

# Frogmore Infant School

## Disciplinary Policy

### 1. Purpose

The School expects all employees to display the highest standards of conduct and behaviour. Employees are expected to demonstrate these standards when carrying out their role and to follow the rules, policies and procedures at all times.

The School is committed to assisting employees to achieve the required standards of conduct and behaviour. The School will provide employees with the necessary information, advice, support and encouragement. The School has a code of conduct which provides a framework within which it is expected employees will work.

There may be circumstances when an employee's conduct and behaviour does not meet the School's expectations. There are examples of inappropriate conduct and behaviour in Appendices One and Two of this How to Guide. In such cases, the School will take action and the Disciplinary policy defines the framework for the approach that will be taken.

When applying the Disciplinary policy, the School will treat the employee reasonably, consistently and fairly.

### 2. Scope

The policy and this how to guide apply to:	<ul style="list-style-type: none"><li>• Teachers including Leadership, Upper Pay Range, Main Pay Range and Unqualified Teachers</li><li>• Support Staff.</li></ul>
The policy and this how to guide do not apply to:	<ul style="list-style-type: none"><li>• Volunteers</li><li>• Contractors</li><li>• Agency workers.</li></ul>

The Disciplinary policy is non contractual and does not form part of any employee's terms and conditions.

Employees who have been subject to a TUPE transfer into the School may be excluded from the Disciplinary policy. In such cases, the employee should refer to their own contractual policies and procedures. Further advice must be sought from Education Personnel Services.

Catholic schools have a separate disciplinary procedure produced by the Catholic Education Service which must be followed.

Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any time.

The School expects all parties to maintain confidentiality throughout the application of the policy.

### 3. How to use this document

**Principles** This how to guide provides information about the procedure to follow when applying the Disciplinary policy.

The document has been written in the second person to address the line manager, referred to throughout the document as 'you'. It may not always be you as the line manager with responsibility to complete a particular action/ stage of the Disciplinary policy. In such cases, the document refers to the 'appropriate manager' and this could be you, your line manager (as the second line manager), the Headteacher or the Chair of Governors.

Throughout this guide, the word 'must' is used as a 'requirement' of the policy and procedure. The word 'should' is used to indicate actions or processes that are considered to be best practice.

Please note that the section numbering in the policy and this how to guide are not aligned.

**How do I address my concern?**

Type of concern	Refer to the...
Unsatisfactory performance due to a lack of skill, knowledge, experience or aptitude	Performance Management and Capability policies
Absences from work due to sickness	Managing Sickness Absence policy and how to guide
An employee's sickness absence which is not genuine or is unauthorised	Disciplinary policy and this how to guide
Concerns about a workplace practice or services provided to the School such as alleged dishonest or illegal activities	Procedure for protected disclosures "Whistleblowing"
An employee's concern(s) about a decision or action taken when applying the Disciplinary policy	Education Personnel Services team for advice.  If concerns are related to the alleged misconduct - use the meetings and appeals process within the policy.  If concerns are unrelated to the alleged misconduct - run the policy and the Grievance policy concurrently.  Or, in certain cases action under the Disciplinary policy may pause to address the grievance.
A concern involving a professional association or trade union representative	Education Personnel Services team for advice

If you are unsure which policy to use please contact Education Personnel Services.

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## 4. Introduction

### Governance

– the full governing body may delegate to the Headteacher the authority to make a decision to dismiss an employee. This responsibility must not be delegated to any employee other than the Headteacher.

### Policy aims

The aims of the Disciplinary policy and this how to guide are to:

- improve and maintain conduct and behaviour through early intervention and management
- help employees to understand the rules and standards required
- address disciplinary matters within a fair and effective framework
- address disciplinary matters in a timely manner
- achieve appropriate outcomes for the School to manage disciplinary matters
- identify any organisational learning.

### Key definitions

(shown in alphabetical order)

**Allegation** - a claim or statement that an employee has done something wrong or illegal.

**Balance of probabilities** - a logic that is applied to assist the investigating officer. This helps to form a view as to whether an event was more likely than not to have occurred based on the evidence.

**Gross misconduct** - is an act of misconduct which is so serious in nature that it fundamentally damages the employment relationship and justifies dismissal without notice.

**Initial assessment** - the process undertaken by an appropriate manager to establish the immediate facts/ circumstances and to determine whether any further action is required.

**Investigating officer** - the manager appointed to investigate the disciplinary matter.

**Misconduct** - is an act of either wilful or negligent conduct, behaviour or omission.

**Suspension or alternative arrangements** – are neutral and precautionary acts. They may be considered at any point during the Disciplinary policy once the initial assessment and/ or investigation have established that the circumstances may be gross misconduct.

**Timescales** - all reference to 'days' in this how to guide refers to working days, regarded as Monday to Friday, excluding public holidays. If an employee works on a term time only basis, then school holidays will be excluded when applying the timescales.

A reference to “x working days” indicates the number of clear days between (and exclusive of) the day the letter is issued and the day of the meeting or hearing.

## 5. Initial assessment

### The initial assessment

When a disciplinary matter arises or an allegation is made against an employee, an appropriate manager must establish the immediate facts/circumstances. This must be completed before commencing any further action under the Disciplinary policy. This is called an initial assessment and is not part of any formal investigation process.

If the initial assessment identifies a safeguarding concern, then the appropriate manager must follow Hampshire’s child protection procedures. Advice must be sought from Education Personnel Services. The principles of safeguarding apply.

The nature of the disciplinary matter will determine the appropriate manager to undertake the initial assessment.

It is usually appropriate for you (as the first line manager) to undertake the initial assessment. If the disciplinary matter directly involves you (as the first line manager), the second line manager will normally undertake the initial assessment.

Given the nature of the disciplinary matter, it may not be appropriate for either the first or second line manager to complete the initial assessment. In such cases, advice must be sought from Education Personnel Services to identify an appropriate manager.

### Completing the initial assessment

The appropriate manager must look at the immediate facts/circumstances of the case. Using this information, will enable the appropriate manager to determine:

- whether any further action is required
- the potential seriousness of the matter
- next steps.

An initial assessment must be given priority. It is typically completed on the same day as the matter is identified.

If the disciplinary matter or allegation relates to a safeguarding issue, the principles of a [safeguarding concern \(relating to vulnerable adults, children and young people\)](#) will apply.

### Considerations

When completing the initial assessment, the appropriate manager should consider the following:

- whether it is a capability or conduct matter
- the potential degree of the misconduct or gross misconduct
- the possible impact on others
- any damage to property or other School equipment

- the likelihood that the employee has behaved or conducted themselves inappropriately
- the likelihood and scale of wilful or negligent behaviour or conduct
- whether there are repeated incidents that are minor in nature.

### **How to distinguish between capability and conduct**

You will need to consider whether the matter has arisen due to the employee's capability or conduct. This will help you to determine whether it is appropriate to use the Capability or Disciplinary policy.

The Capability policy is more appropriate if the employee does not have the necessary skills, knowledge or experience.

The Disciplinary policy is more appropriate if the employee's behaviour or conduct is deemed to be wilful or negligent.

If you are unsure about which policy to apply, you must seek advice from Education Personnel Services.

### **Identifying a disciplinary matter**

Examples of misconduct and gross misconduct are shown in [Appendix One](#) and [Appendix Two](#).

### **Outcomes of the initial assessment**

The possible outcomes of the initial assessment are:

- there is no apparent substance to the disciplinary matter and therefore no further action is required
- the matter is more appropriately managed under the Capability policy
- the disciplinary matter is minor and can be addressed using the informal stage
- formal action is required under the Disciplinary policy.

The appropriate manager must also notify Education Personnel Services if the matter needs to be addressed formally.

If the disciplinary matter or allegation relates to a safeguarding issue, the principles of a [safeguarding concern \(relating to vulnerable adults, children and young people\)](#) will apply.

It may not be appropriate to advise the employee of the outcome of the initial assessment. This will depend upon the nature of the disciplinary matter. This can apply if the disciplinary matter involves a safeguarding issue or is of a criminal nature.

The appropriate manager must make a record of the facts, the decision and next steps following completion of the initial assessment. A record of the decision must be kept.

For further support with the initial assessment please contact Education Personnel Services.

## 6. Managing a disciplinary matter

### Policy stages and principles

The possible stages are:

- informal stage
- investigation
- formal stage hearing – may result in dismissal
- appeal after formal stage hearing.

