



*If you can dream it...*  
Ysgol Bae Baglan

# Ysgol Bae Baglan Disciplinary Procedures for Staff in Schools

MONITORING AND EVALUATION OF POLICY

This policy will be reviewed annually.

Date passed by Governing Body: Oct 18<sup>th</sup> 2023

Chairman.....*E.V. Larnam*

# **Disciplinary Procedure for Staff in Schools**

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# Disciplinary Procedure for Staff in Schools

**Name of school:** Ysgol Bae Baglan

*The Welsh government document 'Disciplinary and dismissal procedures for school staff' circular no.: 002/2013 may be used in conjunction with this procedure.*

## Introduction

*This model procedure presupposes that a delegation is in place allowing the headteacher to deal with accusations constituting lesser misconduct. Where this is not the case, suitable adjustments will need to be made.*

1. This disciplinary procedure applies to school employees. Employees have been made aware of this procedure and copies will be given to any employee who is the subject of any allegation.
2. All timescales included in this disciplinary procedure have been agreed by the governing body and the school's local trade unions. Depending on the circumstances of the case, there may need to be flexibility with these timescales, e.g. where there is a large amount of paperwork or unavailability of employees.
3. Where required throughout this procedure the chair of governors will take appropriate action unless they are compromised, in which case the vice chair of governors will take over the role and actions normally carried out by the chair. If the vice chair is also compromised the governing body will have to select another governor who is not compromised and minute this decision.

## Purpose and scope

4. The governing body is responsible for the conduct and discipline of school employees and is required to have a procedure in place for dealing with staff disciplinary matters.
5. Disciplinary procedures are necessary for promoting orderly employment relations, achieving fairness and consistency in the treatment of individuals and minimising disagreement about disciplinary matters.
6. This disciplinary procedure is intended to help and encourage all employees to achieve and maintain acceptable standards of conduct and to make clear to all concerned the procedure to be followed by this school and governing body to address concerns about an individual's behaviour or conduct and any subsequent disciplinary action that may be taken.
7. This procedure supports the governing body's standards and rules (including the GTCW's Code of Professional Conduct and Practice for Registered Teachers) to ensure consistent and fair treatment for all employees within the school.

## **Matters outside the scope of the procedure**

**8.** The following matters are outside the scope of this disciplinary procedure:

- where employment is terminated:
  - by reason of redundancy
  - by an employee reaching the end of a temporary or fixed-term contract
- where any deficiencies in performance on the part of the employee arise from a lack of aptitude or skill (in such cases the capability procedure will be used)
- employee grievances and grievances lodged as a result of disciplinary action. If, however, action under the employee grievance procedure results in the need for disciplinary action then this disciplinary and dismissal procedure will apply
- for newly qualified teachers – failure to complete the induction period to the satisfaction of the Appropriate Body as defined by the Regulations
- termination during or at the end of a probationary period, whether or not extended beyond its originally specified duration
- matters which ought to be dealt with through the governing body's general complaints procedure and which do not raise employee disciplinary issues for individual school employees

## **GRIEVANCE ISSUES**

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance and the grievance procedure initiated. The disciplinary process should only be suspended if the grievance throws doubt on whether or not the disciplinary process can be conducted fairly.

However, where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently. Or where the grievance has any bearing on the disciplinary proceedings, it may be raised as a relevant issue in the course of those proceedings. In such a case, it would not be appropriate to initiate the grievance process and the substance of the grievance would be dealt with as part of the disciplinary process.

If the grievance is against someone involved in either the investigation or the hearing of a case, then it is normally advisable for them not to hold a decision making role in the process

## **Principles**

**9.** This procedure is a way of helping and encouraging improvement in employees whose conduct is unsatisfactory and is not to be viewed as simply a means of imposing sanctions or punishment.

**10.** In all cases, the school and governing body will ensure that disciplinary cases are dealt with in an unbiased, open and fair way.

**11.** The principles in summary are as follows.

- Where appropriate, every effort will be made to address concerns about behaviour or conduct without recourse to formal procedures.
- No disciplinary action will be taken against an employee until the case has been fully investigated by a person who has no connection with the case in question.
- An investigator will be impartial, with the relevant skills. Reasonable objections to an investigator relating to their inability to act impartially, or their competence for the role, will mean that the investigator will be changed.
- Where it is decided to deal with a disciplinary matter through formal procedures, the employee will be informed of the allegation against them and will be given the opportunity to defend the allegation at the disciplinary hearing
- An employee will not be dismissed for a first breach of discipline in cases of lesser misconduct. However, should this lesser misconduct be repeated it may result in the employee being disciplined for gross misconduct as they are not moderating or amending their behaviour. This behaviour and the improvements/changes expected.
- The employee will be provided, prior to the hearing, with the name of the presenting officer, the names of persons who will be present at the hearing and in what capacity, full details of the allegations, an outline of the evidence to be presented with supporting evidence, the names of any witness to be called and copies of written statements.
- The employee will have the right to be accompanied by a trade union representative or work colleague union during the investigation, the disciplinary hearing and the appeal hearing.
- Dismissal for gross misconduct will take place immediately following the decision of the staff disciplinary and dismissal committee or following the outcome of any appeal by the employee. Dismissal under these circumstances will be without notice or payment in lieu of notice.
- An employee will have the right to appeal against any disciplinary sanction imposed by the headteacher or chair of governors (in respect of lesser misconduct matters), or the staff disciplinary and dismissal committee (in respect of gross misconduct matters).

