



# Red Hall Primary School

## Disciplinary Policy and Procedure

<b>STATUS</b>	<b>DATE</b>
POLICY DATED:	December 2013
REVIEWED BY:	EPM September 2024
DESCRIPTION OF CHANGES	Annual review
REVIWED BY THE GOVERNING BODY:	21 <sup>st</sup> October, 2024
NEXT REVIEW DATE:	Autumn Term 2026

## THE DISCIPLINARY POLICY AND PROCEDURE

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## THE DISCIPLINARY POLICY STATEMENT

This policy applies to all school employees.

External bodies may need to be involved in cases to reflect the seniority of the employee concerned.

It should also be noted that day-to-day managerial supervision of and guidance to employees is outside the scope of this policy.

1. Good employment relations practices (including those relating to recruitment, induction, training, appraisal, communications and consultation) may prevent many discipline problems occurring by helping employees to understand what the School considers being acceptable standards of conduct at work.
2. However, where misconduct issues do arise, or where poor performance results from an employee being unwilling as opposed to unable to improve, the School will use the Disciplinary Policy to address such issues.
3. Disciplinary procedures should not be viewed solely as a means of imposing sanctions but initially as a corrective measure that contributes to the improvement of individual conduct or performance. The School will aim to address issues informally wherever possible and appropriate.
4. This policy aims to:
  - a) help and encourage all employees to achieve and maintain acceptable standards of conduct / behaviour and performance at work
  - b) promote fairness and transparency by providing written rules and procedures that are specific, clear and applied consistently
  - c) help the School to deal with disciplinary situations in the workplace as quickly and effectively as possible.
5. Good conduct and performance by employees are crucial parts of any employment relationship. The School aims to promote these areas through a number of proactive employment practices and initiatives.
6. Employees all have responsibilities and rights including being treated fairly. The School recognises the importance of dealing with disciplinary issues fairly. As such:-
  - a) where appropriate, informal action will be taken to resolve problems before moving to the formal procedure
  - b) if formal action is needed, the action that is reasonable or justified will depend on the circumstances of each case

- c) no disciplinary action will be taken against an employee until the case has been fully investigated to establish the facts and there is a reasonably held belief that the employee committed the misconduct in question
  - d) where formal action is necessary, the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case at a Disciplinary Hearing before any decision is made
  - e) employees will be provided with written copies of evidence and relevant witness statements as appropriate in advance of a Disciplinary Hearing
  - f) employees have the right to be accompanied at investigatory meetings and Disciplinary Hearings and Appeals by their trade union representative, workplace colleague or friend of their choice who does not have a conflict of interest. The School reserves the right to review representatives, please see **Representation** section.
  - g) no employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the sanction will be dismissal without notice or pay in lieu of notice
  - h) an employee will have the right to appeal against any formal disciplinary action
  - i) the Investigating Officer cannot sit as a member of the Disciplinary Hearing Committee or be a member of the Appeal Committee
  - j) the school will raise and deal with issues promptly and not unreasonably delay meetings, decisions or confirmation of those decisions
7. Unfortunately, there may be cases where employees do not meet the standards of behaviour or performance that the School expects at work. In such cases, the School will aim to address issues informally wherever possible and appropriate.
8. However, if the informal process has been tried unsuccessfully, or the circumstances of the case make the informal route inappropriate, the School will use a formal process.
9. The School may implement the Disciplinary Policy at any stage if it feels that the employee's alleged misconduct warrants this.

<b>DEFINITION</b>
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10. Disciplinary situations include misconduct and / or poor performance. Misconduct is any type of behaviour or conduct at work that falls below the standard required by the School or is in breach of a School policy or rule.
11. There may be exceptional circumstances where the grounds for dismissal do not solely relate to misconduct but may either be wholly due to or involve 'SOSR' (i.e. the breakdown of the working relationship). Further advice is available from School's HR provider.
12. Examples of matters that the School considers to be disciplinary offences include (but are not limited to):

- a) poor performance due to an employee's own carelessness, negligence or lack of effort (the School has a separate 'Capability Policy' to deal with poor performance that is not covered by this definition)
- b) persistent bad timekeeping
- c) unauthorised absence
- d) damage to or misuse of School property
- a) failure to follow the School's policies and procedures
- b) a serious breach of health and safety rules
- e) abusive behaviour
- f) refusal to follow a reasonable or lawful instruction issued by a supervisor or manager
- g) poor attendance (outside the areas covered in the School's 'Absence Management Policy') and
- h) smoking in excluded areas, as defined in the School's 'No Smoking at Work' Policy

### **GROSS MISCONDUCT**

- 13. Gross misconduct is generally seen as misconduct serious enough to overturn the contract of employment between the School and the employee, justifying summary dismissal.
- 14. Acts considered as gross misconduct are so serious in themselves or have such serious consequences that they may call for summary dismissal for a first offence. However, the School will always follow a fair disciplinary process before dismissing for gross misconduct.
- 15. Examples of acts that the School will normally regard as gross misconduct (although not exhaustive) are:
  - a) theft or fraud
  - b) falsification of a qualification that is a stated requirement of employment or results in financial gain to the employee
  - c) deliberate falsification of records, reports, accounts, expense claims or self-certification forms, whether or not for personal gain
  - d) physical violence or bullying
  - e) deliberate and serious damage to property
  - f) serious misuse of the School's property or name
  - g) deliberately accessing internet sites containing pornographic, offensive or obscene material
  - h) serious insubordination
  - i) unlawful discrimination or harassment
  - j) bringing the School into serious disrepute
  - k) serious incapability at work brought on by alcohol or illegal drugs

- l) possession, custody or control of illegal drugs on School premises
  - m) causing loss, damage or injury through serious negligence
  - n) a serious breach of health and safety rules
  - o) a serious breach of confidence
  - p) conviction of a criminal offence (or failure to declare a conviction) that is relevant to the employee's employment
  - q) failure to declare unsuitability to work with children / vulnerable adults that is relevant to the employee's work.
16. It is still important to follow a fair procedure, as for any other disciplinary offence. This will include:
- a) investigating the facts of the case before taking any action
  - b) holding a Disciplinary Hearing
  - c) allowing representation at the Hearing
  - d) allowing the right of appeal
17. Where allegations of gross misconduct have been made, it must be made clear to the employee that dismissal is a possibility. A short period of suspension with full pay may be issued to investigate the facts. Suspensions from duty can be authorised by the Head Teacher or Chair of Governors. Suspensions can only be lifted by the Chair of Governors or a committee of the Governing Body.