The appropriate manager must establish the immediate circumstances called an initial assessment, prior to commencing any further action under this policy

Any disciplinary matter will be addressed promptly, fairly and proportionately.

Wherever possible minor disciplinary issues should be dealt with informally.

Education Personnel Services must be advised of all formal disciplinary concerns.

## 7. Informal stage

Use this section when, having completed the initial assessment:

- the disciplinary matter can be addressed informally and/ or
- an investigation determines the matter can be addressed informally.

### Informal stage

As a manager, the School expects you to have open and transparent discussions with an employee to seek to address any disciplinary matters.

Having completed the initial assessment, the appropriate manager must discuss the disciplinary matter promptly with the employee. You should speak to the employee by having an informal discussion.

The informal discussion is an opportunity for the appropriate manager to:

- support the employee to improve their behaviour or conduct
- prevent any further instances from occurring
- provide clear instructions and guidance to the employee of the standards of conduct/ behaviour that are expected
- develop an [action plan](#), as a supportive tool to help the employee, if appropriate.

It is important that the appropriate manager makes it clear to the employee that the discussion is the informal stage of the Disciplinary policy. The employee must be made aware that it is not a routine discussion.

### Right of

The employee is not usually represented/ accompanied at any



## **representation**

discussions within the informal stage of the policy. There may be circumstances when the employee asks to be represented. This can be by a professional association/ trade union representative or a work colleague. Consideration should be given to any requests. This should be accommodated where it does not cause a delay to the process.

## **How to manage an informal discussion**

When undertaking the informal discussion, the appropriate manager must:

- provide clear, tangible examples of when and why behaviour and/ or conduct has been below the required standards which must be based on facts
- ask the employee to respond, explaining any reasons they feel may be relevant
- discuss with the employee whether there is any support, training or reasonable adjustments that may help them to demonstrate the required standards
- identify the standards of behaviour and/ or conduct expected, with examples where appropriate
- provide the employee with an explanation of what is expected of them
- decide on an outcome and agree this with the employee if possible.

## **Outcome of the informal stage**

The appropriate manager must decide how the disciplinary matter will be managed.

The possible outcomes of the informal stage are:

- the employee provides an explanation and no further action is needed
- the employee is given an explanation explaining why their conduct/ behaviour was unacceptable
- to provide guidance to the employee about the standard of conduct/ behaviour required
- any support/ development/ training needs are identified, agreed and put in place as needed
- to develop an [action plan](#) if appropriate
- to refer the matter to be investigated under the formal stage of the Disciplinary policy if further information from the informal discussion indicates that the matter is more serious.

The appropriate manager must make a clear statement to the employee that if there is a further misconduct matter, this may result in formal action under the Disciplinary policy.

A record must be made of each discussion. The appropriate manager can use the 'record of informal discussion' template to complete a record of the discussion. The appropriate manager should:

- seek to agree the record with the employee if possible
- share the record with the employee
- confirm in writing what has been discussed

- keep a copy on the employee's personnel file.

## 8. Investigation

Use this section when, having completed the initial assessment:

- the disciplinary matter is assessed as requiring formal action
- an investigating officer has been appointed to complete an investigation.

### Identifying an investigating officer

An investigating officer will be appointed by the School to complete the investigation

Wherever possible, a senior member of staff should act as the investigating officer. It is not normally appropriate for the Headteacher to be the investigating officer. The Headteacher will have to judge the extent to which they are involved in the investigation. If they are significantly involved in the investigation, then they must not be involved in the decision making at any subsequent hearing or appeal hearing.

The disciplinary matter may relate to the Headteacher. In such cases, the Chair of Governors in consultation with Education Personnel Services (and the County Education Manager/ School Improvement Manager if appropriate) will identify a Governor to lead the investigation. The Governor will be supported by an HR Adviser.

In exceptional circumstances the Local Authority may support or lead an investigation on behalf of the School. The Headteacher or Chair of Governors are responsible for requesting the services of the Local Authority.

Further advice must be sought from Education Personnel Services.

### Key responsibilities of the investigating officer

The investigating officer is responsible for investigating the disciplinary matter and presenting the findings.

The key responsibilities of the investigating officer during the investigation are to:

- gather evidence to establish the facts relevant to the disciplinary matter
- arrange an investigation meeting with the employee
- manage the investigation carefully and sensitively, especially when working with any witnesses
- obtain parental consent before interviewing any children. Advice must be sought from Education Personnel Services
- ensure the disciplinary matter is managed in a timely manner to avoid unnecessary delay
- ensure a fair, balanced, proportionate and unbiased investigation is completed
- keep the employee and if necessary the line manager and any witnesses up to date on progress
- identify any potential delays and agree alternative timescales

- signpost the employee and any witnesses to support that is available
- keep appropriate records of key decisions
- write a report of findings and make a recommendation which must be based on the facts of the case.

The investigating officer can contact Education Personnel Services for advice during the process as appropriate.

#### **Skills required by the investigating officer**

The investigating officer will need to have the following skills/ expertise:

- good communication skills - both oral and written
- good listening skills
- understanding of how their own body language and actions may be perceived by others
- the ability to remain neutral, impartial and not to be influenced by employees involved in the matter/ allegation(s)
- the ability to ask appropriate questions to ascertain the facts
- confidence in dealing with potentially difficult situations
- the ability to write a report where appropriate within a reasonable time frame.

#### **Notifying the employee about the disciplinary matter**

An employee must be notified as soon as possible if a disciplinary matter has been raised/ allegation(s) have been made. The employee should be told by an appropriate manager or the investigating officer.

If during the course of the investigation, the allegation(s) change or new matter(s) arise, the employee must be notified in writing. The employee must be given an opportunity to respond to the new allegation(s).

There are certain circumstances and exceptions when it is not appropriate for the employee to be told about the disciplinary matter. This can apply if the disciplinary matter involves a safeguarding issue or is of a criminal nature. Further advice must be sought from Education Personnel Services.

#### **Arranging an investigation meeting with the employee**

The investigating officer must write to the employee inviting them to attend an investigation meeting. The letter must give the employee **5 working days** notice of the investigation meeting. The timescales for the meeting can be varied by mutual agreement.

#### **Right of representation**

The employee is not usually represented/ accompanied at an investigation meeting. There may be circumstances when the employee asks to be represented and consideration should be given to any requests. This should be accommodated where it does not cause a delay to the process.

#### **Preparation before the investigation meeting**

Before the investigation meeting, the investigating officer must prepare a list of relevant questions based on the allegation(s)

The table below sets out some example questions to use:

<b>Method of questioning</b>	<b>Purpose of the question</b>	<b>Example question(s)</b>
Open questions	Allows the employee to 'open up' and to explore the information being given in more detail.	<ul style="list-style-type: none"> <li>- talk me through what you heard?</li> <li>- describe what happened?</li> <li>- what did you see?</li> </ul>
Closed/ specific questions	<p>Allows the employee to give a "yes or no" answer.</p> <p>They can be helpful to gather specific facts or answers.</p>	<ul style="list-style-type: none"> <li>- did you leave your work place at 5pm?</li> <li>- did that happen more than once?</li> <li>- did you speak to your line manager?</li> </ul>
Probing questions	These can be used to test the reliability of the employee's account or testimony against the evidence which may have already gathered.	<p>The questions must remain inquisitive rather than interrogative.</p> <ul style="list-style-type: none"> <li>- when you said "xx", what did you mean by that?</li> <li>- you mentioned earlier about "xx" tell me more about that?</li> </ul>
Feeling questions	Questions relating to feelings or opinions should be used sparingly as the investigation meeting should establish facts rather than opinions.	<ul style="list-style-type: none"> <li>- what is your main concern about what happened?</li> </ul>
Asking 'what else?'	These questions can be used to probe deeper into the answers if needed.	Care will be needed to ensure sensitivity and to ensure the investigation meeting does not turn into a formal hearing.

The table below sets out some examples of questions to avoid:

<b>Methods of questioning</b>	<b>Question(s) to avoid</b>
Interrogative questions	The purpose of the investigation meeting is to establish the facts rather than to interrogate the individual. When developing questions consider using why questions instead of asking what questions.