- The process will be supportive, as far as reasonably practicable, towards the needs of the employee.
- Investigations and hearings will be conducted, where practicable, (all or part) in English or Welsh, or with access to interpretation, at the request of the employee.

### **Informal discussion with the headteacher – outside of disciplinary process**

**12.** There will be occasions when it is appropriate for an employee's actions to be discussed with them as part of normal supervisory arrangements and without recourse to the formal procedures. In these circumstances the employee will be given guidance and support from their line manager. This could take the form of advice, counselling, training instruction, coaching or other managerial strategies as is appropriate. Such activity may be delegated to a member of the senior management team. In respect of the headteacher however, this would be carried out by the chair of governors with advice and support from the LA HR advisor.

**13.** The aim of this action is to ensure that problems are discussed so as to encourage and help the employee to improve and understand:

- what they need to do in relation to their conduct
- how future conduct will be monitored and reviewed
- the period of time over which conduct will be monitored
- that formal action might be taken if the conduct in question recurs.

**14.** Where discussions and support structures which have been put in place to help the employee do not lead to the necessary improvement or the relevant changes in conduct, within the agreed timescale, the employee will normally be advised in writing of further action to be taken, which may be formal.

### **Formal procedure for lesser misconduct**

**15.** Responsibility for disciplinary matters where the allegation could constitute lesser misconduct is usually delegated by the governing body to the headteacher.

**16.** If an allegation which could constitute lesser misconduct is made against the headteacher, the chair of governors will be responsible for disciplinary action.

### **The investigation**

**17. Unless, after making an initial assessment,** it is clearly impossible for the alleged breach of discipline to have occurred (in which case cogent reasons should be recorded) the headteacher or the chair of governors (in the case of the headteacher) will arrange for an investigation to be carried out by

a person who is unbiased. This may be a member of the senior management team, a governor or external person, e.g. employee of the LA, diocesan authority (where appropriate).

**18.** The employee who is the subject of the alleged breach of discipline, and all witnesses, will be interviewed and requested to provide a signed statement. Notes will be taken at all investigation meetings and a copy given to the party involved. No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected.

**19.** The employee will be given the opportunity to respond to the allegation and will have the right to be accompanied by a trade union representative or work colleague at an investigation interview meeting.

**20.** Once the investigation has been concluded, the investigating officer will present the findings to the headteacher or the chair of governors (in the case of a headteacher) in a written report. This will be done as soon as practicable after the conclusion of the investigation. The investigation report will be based on matters of fact and not opinions; references to or expressions of views on the personalities of individuals will not form a part of the report.

**21.** The headteacher or chair of governors (in the case of a headteacher) may conclude that:

- no further action will be taken
- matters can be dealt with by informal discussion (refer to paragraphs 12–14 of this procedure)
- there appears to be sufficient evidence for a hearing before the headteacher or chair of governors (if the headteacher is to be disciplined) and the possible outcome may be sanctions short of dismissal
- there appears to be sufficient evidence that the allegation constitutes gross misconduct to trigger a formal disciplinary hearing before the staff disciplinary and dismissal committee.

**22.** Where dismissal could result because an employee is currently on a final written warning, the case must be referred to the staff disciplinary and dismissal committee.

### **The hearing before the headteacher or chair of governors**

**23.** Conduct that is considered to fall within the scope of **lesser misconduct** has been delegated to the headteacher to deal with. The chair of governors will deal with lesser misconduct allegations against the headteacher. A hearing will take place with the headteacher or the chair of governors (in respect of the headteacher) supported by advice from the LA or diocesan authority (where appropriate). Should the chair of governors be

compromised this role should be delegated to the vice chair (providing the vice chair is not compromised).

**24.** The employee will be sent a copy of this procedure and will be informed in writing of the following information:

- the nature of the alleged misconduct
- the stage reached in the procedure
- the date, time and place for the hearing
- the possible outcome of the hearing
- their right to:
  - produce written statements which will be circulated to all parties in advance of the hearing
  - ask questions relating to any written statements so produced
  - state their case in person and/or through a representative
  - produce witnesses
  - be accompanied by a trade union representative or work colleague of their choice.

Should it become apparent to the headteacher or the chair of governors (in respect of the Headteacher) during the course of a hearing that the allegation concerns gross misconduct rather than misconduct, the hearing will cease and the allegation will be referred to a disciplinary hearing before the governing body's staff disciplinary and dismissal committee.

**25.** The hearing may conclude that the allegation/s is unproven, which will be confirmed in writing to the employee. Where the allegation is found to be substantiated, there are five possible outcomes:

- informal action
- oral warning
- first written warning
- final written warning.

**26.** In many cases lesser misconduct can be dealt with in the first instance by informal action. However, there may be occasions when it will be appropriate to give an employee an oral warning or a written warning. The sanctions used will depend on the circumstances of the employee's behaviour.

