Regulations 2009 (as amended); and the Education Act 2002, Keeping Children Safe in Education September 2019, Regulated activity in relation to children as relevant and appropriate to disciplinary practices and procedures in employment.

1.4 The procedure takes effect from December 2019 and supersedes all previous disciplinary procedures and practices.

## 2. **PURPOSE**

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance\*. The School requires that whilst attending work, whether or not on School premises, employees should conduct themselves in a safe and proper manner, abiding by the standards of conduct, rules and regulations set out in the School's Articles of Government and the appropriate conditions of service, copies of which are available from the Headteacher. This procedure sets out the action which may be taken when these rules are breached.

This procedure may also be used to deal with allegations that meet the criteria for the Managing Allegations Procedure (Keeping Children Safe in Education (DfE 2019) (KCSiE 2019), whereby following consideration of an Allegations Reporting Form, the Local Authority Designated Officer (LADO) has advised that the concerns may be dealt with internally by the school as a conduct issue.

This internal process will require a full investigation into the allegations (see section 16a Conducting Workplace Investigations) and the LADO must be informed of the outcome of the investigation before a decision is taken on any formal proceedings that may be appropriate. This procedure should be considered alongside the Managing Allegations Procedures in this scenario.

## 3. **EXCEPTIONS**

An employee may be dismissed in the following circumstances without recourse to the Disciplinary Procedure:

- redundancy, provided the appropriate procedure has been followed;
- expiry of the agreed probationary period if applicable;
- failure to satisfactorily complete NQT Induction;
- on the expiry of a fixed term contract of employment;
- lack of professional competence; (where the appropriate Capability Procedure has been followed);
- dismissal due to long-term ill health, provided the appropriate procedure has been followed;

- unsatisfactory attendance due to ill-health; (Absence Management Policy);
- where it would be unlawful for their employment to continue
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#### 4. PRINCIPLES

4.1 The School will take all necessary measures to ensure that the rules and regulations which are in force are communicated to all employees, eg. via employee handbooks, notice boards, etc. It is the responsibility of individual employees to ensure that they are aware of and understand these rules and regulations. Details are available from the Headteacher.

4.2 The day-to-day supervision of staff is part of the normal management process and is outside the formal procedure for dealing with breaches of discipline. There is likely to be less recourse to the formal procedure if deficiencies in an employee's conduct are brought to his/her attention at the earliest possible stage by his/her immediate supervisor. In principle, it is intended that day-to-day managerial approaches are adopted wherever possible. (See Informal Support and Guidance Strategy - Appendix F).

4.3 The procedure is designed to establish the facts quickly and to deal consistently and fairly with disciplinary issues. No disciplinary action will be taken until the matter has been investigated fully (see Section 16a Conducting Workplace Investigations) and a formal disciplinary hearing held. (See Appendix D).

4.4 When allegations or concerns first come to light it is appropriate to hold a meeting with the member(s) of staff as soon as reasonably practicable which covers the following:

- inform of the allegation/issue.
- invite an immediate response (to help management form a view as to whether further investigation is needed)
- advise the employee to seek advice/support from their trade union and that they will be able to attend any further investigatory interviews
- inform the member of staff that they will be kept informed about decisions to proceed with further investigations or if the matter is concluded
- obtain a personal email address from the employee to use for correspondence.
- if the decision is to proceed to an investigation, see Section 16a Conducting Workplace Investigations.
- if an Allegations Reporting Form (ARF) has been submitted to the Local Authority Designated Officer (LADO), the employee must be advised of this and informed of the LADO's advice, namely whether or not the allegation (or part of it) is deemed to meet the criteria for the Managing Allegations Procedure. The only exception to this is where the allegations are

sufficiently serious that they may warrant involvement from the Police and/or Children's Social Care Services and the LADO has advised that a strategy discussion is needed in the first instance. If the threshold has been met, the employee must be advised that if an investigation was to find that there was sufficient evidence to prove the allegation, this will be recorded as a substantiated safeguarding allegation on the employee's record in accordance with KCSiE 2019.

- Details of the support available through the Care First employee assistance programme is available to all School employees.

4.5 The employee should be given as much notice as possible of the hearing to allow them to prepare their response. If less than 5 days' notice is to be given then the hearing can only proceed if agreed by both parties. The invitation letter should inform the employee of the nature of the complaint/concerns that are to be considered by the panel. (See standard letter at Appendix A). If a concern to be considered at the hearing is deemed to meet the criteria under the Managing Allegations Procedures, the letter must also confirm that a possible outcome of the hearing is the recording of a substantiated safeguarding allegation on the employee's file until they reach normal pension age or for a period of 10 years from the date of the allegation if that is longer. This letter should be sent by email and recorded delivery if personal delivery is not practicable. Any supporting papers should be circulated as far in advance of the disciplinary hearing as possible.

When requested, copies will be provided to the employee's companion/representative.

The employee will be given the opportunity to state their case at the disciplinary hearing. Please note that if new evidence or facts emerge during the hearing, it may be necessary to adjourn the hearing to further investigate and then reconvene the hearing when these enquiries have been completed. This decision will rest with the Chair of the Panel.

4.6 If an employee (and/or their representative) cannot attend a meeting, they must inform the School in advance. If there is a reasonable and justifiable reason for a hearing to be rearranged, this will normally take place within 5 working days of the original date. If an employee fails to attend the disciplinary hearing without good cause, or the hearing has previously been re-arranged, a decision may be taken in his/her absence.

If there are medical reasons for non-attendance, the employee is required to produce a doctor's statement (the cost of which would be refunded by the School) and may be referred to Occupational Health. In normal circumstances an employee is expected to attend a disciplinary hearing or investigation meeting even when they may be regarded as being unfit to attend for their normal work. If an employee produces a medical certificate from their GP attesting that they are unfit for work due to a reason unconnected with the disciplinary hearing or matter under investigation (eg bronchitis or a broken leg) then a postponement may be considered by the employer as reasonable in those circumstances.