#### BURDEN OF PROOF / BALANCE OF PROBABILITY

18. A Disciplinary Hearing is not expected to establish whether the allegation of misconduct has been proven beyond all reasonable doubt. The Hearing should seek to establish whether there is sufficient reason to believe **on the balance of probability or more likely than not** that the misconduct has been committed and warrants disciplinary action, in terms of the allegations made and the facts established during the investigation.
19. Where there is an associated criminal charge, the School is not obliged to wait until the outcome of the criminal case is known before disciplinary action is taken against the employee. However, where there is a criminal investigation on going, advice should be sought from the Police and the LADO prior to proceeding with any further investigation so as to not compromise evidence.

#### RESPONSIBILITY

20. **Governing Body and the Head Teacher are** responsible for ensuring that this policy is implemented effectively in their School. They are also responsible for communicating the standard of behaviour required in their School and taking an overview on this. They should ensure that supervisors and managers with staff management responsibilities have had appropriate training on the application of the policy.

21. **Employees with staff management responsibilities** have primary responsibility for managing effective conduct and job performance in their teams. Proactive use of the appraisal process, supplemented by regular meetings to discuss day-to-day performance, should help to establish an on-going positive working relationship between supervisors / managers and their team members. Ideally, this should prevent disciplinary issues from occurring in the first instance.
22. **Employees** must acknowledge that good conduct and performance are crucial parts of any employment relationship and are accepted as the norm. They must also comply with this policy as appropriate.
23. **Human Resources (HR)** Relevant HR staff may accompany supervisors / managers at disciplinary investigatory meetings, Hearings and Appeal Hearings in an advisory capacity. **Please note that it is not the School's HR provider's responsibility to either take or write up notes.**

**AUTHORISED OFFICERS**

24. The relevant levels of authorisation for the formal procedures are summarised in the tables below:

<b>Investigation</b>	<p>Will usually be the manager of the employee against whom allegations have been made. However, where this is not appropriate due to the circumstances of the case, this may be another manager appointed by the Head Teacher or an appropriate external person.</p> <p>Where an allegation has been made against the Head Teacher the investigating officer will be a member of the Governing Body or an external independent officer appointed to undertake the investigation.</p>
<b>Hearing</b>	<p>The hearing panel (either Committee A of the Governing Body or The Head Teacher) is appointed to conduct a Disciplinary Hearing, decide whether disciplinary action is warranted and determine the appropriate level of sanction.</p> <p>When the possible sanction at a hearing is dismissal the Head Teacher can only hear the case when this responsibility has formally been delegated to them by the governing body.</p> <p>Where practicable different people should carry out the investigation and disciplinary hearing.</p>
<b>Appeal</b>	<p><b>The Appeal Hearing Panel (Committee B of the Governing Body)</b> is appointed to conduct a Disciplinary Appeal Hearing and review impartially the disciplinary sanction imposed and will not have any previous involvement in the case.</p>

<b>Level of Warning</b>	<b>Authorised Hearing Officer</b>	<b>Authorised Appeal Hearing Officer</b>
First written warning	Head Teacher and/or Governing Body Committee 'A'	Governing Body Committee 'B'
Final written warning	Head Teacher and/or Governing Body Committee 'A'	Governing Body Committee 'B'
Dismissal or action short of dismissal	Head Teacher and/or Governing Body Committee 'A'	Governing Body Committee 'B'

25. Officers authorised to deal with the various stages of the disciplinary procedures will need to reflect the seniority of the employee against whom allegations of misconduct have been made. As such, external bodies may need to be involved.

## EQUALITIES

26. In applying this policy, managers will take into consideration the School's Equality Scheme and will not unlawfully discriminate in respect of any of the protected characteristics as defined under the Equality Act 2010 and specified below:
- a) Age
  - b) Disability
  - c) Gender reassignment
  - d) Marriage and civil partnership
  - e) Pregnancy and Maternity
  - f) Race
  - g) Religion or Belief
  - h) Sex
  - i) Sexual Orientation
27. Disability under the act covers physical and mental impairments that have a substantial and long term adverse effect on an individual's ability to carry out normal day-to-day activities. If an employee is affected by a disability or any medical condition which affects their ability to undertake their work, they should discuss this with their line Manager. Further information in relation to disability is provided later in the policy.
28. The provisions of this policy may be dis-applied or varied where this is reasonable in order to comply with the act and/or to avoid discrimination in respect of any of the protected characteristics specified above.



## **DISTINCTION BETWEEN THE SCHOOL'S DISCIPLINARY AND CAPABILITY POLICIES**

29. Misconduct is any type of behaviour or conduct at work that falls below the standard required by the School or is in breach of any School policy or rule. It is the agreed standard, policy or rule that is relevant, rather than a manager's subjective opinion.
30. The School's Disciplinary Policy will apply if an employee fails to meet the required standard as a result of his or her own carelessness, negligence or lack of effort, this could be regarded as misconduct because such behaviour is within the employee's control.
31. The School's Capability Policy will apply where an employee is simply unable to perform the job to the standard required by the School; no matter how hard s/he tries (i.e. they are unable to improve despite their best efforts.)
32. It can sometimes be difficult to establish whether poor performance is due to lack of effort, laziness or negligence or to inherent incapability. In some cases, there may be an element of both. Managers / supervisors should generally give employees the benefit of the doubt initially and not automatically assume that anything that goes wrong is as a result of employee misconduct.

## **CHILD PROTECTION / VULNERABLE ADULT MATTER**

33. Where a potential disciplinary issue arises that involves a possible child protection / vulnerable adult matter due to the nature of the employee's role, this will need to be investigated first under Child Protection / Safeguarding Adults procedures.
34. These override all other procedures and will be led by the People Services Group in child protection cases and vulnerable adult cases. Relevant cases will also be referred to the Local Authority Designated Officer (LADO), Disclosure Barring Service (DBS) and / or relevant professional bodies.