	<p>Examples of interrogative questions to avoid include:</p> <ul style="list-style-type: none"> <li>- what made you do that?</li> <li>- what made you decide to do xx?</li> </ul>
Leading questions	<p>You must avoid leading the employee to provide the answer you want to hear.</p> <p>An example of a leading question to avoid is:</p> <ul style="list-style-type: none"> <li>- what did you think of their reaction?</li> </ul>
Multiple questions	<p>These often lead to confusion. The employee may answer some or only part of the question. When asking questions, you should ask each question individually.</p>

### **How to manage an investigation meeting**

During the investigation meeting, the investigating officer must ensure the employee:

- is made aware of the disciplinary matter and the allegation(s)
- is given the opportunity to seek advice from a professional association/ trade union representative or a work colleague before responding fully to the matter/ allegation(s)
- is allowed the opportunity to respond to the matter/ allegation(s)
- understands who to contact if they have any questions during the investigation process.

Further advice must be sought from Education Personnel Services.

### **The investigating officer's recommendation**

The employee must be given an opportunity to respond to the allegation(s) before the investigating officer can make a recommendation.

On completion of any investigation, based on the evidence/ facts and findings the investigating officer will write a report. A template report is available to use.

The investigating officer's report will make a recommendation to state whether

- any further action is needed
- the disciplinary matter can be managed using the informal stage
- the allegation(s) under investigation require the case to progress to a formal hearing.

The investigating officer will not be responsible for deciding any appropriate sanction. This will be decided at the formal hearing.

## **9. Formal stage**

**Use this section when, having completed the initial assessment:**

- **the disciplinary matter is assessed as misconduct or gross misconduct**

- an investigation determines the matter will be addressed formally.

<b>Investigation</b>	The principles of the <a href="#">investigation</a> will apply.
<b>Formal stage hearing</b>	The employee must be invited to attend a formal stage hearing.
<b>Hearing arrangements</b>	<p>The employee must receive in writing the invitation to the hearing.</p> <p>The letter must give the employee <b>7 working days</b> notice of the hearing. The timescales for the hearing can be varied by mutual agreement.</p> <p>Hearing arrangements should ensure that:</p> <ul style="list-style-type: none"> <li>• the date is set in consultation with the employee's representative and Education Personnel Services, where applicable</li> <li>• a suitable venue is sourced</li> <li>• consideration is given to access to refreshments (water)</li> <li>• there are adequate break out rooms reserved for relevant parties</li> <li>• reasonable adjustments are considered if applicable</li> <li>• a note taker or audio equipment is available to record the minutes of the hearing.</li> </ul>
<b>Formal record of the hearing</b>	<p>A formal record must be taken during the hearing. This may be made by audio recording the hearing or by a note taker. It is the School's responsibility to make the appropriate arrangements.</p> <p>Copies of the notes or audio recordings will be provided on request. Audio recordings will not be transcribed.</p> <p>If an audio recording takes place, a copy of the recording must be retained by the School. The School must comply with all relevant retention and storage requirements.</p> <p>The notes/ audio recording and documents shared within the formal hearing are confidential to those present in that hearing.</p> <p>In some cases, it may be necessary as is reasonable in the circumstances to circulate documents to other School employees, in connection with the matter. Any information communicated to other School employees in connection with the matter must be treated as confidential.</p> <p>For governor hearings in maintained schools, there remains a legal requirement to have a written record of the meeting of the Governor Committee.</p>
<b>Alternative date</b>	The School expects that the employee and their representative will make all reasonable efforts to attend the first scheduled hearing date and time.

If this is not possible, the employee may propose an alternative date and/or time. This should be within **5 working days** of the original hearing.

The hearing will be rescheduled.

If the employee is unable to attend or does not attend the re-arranged hearing, the chair must decide whether to proceed in their absence. Further advice should be sought from Education Personnel Services.

## **Sharing of information**

The investigating officer and employee are required to exchange all relevant papers and supporting evidence in advance of the hearing. Documents must be provided to all other parties in sufficient time to enable familiarisation prior to the hearing.

Management documents will be supplied with the invitation letter including the investigation report. This is presented in 'a bundle' of documents. The bundle should include only documents that are relevant to the hearing.

The bundle should contain some or all of the following materials:

- an index/ schedule of documents
- investigating officer's report
- all relevant documents for example committee reports and minutes, management and expert statements, financial reports, witness statements
- any documents provided by the employee.

The employee will be provided with two copies of all documents that will be given to the chair/ panel in advance of the hearing. One copy is for their reference and the other is for their representative/ companion.

The employee can give their consent for you to send a copy of the management documents directly to their representative.

The employee or their representative must submit all relevant papers and supporting evidence to arrive with the chair at least **3 working days** before a hearing.

In exceptional circumstances, additional information may need to be submitted to the chair/ panel outside of the above timescales. If this happens, the information should be shared with all parties as soon as possible.

If additional documents are submitted on the day of the hearing, the chair must decide whether to accept the documents. If the documents are to be included within the bundle then time must be given to allow all parties to read the documentation.

## **Right of representation**

The employee has the right to be represented/ accompanied at a formal stage hearing or appeal hearing. This can be by a professional



association/ trade union representative or a work colleague. The right to be accompanied is limited to one person only.

It is the employee's responsibility to:

- arrange their own representative
- liaise with their representative to agree the formal hearing or appeal hearing date and time
- advise management of the representative's details.

There is no right to legal representation at any stage of this policy.

### Who chairs the formal hearing

#### For Teachers and Support Staff

Stage	Chair/ Panel	HR Adviser	Right to be represented/ accompanied
Formal stage hearing	Headteacher or Governors' Disciplinary Committee	If required	Yes

To determine whether the case can be heard by the Headteacher or a Governors' Disciplinary Committee, the following factors must be taken into account:

- the nature of the Headteacher's involvement with the case and investigation
- if dismissal is a potential outcome, whether the Headteacher has delegated authority to dismiss.

### Who chairs the formal hearing

#### For a Headteacher

Stage	Chair/ Panel	HR Adviser	Right to be represented/ accompanied
Formal stage hearing	Governors' Disciplinary Committee	Yes	Yes

In maintained schools, the panel may also be supported by the County Education Manager.

### Other hearing conditions

An employee of the School may be a staff governor. As part of the role, the employee may be a member of the Disciplinary Committee. If a Governors' Disciplinary Committee is necessary as part of the Disciplinary policy, the staff governor should not normally be called as a panel member.

If a Governors' Disciplinary Committee is convened, the following applies:

- **for maintained schools** - if dismissal is a potential outcome, there should usually be 3 governors on the panel. In exceptional circumstances, this could proceed with 2 governors.



- **for Academies** - the panel composition will depend on the agreed terms of reference.

An HR Adviser from Education Personnel Services will normally join the panel in an advisory capacity.

If dismissal is a potential outcome, then the following conditions apply:

<b>School</b>	<b>Requirement for additional attendees at a hearing</b>	<b>HR Adviser</b>
Maintained Schools - Hampshire County Council is the employer	There is a statutory right for the Local Authority to attend and offer advice. The HR Adviser will act on behalf of the Local Authority.	An HR Adviser from Education Personnel Services must be invited to attend.
Maintained Schools in other local authorities	The Local Authority may be able to attend depending on the arrangements with the Governing Body.	In the absence of an agreement, Education Personnel Services should be invited to attend.
Voluntary Controlled and Voluntary Aided schools	The diocese may have the same advisory rights as the Local Authority. This will depend upon whether the Governing Body of the School has made such an agreement in writing.	If required.
Academy	Education Personnel Services should be invited to attend as the School's HR provider. An Academy may also choose to clarify whether their legal provider will attend.	If required.

The HR Adviser to the panel does not perform a decision making role. Their function is to provide advice on legal issues, correct application of the policy, how to guide and procedural matters.

#### **Other hearing attendees**

Other hearing attendees may include:

- a senior manager/ the investigating officer, supported by an HR Adviser to present the case/ respond to the appeal

- the chair of a previous hearing (at an appeal hearing only)
- a professional association/ trade union representative or a work colleague
- witnesses (which may include the line manager or chair of the previous hearing)
- the Clerk to Governors or another Clerk to take notes
- an observer for training purposes with the consent of all parties.

## **Witnesses**

The senior manager/ investigating officer and the employee can request witnesses to attend the hearing. It is the responsibility of each party to arrange their own witnesses.

Children must not be called as witnesses.

Witnesses should only be called if they can provide significant information regarding the case.

Witnesses must be given due notice to attend the hearing by the person who wishes to call them.

The chair must be notified in advance of the hearing of the witnesses who will be called.

A witness may be unable to attend the hearing. The chair can use the witness's statement that is contained within the investigation report.

A witness may refuse to attend the hearing. The chair will need to understand why the witness does not wish to attend.