However, if the reason for the absence as attested by the employee's GP is stress related to or arising from the disciplinary hearing or matter under

investigation then this will not be regarded as a legitimate reason for postponing the matter. If the cause of the stress is the potential disciplinary matter under consideration it follows that the conclusion of the matter will resolve the issues causing the stress and the absence arising from it. If the matter is of such gravity that it must be dealt with immediately then the hearing will proceed in the employee's absence. Any decision to proceed with a subsequently rearranged hearing at which the employee again fails to attend will take into account the reason for the non-attendance, medical advice from the School's Occupational Health Physician (if appropriate), the seriousness of the matter being considered and whether or not the employee has a representative to respond on his/her behalf.

- 4.7 The employee will have the right in law to be accompanied by a trade union/ association representative or a work colleague at all stages of the disciplinary procedure, including during any investigatory interviews. A work colleague means a paid employee of the School.
- 4.8 An employee has the right to appeal against any formal disciplinary warning imposed (see paragraph 10).
- 4.9 An employee will be required to acknowledge receipt of a warning letter and confirm that its implications are understood.
- 4.10 The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- 4.11 Repeated acts of misconduct where the warnings are current, whether of a similar or dissimilar nature, will result in the cumulative application of this procedure (see NB paragraph 5.4).
- 4.12 An employee will not be dismissed for a first breach of discipline except in the case of gross misconduct when dismissal may be immediate and without notice or payment in lieu of notice.
- 4.13 In the course of a disciplinary investigation or hearing an employee might raise a grievance that is related to the case. Depending on the nature of the grievance the disciplinary process may be suspended for a short while whilst the grievance is dealt with. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

For purposes of this procedure:

- Where the grievance is raised at the outset of the investigation or notification of the hearing and the grievance relates to the case eg the suitability or impartiality of the manager conducting the investigation or the hearing or the refusal of the manager conducting the investigation to include witnesses proposed by the employee then the disciplinary process

may be suspended for a short while to enable the grievance to be considered as a separate process.

- Where the grievance relates to the School's decision to impose a disciplinary sanction, the grievance procedure **does not** apply and the grounds for the employee's grievance may be dealt with as part of the appeal against the sanction.
- Where the grievance is raised during the disciplinary hearing, or after the disciplinary hearing but before any appeal, then the grievance will be dealt with as part of the disciplinary or the appeal hearing. In effect, the grievance becomes part of the employee's response to the case being presented at the disciplinary hearing or becomes one of the grounds for the appeal.

## 5. SANCTIONS

Minor faults will be dealt with informally, normally by the employee's immediate supervisor either

via day to day management or the informal support and guidance strategy set out in Appendix F. Where the matter is more serious or the behaviour or actions continue, the following procedures and sanctions will apply once a thorough investigation has taken place and following a formal disciplinary hearing:-

### 5.1 Stage 1 - Verbal Warning

If conduct or performance is found not to meet acceptable standards then the employee will normally be given a formal VERBAL WARNING (standard letter Appendix B). They will be advised of the reason for the warning, the length of time that it will remain current and of the right to appeal. A letter confirming the verbal warning will be issued and a copy placed in the employee's file. It will remain current for a minimum of three months and a maximum of twelve months, after which it becomes spent.

*Recommended management level:* Headteacher/Deputy

### 5.2 Stage 2 - Written Warning

If the misconduct or poor performance is serious, ie impact on employer's business is/could be serious, or if further misconduct/poor performance occurs whilst a verbal warning is current, the employee will be given a WRITTEN WARNING letter (standard letter at Appendix B). They will be advised of the reason for the warning, the length of time that it will remain current, the improvement required and of the right to appeal. A copy of this written warning will be placed in the employee's file. The warning will remain current for a

minimum of six months and a maximum of twelve months, after which it becomes spent.

*Recommended management level:* Headteacher/Deputy

### 5.3 **Stage 3 - Final Written Warning**

If the misconduct or poor performance is more serious than that considered appropriate for a written warning or if further misconduct/poor performance occurs whilst a written warning is current, the employee will be given a FINAL WRITTEN WARNING letter (standard letter at Appendix B). They will be advised of the reason for the warning, the length of time that it will remain current, that dismissal will result if there is further act of misconduct/poor performance and of the right to appeal. A copy of the final written warning will be placed in the employee's file.

The warning will remain current for a minimum of twelve months and a maximum of eighteen months (in exceptional cases the period may be longer, for example, a lengthy pattern of misconduct where previous warnings have failed to secure the required improvement and it is felt that a longer period of time is necessary for the employee to establish a pattern of sustained good conduct), after which it becomes spent.

*Recommended management level:* Headteacher

### 5.4 **Stage 4 - Dismissal**

If, during the currency of a final warning, further misconduct which would warrant a formal warning occurs, dismissal with notice/pay in lieu of notice will result, other than in exceptional circumstances (see NB below). It is also possible (if the issue is of sufficient seriousness) to move from a lower level formal disciplinary warning to dismissal.

It is up to the School Board to delegate responsibility for dismissal decisions. This would normally be to the Headteacher. Where the Headteacher is not exercising delegated responsibilities or the Headteacher is being considered for dismissal, the initial dismissal decision should be delegated to a School Staff Dismissal Committee of at least 3 directors/governors, unless there are not enough directors/governors who have not been involved in any previous action or decision connected to the dismissal. In this case the decision should be delegated to a panel of two directors/governors. The Chair of Governors will be made aware of any dismissal decisions and legal advice will be sought.

Following determination, either by the Headteacher or a committee of governors as described above, that a member of staff should cease to be employed by the School, dismissal will be by the School Board.

If a disciplinary hearing determines that the employee should cease to work at the School, the Headteacher or Chair of the School Staff Dismissal Committee, will confirm the decision in writing, stating the grounds for the determination to dismiss and the right of appeal.