## **MEETINGS**

35. Meetings will generally take place on School premises.

### **Notes of Meetings**

36. Another employee may attend the meeting to take notes and write these up afterwards to provide a written record. The Investigating Officer must not change anything that was actually said during the meeting.
37. If the individual feels that the notes are accurate, they should sign and date both copies and return one copy to the Investigating Officer by a specified date. The second copy is for the individual's retention.

38. If the individual is unwilling to sign the form, the Investigating Officer should not insist – but simply note this fact at the bottom of the notes. They must then ask the note taker to sign and date the form and confirm that the notes are a fair record of what was said at the meeting.
39. The individual may be invited to make a note against and initial any parts of the notes with which they disagree.

#### **EMPLOYEE MONITORING AND SURVEILLANCE**

40. In certain cases it may be necessary for the School to carry out monitoring and surveillance as part of an investigation.

#### **RECORDS AND CONFIDENTIALITY**

41. Managers/supervisors must treat personal Information relating to an employee as sensitive personal information in accordance with the General Data Protection Regulations 2018 and other legislative provisions.
42. Information held on the personal file will be held in accordance with retention policies and will include;
  - a) the case against the employee
  - b) the employee's defence
  - c) findings made and actions taken
  - d) the reason for the actions taken
  - e) whether an appeal was lodged
  - f) the outcome of any appeal
  - g) any grievances raised during the disciplinary process
  - h) subsequent developments
  - i) notes of any formal meetings
  - j) copies of any letters issued
43. Copies of meeting records will be given to the employee, including copies of any formal minutes that may have been taken. In certain circumstances, the School may withhold some information (i.e. to protect a witness).

#### **REFERENCES**

44. The School will disclose information regarding current sanctions when requested to do so for the purpose of employment references (including information on expired sanctions and allegations in cases relating to suitability to work with children / vulnerable adults.
45. Allegations that are proven to be unsubstantiated or deliberately and knowingly false which are deemed to be malicious should not be referred to in any reference.

## **ADVICE**

46. For further advice on this policy, or if managers have any concerns about practical implementation, please contact School's HR provider.
47. Managers may also access the Managers Toolkit to be used in conjunction with this policy. The Toolkit consists of a number of draft letters. These draft letters are stencils only and state what should be included; they should be tailored by the manager to meet individual circumstances in consultation with the School's HR provider.

**Sections covering Representation, Witnesses, Mediation and Reasonable Adjustments can be found as Appendices to this policy**

## The Disciplinary Procedure

**This section of the Guidance provides employees and managers with a clear understanding of the process that will be followed when a disciplinary issue is raised.**

### PROACTIVE MANAGEMENT

48. The School's Appraisal/Performance Development Review (PDR) process already provides a proactive forum for discussing and recording work performance and development needs with employees.
49. It is good practice for managers / supervisors to supplement the Appraisal/PDR process with more regular documented discussions with employees on a monthly or 6-weekly basis to talk about and record how work is going generally; discuss tasks that need to be done and any related training; what is going well and any areas of immediate concern. Action can then be followed up at the next meeting to check progress.
50. In this way, managers / supervisors can address issues as they arise so that they do not escalate to a situation where action is required under the Disciplinary Policy.

### INFORMAL ACTION

51. Outside the Appraisal/PDR process, cases of minor misconduct are usually best dealt with informally. A quiet word is often all that is required to improve an employee's conduct. In some cases, additional training, coaching or advice may be what is needed. However, managers / supervisors should seek advice from the School's HR provider before instigating the informal process.
52. The employee does not have a legal right to representation at this stage of the process, however, both this and HR involvement may be agreed.

#### **Discuss the Problem as Soon as Possible**

53. Managers / supervisors should talk to the employee in private. This should be a two-way conversation, aimed at discussing possible shortcomings in conduct and encouraging improvement. Criticism should be constructive, with the emphasis being on finding ways for the employee to improve and how the improvement can be sustained.
54. It is important to listen to whatever the employee has to say about the issue. It may become evident that there is no problem – in which case the manager / supervisor should make this clear to the employee.

## **Record and Review Required Action**

55. Where improvement is required, it is important that the manager / supervisor makes sure that the employee understands what needs to be done, how their conduct will be reviewed, over what period and that this is confirmed in writing to the employee. This may be conducted as part of an Appraisal, PDR, one to one meeting or a separate meeting depending upon circumstances. It is also important to consider whether the use of an independent mediator may be helpful at this stage (please see **Mediation** section).

## **Do not drift into Formal Procedures**

56. Managers / supervisors must be careful that any informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee certain rights, such as the right to be accompanied.
57. However, if the informal process has been tried unsuccessfully, or if, during discussion, it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter will be continued under the formal disciplinary procedure.

## **FORMAL ACTION**

58. If informal action does not bring about an improvement, or the misconduct is considered too serious to be classed as minor, the School will take formal action.

### **The Investigating Officer**

59. The Head Teacher is responsible for appointing an officer to investigate alleged cases of misconduct or the Head Teacher may carry out the investigation. In the case where the allegation is against the Head Teacher the Investigating Officer should be appointed from the Governing Body or an independent external advisor should be appointed to undertake the investigation. The relevant authorisation is detailed above in the **Authorisation Section**.
60. All employees with line management responsibility should ensure that they receive appropriate training or briefing on how to conduct an investigation should the need arise.
61. In appointing an Investigating Officer, it should be noted that a detailed investigation can generate a significant workload. This may require time being freed up from other tasks wherever possible so that the investigation can be completed quickly.

### **The Investigation**

62. This will usually involve an investigation into the alleged misconduct by an appropriate officer to establish the facts of the case. The investigation will take place without unreasonable delay. The Investigating Officer will keep the employee informed of progress.

63. When investigating a disciplinary matter, it is important to deal with the employee in a fair and reasonable manner.
64. It is good practice to plan an investigation at the outset, so that the Investigating Officer can arrange any interviews necessary and establish timescales for the investigation.

### **Timescales**

65. Investigating Officers should aim to complete the investigation as soon as practically possible.
66. The Investigating Officer should keep the employee informed and give an indication of the likely length of the investigation.