The chair may consider that a witness must be present at the hearing because their evidence is significant to the outcome of the case. In such cases, the chair can adjourn the hearing and request a witness to attend. The length of the adjournment will depend upon whether the witness is available to attend. If there will be a significant delay to the hearing because the witness is unavailable then the chair will need to consider arranging an alternative date and time for the hearing.

A witness may find it difficult or distressing to attend a hearing. The investigating officer can provide information about support that is available to the witness during the process. If the professional association/ trade union representative requests a witness it is their responsibility to provide the witness with support.

## **Attending formal hearings**

If the employee is not well enough to attend the hearing, it may be deferred until they are able to attend. Every effort should be made to make it possible for the employee to attend if they wish to do so. A hearing will not be deferred indefinitely because the employee is unable to attend.

If the employee does not attend, the chair will need to decide whether to

defer the hearing or to continue in the employee's absence.

If the employee is unable to attend, their professional association/ trade union representative may attend the hearing. The professional association/ trade union representative would represent the employee. Alternatively the employee may submit a written statement.

### **How to manage a formal hearing**

The procedure for the formal hearing is detailed in [Appendix Three](#).

### **Reaching a decision**

The Headteacher/ Governors' Disciplinary Committee of the formal stage hearing must fully consider all evidence presented and decide on an outcome.

At the end of the hearing the chair will need to tell the employee what happens next. If possible, the chair should tell the employee how long it is likely to take to make the decision. This depends on the time of day and the issues that are under consideration.

The chair may feel it appropriate to adjourn the meeting. The purpose of the adjournment would be to decide whether it is reasonable to reach a decision on the day.

The Headteacher/ Governors' Disciplinary Committee will need to reach a conclusion on the facts of the investigation. Consideration should be given as to whether 'on the balance of probabilities' the employee concerned carried out the alleged misconduct.

In many cases, the employee concerned will have offered an explanation about what happened and why. In some cases, the misconduct may be admitted and the only evidence put forward by the employee relates to mitigating circumstances. Based on the facts that have been found, the chair/ panel should consider any mitigation put forward by the employee to decide what sanction should apply.

Having considered the facts of the investigation and any mitigation, the Headteacher/ Governors' Disciplinary Committee will need to reach a fair decision by ensuring:

- that there been as much investigation as is reasonable in the circumstances
- the requirements of the disciplinary procedure have been properly followed
- there is a genuine belief that the employee committed the misconduct
- there are reasonable grounds for sustaining that belief on the balance of probabilities
- the misconduct is sufficiently serious to justify the disciplinary decision being contemplated
- consideration has been given to any mitigating circumstances
- the decision is within the band of 'reasonable' responses of a

‘reasonable’ employer in the circumstances.

Where there is more than one allegation, any allegations that are unsubstantiated/ unfounded/ unproven must be disregarded. A disciplinary sanction will be applied considering the entirety of the upheld/ proven allegations. A sanction will not be applied to each individual allegation, though there should be clarity about which, if any, of the allegations constitute gross misconduct.

### Outcome of a formal hearing

Any outcome given will apply from the date of the hearing.

Formal stage	Possible outcomes
Formal stage – for misconduct cases	<ul style="list-style-type: none"><li>• there is no further action</li><li>• the matter is more appropriately managed under the Capability policy and will be passed back to the line manager</li><li>• additional support, <a href="#">action plan</a> or development/ training required to help the employee</li><li>• a warning is issued (which can include an action plan) and is valid for:<ul style="list-style-type: none"><li>• a first written warning: up to 12 months unless a longer period is justified OR</li><li>• a final written warning: up to 24 months unless a longer period is justified</li></ul></li><li>• extension of a final written warning (in exceptional circumstances only)</li><li>• to dismiss with contractual notice. Dismissal with notice applies in cases where an employee has committed a further act of misconduct whilst a first or final written warning remains live.</li></ul>
Formal stage – for gross misconduct cases	<ul style="list-style-type: none"><li>• any of the possible outcomes as listed for a <a href="#">misconduct case</a></li><li>• to summarily dismiss. The matter is so serious in nature that the dismissal needs to be applied with immediate effect. The dismissal will be without notice or pay in lieu of notice.</li></ul>
Formal stage – for employees with less than two years’ continuous service; misconduct and gross misconduct cases	<ul style="list-style-type: none"><li>• there is no further action</li><li>• the matter is more appropriately managed under the Capability policy and will be passed back to the line manager</li><li>• additional support, <a href="#">action plan</a> or development/ training required to help the employee</li><li>• a warning is issued (which can include an <a href="#">action plan</a>) and is valid for between 12 - 24 months. The employee must be told whether the warning should be treated as a first or final in the event of further misconduct occurring</li><li>• extension of a final written warning (in exceptional circumstances only)</li></ul>

	<ul style="list-style-type: none"> <li>• to dismiss with contractual notice. Dismissal with notice applies in cases where an employee has committed a further act of misconduct whilst a first or final written warning remains live.</li> <li>• to summarily dismiss. The matter is so serious in nature that the dismissal needs to be applied with immediate effect. The dismissal will be without notice or pay in lieu of notice.</li> </ul>
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The length of the warning depends on:

- the nature of the misconduct
- whether there is a belief that the misconduct may reoccur
- whether a warning at the same stage has previously been issued.

### Previous warnings

A disciplinary matter may arise whilst a warning is still live. The Headteacher/ Governors' Disciplinary Committee will take the previous warning into account at a formal stage hearing. This may lead to a higher sanction being imposed.

Expired warnings may be taken into consideration in exceptional circumstances. This would be in circumstances where the employee has a history or pattern of the same or similar conduct concern(s) over a prolonged period of time which continues to give cause for concern.

Either the Headteacher or a member of the Governors' Disciplinary Committee must seek advice from Education Personnel Services.

### Confirming the outcome

The Headteacher/ Governors' Disciplinary Committee will normally advise the employee verbally of the outcome at the hearing, unless agreed otherwise with the employee.

The Headteacher/ Governors' Disciplinary Committee of the hearing must explain to the employee:

- the outcome
- the reason(s) for the decision. This includes any impact of any mitigating factors considered and how or why this affected the decision reached
- requirements regarding the employee's future behaviour and conduct if the employee is not dismissed
- details of any support to be provided if appropriate
- the likely consequences of any further misconduct
- any duty to refer the employee to the Disclosure and Barring Service and/ or a professional body
- that a copy of the letter detailing the outcome will be placed on their personnel file
- that they have the right of appeal.

The Headteacher/ Governors' Disciplinary Committee must confirm the outcome in writing within **5 working days** of the hearing. The outcome letter will include details of any warning and/ or sanction issued. A

template letter is available to ensure all of the necessary information is included.

A copy of the outcome letter and any warning must be placed on the employee's personnel file.

If a warning is issued, this should be reported to the full Governing Body. It must not identify the employee.

If a dismissal takes place, the Headteacher or Chair of Governors must report this to the full governing body. This report may identify the employee.

**For dismissals only** - if a dismissal takes place, it is essential that notice is effectively and unambiguously communicated to the employee. There must be a clear date on which the contract will end.

The date on which notice is given does not count when calculating the notice period. Notice begins from the day after it is issued.

**For dismissals only in maintained schools** – the notice period would not begin until the employee had received the letter of termination from the Local Authority and been given reasonable time to have read it. EPS on behalf of the Director of Childrens Services will confirm the dismissal in writing. The Headteacher/ Governors' Disciplinary Committee will give this instruction to EPS.

The letter must be sent to the employee within **14 days** from when the Headteacher or Governing Body reached the decision to dismiss. In such cases, the notice period begins once the employee has received the letter and has been given reasonable time to have read it.

**For dismissals in Academies or Schools where the Governing Body is the employer** - if the outcome is dismissal this will be confirmed in writing by the Chair of Governors.

If notice is given verbally then the notice period begins from the day after the employee was told. This is the case even if the notice is confirmed in writing. The letter should state that it is confirming what the employee was told on a certain date. This makes it clear that the letter is confirming what has already been done verbally.

If the employee is not told verbally, notice can be given in writing. In such cases, the notice period begins once the employee has received the letter and has been given reasonable time to have read it.

If a dismissal takes place the School must make arrangements to complete the necessary leaver actions including:

- cancelling the employee's IT account
- obtaining the employee's identity card

- completing the other leaver requirements.

Any sums owing to the School from the employee will normally be deducted from their final pay.

### **How to develop an action plan**

An action plan is a tool for you and the employee to use to assist with improving behaviour and/ or conduct. The aim of an action plan is to identify and record any activity that will enable the employee to demonstrate their ability to meet and maintain the expected standards.