In accordance with Sections 35 and 36 of the Education Act 2002, the employee can be dismissed prior to the period allowed for the employee to lodge an appeal and for that appeal to be heard. The termination may be rescinded if an appeal is upheld.

*NB It is for the headteacher/School dismissal committee, to determine whether there are such exceptional circumstances and each situation will be considered on its own merits.*

*Examples of such circumstances could be:*

- *distressing, unforeseen family or external circumstances affecting the employee.*
- *where the employee has a serious or terminal illness and the headteacher or governors committee determine not to exercise a decision that would lead to dismissal.*

5.4.1 Where there has been a misconduct which has resulted in dismissal or a member of staff has resigned where dismissal was an option and there is a safeguarding element (as outlined in Keeping Children Safe in Education DfE 2019), the School is required to make a referral to the Disclosure and Barring Service. In cases where there is no child protection element, but misconduct has resulted in dismissal, or the employee has resigned when dismissal was an option, in the case of teachers the School is required to make a referral to the Disclosure and Barring Service.

5.4.2 In the case of safeguarding allegations which are deemed to meet the threshold under Managing Allegations Procedures, one of the following outcomes will also need to be determined and confirmed with the employee:

**Substantiated:** there is sufficient evidence to prove the allegation.

**Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive.

**False:** there is sufficient evidence to disprove the allegation.

**Unsubstantiated:** there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

**Unfounded:** to reflect cases where there is no evidence or proper basis which supports the allegation being made.

## 5.5 Resignations



Every effort must be made to reach a conclusion in all cases of allegations bearing on the safety or welfare of children, including any in which the person concerned refuses to cooperate with the process or resigns from their employment.

Wherever possible, the accused employee should be given a full opportunity to answer the allegation and make representations about it. But, the process of recording the allegation and any supporting evidence and reaching a judgement about whether it can be substantiated on the basis of all the information available, should continue even if that cannot be done or the accused does not cooperate.

It may be difficult to reach a conclusion in those circumstances, and it may not be possible to apply any disciplinary sanctions if a person's period of notice expires before the process is complete, but it is important to reach and record a conclusion wherever possible.

## **5.6 Disciplinary Warnings – Record Keeping**

Whilst warnings issued under 5.1, 5.2 and 5.3 above will be disregarded for future disciplinary purposes once spent, a record relating to any child protection/safeguarding allegations will be retained.\*

For those warnings not related to child protection/safeguarding the warning letter itself should be removed, however, any accompanying management guidance about the expectations for future standards of conduct and performance should be retained.\*

To ensure compliance with these record keeping requirements, any management guidance should be on a separate document to the note of the actual disciplinary sanction.

Keeping Children Safe in Education (Statutory Guidance issued by the DfE in September 2019 states:-

“For child protection/safeguarding allegations (excluding those found to be malicious) it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on the confidential personnel file of the accused, and a copy provided to the person concerned.”

The details of any substantiated safeguarding allegations must be kept on the employee's confidential personal file until the employee has reached formal pension age or for a period of 10 years from the date of the allegation if that is longer.

Refer to guidance on the SSE Website, Section 23d Keeping Children Safe in Education September 2019.

## 6. GROSS MISCONDUCT

6.1 This is misconduct of such gravity as to warrant summary dismissal. In the case of alleged gross misconduct, it will normally be necessary to suspend the employee from work on full pay, (please refer to paragraph 7) while the alleged offence is investigated. An investigation will normally be delegated to the Deputy Headteacher or other appropriate senior member of staff. If, as a result of a full investigation and disciplinary hearing, the Headteacher or School Staff Dismissal Committee has reason to believe gross misconduct has occurred, they will normally determine that the person should cease to work at the School without the need for notice.

The decision to dismiss will be actioned by the School Board in accordance with paragraph 5.4 irrespective of the employee's decision to exercise their right of appeal. If the appeal is subsequently successful, reinstatement will be directed (see paragraph 10.4).

6.2 It is not possible to provide an exhaustive list of the types of offences which are to be regarded as gross misconduct. However, the following provides examples of the offences which, depending on the circumstances of the particular case, could be considered by the School Board or Headteacher as gross misconduct.

- An inappropriate relationship, or an attempt to establish an inappropriate relationship with a pupil, whether of a sexual nature or otherwise.
- Behaviour towards a child or children in a way that demonstrates they are unsuitable to work with children. (DfE Guidance: Keeping Children Safe in Education 2019).
- Disclosure of school/academy documents and other confidential information to unauthorised third parties.
- Physical violence or bullying.
- Deliberate damage to property.
- Drunkenness or the consumption of alcohol while on duty.
- The use or distribution of illegal drugs while on the school/academy premises.
- Indecency.
- Bringing the School into serious disrepute.

- Serious infringement or reckless disregard of the School's Health & Safety Policy
- Theft or unauthorised possession of items belonging to other employees, students, the School, partner organisations or clients.
- Physical assault, violence, bullying, abusive or threatening behaviour, in the course of an employee's duties whether or not on School property. Please also note paragraph 8 below.
- Being under the influence of alcohol or drugs; being in possession of and/or dealing in unauthorised substances whether at work or at any time.
- Any conduct either during or outside your hours of work which in our opinion brings the School or the employee into serious disrepute.
- Unlawful discrimination (see Paragraph 8 below).