### **Investigatory Meetings**

67. Interviews should be conducted / statements taken as soon as possible after the event to ensure accurate recollections and minimise recollections becoming biased.
68. Interviews should take place in a private office with the Investigating Officer and the employee present. The School's policy allows employees to be accompanied at such meetings, although there is no statutory obligation to do so.
69. Another employee may attend to take notes of the meeting (please see **Notes of Meetings** section).

### ***With the Employee Alleged of Misconduct***

70. The Investigating Officer should interview all appropriate people.
71. The School needs to give the employee advance warning of this and time to prepare.
72. Any investigatory meeting should be confined to establishing the facts of the case. The Investigating Officer must not cross examine but ask for the employee's recollection of the facts. Clarification on certain points may be sought by using open questions.
73. It is important that disciplinary action is not considered at an investigatory meeting. If it becomes apparent that formal disciplinary action may be needed, then this should be dealt with at a formal Disciplinary Hearing.

### ***With Witnesses***

74. The Investigating Officer may wish to interview other employees to ensure a balanced investigation. However, it is important that the Investigating Officer does not pressurise any witness into being interviewed / making a statement if they do not wish to do so (please refer to **Witness** section).

75. The School will allow witnesses to be accompanied at the meeting, although there is again no statutory obligation to do so.

### **MANAGEMENT STATEMENT OF CASE**

76. At the end of the investigation, the Investigating Officer must write up his/her investigation.
77. The Investigating Officer must liaise with the School's HR provider on the Management Statement of Case to ensure that it covers all relevant information and meets school procedures and discuss whether there are sufficient grounds for holding a Disciplinary Hearing at which disciplinary action will be considered.

#### **No Further Disciplinary Action**

78. If no disciplinary action is appropriate, the Investigating Officer must advise the employee of this in writing within 5 working days of completing the investigation, in conjunction with the School's HR provider.

#### **Management Actions**

79. In some cases where the Investigating Officer feels that disciplinary action is not justified, s/he may require some improvement to be made as Management Action. As in the **Informal Action** section above, it is important that the employee understands what needs to be done, how their conduct will be reviewed, over what period and that this is confirmed in writing to the employee. This may be conducted as part of an appraisal/PDR, one to one meeting or a separate meeting depending upon circumstances.
80. Examples of Management Action are:
- a) Moving to capability action via the Capability Policy
  - b) Improvements required

#### **Further Action Required**

81. The School will inform the employee asking him / her to attend a Disciplinary Hearing, giving at least 5 working days' prior notice.
82. It is the responsibility of the School to compile and circulate copies of relevant paperwork, including the Management Statement of case. The Investigating Officer should retain the original for his/her presentation at the Hearing and this version can also be retained on the employee's personal file afterwards.
83. The Investigating Officer should consider how s/he will present the School's case at the Hearing. As the employee and Hearing Officer will have a copy of the Management Statement in advance (including witness statements as relevant), the Investigating Officer should ideally give a summary of the main points of the case, focussing on the areas from the investigation which either substantiate or do not support the allegations. The Investigating Officer should also consider what explanations may be offered by the employee and check them out beforehand if possible.

## **Disciplinary Hearing**

84. If the Investigating Officer recommends that there is a disciplinary case to answer following investigation, a Disciplinary Hearing will be conducted by the Head Teacher, (where the responsibility has formally been delegated by the Governing Body) acting as the Hearing Officer or the Hearing Panel sitting as Committee A.

### ***Preparation***

85. The Hearing Officer/Committee A should:
- a) listen to both sides of the case; decide whether disciplinary action is warranted and if so, the level of sanction that is appropriate.
  - b) liaise with the School/Governor Support/School's HR provider on the following points
    - arrange a date and time for the Hearing (in consultation with the employee's representative where possible)
    - arrange a venue for the Hearing. This should be held as privately as possible, in a suitable room and where there will be no interruptions
    - arrange adequate separate waiting areas for the employee and his / her representative and the Investigating Officer (and the School's HR provider if necessary) during any adjournment
    - arrange for the Hearing to be recorded and transcribed afterwards or alternatively arrange a note taker (The notes should be typed up as soon as possible after the hearing)
    - allow the employee time to prepare for his / her case.
    - write to the employee giving at least 5 working days' prior notice of the Hearing (two copies of all correspondence should be sent to the employee, the second copy is for the employees representative)
    - inform the employee that s/he has the legal right to be accompanied (as detailed in the **Representation** section).
    - the letter should contain information about the alleged misconduct/ poor performance and any possible consequences so that the employee can prepare their case.
    - enclosing the Investigating Officer's Management Statement of case with witness statements as appropriate and advises the employee of the right to representation.
    - the letter must also allow the employee a reasonable opportunity to call witnesses or submit witness statements, providing they give advance notice of their intention to do so and the witnesses are appropriate to the case (please see **Witness** Section).
    - if the School intends to call relevant witnesses, they should give the employee advance notice of this



- consider the provision of an interpreter or facilitator if there are understanding or language difficulties (perhaps a friend of the employee, or a co-worker).
- make provision for any reasonable adjustments to accommodate the needs of a person with disabilities
- think about the structure of the Hearing and make a list of points to be covered

### ***Conducting a Disciplinary Hearing***

#### ***Attendees***

86. The Hearing will be conducted by the Hearing Officer/Committee A, accompanied by the nominated School's HR provider to the Hearing.
87. Notes will be taken at the Hearing by the note taker, please see **Notes of Meeting** section
88. The Investigating Officer will also attend to present his/ her investigation, as detailed in the Management Statement of Case and may be accompanied by the School's HR provider to the investigation.
89. The Investigating Officer may wish to invite witnesses to attend to support the School's case. If so, they must advise the employee of this in advance.
90. The employee will also usually attend, unless there are circumstances whereby the Hearing Officer/Committee A may choose to conduct the Hearing in the employee's absence.
91. The employee has the right to be represented by their trade union representative, workplace colleague or friend of their choice who does not have a conflict of interest. The School reserves the right to review representatives, please see **Representation** section.
92. The employee may also choose to invite witnesses to attend to support his/her case. However, this must have been agreed in advance (please see the **Witness Section**).

#### ***At the Hearing***

93. At the Hearing, the Investigating Officer will explain the complaint against the employee and go through the evidence that has been gathered, may call witnesses and ask questions of the employee and the employee's witnesses.
94. The Hearing Officer or the Chair of Committee A must set out the procedure at the start of the Hearing.
95. The employee may confer privately with their representative and vice versa at any time during the Hearing on request. However, the Hearing Officer /Committee A has the right to ask the employee personally to answer any questions put to them.