The action plan can be used to record key outcomes from a formal hearing including any associated timescales.

The action plan should include:

- the expected standard(s) of behaviour and/ or conduct with a timescale in which this should be achieved
- the action/ support that will be put in place
- the associated action(s) to be taken
- who is responsible for arranging or providing any relevant support, training or guidance as appropriate
- dates of review meetings.

You should develop an action plan jointly with the employee. Working with the employee, you should seek to agree the action plan if possible.

You must share the action plan with the employee and keep a copy for your records.

### **Review meetings**

If a formal warning is issued or an action plan is required, it may be necessary to have a review meeting with the employee.

You should agree a series of dates and times to meet with the employee throughout the duration of the length of the warning issued.

The purpose of the meetings are to provide an opportunity to:

- review the employee's behaviour and/ or conduct
- review any action plan as appropriate
- discuss any other support that may be relevant.

A record must be made of each discussion. You should:

- seek to agree the record with the employee if possible
- share the record with the employee
- keep a copy on the employee's personnel file.

The principles of the [right of representation](#) will apply.

## **10. Appeal**

### **Appeal stage**

The employee has the right to appeal against the outcome of a formal hearing.



**For employees with less than two years' continuous service** - an employee only has the right of appeal against a dismissal decision. There is no right of appeal against a warning.

## Right of appeal

The employee must submit their appeal in writing. This must be within **10 working days** of the date of the letter confirming the outcome of the formal hearing. The letter must include the full reasons for the appeal.

The employee must send their appeal letter to the Clerk of the Governing Body.

Potential grounds for appeal are (this is not an exhaustive list):

- finding/ outcome was unreasonable
- emergence of new evidence which could have a material effect on the outcome
- terms of a warning are unreasonable (duration or conditions imposed with the warning)
- unfair/ incorrect application/ breach of the policy which could have had a material effect on the outcome.

The appeal is not a repeat of the formal stage hearing. It seeks to address the specific issues raised by the employee in the appeal letter.

A complete re-hearing is only permitted in exceptional circumstances where the chair determines that the submitted grounds of appeal identify:

- there was a significant defect in the procedure
- new evidence has to come to light since the hearing which may have a significant impact on the decision
- there is a dispute about evidence given by one or more witnesses at the original hearing. In these cases it may be necessary to rehear the witness's evidence at the appeal.

Following an appeal of a formal stage hearing, there is no further right of internal appeal.

## Appeal hearing

The employee must be invited to attend an appeal hearing.

## Appeal hearing arrangements

The employee must receive in writing the invitation to the appeal hearing.

The letter must give the employee **7 working days** notice of the appeal hearing. The timescales for the appeal hearing can be varied by mutual agreement.

Appeal hearing arrangements should ensure that:

- the date is set in consultation with the employee's representative and Education Personnel Services, where applicable
- a suitable venue is sourced
- consideration is given to access to refreshments (water)
- there are adequate break out rooms reserved for relevant



- parties
- reasonable adjustments are considered if applicable
- audio equipment is available if the appeal hearing is going to be recorded.

An appeal hearing may be audio recorded if all parties agree. Such agreement must be sought in advance of the appeal hearing.

#### **Alternative date**

The principles of [alternative date](#) will apply.

#### **Sharing of information**

The principles of [sharing of information](#) will apply.

#### **Right of representation**

The principles of the [right of representation](#) will apply.

#### **Who chairs the appeal hearing**

Stage	Chair/ panel members	HR Adviser	Right to be represented/ accompanied
Appeal against a formal warning	Governors' Appeal Committee	If required	Yes
Appeal against dismissal	Governors' Appeal Committee	HR Adviser	Yes
<b>For employees with less than two years' continuous service – appeal against dismissal only</b>	Governors' Appeal Committee	HR Adviser	Yes

There must be a minimum of 3 governors to form the panel. These governors must not have had previous involvement in the case.

#### **Other appeal hearing conditions**

The principles of [other hearing conditions](#) will apply.

#### **Other appeal hearing attendees**

The principles of [other hearing attendees](#) will apply.

#### **Witnesses**

The principles of [witnesses](#) will apply.

#### **How to manage an appeal hearing**

The procedure for managing an appeal hearing is detailed in [Appendix Three](#).

#### **Outcome of the appeal meeting**

The Governors' Disciplinary Committee must fully consider all evidence presented and decide on an outcome.

The possible outcomes are as follows:

Outcome of the appeal	Factors to consider
The appeal is not upheld and the previous decision remains.	<ul style="list-style-type: none"><li>• whether there is insufficient evidence to overturn the decision of the original formal stage hearing.</li></ul>
The appeal is upheld and a different outcome is applied.	<ul style="list-style-type: none"><li>• new evidence has been presented which impacts on the decision about whether an allegation was substantiated</li><li>• new evidence has been presented which impacts the sanction applied</li><li>• a review of the process has uncovered flaws in how the Disciplinary policy was applied</li><li>• there are flaws in how the formal stage hearing was conducted</li><li>• mitigating circumstances have been uncovered which were not previously taken into account.</li></ul>

If the appeal was against an outcome of dismissal, the Governors' Disciplinary Committee may decide to reinstate the employee. The employee's service remains continuous and any loss of pay between dismissal and reinstatement will be paid. The School is responsible for contacting their payroll provider to make the arrangements to ensure the employee receives their pay. The School must also make the necessary arrangements for the employee to have their IT account reinstated.

The outcome cannot impose a higher sanction than issued at the formal hearing although a lower sanction can be applied.

There is no further internal right of appeal.

### Confirming the outcome

The Governors' Disciplinary Committee will normally advise the employee verbally of the outcome at the hearing, unless agreed otherwise with the employee.

The Governors' Disciplinary Committee must confirm the outcome in writing within **3 working days** of the appeal hearing. A template letter is available to ensure all of the necessary information is included.

A copy of the outcome letter must be placed on the employee's personnel file.

## 11. Other policy requirements

### **Confidentiality**

It is expected that all parties involved in the disciplinary process will maintain confidentiality as appropriate. This is both within and outside of the School (including social media). If any party does not maintain confidentiality action may be taken under the Disciplinary policy.

### **Right of representation**

Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any time.

The employee is not usually represented/ accompanied at any discussions within the informal stage of the policy. There may be circumstances when the employee asks to be represented. This can be by a professional association/ trade union representative or a work colleague. Consideration should be given to any requests. This should be accommodated where it does not cause a delay to the process.

The employee has the right to be represented/ accompanied at a formal stage hearing or appeal hearing. This can be by a professional association/ trade union representative or a work colleague. The right to be accompanied is limited to one person only.

It is the employee's responsibility to:

- arrange their own representative
- liaise with their representative to agree the formal hearing or appeal hearing date and time
- advise management of the representative's details.

There is no right to legal representation at any stage of this policy.

### **Suspension or alternative arrangements**

Before making a decision about suspension or alternative arrangements, the appropriate manager must seek advice from Education Personnel Services.

Suspension or alternative arrangements are neutral and precautionary acts. They may be considered at any point during the Disciplinary policy once an initial assessment and/ or investigation have established that the circumstances may be gross misconduct.

If the potential gross misconduct establishes that the employee entering the workplace places them, or the School, at risk, alternative arrangements must be put in place to reduce or remove that risk. This must be a considered response to the specific issues/ risks identified in the initial assessment/ investigation.

Issues/ risks may be identified at the start of an investigation, or new evidence may mean that alternative arrangements become appropriate part way through the case.

The risks may arise from:

- the seriousness of the potential issues, in that they could amount to gross misconduct
- interference with the investigation which may impact on the fairness of the investigation
- a health and safety risk to the employee or others in the work place.

The alternative arrangements that could be made include:

- temporary placement into another role
- amended duties in the employee's current role
- temporary placement in an alternative location
- another action identified which would reduce or remove the risk
- suspension.

Alternative arrangements to suspension are only appropriate where the new duties or role are not linked in any way to the alleged gross misconduct.

The appropriate manager must refer the case to the Headteacher or the Chair of the Governing Body. A decision will be made as to whether alternative arrangements or suspension are applicable. The Governing Body should be informed as soon as possible of any cases of suspension. The information must be limited so as not to prevent the governors from involvement in a formal stage hearing, if this is necessary

The decision regarding whether alternative arrangements or suspension is necessary and the rationale must be recorded in writing. The appropriate manager must also seek advice from Education Personnel Services before communicating the outcome to the employee.