- Falsification and irregular practice in respect of cash, or of any record or return, including, for example, a reference used in support of employment, expenses or overtime claim forms or absence records / medical certificates in respect of either the employee or any fellow employee.
- Sending offensive or inappropriate e-mails, accessing, downloading, viewing or distributing offensive, unsuitable, obscene or pornographic web pages or material from the internet.
- Making unprofessional or inappropriate comments on social networking sites about the School, its employees, governors or any student.
- Fraud, or attempt to defraud or other acts of dishonesty.
- Deliberate misuse of Data Protection information.
- Unauthorised access to information held on computer including internet sites containing offensive or obscene material.
- Deliberately accessing information held on a computer, including internet sites containing offensive or obscene material, which damages or has potential to damage public confidence in the service provided.
- Serious insubordination.
- Gross negligence or a deliberate act or acts which causes unacceptable risk, loss or damage to the School's property, injury, or damages the public reputation of the School or partner organisations.
- A criminal conviction or caution, whether or not committed in connection with employment, which may affect the employee's suitability or availability for continued employment in their current role.
- A sustained serious/significant breach in professional standards/codes of practice which brings in to question your suitability for the role.
- Serious infringement of the School's Health and Safety policies and procedures and also, for employees involved in catering activities, food procedures and food safety regulations.
- Behaviour or conduct, whether inside or outside of work, which in the opinion of the School confirms that an individual is unsuitable to work in an educational setting.

## 7. SUSPENSION DURING AN INVESTIGATION

7.1 Suspension on full pay normally occurs where there is an allegation which potentially constitutes gross misconduct, a criminal offence or a safeguarding concern. In some circumstances, for the individual to remain on site could inhibit an investigation. An employee may be suspended which must be on full pay. This is not a disciplinary step, but a means to enable an unhindered investigation to establish the facts and may occur at any time during the investigation. Consideration will be given to suspending access to school premises and IT sites. Suspension must be confirmed in writing within 3 calendar days (see standard letter at [Appendix G](#))

7.2 The School Board has the power to suspend the Headteacher. This power should be delegated to a committee or panel of the School Board. Other members of staff may be suspended by the nominated committee, Governing Body member or the Headteacher (or the Deputy Headteacher in the absence of the Headteacher).

7.3 Suspension is not a disciplinary sanction but nonetheless will be viewed by the individual as a very serious step which has the potential to “cast a shadow” on an employee’s reputation. Therefore, it needs to be considered very carefully before being taken and should only happen once a preliminary review of the facts has taken place (see explanatory note below). It should not be undertaken without good reason and without first consulting the School's HR Adviser and considering the alternatives to suspension outlined in 7.4 below. Circumstances in which suspension could properly occur include:

- (a) Where this would allow a more objective examination of the allegation and the employee’s presence could interfere with the investigation;
- (b) Where the member of staff is the subject of a police investigation and the alleged offence is considered relevant to their professional duties;
- (c) Where there is a reasonable ground to believe that it would seriously affect the interests of the School and/or the employee if they were to remain at work; or
- (d) Where a child/or children is/are at risk. (See Keeping Children Safe in Education 2019).

This list is not to be regarded as exhaustive.

Explanatory note: Any preliminary review into whether suspension is appropriate should conclude that the allegations as highlighted **could** have happened, warrant suspension and that the options in 7.4 are not suitable.

- 7.4 Paid leave of absence, mutual agreement to refrain from work, alternative duties or locations should also be seriously considered first as an alternative to suspension.
- 7.5 Any suspension should be kept under review throughout the investigation and may be lifted at any stage but may only be done by the nominated Committee or member. The employee should be informed of this in person and an appropriate written statement confirming the end of the period of suspension will be issued to the employee following this meeting.
- 7.6 If an employee is suspended then a management contact should be identified who is responsible for maintaining contact with the suspended employee and who they can contact on work related issues.

## 8. **EQUAL OPPORTUNITIES**

All employees should be fully aware of the School Board's commitment to equal opportunities and that the following acts are both unlawful and would constitute misconduct liable to disciplinary action that may include summary dismissal.

- Discriminating unlawfully in the course of their employment against fellow employees or job applicants in job, transfer or promotion applications.
- Inducing, or attempting to induce, employees or managers to practise unlawful discrimination.
- Verbal or physical, harassment or behaviour of a nature which is known, or should be known, to be offensive to the victim.
- Victimising individuals who have made allegations or complaints of discrimination or harassment or provided information about such discrimination or harassment.

## 9. **TRADE UNION/ASSOCIATION, LAY REPRESENTATIVES**

In all respects trade union/association representatives will adhere to the rules of conduct applicable to all other employees. No formal disciplinary action may be taken until the circumstances of the case have been investigated and discussed, after obtaining the employee's agreement, with the appropriate full-time Trade Union official.

A trade union/association representative may be suspended on full pay without discussion with the full-time Trade Union Official if he/she is not readily available. Notification should, however, be made as soon as possible.

## 10. APPEALS

### 10.1 Formal Verbal Warnings/Written Warnings

An employee who wishes to appeal against a formal verbal warning or a written or final written warning should inform the **Clerk to the Governors** in writing within 10 working days of receipt of the disciplinary letter, stating the grounds for the appeal.

The appeal should normally be heard by the Appeals Committee of the School Board comprising three\* directors/governors who have not been involved in any previous action or decision connected with the matter within 15 working days of the appeal being lodged.

The employee will have the right to be accompanied at all stages of the appeals process. (See paragraph 4.6 for definition of 'accompanied'.)

The decision of the Appeals Committee of the School Board will be final. At the appeal, the disciplinary penalty i.e. level of warning and/or duration imposed will be reviewed but it cannot be increased.

\* Where three such Directors/Governors are not available then the appeal may be heard by two. However, if the initial disciplinary decision was heard by a committee of Directors/Governors then the Appeals Committee should comprise at least the same number of directors/governors who made the original decision.

### 10.2 Dismissal

An employee who wishes to appeal against the Headteacher's or Governors' decision to dismiss them should inform the Clerk to the School Board in writing within 10 working days of receipt of the disciplinary letter, stating the grounds for the appeal. The appeal would be heard by the **Appeals Committee of the School Board** normally within 15 working days of the appeal being lodged.

10.3 The decision of the Appeals Committee of the School Board will be final. At the appeal a lesser disciplinary penalty may be imposed on review of the dismissal.