**27.** Further advice on each of these sanctions is set out below. The sanctions an employee could receive will be in line with the nature and severity of the allegation. However, there may be occasions where an employee has had repeated lesser misconduct allegations against them and has not altered or improved their behaviour. This may result in a more severe sanction being given, e.g. a final written warning. Alternatively, the lesser misconduct behaviour may be serious enough to warrant an immediate final written warning instead of any other sanction.

### **Informal action**

**28.** As a result of the hearing, the headteacher or the chair of governors (in respect of the headteacher), with support from the LA HR advisor, may deal with matters by giving advice, counselling, training instruction, coaching or other managerial strategies as is appropriate. Such activity may be delegated to a member of the senior management team. In respect of the headteacher however this will be carried out by the chair of governors with advice and support from the LA HR advisor.

**29.** The aim of this action is to ensure that problems are discussed so as to encourage and help the employee to improve. The employee needs to understand:

- what they need to do in relation to their conduct
- how future conduct will be monitored and reviewed
- the period of time over which conduct will be monitored
- that formal action might be taken if the conduct in question recurs.

**30.** Where discussions and support structures which have been put in place to help the employee do not lead to improvement or the relevant changes in conduct in the agreed timescale, the employee will normally be advised in writing of further action to be taken.

### **Warnings**

**31.** Where the employee's conduct is satisfactory for the specified period of a warning such warnings will be expunged from the employees member's file after a specified period and cannot be referred to again once spent.

Suitable periods would be:

- oral warning – six months
- first written warning – 12 months
- final written warning – 24 months.

### **Oral warning**

**32.** If at the conclusion of the hearing it is decided to proceed with disciplinary action by way of an oral warning, the headteacher or the chair of governors (in respect of the headteacher) will issue the oral warning to the employee in the presence of their trade union representative or work colleague.

**33.** An oral warning will be confirmed in writing with a copy to any person who accompanies the employee in accordance with these procedures and will state:

- the nature of the misconduct
- the stage reached in the procedure
- what is expected for the future
- the right to appeal, the time limit within which the appeal should be made, and how the appeal should be made.

**34.** The employee will be required to indicate receipt of the written confirmation of the oral warning. A record of the warning will be placed on the employee's file. Where the employee's conduct is satisfactory for the specified period (usually six months) following an oral warning, such warnings shall be expunged from their record and therefore cannot be referred to again once spent.

### **First written warning**

**35.** If at the conclusion of the hearing, it is decided to proceed with disciplinary action by way of a first written warning, the headteacher or the chair of governors (in respect of the headteacher), will issue the first written warning to the employee in the presence of their trade union representative or work colleague.

**36.** The written warning, which, at request of the employee may be copied to his/her representative, will state:

- the nature of the misconduct
- the stage reached in the procedure
- what is expected for the future
- the right to appeal in writing within 7 calendar days' of receipt of the letter, setting out the grounds for the appeal .

**37.** A copy of the warning will be placed on the employee's file. Where the employee's conduct is satisfactory for the specified period (usually 12 months) following a written warning, such warning shall be expunged from their record and therefore cannot be referred to again once spent.

### **Final written warning**

**38.** A final written warning may be issued where lesser misconduct recurs despite attempts by senior managers to support the employee and improve their behaviour or conduct. A final written warning may also be issued where a single instance of proven misconduct is considered to be of a serious nature.

**39.** Final warnings may be given following a hearing before the headteacher or the chair of governors (in respect of the headteacher) who will issue a final written warning to the employee in the presence of their trade union representative or work colleague.

**40.** The final warning, which, at the request of the employee, may be copied to his/her representative, will state:

- the nature of the misconduct
- the stage reached in the procedure
- what is expected for the future
- that the next stage will be dismissal
- the right to appeal in writing within 7 calendar days' of receipt of the letter, setting out the grounds for the appeal.

**41.** A copy of the warning will be placed on the employee's file. Where an employee's conduct is satisfactory for the specified period (usually 24 months) following a final warning, such warning shall be expunged from their record and therefore cannot be referred to again once spent. During the period of the final written warning, if the employee commits a further act of misconduct, the matter can be referred to the staff disciplinary and dismissal committee for a formal hearing which could result in dismissal. The employee must be informed of this at the time the final written warning is issued.

### **Appeals against formal warnings**

**42.** There is a right of appeal against any disciplinary action (refer to paragraphs 79–85 of this procedure for information on appeals).

### **Referral for consideration under procedures for gross misconduct**

- 43.** There may be rare occasions where, at the end of an investigation into lesser misconduct matters, the evidence in the investigation report indicates that the behaviour constitutes gross misconduct. If the headteacher (or chair of governors in respect of the headteacher) with support from the LA or diocesan officer concludes that this is the case, a referral for formal disciplinary action for gross misconduct may be justified. In these circumstances the employee will be informed immediately of the decision made and that the matter is being referred to the staff disciplinary and dismissal committee for their consideration. The most appropriate way for an employee or headteacher and his/her trade union representative to be informed of this decision will be through a meeting with the headteacher or chair of governors (in respect of the headteacher). As this is likely to be a rare occurrence this meeting does not form part of the lesser misconduct process.