If a Headteacher is to be suspended, Education Personnel Services will support the Chair of the Governing Body in making the necessary arrangements. For maintained schools this will involve the School Improvement Manager or County Education Manager as necessary.

**Suspension** – this requires the employee to stay away from the workplace whilst on full contractual pay. Suspension is a neutral act and does not imply guilt or innocence. Advice must be sought from Education Personnel Services when considering whether suspension is necessary. Suspension must be a last resort after other alternatives have been considered.

### **Documenting and reviewing alternative arrangements/ suspension**

The reason for any alternative arrangements must be documented. In the case of suspension, the reason why other alternatives were not appropriate must be documented.

Arrangements must be regularly reviewed to determine whether they are still appropriate. This will be undertaken by the Headteacher. If the

Headteacher has been suspended, then the arrangements must be regularly reviewed by the Governing Body (who may delegate the responsibility to a Committee or identified member).

In reviewing the suspension arrangements, a decision may be made that suspension is no longer required and the employee can return to work. Any return to work must be approved by the Governing Body.

Academies can determine who has the authority to decide whether suspension arrangements are no longer required.

If the arrangements are to continue or change, the reason for this must be documented and communicated to the employee.

### **Communicating alternative arrangements/ suspension**

Once confirmation that suspension or alternative arrangements are approved, the Headteacher or Chair of the Governing Body must meet face to face (where possible) with the employee immediately to inform them of the decision.

The employee has no statutory right to be accompanied. However this will normally be accommodated where it does not cause any unnecessary delay. This meeting should be handled sensitively and acknowledge this is likely to be a difficult time for the employee.

The alternative arrangements/ suspension must be confirmed to the employee in writing.

There is no right of appeal against the decision to implement alternative arrangements or suspension.

### **Support during suspension**

The terms of the suspension often involve the employee being instructed not to contact colleagues during the suspension. Colleagues can still remain friends but the employee must refrain from discussing the investigation with colleagues.

It is important to identify one or more people they are able to communicate with, in order to ensure that contact can be maintained. Ideally this should be agreed with the employee and their representative.

The contact person should usually be a member of staff from the School. It must not be a member of the School's Governing Body. It is essential that the contact shall have no part whatsoever to play in any subsequent investigation, nor any other connection with, or vested interest in, the outcome of the case.

The nomination of a contact will need to be dealt with sensitively as it is not intended to replace the role of the employee's representative or line manager but rather to reinforce the support/ contact available for the employee concerned.

The employee can also seek support from their professional association/ trade union representative.

The principles of [support for the employee](#) will apply.

**For cases of suspension only** - during suspension the employee must:

- remain away from the workplace for a period of time with the purpose of enabling the investigation to take place and protecting both the School and the employee
- continue to receive full pay and all allowances applicable to their role unless they become sick in which case their pay will be in accordance with the sick pay scheme
- fulfil the requirements of their suspension. If the employee fails to maintain contact, their whereabouts are unknown, or they breach the terms and conditions of the suspension, their pay and any allowances may be suspended
- be available for meetings and hearings
- be provided with the details of the contact that will be assigned to them during the suspension or alternative arrangements
- follow normal reporting procedures such as sickness absence and annual leave. Sickness absence and annual leave must be requested and recorded in line with required protocols.

The Headteacher or Chair of Governors must decide how to inform other colleagues to explain the situation. It is important that all parties maintain confidentiality. It is important for the Headteacher or Chair of Governors to carefully consider how workplace messages will be managed during any period of suspension or alternative duties.

## **Criminal offences**

An employee may be subject to a criminal investigation. In such cases, the Headteacher/ senior member of staff must contact the Lead Investigation Officer within the police Force. The purpose is to ensure that an internal investigation will not obstruct any criminal investigation. Particular care needs to be taken where there is a criminal investigation of a safeguarding nature.

Criminal proceedings will not normally delay action under the Disciplinary policy unless it would prejudice the criminal case. Action under the Disciplinary policy can be taken prior to or in parallel with criminal proceedings.

A finding of guilty or not guilty in a criminal case will not automatically result in a similar finding in a formal disciplinary hearing. Each case will be managed based on the circumstances. A decision must be made as to whether the employee's conduct affects their ability or suitability for their continued employment with the School.

Further advice must be sought from Education Personnel Services. This will enable a decision to be made as to whether the Disciplinary policy can proceed whilst criminal proceedings are or have taken place.

**Safeguarding concern (relating to vulnerable adults, children and young people)**

Any allegation relating to a safeguarding concern against an employee must be dealt with in accordance with Hampshire's child protection procedures. This ensures that a child, young person or vulnerable adult is not at risk or that a police or social care investigation is prejudiced.

You must report safeguarding allegations to:

- Hampshire County Council's Local Authority Designated Officer (LADO) where it involves children
- Hampshire County Council's Adult Services Safeguarding Team where it involves adults.

There may be up to three possible processes involved in responding to a concern or allegation which may run concurrently:

- a Police investigation of a possible criminal offence
- enquiries and assessment by Hampshire County Council's safeguarding teams about whether a child or adult is in need of protection/ support
- an investigation under the Disciplinary policy.

The Local Authority Designated Officer (LADO) or their representative will provide written confirmation that an internal investigation can commence. You must not commence action under the Disciplinary policy until this written confirmation is received.

In order to support a Police or Safeguarding team's investigations, there may be some variation in:

- timescales of the process
- what information is shared
- when information is shared.

For further guidance please contact Education Personnel Services.

**Referral to relevant bodies**

Some professions are required to be registered with a professional body in order to practice. During, or upon completion of the Disciplinary process, in the following circumstances it may be necessary to make a referral to the relevant body:

- if a dismissal takes place
- where a disciplinary process has not concluded as the employee has resigned and the potential outcome may have resulted in dismissal.

If a referral is necessary, the School is responsible for initiating and completing it. The School must work in conjunction with Education Personnel Services and the Local Authority Designated Officer (LADO)/ Adult Services safeguarding team where appropriate.

If the allegation(s) relate to a safeguarding matter, the employer is required to make a referral to the Disclosure and Barring Service (DBS). Further guidance is available on the [Disclosure and Barring Service](#)



website. The DBS may take action under their statutory powers. Alternatively the DBS may refer the case to the Teaching Regulation Agency (TRA) for consideration where the matter concerns a teacher.

If the disciplinary matter concerns a teacher, the employer may make a referral to the Teaching Regulation Agency (TRA). The TRA may take action under their statutory powers.

Where there is a requirement to make a referral to a relevant body, the employee must be notified in writing that this has taken place.

Further guidance is available on the relevant professional body websites.

For further guidance please contact Education Personnel Services.

**Employees with less than two years' continuous service**

The same policy principles, stages (except for an appeal against a warning) and process for managing disciplinary matters apply to employees with less than two years' continuous service.

There are some areas of difference which are contained in the policy. These differences allow greater flexibility as the chair of the panel may reasonably decide that misconduct as opposed to gross misconduct is a sufficient reason to dismiss.

**Formal action concerning a professional association/ trade union representative**

Where there are concerns involving a professional association/ trade union representative, the appropriate manager must notify and seek advice from Education Personnel Services before taking any formal action.

The professional association/ trade union representative is encouraged to seek advice from their professional association/ trade union branch in such cases.

## **12. Support**

**Support for an employee**

This process can be difficult for the employee involved. The investigating officer should be sensitive to this and aim, as far as possible, to avoid undue stress to the employee.

The investigating officer must ensure that employees involved in the process understand where they can access support.

At any time during the disciplinary process an employee can:

- contact their professional association/ trade union representative to obtain advice
- contact a work colleague or an alternative manager within the School to obtain support. The employee should ensure that the colleague or alternative manager they approach understands they will be bound by the confidentiality requirements within this process and must not be connected with the disciplinary matter



- ask the School about any policy related questions.

For Schools that subscribe to Hampshire County Council's Occupational Health Service, the employee can contact the Employee Support Service. A confidential counselling service is provided by the Wellbeing Helpline who can be contacted on **0800 030 5182**. A wide range of useful advice and information is available via the Health Assured [online support](#) pages.

### **Support for the witness**

This process can be difficult for any witnesses involved. The investigating officer should be sensitive to this and aim, as far as possible, to avoid undue stress to witnesses.

The investigating officer must ensure that any witnesses involved in the process understand where they can access support.

At any time during the disciplinary process a witness can contact their professional association/ trade union representative to obtain advice.