96. The employee will then be allowed to set out his / her case and answer the allegations made against them. The employee will also be able to ask the Investigating Officer questions, present his / her own evidence, call relevant witnesses and raise any points about information provided by any witnesses called by the School.
97. The representative will be allowed to address the Hearing to put forward and sum up the employee's case, respond on behalf of the employee to any views expressed at the Hearing and confer with the employee during the Hearing. However, the representative does not have the right to answer questions on the employee's behalf, address the Hearing if the employee does not wish it, or prevent the School from explaining the case against the employee.
98. If it is not practical for witnesses to attend, the Hearing Officer/Committee A should consider proceeding if it is clear that their verbal evidence will not affect the substance of the complaint. Alternatively, the Hearing Officer/Committee A could consider an adjournment to allow questions to be put to a witness who cannot attend in person but who has submitted a witness statement.
99. The Hearing Officer/Committee A may adjourn proceedings at the Hearing if it appears necessary or desirable to do so. If an adjournment is agreed, all parties must leave the room, excluding the Hearing Officer/Committee A and School's HR provider.
100. If new relevant facts emerge, it may be necessary to adjourn the Hearing to investigate them and reconvene the Hearing at a later date when this has been done.
101. The Hearing Officer/Committee A will inform the employee of the period of adjournment. If further information is gathered, the employee will be allowed a reasonable period of time with his/her representative, to consider the new information prior to reconvening the disciplinary proceedings.
102. As soon as possible after the conclusion of the disciplinary proceedings, the Hearing Officer/Committee A will convey his/her decision to the employee and inform the employee what disciplinary action, if any, is to be taken and of his/her right of appeal under the procedure.
103. The decision and details of the right of appeal must be confirmed in writing within 5 working days of the Hearing unless otherwise agreed.

### **Notes of the Hearing**

104. The notes should start with the date and time of the Hearing and the names and titles of those present. The notes are then kept on the disciplinary file for the currency of any sanction issued.

## **Time Limits for Warnings**

105. The start date for disciplinary sanctions is the date of the Disciplinary Hearing at which the sanction was given. The exception to this is Gross Misconduct where the employee was not present at the Hearing, and then the effective date will be the date that the letter is expected to be received by the employee.
106. As part of the School's fair approach to Disciplinary issues, the School's Disciplinary Policy enables employees to regain a clean record and the disciplinary sanction will normally be disregarded for disciplinary purposes once the currency of the sanction has expired, although a record will still be kept on the employee's personal file as they form a valid record of employment history.
107. However, there may be occasions where an employee's conduct is satisfactory throughout the period that the warning is in force, only to lapse very soon afterwards.
108. Where a pattern emerges and / or there is evidence of a breach of safeguarding practice, the employee's disciplinary record may be considered when deciding how long any warning should last.
109. A decision to dismiss should not be based on an expired warning but the fact that there is an expired warning may explain why the Hearing Officer/Committee A does not substitute a lesser sanction.

## **SUSPENSION**

110. With the exception of alleged or potential gross misconduct cases, suspensions will generally be considered as a last resort if temporary alternative work is not suitable / available. In some cases, it may be suitable to consider temporary action short of suspension, such as variation to duties, working arrangements or work location.
111. There may be instances where the employee alleged of misconduct needs to be suspended with pay whilst the investigation is carried out i.e.
  - a) where relationships have broken down
  - b) where there are risks to an employee's or the School's property, or responsibilities to other parties
  - c) where there are reasonable grounds for concern that evidence may or has been tampered with, destroyed or witnesses pressurised before investigatory meetings
112. Suspensions may be made prior to the start of the investigation, or later during the course of the investigation (if this becomes necessary).
113. During suspension, employees should remain available during their normal working hours. This suspension is in order to allow the School to conduct the investigation impartially and fairly.

114. Where a period of suspension with pay is considered necessary, this will be as brief as possible. Suspension is not an assumption of guilt and is not considered a disciplinary sanction (i.e. a suspension is made 'without prejudice'). The suspension should not normally last for longer than 28 calendar days. However, if it becomes necessary to extend the investigation beyond this, the employee must be informed of the reasons why and the period of the further extension.
115. The employee will be asked to hand in their School identity badge and any other School property as appropriate for the duration of the suspension. An employee who has been suspended must not attend their workplace or enter into their place of work, or discuss the issue with work colleagues, or any of the School's parents/carers (unless they have been given explicit permission to do so).
116. The employee should be given the name and telephone number of a contact person within the school who they can call upon during any period of suspension. Where it is considered that the Investigating Officer is not an appropriate contact person another appropriate person can be considered.
117. Support Staff: Annual leave continues to accrue during period of suspension. Employees may request and be authorised annual leave during period of suspension following the normal annual leave procedures. However, if an employee advises that they are not available to attend meetings as requested, then they must take annual leave.
118. The period of suspension will be kept under review and the Investigating Officer will write to the employee to explain the reason(s) for any delay(s).
119. Suspensions from duty can be authorised by the Head Teacher and/or Chair of the Governing Body or a Committee of the Governing Body.

### ***Suspension Meeting***

120. A meeting must be arranged with the employee to explain the reasons for the suspension, making clear that suspension is not an assumption of guilt and is not considered a disciplinary sanction.
121. Suspensions must be followed up in writing within five working days of the suspension meeting.

### ***Representation***

122. The School will normally allow the employee to bring a representative to the suspension meeting if the employee wishes to do so. However, as such meetings usually need to be organised fairly quickly, there may not always be time for the employee to arrange representation and there is no legal obligation for the School to allow an employee to be represented at a meeting where no disciplinary action is to be taken (please see **Representation** Section).

<b>DISCIPLINARY SANCTIONS</b>
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123. At the end of the Disciplinary Hearing, the Hearing Officer/Committee A will decide whether or not disciplinary or any other action is justified and informs the employee accordingly.