### **Gross misconduct (where the allegation does not relate to child protection issues. For child protection allegations please see point 55 - 70)**

**44.** The term gross misconduct is used to mean an act, or omission, or a series of actions or omissions by an employee that fundamentally repudiates the contract of employment. All gross misconduct allegations will be subject to

a formal disciplinary hearing before the governing body's staff disciplinary and dismissal committee. The staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee shall each have a minimum of three governors. The staff disciplinary and dismissal appeals committee must have at least the same number of governors as the staff disciplinary and dismissal committee. No governor will be a member of both committees and both committees will also have separate advisers.

**45.** Where alleged gross misconduct is to be considered responsibility for the arrangements to set up a disciplinary investigation rests with the chair of governors through the clerk to the governing body.

**46.** Gross misconduct allegations are usually sent to the headteacher or chair of governors (if the allegation is about the headteacher). On receipt of an allegation the headteacher or chair of the governors will make an initial assessment of the situation (but not investigate) to determine the nature and circumstances of the allegation, i.e. witnesses, when it occurred, etc. If the conclusion is that the allegation may be true the employee and their trade union representative will be informed of the allegation immediately and that the formal disciplinary process is being engaged.

**47.** The headteacher or chair of governors will arrange for the allegation to be thoroughly and fairly investigated. At this point the employee may be suspended by the headteacher or chair of governors, on full pay and in line with the governing body's agreed procedure. Both the headteacher and chair of governors can suspend employees but only the governing body can end a suspension. The governing body has delegated this function to the chair of governors/the chair of

the staff disciplinary and dismissal committee. The decision has been minuted. Suspensions will be reviewed by the chair of governors at intervals set out in this disciplinary procedure and the outcome will be reported to the employee and the governing body.

**48.** However, if after making the initial assessment of the allegation the conclusion of the headteacher or chair of governors (in respect of an allegation against the headteacher) is that beyond any doubt it is impossible for the allegation to be true, the headteacher or chair of governors may take no further action. The employee and their union representative will be informed immediately of this decision.

### **The investigation**

**49.** As a possible outcome for gross misconduct hearings is dismissal, it is important that investigations into gross misconduct allegations are unbiased and thorough. Depending on the circumstances, the governing body may engage as investigator an LA or diocesan officer, ex-headteacher or ex-LA officer, who has no connections with the case, as an alternative to a member of the senior management team or a governor. The chair of governors is

responsible for controlling and managing all aspects of the disciplinary process including the engagement of an appropriate investigator. The employee has the right to object to an investigator if they have reasonable doubts as to their ability to act impartially.

**50.** Prior to the investigation, the employee will be informed in writing of their rights under the school's disciplinary procedure, including the right to be accompanied by a trade union representative or work colleague, at all meetings held in connection with the disciplinary matter.

**51.** Notes will be taken of the meeting and a copy given to the employee and their trade union representative following the meeting. No undertaking of confidentiality can be given to witnesses, however the overall confidentiality of the disciplinary process will be respected.

### **The investigation report**

**52.** The report, once completed, will be given to the headteacher and the chair of governors (or chair of governors and another governor in respect of investigations into the conduct of the headteacher) who will consider the findings and decide whether, based on the findings of the report:

- there is no evidence to support the allegations and the matter is closed
- the conduct does not amount to gross misconduct but to lesser misconduct which can be dealt with by the appropriate person
- based on evidence, the conduct does amount to gross misconduct and is required to be referred to a staff disciplinary and dismissal hearing.

**53.** This discussion and decision will be minuted by the clerk. The employee will be advised of the outcome of the investigation as soon as possible in writing by the clerk to the staff disciplinary and dismissal committee.

**54.** A copy of the investigation report, including all interview notes, will automatically be provided to the employee against whom the allegation has been made, within the timescales set out in this disciplinary procedure, if the case is to proceed as outlined above.

### **Allegations that involve issues of child protection – receipt of an allegation**

**55.** Allegations involving issues of child protection will be brought immediately to the attention of the headteacher or the chair of governors (if the allegation is in respect of the headteacher) and the designated child protection officer in the school and referred to the statutory authorities, e.g. the police and social services.

56. The headteacher or chair of the governors (in respect of the headteacher) will make an initial assessment (but not investigate) to determine the nature and circumstances of the allegation, i.e. witnesses, when it occurred, etc. If the conclusion is that beyond any doubt it is impossible for the allegation to be true the matter will be discussed by the chair of governors, headteacher and the lead child protection officer in the LA, to determine whether a referral to social services and/or the police is required. If the allegation is about the headteacher the chair of governors will have the same discussion without the headteacher being present. If the conclusion of all parties is that it is impossible for the allegation to be true the headteacher or chair of governors may not take any further action against the employee and no referral to the statutory authorities is required. If there is any doubt and agreement between these parties cannot be reached, the matter will be referred to the statutory authorities.

57. If however, the initial assessment by the headteacher or chair of governors (if the allegation is about the headteacher), in discussion with the LA lead child protection officer, indicates that an allegation might be true, there will be an immediate referral to the statutory authorities (social services and/or the police), in accordance with local child protection procedures.