For Schools that subscribe to Hampshire County Council's Occupational Health Service, the witness can contact the Employee Support Service. A confidential counselling service is provided by the Wellbeing Helpline who can be contacted on **0800 030 5182**. A wide range of useful advice and information is available via the Health Assured [online support](#) pages.

### **Support for the manager/ investigating officer**

Any queries can be directed to Education Personnel Services on 02380 383500 or [eps.consultants@hants.gov.uk](mailto:eps.consultants@hants.gov.uk)

At any time during the disciplinary process the investigating officer/ line manager can contact their professional association/ trade union representative to obtain advice.

For Schools that subscribe to Hampshire County Council's Occupational Health Service, the investigating officer/ line manager can contact the Employee Support Service. A confidential counselling service is provided by the Wellbeing Helpline who can be contacted on **0800 030 5182**. A wide range of useful advice and information is available via the Health Assured [online support](#) pages.

## **13. Toolkit**

Informal discussion form template, action plan template, letter templates, suspension checklist, suspension guidance, template management report.

## **14. Related documents**

To help with the application of the Disciplinary policy and this how to guide it may be useful to read the following:

- ACAS conducting workplace investigations guidance
- Search online for Peace Model interview techniques.

**This policy was reviewed and approved by the FBG on 17.09.24**

## Roles and responsibilities

Person	Roles and responsibilities
Everybody	<ul style="list-style-type: none"> <li>• applying the Disciplinary policy accurately</li> <li>• maintaining confidentiality.</li> </ul>
The Headteacher/ manager	<ul style="list-style-type: none"> <li>• establishing the immediate circumstances called an initial assessment, prior to commencing any further action under the Disciplinary policy</li> <li>• providing informal feedback, instruction and practical support to ensure employees are aware of the standards they should comply with</li> <li>• identifying and responding where a disciplinary matter is identified</li> <li>• determining when an investigation is necessary</li> <li>• determining whether alternative arrangements/ suspension is necessary</li> <li>• setting the terms of reference for the investigation</li> <li>• informing Education Personnel Services of all formal disciplinary matters or of any safeguarding concerns</li> <li>• liaising with the investigating officer (where this is not you) to assess next steps</li> <li>• seeking advice from Education Personnel Services about gross misconduct concerns</li> <li>• maintaining awareness of the case status at each stage of the Disciplinary policy</li> <li>• arranging hearings as necessary</li> <li>• suspension of IT accounts and security passes as appropriate</li> <li>• keeping records, drafting and issuing letters/ documentation with HR support as necessary</li> <li>• identifying a note taker for the meeting or arranging audio recordings for a formal meeting and confirming these to the employee</li> <li>• ensuring the School completes the e-leaver form and completing the other leaver requirements if a dismissal takes place or the employee resigns during the process.</li> </ul>
The investigating officer	<ul style="list-style-type: none"> <li>• ensuring the disciplinary matter is managed in a timely manner to avoid unnecessary delay</li> <li>• declaring any conflict of interest and if necessary withdrawing from the role</li> <li>• contacting Education Personnel Services for advice during the process as appropriate</li> <li>• investigating the disciplinary matter to establish the facts and the required course of action</li> <li>• identifying what rule or requirement the employee has allegedly breached</li> <li>• obtaining and critically evaluating evidence</li> <li>• determining, on the basis of the evidence gathered, whether there has been a breach and if so, the significance of the breach</li> </ul>

	<ul style="list-style-type: none"> <li>• producing a report that clearly documents the investigation, conclusions and recommendation for next steps</li> <li>• making a recommendation, based on the findings of the investigation</li> <li>• keeping the employee and if necessary the line manager and any witnesses up to date on progress</li> <li>• managing the disciplinary matter carefully and sensitively, especially when working with any witnesses</li> <li>• arranging meetings/ hearings as necessary</li> <li>• keeping records of key decisions</li> <li>• signposting to support that is available</li> <li>• drafting and issuing of letters, reports and documentation with HR support as necessary.</li> </ul>
All employees	<ul style="list-style-type: none"> <li>• meeting the required standards of behaviour/ conduct</li> <li>• improving their conduct following an informal discussion or formal warning</li> <li>• complying with employee obligations/ deadlines</li> <li>• arranging their own professional association/ trade union representative or work companion if desired and advising management of their details</li> <li>• sharing paperwork and information relating to the meeting with their representative</li> <li>• submitting evidence as part of the investigation or formal hearing.</li> </ul>
The Education Personnel Services caseworker	<ul style="list-style-type: none"> <li>• supporting with case management</li> <li>• advising on the completion of letters, reports and relevant documentation</li> <li>• attending meetings/ hearings where appropriate in an advisory capacity</li> <li>• providing targeted coaching, training and development as appropriate.</li> </ul> <p>In all serious disciplinary cases that might result in a final written warning, dismissal or an appeal following a dismissal, Education Personnel Services are responsible for</p> <ul style="list-style-type: none"> <li>• advising on policy application and best practice</li> <li>• ensuring cases are managed in accordance with the Disciplinary Policy.</li> </ul> <p>The Education Personnel Services HR Adviser does not perform a decision making role.</p>
The professional association, trade union representative or Hampshire County Council work colleague	<ul style="list-style-type: none"> <li>• advising/ supporting their member/ colleague/ manager</li> <li>• attending arranged hearings and/ or appeal hearings. If this is not possible, then arrangements should be made so that hearings and/ or appeal hearings are covered by an alternative representative and are not delayed</li> <li>• making representations, advocating and mitigating on behalf of the employee, submitting papers if appropriate, asking questions and addressing a hearing on behalf of the employee. They may not answer questions on behalf of the employee.</li> </ul>

Formal stage hearing and appeal hearing chair/ panel member(s)	<ul style="list-style-type: none"> <li>• making a finding of fact based on balance of probabilities and the evidence presented by all parties</li> <li>• deciding the seriousness of the misconduct</li> <li>• deciding an appropriate outcome, taking into account any mitigation</li> <li>• communicating the decision, and the reason for that decision</li> <li>• agreeing the management notes.</li> </ul>
The note taker (if the hearing is not audio recorded)	<ul style="list-style-type: none"> <li>• reading the bundle in advance of the hearing in sufficient detail to enable effective note taking</li> <li>• taking management notes and not a verbatim account of what was said. It is, however, important to capture the essence of what has been said, but it does not have to be a word for word account</li> <li>• ensuring notes follow the natural order of events and should, therefore, be in chronological order</li> </ul> <p>The notetaker should feel able to ask for the speaker to pause in order to allow for accurate notes to be captured.</p> <p>The notes should include:</p> <ul style="list-style-type: none"> <li>• the date, venue and start time of the hearing</li> <li>• list those attending the hearing and their roles within the hearing</li> <li>• details of the allegation(s) stated to the employee and of the supporting evidence, for example the witness statements</li> <li>• details of the employee's responses and their supporting evidence</li> <li>• the questions asked by the parties and the answers provided</li> <li>• a record of any adjournments and approximate timings</li> <li>• the decision taken</li> <li>• reference to the right of appeal and the finish time of the hearing</li> <li>• reference to the notetaker's name, plus a date and signature</li> </ul>

# Appendix One - Misconduct

## Definition

**Misconduct** – is an act of either wilful or negligent conduct, behaviour or omission.

Misconduct can be categorised as follows:

- **Negligent conduct** - careless or reckless behaviour or a failure to act which has a significant adverse impact on a service or an employee.
- **Wilful misconduct** - lapses of conduct in an employee's approach to their work or unacceptable behaviour towards others. It can also include unacceptable work performance which is deliberate and not simply a lack of competence.

The level of seriousness of each instance of misconduct depends upon the nature of the employee's role, the work environment and whether the misconduct has happened before.