124. For Support Staff: In line with National Joint Council guidance, where incremental progression applies, it may be withheld for the duration of any sanction given and the employee will be advised of this in writing. This will be paid subsequently once the sanction expires. Any pay awards given nationally, however, will continue.
125. For teaching Staff: In line with the School Teachers Pay and Conditions Document, where incremental progression applies, a decision may be made not to award progression whether or not the teacher is subject to capability proceedings. A decision not to award pay progression must be related to the teacher's performance, as assessed through the school appraisal policy.
126. When deciding whether a disciplinary sanction is appropriate and what form it should take, the Hearing Officer/Committee A should consider:-
- a) what the Disciplinary Policy indicates in terms of the likely sanction for a particular misconduct
  - b) the sanction imposed in similar cases in the past (the School's HR provider should be able to offer moderation advice)
  - c) whether other employees' standards are acceptable and the employee is not being singled out unfairly
  - d) the employee's disciplinary record (include current warnings), general work record, work experience and length of service
  - e) whether the proposed sanction is reasonable in view of the circumstances and any mitigating circumstances
  - f) whether any training, additional support or adjustments to the work are necessary
127. If an employee's misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning, or even dismissal in cases of gross misconduct.
128. The Hearing Officer/Committee A may also issue separate warnings for unrelated breaches of discipline on separate occasions - i.e. a first written warning for one breach and another first written warning or a final written warning for a different breach.

### **No Further Disciplinary Action**

129. In some cases where the Hearing Officer/Committee A feels that disciplinary action is not justified, they may require some improvement to be made as Management Action. It is important that the employee understands what needs to be done, how their conduct will be reviewed, over what period and that this is confirmed in writing to the employee. This may be conducted as part of a PDR/ appraisal, one to one meeting or a separate meeting depending upon circumstances.

130. Examples of Management Action are:

- a) Moving to capability action via the Capability Policy
- b) Improvements required

#### **First Written Warning**

131. Where misconduct is confirmed (i.e. the employee's conduct does not meet acceptable standards), it is usual to give the employee a first written warning. The warning will remain current for 12 months from the date of the Hearing.

#### **Final Written Warning**

132. If an employee's misconduct is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the School. A final written warning may also be given if there is further misconduct during the currency of a first written warning. The warning will remain current for 24 months from the date of the Hearing

#### **Sanction Short of Dismissal / Dismissal**

133. If the outcome of the Hearing is that there has been an act of gross misconduct or if there is further misconduct during the currency of a written or final written warning, the sanction may be dismissal, or some other action short of dismissal.

134. Recommendations to dismiss or take action short of dismissal can only be made at Head Teacher/Committee A level (please see **Authorisation** Section.)

#### ***Sanction Short of Dismissal***

135. In cases short of dismissal where other disciplinary sanctions are deemed appropriate, it is important that the Hearing Officer/Committee A only issues a sanction covered in the contract i.e. demotion, loss of seniority, loss of increment (all without salary protection) disciplinary suspension without pay or transfer.

136. If some sanction short of dismissal is imposed, the employee must receive the details in writing.

137. Special consideration should be given before imposing disciplinary suspension without pay. No suspension should exceed the maximum period set out in the contract and it must not be unreasonably prolonged (to avoid breach of contract action or constructive dismissal claims).

#### ***Dismissal***

138. Employees should only be dismissed if, despite warnings, their conduct does not improve to the required level within the specified time period, or the Hearing Officer/Hearing Committee considers at the Hearing that an act of gross misconduct has occurred. Dismissal must be reasonable in all the circumstances of the case.

139. Unless the employee is being dismissed for reasons of gross misconduct, s/he should receive the appropriate notice in accordance with their contract of employment. Employees with one year's service or more have the right to request a written statement of reasons for dismissal. Employers are required by law to provide this within 14 days of the request being made, unless it is not reasonably practicable. The written statement can be used in evidence in any subsequent proceedings, for example, in relation to a complaint of unfair dismissal.

140. **Maintained Schools** – Where the Hearing Officer/Committee A feel that the appropriate sanction is dismissal they will make a recommendation of such to the Director of Children and Adult Services and confirm this recommendation to the employee

The Director of Children and Adult Services will then consider the recommendation and, if he accepts the recommendation, notify the employee of his decision, confirming in writing:

- the reason for dismissal
- date on which the employment will terminate
- the situation regarding notice
- right of appeal, including timescales and how an appeal should be made
- details of any proposed referral to an appropriate body, if applicable.

141. It should be noted that a woman who is dismissed during pregnancy or maternity or adoption leave is automatically entitled to the written statement without having to request it and irrespective of length of service.

## APPEALS

142. If an employee feels that disciplinary action taken against them is inappropriate, they may appeal against the decision. The Appeal Hearing Committee B will review impartially the disciplinary sanction imposed.

143. **Community Schools** – In cases of an appeal against dismissal the Appeal Committee B will make a recommendation to the Director of Children and Adult Services. The decision of the Director is final.

144. In cases where the appeal is against a sanction other than dismissal the decision of the Appeal Committee B is final.

145. The opportunity to appeal against a disciplinary decision is essential to natural justice.

146. Employees must advise that they wish to appeal in writing, clearly stating the grounds for their appeal, within 5 working days of receipt of the letter giving the decision on the disciplinary sanction. The appeal may either be a review of the disciplinary sanction or a re-hearing, depending on the grounds of the appeal. An appeal should not result in any increase in sanction, as this may deter individuals from making an appeal.

147. Disciplinary Appeals will be heard by Appeal Panel Committee B.
148. Disciplinary Appeals will be heard without unreasonable delay and ideally at an agreed time and place. The employee will be given preferably at least 5 working days' notice of the date of the Appeal Hearing in writing. They have the right to be represented (as detailed in the **Representation** section).
149. The same basic principles in terms of the arrangements for and during the Appeal Hearing remain as for the Disciplinary Hearing.
150. The employee (or their representative if the employee so wishes) will have the opportunity to comment on any new relevant evidence arising during the appeal before any decision is taken.
151. The employee will normally be informed in writing of the results of the Appeal Hearing within 5 working days of the meeting.