58. The employee and their union representative will normally be informed of the decision, as agreed by the statutory authorities, that a referral is being made. However, there may be some circumstances where this will not be appropriate. At this point the headteacher or chair of governors (if the allegation is about the headteacher) may suspend the employee, on full pay, in line with the governing body's agreed procedures. Both the headteacher and chair of governors can suspend an employee but only the governing body can end a suspension. However, the governing body can delegate this function to the chair of governors/the chair of the staff disciplinary and dismissal committee. **This decision must be minuted.** Suspensions will be reviewed at intervals set out in the disciplinary policy and the outcome reported to the employee and the governing body.

59. After the statutory authorities (e.g. the police and social services) have completed their consideration of the allegation, it will be referred back to the governing body to complete the employee disciplinary process. This will happen even if the statutory authorities take the decision not to pursue a criminal investigation.

60. The headteacher and chair of governors or the chair of governors and another governor (if the headteacher is the subject of the allegation), with advice from the school's designated child protection officer and LA lead child protection officer as appropriate, will discuss:

- whether the allegation is of a child protection nature and the behaviour constitutes gross misconduct which requires it to be independently investigated prior to any disciplinary hearing

- whether there is evidence of misconduct which should be treated as lesser misconduct
- whether no further action is required.

**61.** If there is any doubt at all, or agreement cannot be reached as to whether the matter is a child protection issue, the allegation will be independently investigated.

### **Referral for an independent investigation**

**62.** The requirement in education law is that the governing body must refer child protection allegations for independent investigation. In order to make the process easier this task has been delegated to the chair of governors and the governing body's decision to this effect has been minuted. This must be done prior to the hearing of any disciplinary proceedings. The independent investigator's contact in relation to the running of the investigation will be with the governing body (e.g. the chair of governors) and not the LA or headteacher. The purpose of an independent investigation is to enable the governing body to comply with the law and to provide members of the staff disciplinary and dismissal committee with a thorough and unbiased investigation report, produced by persons with appropriate skills and training, to enable them to reach fair and balanced decisions.

**63.** The independent investigator will be appointed as soon as the governing body makes a referral; however, the independent investigator will not commence the investigation until after the police have completed their investigation.

### **The independent investigation**

**64.** The independent investigator will set the parameters of the investigation and interview all witnesses in order to ensure a completely impartial and unbiased investigation is carried out. The report will not contain any conclusions and recommendations as these are matters for the committee to determine.

### **The independent investigation report**

**65.** The report, once completed, will be given to the headteacher and chair of governors, or chair of governors and another governor in respect of investigations into the conduct of the headteacher. They will consider these findings and decide whether, based on the findings of the report:

- there is evidence to support a decision that the child protection allegation has some foundation constitute gross misconduct and that it will, therefore, require a hearing before the staff disciplinary and dismissal committee

- there is evidence to support a decision that the allegation constitutes lesser misconduct behaviour which can be dealt with by the headteacher or chair of governors (if the allegation is against the headteacher)
- there is no evidence to support the child protection allegation and no further action needs to be taken against the employee.

The clerk to the governing body **must** be present to record the decision of the headteacher/chair of governors (or chair of the governors and another governor if the allegation is against the headteacher).

**66.** If there is any doubt at all, or agreement cannot be reached by the headteacher and the chair of governors, or the chair of governors and another governor in respect of the headteacher, the matter will be referred for a full hearing before the staff disciplinary and dismissal committee.

**67.** The employee and trade union representative will be informed of the decision as soon as reasonably practicable.

**68.** The chair of governors will ensure that all relevant papers, including the full investigation report, are sent to the employee and/or their union representative, the person presenting the case against the employee, and members of the staff disciplinary and dismissal committee within the timescales set out in this procedure.

**69.** No evidence will be removed by any party from the investigation report before it is sent to the governing body staff disciplinary and dismissal committee.

### **Appointment of independent non-governor member on staff disciplinary and dismissal committees and staff disciplinary and dismissal appeals committees dealing with child protection allegations**

**70.** As required in law the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee will have at least two governors plus an independent non-governor with voting rights. The appeal committee will have the same number of governors as the first committee. The governors, including the independent non-governor on the appeal committee will be different from those on the first committee.

### **The disciplinary hearing in respect of all gross misconduct cases**

**71.** A disciplinary hearing will be held as soon as it can be arranged by the clerk to the staff disciplinary and dismissal committee even if the employee has subsequently resigned or is on sick leave. An employee who is required to attend a formal disciplinary hearing should receive not less than 10 working

days notice of the time, date and place of the hearing. Date of the hearing will be mutually agreed wherever possible but delaying the process unnecessarily will not be acceptable.

**72.** The employee will be informed in writing of:

- the date, time and place for the disciplinary hearing, seeking agreement to dates from members of the committee, the employee, any witnesses appearing in person and the LA and diocesan authority (if appropriate)
- the purpose of the hearing and that termination of employment is a possible sanction
- the right of the employee to be accompanied by a trade union representative or work colleague
- the membership of the staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee
- the name of the person presenting the case against the employee
- the full details of the allegation, the evidence to be presented and the names of any witnesses to be called, etc.
- who is to be the adviser to the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee
- the date by which all relevant documentation should be received by the clerk prior to the hearing.