10.4 If, as a result of an appeal, reinstatement is directed, any loss of normal earnings before the hearing of the appeal will be reimbursed.

10.5 If the decision to dismiss is confirmed by the Appeals Committee the employee will be informed, in writing that the dismissal notice already issued will stand.

## 11 WITNESSES

- 11.1 As part of the investigation process, it is the employee's responsibility to inform the investigating officer at the formal investigation meeting of any witnesses they feel are relevant to the case and why, i.e. witness of alleged incident, character witness, professional knowledge witness. The investigating officer will then decide who will be interviewed as part of the investigation and invite them to an investigation meeting (a model invite letter can be found at Appendix G).
- 11.2 Should the case progress to a formal hearing both the investigating officer and the employee have the right to request that **relevant** witnesses to the alleged offence are called and should provide details of witnesses and their relevance to the person who is providing the administrative support to the presenting manager(schools will need to consider the appropriateness of the person providing this support – if Governor Panel it should be the Clerk to Governors or if being heard by the Headteacher it could be the Headteacher's Personal Assistant / Office Manager) . The Chair of the panel will review and agree or decline the request for the attendance of the witnesses.
- 11.3 Witnesses should only be invited to a hearing by the clerk of the panel following instruction from the panel. A model invite letter can be found at Appendix H. Where there is dispute about the relevance of a witness (i.e. they have not witnessed the events under investigation, or a significant number of witnesses are being called to provide the same information, in the case of character witnesses) the Chair of the panel will make the final decision about whether to hear from any individual. A witness can choose not to attend a disciplinary hearing and cannot be forced to do so.
- 11.4 When the disciplinary matter involves one person making allegations against another, then natural justice requires that person to be seen by the panel and questioned by the person they are accusing or their representative. This may not be appropriate when the accusation is part of a severe bullying/harassment allegation or when it involves students of the School (see 11.5).
- 11.5 In the majority of circumstances and subject to 11.2 above, it would be inappropriate for the Chair of a panel to decide not to hear from any witness the respondent feels has relevant information about the case. If the Chair of the panel does decide not to hear from a witness, the reason for the decision should be clearly outlined to the employee and their companion/representative in advance of the hearing to allow witness statements to be produced if necessary. Where a witness is stood down just before the hearing and there is no opportunity available for a witness statement to be produced then a revised date for a hearing should be considered where appropriate.
- 11.6 On occasions allegations will be made by students or they may have witnessed key



events. In these circumstances we would not expect a student to be present at a disciplinary hearing. It may, however, be appropriate for the employee's representative to be present at interviews held with any children so that they can confirm leading questions have not been asked or allow the employee or their representatives to highlight questions they would like put to the students. In these circumstances a balance will always have to be struck between the rights of the accused member of staff and that of the student. At the very least a record of all the questions asked of the child/young person should be recorded and made available along with the responses to ensure transparency in relation to the evidence gathered. Students' statements/records of interviews should be signed and dated to evidence that the student has read and agreed their accuracy.

When allegations relate to severe bullying/harassment where appropriate a similar approach can be used with staff, to minimise the distress of staff giving evidence. In all circumstances the panel should balance the rights of all individuals and be clear about the reason why they have proceeded in the way they have.

The above principles can also be used to allow an employee's representative to observe the interviews held with other witnesses. This may negate the need for witness to be called to the actual hearing, but should not delay the process. The role of the representative is purely one of observer and they should make no comment during the meeting if their attendance is agreed.

- 11.7 Witness statements may also be obtained from or provided by other agencies for consideration at a hearing, for example relevant statements obtained by the police as part of a criminal investigation.

## STANDARD LETTER: INVITATION TO DISCIPLINARY HEARING

(to be sent by recorded delivery if the letter cannot be handed to the employee personally)

### CONFIDENTIAL

(Name)  
(Address)

Dear

Would you please attend a hearing, to be held under the School's Disciplinary Procedure, on (date) at (time) in (location).

The purpose of this hearing is to consider and discuss the following concerns or allegations:

(provide a brief outline/summary)

.....  
.....  
.....  
.....

As this hearing may result in disciplinary action, [not excluding your dismissal\*] you are entitled to be accompanied by either your Trade Union/Association Representative or a work colleague (for definition see paragraph 4.6 of the Staff Disciplinary Policy - attached). You also have the right to call relevant witnesses. If you wish to do this, please inform xx by xx of the names of those witnesses so that appropriate housekeeping arrangements can be made. Please be advised the Chair of the panel will make the final decision relating to the attendance of witnesses at the hearing.

Present at the hearing will be .....and ..... (name and position).

Please confirm by xx that you will be able to attend by telephoning (name and contact and extension number). If you fail to attend and do not provide a reasonable explanation, a decision may be taken in your absence (see paragraph 4.5 of the Staff Disciplinary Policy).

A copy of the School's Staff Disciplinary Policy is enclosed for your information.

Yours sincerely

**\* include phrase if dismissal is a potential outcome.**

**STANDARD LETTER : FORMAL VERBAL, FIRST WRITTEN OR FINAL WRITTEN WARNING LETTER**

**CONFIDENTIAL**

(Name)  
(Address)

Dear

I am writing to confirm the outcome of the disciplinary hearing held on (date of meeting) in the presence of (names and positions of all attendees) and myself.

(Explain the process of the hearing ie, who presented the management case, and briefly what the individual replied).

After full consideration of all the evidence, I/We had no alternative but to issue a formal verbal warning/written warning/final written warning\* for (nature of the unsatisfactory conduct). This warning will expire on (insert date).

The improvement in conduct expected is outlined in the attached note which you are also required to sign, but in brief the expectations are

.....

within (specify the time period).

You should note that any similar or dissimilar misconduct during the currency of this warning may lead to further disciplinary action not excluding your dismissal from the Governing Body’s employment.