### **Preparation**

152. Before the Appeal Hearing, the School must prepare using the same basic steps as for a Disciplinary Hearing (as detailed in **Disciplinary Hearing** Section)
153. The School will write to the employee with copies to the Appeal Hearing Committee B, and the School's HR provider to the Hearing Committee B. Details for the letter can be found in the Toolkit accompanying this policy.
154. The School must then ensure that the following people have copies of any further written information submitted by the employee or School at least two working days before the Appeal Hearing.
  - a) the employee with a copy for the employee's representative
  - b) the Hearing Officer (Chair of Committee A/Head Teacher)
  - c) School's HR provider to the Hearing Officer
  - d) members of the Appeal Panel Committee B
  - e) School's HR provider to the Appeal Hearing Panel Committee B

### **Conducting an Appeal Hearing**

#### ***Attendees***

155. The Appeal will be conducted by a panel sitting as the Appeal Hearing Committee B, accompanied by the nominated School's HR provider to the Appeal
156. Notes will be taken at the hearing or alternatively the hearing will be recorded and transcribed afterwards, please see Notes of Meeting section
157. The Hearing Committee Chair/Head Teacher who made the decision against which the employee is appealing may also attend to present the reason(s) for his / her decision and may be accompanied by the School's HR provider to the Hearing.



158. The School may also wish to invite witnesses to attend to support the School's case. However, if this is the case, the School must advise the employee of this in advance.
159. The Employee will also usually attend, unless there is circumstances whereby the Appeal Hearing Committee may choose to conduct the Appeal Hearing in the employee's absence.
160. The employee has the right to be represented by their trade union representative, workplace colleague or friend of their choice who does not have a conflict of interest. The School reserves the right to review representatives, please see **Representation** section
161. The employee may also choose to invite witnesses to attend to support his/her case. However, this must have been agreed in advance (please see the **Witness Section**).

### ***At the Appeal Hearing***

162. The Appeal Hearing Committee must follow the same principles as when conducting a Disciplinary Hearing (section on **Disciplinary Hearings**).
163. The purpose of the Appeal will be slightly different to the Disciplinary Hearing and will depend upon the grounds of the Appeal i.e. whether the employee is appealing against the finding that s/he has committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.
164. The Appeal Hearing Committee has the power to change a previous decision if it becomes apparent that it was not soundly based. Such action does not undermine authority but rather makes clear the independent nature of the appeal.
165. The Appeal Hearing Committee must pay particular attention to any new relevant evidence that has been introduced and ensure that both parties have the opportunity to comment on it.
166. Once the relevant issues have been thoroughly explored, the parties may each summarise the facts and the chair will call an adjournment to consider the decision. All parties must leave the room during any period of adjournment, excluding the Hearing Committee and the School's HR provider. If either party is called back to the room to check facts, then both sides must return.
167. They must then inform the employee of the results of the Appeal and the reasons for the decision and confirm it in writing within five working days making clear that this decision is final.
168. If a disciplinary sanction is withdrawn at Appeal, any written reference of the disciplinary sanction must be removed from the employee's personal file and the employee must be notified of this in writing. However, where relevant, if any safeguarding / protection issues are included, this will remain held on file.

### ***Appeals against Dismissal***

169. Where an appeal is against dismissal, the decision to dismiss will have had immediate effect. If the dismissal was with notice, the period of notice will already have started on the date that the Head Teacher/Hearing Committee gave the original decision.
170. If the Head Teacher/ Hearing Committee decision was to dismiss the employee summarily without notice and the Appeal Hearing Committee decides that the decision should stand, the School is under no obligation to reinstate or pay the employee for any period between the date of the original dismissal and the appeal decision and the original date of termination will stand.
171. If the Appeal Panel overturns the original decision to dismiss, the employee will be reinstated with immediate effect and s/he will be paid for any period between the date of the original dismissal and the successful appeal decision. The employee's continuous service will not be affected.

### ***Further Right of Appeal***

172. The outcome of an Appeal Hearing is final and there is no further right of appeal.

## **GRIEVANCES DURING THE DISCIPLINARY PROCESS**

173. In managing disciplinary issues, the School should not allow grievances put forward by the employee concerned to delay the process unnecessarily. The legislation is flexible enough to allow the School to deal with such issues in an appropriate order and in good time.

### **Postponing the Disciplinary Procedure**

174. There is no legal requirement for the School to postpone the disciplinary process to deal with a grievance raised by the employee.
175. The ACAS Code suggests that the disciplinary procedure 'may' be suspended whilst the employer deals with the grievance and that, where the grievance and the disciplinary processes are related, it may be appropriate to deal with them concurrently.
176. If the two issues are unrelated, there would be no benefit in postponing a Disciplinary Hearing until the grievance has been dealt with and the fairness of a disciplinary process could not be affected by a failure to deal with a wholly unrelated grievance.

### **Grievances about the Disciplinary Process**

177. In the vast majority of cases, a complaint about the disciplinary process will be best dealt with in the course of the disciplinary procedure - i.e. by the employee raising the matter either in the Disciplinary Hearing or Appeal Hearing.

178. If, in unusual circumstances, the employee does not make their argument in the course of the disciplinary process, it may be appropriate for the School to deal with the matter under the grievance procedure. However, this will only be appropriate where the disciplinary process has been completed. In such cases, the School is entitled to ensure that the employee is not using the grievance process to get a 'second chance' once the disciplinary process has taken its course.
179. Where the employee is merely repeating an allegation that has been made, considered and rejected in the course of the disciplinary process, the School is entitled to refuse to discuss the matter further under the formal grievance procedure.

### **Grievances about the lead-up to the Disciplinary Process**

180. An employee may make allegations about the circumstances that led to the disciplinary process being initiated, rather than raise a grievance about the disciplinary process itself. For example, the employee may allege that s/he was bullied or harassed by the manager who initiated the process.
181. There may be cases where the allegations made by the employee are so serious and credible that it would be unreasonable to proceed with the disciplinary issue.
182. However, in most cases it is likely that the best format for considering the allegations will be the disciplinary process, especially where the allegations amount either to a defence to the accusation of misconduct or to mitigating factors that the School should take into account when considering what action to take.
183. Postponing the disciplinary process to consider such a grievance will only be the best course of action in a minority of cases.

### **Grievances Unrelated to the Disciplinary Process**

184. In many cases, an employee's response to being taken through the disciplinary process may be to raise a grievance - or a number of grievances - unrelated to the disciplinary process. Where this is the case, there is usually no need for the disciplinary process to be put on hold.
185. There may be circumstances in which the grievance raised is so serious that it overshadows the disciplinary process, in which case it may be sensible for the School to delay dealing with the disciplinary matter until the grievance has been addressed. However, such situations are likely to be rare.
186. In such cases, there will generally be nothing to be gained from deferring the grievance until after the disciplinary process has been completed. The grievance and disciplinary issues can simply be dealt with in parallel.