**73.** The clerk will arrange for the documentation from both parties to be distributed to the employee and their representative prior to the hearing, including up-to-date procedures, in accordance with the timescales set out in this procedure.

**74.** The employee will be afforded the right to object to any member of the committee or the investigator on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case.

### **At the hearing**

**75.** The hearing will be conducted in a fair manner with all parties having the opportunity to present evidence and call and question witnesses. There will also be an opportunity for the presenting officer and the employee and/or their trade union representative to summarise their case. The clerk to the governing body will be present to record the hearing in detail.

**76.** New evidence submitted on the day of the hearing to be accepted only at the discretion of the Headteacher/Chair of the Staff Disciplinary/Dismissal Committee and generally this will only be where the information submitted was not previously available.

77. Once this part of the hearing is completed there will be an opportunity for the staff disciplinary and dismissal committee to receive advice. Once this is received members of the committee will be left alone with the clerk to discuss the evidence and make their decision. Where possible this will be given verbally at the end of the hearing. If for some reason this is not possible the committee's decision will be given in writing to the employee as soon as possible after the hearing. At this point the employee will also be informed of their right to appeal and the timescale within which this must be made.

78. A disciplinary hearing may be adjourned at any time by the Headteacher/Chair of the Staff Disciplinary/Dismissal Committee where it is considered necessary and reasonable to do so, e.g. to obtain additional information.

### **Decision reached after the hearing has taken place**

77. Having considered all the evidence and taken into account advice provided the staff disciplinary and dismissal committee may conclude that:
- the allegation is unproven and there is no action to be taken
  - the alleged behaviour constitutes lesser misconduct and a formal oral written warning or final written warning should be issued
  - the allegation of gross misconduct is proven and, depending on the severity of the misconduct, an appropriate sanction shall be imposed.

### **Possible sanctions may be:**

- relegation to a lower-graded position (if practical and appropriate) and loss of salary
- specified training and development
- issue of a formal warning (where the alleged behaviour constitutes lesser misconduct)
- dismissal of the employee without notice.

### **Please Note:**

**The outcome of any child protection disciplinary hearings which have been part to a Professional Abuse Strategy Meeting (PASM) MUST be relayed to the chair of the PASM via HR i.e. the clerk to the governing body should inform the relevant HR Officer, in writing, of the outcome and the HR Officer will then inform the Chair of the PASM**

78. Matters that are considered lesser misconduct will be dealt with by means of formal action set out in paragraphs 28–41.

### **79. Disciplinary Offences**

The following lists of examples is neither exclusive or exhaustive, but are an indication of how an offence may be viewed:

### **Lesser Misconduct**

Such breaches of discipline would not normally result in dismissal for a first offence, but may result in dismissal if the employee has previous 'live' warnings on record:

- *Specified conduct which is incompatible with the ethos and the precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment, etc.*
- *Poor timekeeping and/or unauthorised absence (e.g. absence from the workplace during school sessions without permission or in line with the school's policy).*
- *Refusal to carry out a reasonable instruction.*
- *Violation/breach of the Authority's or school's health and safety rules and standards.*
- *Causing damage to property/equipment through negligence/not having due regard to school property.*
- *Causing unintentional superficial injury to a member of staff/pupil*
- *Petty theft, e.g. making unauthorised private telephone calls or sending personal mail at the school's expense.*
- *Breach of dignity at work policies.*
- *Unauthorised use of computer hardware/software and/or data including inappropriate use of the Internet and electronic mail.*
- *Unauthorised use of mobile phones/text messaging/social networking sites during lesson time/core working time.*
- *Neglect or unsatisfactory standards in performance of duties;*
- *Offensive behaviour, insubordination or using abusive language;*
- *Disclosure of confidential information;*
- *Breach of School's Policy or Procedures;*

### **Gross Misconduct**

This is misconduct which is so serious that the Governing Body is justified in no longer tolerating the continued presence at work of the employee. It is misconduct which strikes at the root of the confidence which must exist for a contract of employment to be effective and in most cases the result will normally be summary dismissal without notice or payment in lieu of notice. Examples of such offences are:

- *Specified conduct which is incompatible with the ethos and the precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment, etc.*
- *Fraudulent acts or theft of property belonging to the Authority, the school, fellow members of staff or pupils.*
- *Deliberate and serious damage to property belonging to the Authority, the school, fellow members of staff or pupils.*
- *Physical, sexual or emotional abuse of pupils or colleagues in or outside work*
- *Gross or Serious negligence causing, damage or injury.*
- *Serious insubordination or refusal to carry out a reasonable instruction*
- *Deliberately accessing offensive or obscene material via internet sites, social networking sites or by messaging.*
- *Inappropriate texting.*
- *Theft or fraud in and out of the workplace.*
- *Dishonesty (e.g. tampering with examination papers, revealing examination papers prior to examinations or altering examination results).*
- *Serious violation/breach of the Authority's or school's health and safety rules and standards.*
- *Criminal misconduct inside or outside the workplace which reflects adversely upon the school or member of staff's suitability to continue to be employed at the school.*
- *Knowingly providing false information on any matter relating to the member of staff's employment.*
- *Disclosure of confidential personal information.*
- *Abuse of sick pay scheme*
- *Falsification of time/bonus sheets, expenses claims, car allowance claims, or other documents in order to defraud the School*
- *Violent behaviour, including physical assault;*
- *Failure in the duty to declare Criminal or any other serious misconduct outside the workplace which reflects adversely upon the Authority and/or on the employee's suitability for the post;*
- *Serious discrimination on the grounds of gender, race, religion, disability, age, sexual orientation etc;*
- *Serious harassment or abuse of fellow employees or any other person in, or outside of work. Including parents/pupils*
- *Serious incapacity through alcohol or being under the influence of illegal drugs;*
- *Serious unauthorised use of computer hardware/software and/or data including inappropriate use of the Internet and electronic mail;*
- *Failure of an employee to report actual or suspected physical or sexual abuse of a child or vulnerable adult by another employee or person;*
- *Professional Malpractice; - could be professional malpractice*