## Examples - misconduct

(this list is not exhaustive and other forms of misconduct will be managed under the Disciplinary policy)

- a pattern of lateness or absenteeism/ poor time keeping
- serious infringement of health and safety requirements
- wilful unsatisfactory standards of work
- wilful failure to follow a reasonable management request/ instruction
- behaving in an improper, disorderly, unacceptable or unprofessional manner
- use of inappropriate language
- misuse of the School's equipment or IT systems – such as revealing passwords to others, loss of data/ equipment, excessive or unauthorised use of any IT service for private purposes
- misuse/ damage to the School's property, assets, equipment or vehicles
- inappropriate use of social networking
- inappropriate use of personal IT facilities and resources
- misconduct at work or outside work (criminal or otherwise) which could discredit the School's reputation
- 
- unauthorised absence and failure to record absence
- improper disclosure of information
- significant breaches of data security policies or data protection standards
- unauthorised disclosure of examination material or unauthorised assistance to pupils prior to or during examinations
- discrimination, harassment, victimisation or bullying, which are not sufficiently serious enough to be categorised as gross misconduct
- other actions and personal behaviour which are incompatible and/ or inconsistent with the expectations of staff working with children and young people
- failure to take prompt and effective action when child protection/ safeguarding concerns come to light

- breach of the Schools' policies and procedures/ code of conduct
- actions inconsistent with the Professional Standards for Teachers
- conflict between the employee's role within the School and any business interests or secondary employment
- failure to disclose any misconduct or alleged misconduct arising from alternative or additional employment outside of the School
- assisting others in any of the above activities.

# Appendix Two - Gross Misconduct

## Definition

**Gross misconduct** - is an act of misconduct which is so serious in nature that it fundamentally damages the employment relationship and justifies dismissal without notice.

## Examples – gross misconduct

(this list is not exhaustive and other forms of gross misconduct will be managed under the Disciplinary policy)

- serious breaches of work rules and reasonable requirements
- dishonesty, theft, misappropriation, fraud or deliberate falsification of records including financial claims
- fighting, assault or attempted assault on another person, serious acts of violence or threatening behaviour
- bullying, harassment, victimisation or discriminatory behaviour
- serious breaches of health and safety requirements
- convictions for serious criminal offences (including sexual offenses)
- failure to self disclose a criminal offence, conviction or caution
- sexual misconduct at work
- unauthorised disclosure of confidential information
- unauthorised/ inappropriate use of information systems, including accessing pornographic, obscene or offensive material
- serious unauthorised access or misuse of School information
- serious inappropriate use of social networking
- consuming alcohol or illegal substances whilst at work, or reporting for work under the influence of alcohol or illegal substances
- serious negligence that causes unacceptable loss, damage or injury
- serious act of insubordination or failure to follow a reasonable management instruction
- serious breach of specific School rules
- serious infringement of health and safety requirements
- any conduct at work or outside of work (criminal or otherwise) which could discredit the reputation of the School or result in a serious breach of trust and confidence
- wilful or careless loss, damage to, unauthorised removal of or misuse to the School's equipment, property, vehicles, assets, facilities
- serious breach of data security policies or data protection standards
- serious breach of the School's policies and procedures/ code of conduct
- engaging in inappropriate online contact and/ or relationships with children, young people or vulnerable adults through social networking sites, text messaging, instant messaging or other IT media
- deliberately accessing and/ or downloading (via School resources) and/ or possession at School of inappropriate material for example pornographic, offensive or obscene material and/ or possession of obscene material containing images of children
- persistent wilful failure to comply with a reasonable instruction from a member of senior management
- serious breach of confidentiality
- other actions and personal behaviour which are incompatible and/ or inconsistent with the expectations of staff working with children and young people
- serious actions inconsistent with the Professional Standards for



#### Teachers

- failure to disclose any serious misconduct or alleged misconduct arising from alternative or additional employment outside of the School
- assisting others in any of the above activities.

# Appendix Three – Procedure for a formal stage hearing/ appeal hearing

## Introductions

The Headteacher/ Governors' Disciplinary Committee will:

- introduce the parties present and their roles
- confirm the purpose of the hearing
- explain how the hearing will be conducted
- remind the employee of their right to representation if they do not have representative with them
- make a final check that any reasonable adjustments have been made or considered
- confirm that the employee has received all of the papers for the hearing and that all other parties have the same documentation
- ensure everyone understands the protocol of the hearing, for example leaving the room during adjournments, switching off mobiles, breaks, safekeeping of documents
- establish if any witnesses are to be called by either party or whether the panel wish to call any witnesses.

### **The role of the employee's representative**

The employee's representative (if present) should be allowed to:

- address the meeting if the employee allows them to do so
- present the employee's case, although the employee can provide the chair/ panel with their explanation
- sum up the employee's case
- respond on behalf of the employee to any views expressed at the hearing
- confer with the employee during the hearing.

The representative does not have the right to answer questions on behalf of the employee.

### **Adjournments**

At any point during the hearing, the Headteacher/ Governors' Disciplinary Committee may call an adjournment if it appears necessary or desirable to do so. This can include an adjournment:

- for the purpose of gathering further information
- at the request of any parties present at the hearing.

## For formal stage hearings - the investigation

### **Presentation of the investigation**

The Headteacher/ Governors' Disciplinary Committee will invite the senior manager/ investigating officer to explain the facts of the case, key evidence and the conclusions they have reached.

### **Questions**

The Headteacher/ Governors' Disciplinary Committee will:

- invite the senior manager/ investigating officer to call any witnesses to provide evidence at the hearing
- invite the employee or their representative to ask questions to the

- investigating officer
- invite the employee or their representative to ask questions to any witnesses
- have the opportunity to ask questions of the senior manager/ investigating officer
- ask questions to any witnesses.

## **For formal stage hearings - responding to the investigating officer's report**

<b>The employee</b>	<p>The employee or their representative must be allowed a full and fair opportunity to:</p> <ul style="list-style-type: none"> <li>• provide an explanation from their perspective</li> <li>• explain their conduct</li> <li>• state any mitigating factors</li> <li>• call any witnesses into the hearing to provide evidence.</li> </ul>
<b>The senior manager/ investigating officer</b>	<p>The senior manager/ investigating officer will be allowed the opportunity to ask questions to the employee on their response that is provided at the hearing.</p> <p>If the employee has called witnesses, the senior manager/ investigating officer can also ask questions of the witness when it is appropriate.</p>
<b>The Headteacher/ Governors' Disciplinary Committee</b>	<p>The Headteacher/ Governors' Disciplinary Committee will have the opportunity to ask questions to the employee.</p> <p>If the employee has called witnesses, the Headteacher/ Governors' Disciplinary Committee can also ask questions of the witness.</p>

## **For appeal hearings – presentation of the appeal**

<b>The employee</b>	<p>The employee or their representative must be allowed a full and fair opportunity to:</p> <ul style="list-style-type: none"> <li>• provide an explanation of the appeal</li> <li>• call any witnesses into the hearing to provide evidence.</li> </ul>
<b>The senior manager/ investigating officer</b>	<p>The senior manager/ investigating officer will be allowed the opportunity to respond to the appeal.</p> <p>If the employee has called witnesses, the senior manager/ investigating officer can also ask questions of the witness when it is appropriate.</p>
<b>The Headteacher/ Governors' Disciplinary Committee</b>	<p>The Headteacher/ Governors' Disciplinary Committee will have the opportunity to ask questions to the employee and the senior manager/ investigating officer.</p> <p>The Headteacher/ Governors' Disciplinary Committee can also ask questions of any witnesses who are called.</p>

# Consideration by the Headteacher/ Governors' Disciplinary Committee

## Further evidence/ information

The Headteacher/ Governors' Disciplinary Committee will consider whether other relevant evidence or information should be requested. If further evidence or information is required the hearing will be adjourned.

There will be a period of time whilst the additional evidence or information is gathered. The Headteacher/ Governors' Disciplinary Committee must allow time for all parties to read the additional evidence/ information. The hearing will be reconvened, at a date and time that is suitable for all parties. At the reconvened hearing, the employee must be given the opportunity to respond to the further evidence or information gathered.

## Summary of the case before the final adjournment

The Headteacher/ Governors' Disciplinary Committee must:

- confirm the key steps that have been followed
- ask the parties to confirm that they have presented all of the relevant information for the Headteacher/ Governors' Disciplinary Committee to take into account to reach its decision
- tell the employee what the next steps will be, including when a decision will be made on the outcome
- tell the employee they will prepare a statement of decision. This will be read out when giving the outcome of the hearing and will be used in the decision letter.

## Reaching a decision

The Headteacher/ Governors' Disciplinary Committee will take into account all information submitted. This will include any mitigating factors put forward by the employee. This will help the Headteacher/ Governors' Disciplinary Committee to reach a decision about whether to impose a sanction and if so, what this should be.

The Headteacher/ Governors' Disciplinary Committee must tell the employee that they have the right to appeal any outcome. If the employee has less than two years' continuous service they only have the right of appeal if they are dismissed. They do not have the right of appeal against a warning.

The Headteacher/ Governors' Disciplinary Committee will close the hearing.

## How to guide governance

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