You have the right to appeal against this decision by writing, stating the reason for your appeal, to the Clerk to the School Board within 10 working days (see paragraphs 10.1 of the School’s Staff Disiplinary Policy) of receiving this disciplinary warning. The Appeals Committee of the School Board has the following powers:

- (a) uphold the appeal and either substitute a lower warning and/or reduce the currency of the warning or delete the warning;
- (b) dismiss the appeal.

Please sign the enclosed copy of this letter\*\* to confirm its receipt and your understanding of its contents and return it in the enclosed stamped addressed envelope.

Yours sincerely

\* delete as appropriate

\*\* include the following on the copy:

I confirm receipt of this letter and my understanding of its contents.

Signed \_\_\_\_\_ Dated \_\_\_\_\_

## STANDARD LETTER : Dismissal

### CONFIDENTIAL

(Name)  
(Address)

Dear

I am writing to confirm the outcome of the disciplinary hearing held on (date of meeting) in the presence of (names and positions of all attendees) and myself.

(Explain the process of the hearing i.e., who presented the management case, and briefly the individual's response).

After full consideration of all the evidence, I/We decided that your employment should be terminated [for gross misconduct] [without notice or pay in lieu of notice/with notice]. Your employment is terminated from xxxx/with immediate effect. The reasons for this decision were:  
xxxx

You have the right to appeal against this decision by writing, stating the reason for your appeal, to the Clerk to the School Board within 10 working days (see paragraphs 10.2 of the School's Staff Disciplinary Policy) of receiving this disciplinary warning. The Appeals Committee of the School Board has the following powers:

- (a) uphold the appeal and reinstate you without loss of normal salary, substituting a lesser sanction
- (b) dismiss the appeal and confirm the dismissal decision.

Yours sincerely

\* only possible in cases of gross misconduct/SOSR.

**STANDARD LETTER : CONFIRMATION OF SUSPENSION**

**CONFIDENTIAL**

(Name)  
(Address)

Dear

Further to our discussion on . . . . . this letter is to confirm my decision to suspend you from work, in both the interests of the School and yourself. It will also enable a full investigation into the allegation that. . .

. . . . .

(State briefly the issues/incident to be investigated)

.....  
.....  
....  
.....  
....

During the period of suspension you should not enter the School premises or contact other school staff, parents or students without the prior permission of myself or . . . . . on extension .....

During the suspension if you have any work related queries then your management contact has been identified as xx.

You should note that suspension is a neutral act and in itself is not a disciplinary sanction. During the investigation and disciplinary process your suspension will be kept under review and if, during or, following the investigation, the allegations are not substantiated, or the reason for suspension is no longer valid, the suspension will be lifted. You will continue to receive full pay during the period of suspension.

I would like to take this opportunity to remind you that the school buys into a Counselling Service (Care First), a free, independent support service contactable on 0800 174319.

A copy of the School's Staff Disciplinary Policy is enclosed for your information.

Yours sincerely

## PROCESS TO BE FOLLOWED AT A DISCIPLINARY HEARING

### 1. GENERAL

For purposes of this procedure the following definitions apply:

- Hearing - a formal disciplinary hearing convened in accordance with this procedure and held before the recommended management level as set out in paragraph 5 of the Staff Disciplinary Policy.
- Panel - the recommended manager (Headteacher, Deputy Headteacher/Business Manager as set out in Paragraph 5 together with the manager's professional adviser, normally the School's HR adviser or other appropriate professional.
- Committee - a group of members of the School Board or Local Governing Body convened to hear a case in accordance with this procedure.

No disciplinary action will be taken against an employee until the matter has been investigated fully and a formal disciplinary hearing has been held. (Paragraph 4.3 of the procedure).

#### (a) Membership

Where the hearing is to be held before a panel of members of the School Board or Local Governing Body (the Staff Dismissal Committee - see paragraph 5.4 of the procedure), the panel should consist of no fewer than three governors, none of whom should be governors or employees at the School who have a direct or indirect financial interest in the outcome of the hearing. In exceptional circumstances the panel may consist of two members but any subsequent Appeals Committee should then comprise the same number of governors who attended the original hearing.

#### (b) Administration

The administration arrangements for a hearing will be the responsibility of the presenting manager except where the case is to be heard by a panel of members of the School Board in which case it will be the responsibility of the Clerk to the School Board in liaison with the presenting manager. Administrative support will be provided through the School office but where this is not appropriate, eg for purposes of confidentiality, such support may be commissioned from the school's HR Advisory Service.



**(c) Powers**

The Disciplinary Hearing can:-

- determine to dismiss the employee (Headteacher or Staff Dismissal Committee only). The employee will be given the right to appeal to the Governors' Appeals Committee by writing to the Clerk to the School Board within 10 working days.
- determine not to dismiss (Headteacher or Staff Dismissal Committee only).
- either determine there is no case to answer or to issue a formal warning in accordance with the Disciplinary Procedure. The employee will be given the right to appeal to the Governors' Appeals Committee by writing to the Clerk to the School Board within 10 working days.

**(d) Methods of Operation**

- Strict confidentiality will be observed with regard to the hearing and all related documentation.
- The rules of "natural justice" will be applied as far as is possible for hearings. Accordingly, the employee can arrange to be represented or supported by a professional association/trade union representative or work colleague; call witnesses and submit documents to the hearing.
- hearings are conducted as informally as possible within the guidelines set out in paragraph 3 below.

**2. ACTION PRIOR TO THE HEARING**

If the Headteacher is hearing the case, the presenting manager will be responsible for ensuring the administrative arrangements are carried out as detailed below, normally using the School's administrative services. Where the case is to be heard by a Governors' panel, the arrangements will be carried out by the Clerk to the School Board.

(a) The Clerk to the School Board /presenting manager in liaison with an appropriate School administrator will:-

- arrange for the hearing to be heard as soon as reasonably practical.
- give all parties to the hearing a minimum of 5 working days notice, in writing, of the time and place of the hearing. If less than 5 days' notice is to be given, the hearing can only proceed if agreed by both parties.