- *Any action or behaviour, which could damage the school's reputation, including rudeness to members of the public or clients, and inappropriate use of social networking sites;*
- *Serious breach of the Council's Policies and Procedures;*
- *Endangering the safety of the individual, or others;*
- *Breach of authority with child protection issues*

### **Disciplinary hearing – appeal**

**80.** An employee is entitled to appeal against a decision of the staff disciplinary and dismissal committee (or against a formal warning issued by the headteacher/Chair of Governors – see paragraph 42 above). The notice of the intention to appeal needs to be lodged with the clerk to the staff disciplinary and dismissal appeals committee within the specified time limit set out in this procedure. The appeal notice will need to include the grounds for the appeal.

**81.** The appeal will be heard by the disciplinary and dismissal appeals committee within a specified time set out in this procedure. Appeal hearings will focus on the issues set out in the appeal notification, therefore the appeal process may not always take the form of a complete hearing. However, under certain circumstances, e.g. where new evidence comes to light or the first hearing process was flawed or biased, it may be appropriate to rehear part, if not all, of the case. The employee will be given notice of the date and time of the appeal hearing. Agreeable times and dates will be arranged for all parties concerned where possible.

**82.** The staff disciplinary and dismissal appeals committee may, after considering all the facts presented to it, including any new evidence, come to one of three conclusions:

- uphold the decision of the staff disciplinary and dismissal committee
- impose a lesser penalty
- conclude that no disciplinary action should be taken against the employee.

**83.** The staff disciplinary and dismissal appeals committee cannot impose a more severe penalty than that imposed by the headteacher or chair of governors in respect of the headteacher (in lesser misconduct cases) or the employees disciplinary and dismissal committee (in gross misconduct cases).

**84.** The decision of the staff disciplinary and dismissal appeals committee will be final and the employee will be informed in writing.

**85.** The employee will be given a copy of the minutes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions.

- 86.** If, as the result of an appeal, disciplinary action is withdrawn, all details thereof will be expunged from the employee's personal file and they will be informed accordingly. The employee will be given a copy of the minutes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions.

## **Suspension**

**87.** Suspension pending disciplinary proceedings will normally only be considered where allegations relate to gross misconduct behaviour and where:

- it appears to be necessary to exclude the employee from the school, for the protection of pupils, other employees or property or the orderly conduct of the school
- the continued presence at work of the employee would be an obstacle to proper investigation of the allegations made against that employee.

**88.** Suspension is a serious step and will not be used in a punitive way. Suspension will be on full pay and without loss of emoluments. The suspension will be kept under regular review.

**89.** The decision to suspend can be taken by the headteacher or the chair of governors (or vice chair if the chair is not available) but only the governing body can end a suspension. However, it is recommended that the governing body can delegate this function to the chair of governors/the chair of the staff disciplinary and dismissal committee.

**90.** The Headteacher or chair of governors (or vice chair if the chair is not available) should consult with the relevant HR Officer of the maintaining LA and, where applicable, the diocesan authority, prior to implementing any suspension or alternative control measures such as undertaking work that does not involve contact with pupils. (The Director of Education, Leisure and Lifelong Learning and Head of HR should be informed by email of any suspension, and provided with the suspended employee's name, employee number, details of the allegation and a copy of the risk assessment).

**91.** If the employee is absent due to sickness, the staff disciplinary and dismissal committee will usually postpone the hearing. The school will only consider postponing a hearing on one occasion. If after one postponement, the employee fails to attend the rearranged hearing, then the case may be heard in the employee's absence. If a nominated representative is unavailable, the employee will be expected to contact the union for alternative representation.

**92.** Following suspension due to a safeguarding allegation/s, an additional risk assessment regarding risk to children must be carried out prior to a return to work of an employee to a job involving contact with pupils.

## Summary

**93.** In adopting this procedure the governing body has taken due regard of advice and guidance from the LA and the *Disciplinary and dismissal procedures for school staff* Welsh Government circular no: 002/2013 (2013). It has also consulted the local trade union representatives.

**94.** The governing body will also consult further before any amendments are made to this disciplinary procedure.

Further detailed guidance on the stages of this policy can be found in the revised *Disciplinary and dismissal procedures for school staff* Welsh Government circular no: 002/2013

Signed by chair of governors on behalf of the governing body:

.....

Date approved: .....

Date of review ..... **(by full governing body)**

Date sent to LA .....

*[There is no statutory requirement to do this, but it may be good practice.]*

<p><b>Disciplinary Hearing Procedure</b></p>
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**Attendance**

The following parties will normally be in attendance:

- (1) The Headteacher\*/Staffing Disciplinary and Dismissal Committee (SDDC) and advisers, as appropriate
- (2) The Employee, together with his/her Trade Union Representative or work colleague.
- (3) Headteacher/Management representative/s as appropriate
- (4) Clerk to take contemporaneous confidential notes.

\* or Chair of Governors for allegations of lesser misconduct against the Headteacher

**The Procedure**

- (1) The management and employees parties to the hearing shall be called in simultaneously.
- (2) The Headteacher/Chair of Staffing Disciplinary and Dismissal Committee (SDDC) will introduce those present and explain how the hearing will be conducted.
- (3) The Headteacher/Chair of SDDC will seek confirmation of any witnesses to be called by either side and also of any documentation which will be referred to during the hearing.
- (4) The Headteacher/Management representative/s will present details of the case.
- (5) The other two parties may ask questions in the following order:-
  - (a) The Employee (and/or representative)
  - (b) The Headteacher/SDDC and advisers.
- (6) The Management representative/Headteacher will then call and question any witnesses.
- (7) The other two parties may ask questions of the witnesses in the following order:-
  - (a). The Employee (and/or representative)

- (b). The Headteacher/SDDC and advisers.
- (8) Additional questions to witnesses, for clarification purposes only, may be asked by management and employee (or representative).
- (9) The Employee (and/or representative) shall respond to the management's case.
- (10) The other two parties may ask questions on the presentation in the following order:-  
    (a) The Management representative/Headteacher  
    (b) The Headteacher/SDDC and adviser/s
- (11) The Employee (or representative) will call and question any Witnesses.
- (12) The other two parties may ask questions of the Witnesses in the following order:-  
    (a) The management representative/Headteacher  
    (b) The Headteacher/SDDC and advisers
- (13) Additional questions to witnesses for clarification purposes only, may be asked by management and employee (or representative).
- (14) Both parties will then have the opportunity to sum up, the management representative speaking first. No new information may be introduced at this stage.
- (15) The management and employee parties will then withdraw.
- (16) The Headteacher/SDDC and adviser/s will then deliberate in private, recalling the management representative/s and the employee (and representative) only to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return.  
The adviser(s) should leave the meeting when the actual decision is being made.
- (17) Both parties will be recalled and informed of the Headteacher's/SDDC's decision. This decision will be confirmed in writing to the employee normally within 3 working days of the conclusion of the hearing.

<p><b>Disciplinary Appeals Procedure</b></p>
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**Attendance**

The following parties will normally be in attendance:

- (1) The Staff Disciplinary/Dismissal Appeal Committee and advisers, as appropriate
- (2) Headteacher/Management representatives.
- (3) The Employee, together with his/her trade union representative or work colleague.
- (4) Clerk to the Committee, to take contemporaneous confidential notes on behalf of the Committee.

**The Procedure**

- (1) The Headteacher/management and employee parties to the hearing shall be called in simultaneously.
- (2) The Chairperson will introduce those present and explain how the hearing will be conducted.
- (3) The Chairperson will seek confirmation of any witnesses to be called by either side and also of any documentation which will be referred to during the appeal.
- (4) The Headteacher/management representative will present details of the case.
- (5) The two other parties may ask questions in the following order:-
  - (a) The Employee (and/or representative)
  - (b) Committee Members and advisers
- (6) Additional questions to witnesses for clarification purposes only, may be asked by Headteacher/management and employee (or representative).
- (7) A Headteacher/management representative will then call and question any Witnesses

(8) The other two parties may ask questions of the Witnesses in the following order:-

- (a) The Employee (and/or representative)
- (b) Committee Members and Advisers

(9) The Employee (and/or representative) shall respond to the Headteacher/management's case, including the submission of any supporting documentation.

(10) The other parties may ask questions on the presentation in the following order:-

- (a) The Headteacher/Management representatives
- (b) Committee Members and Advisers

(11) The Employee (and/or representative) will call and question any Witnesses.

(12) The other parties may ask questions of the Witnesses in the following order:

- (a) The Headteacher/management representative
- (b) Committee Members and Advisers

(13) Additional questions to witnesses for clarification purposes only, may be asked by management and employee (or representative).

(14) Both parties will then have the opportunity to sum up, the Headteacher/management representative speaking first. No new information may be introduced at this stage.

(15) The Headteacher/management and employee parties will then withdraw.

(16) The Committee will then deliberate in private, recalling the other parties to clear points of uncertainty on evidence already given and/or to hear further representations in relation to the penalty. If recall is necessary, both parties are to return, even if only one is concerned with the point giving rise to doubt. Advisers should leave when the actual decision is being made.

(17) Both parties will be recalled and informed of the Committee's decision.

This decision will be confirmed in writing to the employee, normally within 3 working days of the conclusion of the hearing