- invite relevant documents in support of their respective cases from the employee and their representative and the presenting manager/ Headteacher - with an instruction that the Clerk/administrator should receive any documents in time for circulation with the agenda ie 5 working days before the hearing, to allow circulation to all parties.
  - table at the hearing any late documents received, subject to the agreement of all parties. If there are late submissions and agreement cannot be reached, the Chair of the Panel will make the final decision on whether they should be considered.
  - Circulate the list of witnesses who have been invited by both sides
- (b) Every effort should be made by the parties to exchange written evidence prior to the hearing, late submission of evidence should be avoided if at all possible.

### 3. THE HEARING

The conduct of any hearings held under the scope of this procedure will be as follows:

#### 3.1 Preliminaries:

3.1.1 Confirm who will Chair the Hearing and that the Panel or Committee is eligible to hear the case in accordance with the Disciplinary and Appeals Procedure.

3.1.2 Invite both parties and their advisers/representatives to enter the meeting.

3.1.3 After introduction, ask both parties who will be their chief spokesperson and inform them of the procedure to be adopted.

3.1.4 State precisely what the complaint/allegation is, as outlines in the letter of invitation to the hearing and/or outlined in any disciplinary reports.

3.1.5 Confirm the list of witnesses (if any) to be called by both parties

#### 3.2 The Procedure:

3.2.1 Invite the presenting manager to make their opening statement and to call witnesses, if appropriate.

3.2.2 Where no witness has been called, the employee, or their representative, may question the manager on their case, or parts of it, once it has been presented.

3.2.3 Where a witness has been called and given evidence, the employee, or their representative may ask questions of the witness. The manager has a right to requestion any matter arising from the employee's questions. The Panel or Committee may ask questions of the manager and their witness.

3.2.4 The employee, or their representative, has a right to question on any matter arising from the Panel or Committee's questions.

3.2.5 Invite the employee, or their representative, to make their opening statement and to put their case and call witnesses if appropriate.

3.2.6 Where no witness has been called, the manager may question the employee, or their representative, on their case, or parts of it, once it has been presented. Any questions asked of the employee should be answered by them and not their companion/representative.

3.2.7 Where a witness has been called and given evidence, the manager may question the witness. The employee, or their representative has the right to question on any matter arising from the manager's questions.

3.2.8 The Panel or Committee may ask questions of the employee, or their representative, and their witnesses. The manager then has a right to question on any matter arising from the Panel or Committee's questions.

3.2.9 Witnesses will leave the room after having given, or having been questioned on, their evidence. Whilst witnesses are normally only required to be present whilst giving evidence, management witnesses may remain throughout the hearing at the discretion of the Chair eg where it is felt that this may assist either party in the presentation of their case to the hearing. However, due care will be taken by the Panel or Committee to ensure that any use of this discretion does not compromise or impede either side's case or any individual witness evidence.

3.2.10 There should be no discussion on the case or associated matters between the witnesses before or after giving evidence.

3.2.11 At the discretion of the Chair of the Hearing, further questions by one party or the other may be permitted if, in the view of the Chair, it would assist in clarifying the relevant issues or eliciting further evidence.

3.2.12 Invite the presenting manager to make their closing statement.

3.2.13 Invite the employee, or their representative, to make their closing statement.

3.2.14 The Panel or Committee may ask further questions of the manager and/or the employee, or their representative.

3.2.15 Both parties to leave the room while the Panel or Committee considers their decision.

3.2.16 While considering their decision the Panel may take the view that they need further information or clarification by one or other party. In these circumstances both sides should be recalled, even if clarification is only required by one party.

3.2.16 Both parties to be invited back to hear the Panel or Committee's decision.

3.2.17 No further discussion or debate will take place.

3.2.18 The Panel or Committee's decision will be confirmed in writing within 5 working days.

#### 4. **THE DECISION**

- (a) The Headteacher/Panel will examine all of the issues fully before reaching a decision.
- (b) Following the adjournment, the Headteacher/Chair of the Panel will inform both parties of the decision reached. This will be confirmed in writing by the Headteacher/Chair of the Panel.

## ROLE OF THE COMPANION

1. A companion can be:
  - A fellow school employee
  - An official employed by a trade union
  - A workplace based trade union representative, certified in writing by the trade union as having experience of, or having received training in, acting as a worker's companion at a disciplinary or grievance hearing.
  
2. The companion will be allowed to address the hearing in order to:
  - ✦ put the employee's case and ask questions on behalf of the employee
  - ✦ sum up the employee's case
  - ✦ respond on the employee's behalf to any view expressed at the hearing
  - ✦ confer with the employee during the hearing

The companion has no right to answer questions on the employee's behalf, to address the hearing if the employee does not wish it, or to prevent the employee from explaining their case.

**GOVERNORS' APPEALS PROCEDURE**

Please see the School's separate Appeals Procedure.

## INFORMAL SUPPORT AND GUIDANCE STRATEGY

1. Introduction and Preamble
  - 1.1 This guidance does not form part of the formal Disciplinary procedure. It takes into account that most issues relating to conduct and performance are more appropriately dealt with on a day-to-day basis through line management intervention and, if appropriate, admonishment.
  - 1.2 It also recognises that there is a range of management responses to issues of conduct and performance that falls between day-to-day management supervision and formal disciplinary procedures.
  - 1.3 This document outlines advice and guidance in relation to informal support strategies to
    - (i) wherever possible avoid formal disciplinary action and
    - (ii) obtain improvement in the conduct and/or performance of an individual employee.
  - 1.4 It is written to support the principles set out in paragraph 4.2 of the Staff Disciplinary Policy. It also recognises that formal disciplinary action is never taken lightly and should normally be a last resort.
  - 1.5 Often some concerns and issues are some way from formal action and there is some “middle ground”.
  - 1.6 This document sets out a structured informal process that managers can adopt in that ‘middle ground’ when for example, initial management meetings and discussions have not had the desired effect.
  - 1.7 To follow this course of action the manager, having established the apparent circumstances, needs to be specific about his/her concerns (with instances and evidence) and to genuinely want the employee to reach and maintain proper conduct. This should not be regarded as just a way of preparing the ground for formal action.
  - 1.8 The informal process involves a discussion with the member of staff. The invitation to the discussion meeting, which can be oral, by informal note or by letter, should contain some key information, namely
    - that the meeting is informal
    - it is an opportunity to discuss matters of concern

- it is an opportunity to outline the expectations in terms of future conduct
- it is an opportunity to identify support strategies and advice needed to improve future conduct.

Although the meeting is an informal one, the employee may request to be accompanied by a work colleague or work place Trade Union Representative and this should not be unreasonably refused.

If you choose to write a letter inviting the employee to a meeting a model letter is attached as appendix F1.

## 2. The Meeting

- 2.1 At the meeting, the manager should outline his/her concerns with clear supporting evidence.
- 2.2 The manager should listen to any feedback/response from the member of staff.
- 2.3 The manager should confirm his/her expectations of the member of staff.
- 2.4 The manager should state what support and guidance will be available to the member of staff to assist him/her to reach and maintain the required standards.
- 2.5 In most circumstances a review meeting will be required and the manager should set an appropriate review date eg three months. However some issues may be concluded in a single meeting.
- 2.6 Once the meeting has taken place the discussion should be followed up with a letter of guidance and expectation. This letter will be placed on the employee's file and may be referred to in the future should there be a repetition of similar concerns being raised. A model letter is attached as Appendix F2.
- 2.7 Following the meeting the manager should monitor and record any positives and negatives
  - in preparation for the review. The manager should, however, bring to the attention of the employee any instances relevant to the issues causing concern as and when they occur during the review period.
- 2.8 Informal Management Advice & Guidance is not a formal sanction and, therefore, should not be referred to as such in any part of a response to a reference request that may be received.



**INFORMAL SUPPORT AND GUIDANCE STRATEGY**

**MODEL LETTER OF INVITATION**

CONFIDENTIAL

(Name)

(Address)

Dear

I am writing with reference to concerns regarding your conduct and/or performance. The concern is

(details of event/concerns)

I should be grateful if you would attend a meeting on (date) at (time) in (venue) in order that we can talk through these issues further.

At the meeting we will discuss the events/concerns mentioned above and my expectations of your future conduct and/or performance in your employment as (post) at the School.

In addition, I will want to outline any further support, guidance and advice that may be appropriate to improve your future conduct and/or performance.

This meeting is not part of the formal disciplinary procedure and, whilst it is intended that this management meeting will be informal in nature, you may bring your professional association/trade union representative or a work colleague with you if you so wish. Please let me know prior to the meeting if you intend to be accompanied.

Yours sincerely

**INFORMAL SUPPORT AND GUIDANCE STRATEGY MODEL LETTER OF EXPECTATION AND GUIDANCE**

CONFIDENTIAL

(Name)

(Address)

Dear

Thank you for attending the meeting on (date). I hope that you found the advice and guidance offered at that time useful.

At the meeting we spoke about the following points

(details of events/concerns)

Your response to those concerns was

(details of response(s))

After giving due consideration to our discussions, I have decided that there remains an important basis for the concerns that I expressed at the meeting. Whilst I do not intend to take any formal action at this time I feel it is appropriate for me to issue you with this letter of expectation and guidance and confirm it will be necessary for you to adopt the following approach in future:

(Details of expectations, advice and guidance)

Continued support is available as follows

(Details of support – including names of manager/colleague providing such support as appropriate).

\*I intend to monitor the situation and will review it with you in ( ) months. In the meantime, please contact me (or other named person as appropriate) about any concerns or difficulties that you may have in meeting the expectations set out in this letter.

I do very much hope that you will take positive steps to maintain the standards of conduct expected of you as outlined in our discussions. You should be aware that failure to do so could result in action under the formal Disciplinary Procedure. You must appreciate the seriousness of the matter and understand the possible consequences if there is any repetition of the conduct/performance.

Please indicate your understanding and acceptance of the guidance set out in this letter by signing both copies in the space provided and returning one copy to me.

Yours sincerely

Headteacher/Manager

---

I understand and accept the guidance set out in the above letter.

Signed: ..... Date: .....

\* include if a review period has been set.

**MODEL LETTER OF INVITE TO WITNESS**

CONFIDENTIAL

(Name)

(Address)

Dear

As part of the investigation in to an incident on xx/allegations in relation to xx/you have been identified as a potential witness and I would request to meet with you to obtain a witness statement on xx at xx.

Please note that the purpose of this meeting is to ascertain your recollection of events and a note of the discussion will be made, which you will be asked to sign.

You should also be aware that to ensure that a full and fair investigation takes place into these events the matter should be treated in the strictest of confidence and should not be discussed with others.

Present at the meeting will be xx and xx. If you would rather not meet with me to provide a statement then I would ask that you provide me with a written statement that can be provided at any hearing.

If you have any queries, please feel free to contact me on the above number or contact the investigating officer on xxxx

Yours sincerely

**MODEL LETTER OF INVITE FOR A WITNESS TO ATTEND A DISCIPLINARY HEARING**

CONFIDENTIAL

(Name)

(Address)

Dear

Thank you for providing a witness statement to the investigating officer .....

A request has been made by ..... for you to be available as a witness at a hearing on .....

Present at the meeting will be xx and xx.

If you have any queries, please feel free to contact me on the above number or contact the investigating officer on xxxx.

You should also be aware that the matter should be treated in the strictest of confidence and should not be discussed with others.

Could you please confirm that you are available by midday on .....

Yours sincerely