### **Grievances Raised during a Disciplinary Hearing**

187. In such cases, it may sometimes be appropriate to consider stopping the meeting and suspending the disciplinary procedure – i.e. when
- a) the grievance relates to a conflict of interest that the Head Teacher/Member of the Hearing Committee is alleged to have
  - b) bias is alleged in the conduct of the Hearing
  - c) it is alleged that managers have been selective in the evidence they have supplied to the Head teacher/Hearing Committee
  - d) there is possible discrimination
188. It is not appropriate to suspend the meeting where the employee makes an invalid point (i.e. if they mistakenly claim that they have the right to be legally represented or that the Policy does not apply to them because they are not a union member.)
189. It is possible that the Hearing may not run smoothly because people may be upset or angry. If the employee becomes upset or distressed, the Hearing Officer/Chair of the Hearing Committee should allow time for them to regain composure before continuing.
190. The Hearing Officer/Hearing Committee can adjourn and reconvene at a later date but the issues should not be avoided. Abusive language or conduct will not be tolerated.

### **Grievance Hearing after the Disciplinary Process**

191. If the School decides there is no reason to put the Disciplinary process on hold because a grievance has been raised, it is usually appropriate to consider the grievance after the disciplinary process has been completed. The advantages of this approach are that:
- a) the disciplinary hearing or appeal may take on board the employee's complaints and resolve the grievance, without the need to go through a subsequent formal grievance procedure
  - b) if the result of the disciplinary process is dismissal, the School will not be obliged to address the grievance

<b>EMPLOYMENT TERMINATED WHILST PROCESS ON-GOING</b>
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192. The School reserves the right to conclude the disciplinary process after the employment has terminated. In such cases, employees will be informed of the outcome of the process in writing and given copies of relevant paperwork.

## **ACTION AGAINST A TRADE UNION REPRESENTATIVE**

193. Although normal disciplinary standards apply to the conduct of trade union officials, disciplinary action against a trade union representative may be construed as an attack on the union if not handled carefully. As such, it is important to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

## **CRIMINAL ISSUES**

194. In cases where the alleged misconduct involves employees charged with or convicted of criminal offences, the Director of Children and Adult Services must be informed and Internal Audit may be involved in the investigation.
195. If an employee is charged with, or convicted of a criminal offence, this is not normally in itself reason for disciplinary action. However, the School will consider what affect the charge or conviction has on the employee's suitability to do the job and their relationship with the School, work colleagues and customers.
196. An employee should not be dismissed or otherwise disciplined solely because s/he has been charged with or convicted of a criminal offence. In such cases, the School will consider whether the employee's conduct or conviction merits action because of its employment implications.
197. Where the School considers that disciplinary action may be warranted – the following steps should be followed:
- a) the School will investigate the facts as far as possible, come to a view about them and consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure
  - b) where the conduct needs prompt attention, the School need not await the outcome of the prosecution before taking fair and reasonable action
  - c) where the police are called in, they should not be asked to conduct any investigation on behalf of the School, nor should they be present at any investigatory meeting, Disciplinary or Appeal Hearing
198. Where an employee who has been charged with or convicted of a criminal offence refuses or is unable to cooperate with the School's disciplinary proceedings, this will not prevent the School from taking action. The employee would be advised in writing that unless further information is provided, a disciplinary decision would be taken on the basis of information available and could result in dismissal.
199. Where a criminal conviction leads to the loss of a licence or professional membership so that continued employment in a particular job would be illegal, the School will consider whether alternative work is appropriate and available.

- 200. In some cases, the nature of the alleged offence may not justify disciplinary action – for example, off-duty conduct that has no bearing on employment – but the employee may not be available for work because s/he is in custody or on remand. In these cases, the School will decide whether, in light of the School's needs, the employee's job can be held open or not.
- 201. Where there is little likelihood of an employee returning to employment, it may be argued that the contract of employment has been terminated through 'frustration'. However, this can generally only be demonstrated where the 'frustrating' event makes all performance of the contract impossible. In such cases, the School will normally take disciplinary action.

<b>FAILURE TO ATTEND A HEARING / INVESTIGATION / APPEAL</b>
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- 202. There may be occasions when an employee is unable or unwilling to attend a Disciplinary Hearing (or Appeal Hearing). This could be for various reasons, from genuine illness to a reluctance to attend.
- 203. The Hearing Officer//Hearing Committee will need to consider all the facts and come to a reasonable decision on how to proceed, with advice from the School's HR provider. Considerations may include the seriousness of the disciplinary issue and medical opinion on whether the employee is fit to attend the meeting.
- 204. If the meeting has already been re-arranged and the employee fails to attend without good cause, the Hearing Officer/Hearing Committee will normally write to the employee offering a final date for the Hearing.
- 205. The letter will normally advise the employee that if s/he fails to attend without good cause, the Hearing will take place in the employee's absence and a decision made on the evidence available.
- 206. The employee's representative may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation. The employee will then be advised of the outcome in writing.

**Representative Unable to Attend**

- 207. These cases should be rare if the representative has been consulted on the date and time of the meeting.
- 208. However, where this has not been possible, or something urgent occurs that prevents the representative from being able to attend, the Hearing Officer/Hearing Committee may offer the employee a reasonable alternative time within 5 working days of the original date.

**School Needs to Re-Arrange**

- 209. There may also be occasions where the School needs to re-arrange the Hearing / Investigation / Appeal Date.

## **ILLNESS / ABSENCE DURING THE DISCIPLINARY PROCEDURE**

210. Where an employee is absent from work due to illness, the School will seek advice from the School's Occupational Health Service on the employee's ability to go through the process before progressing the case further.
211. If the employee's absence from work occurs during the course of the disciplinary procedure, the School will also seek advice from Occupational Health on the employee's fitness to attend meetings, Hearings, Appeals etc. The School will progress the case as far as possible but will not unreasonably delay it (i.e. interviewing witnesses and collecting relevant information.)
212. The School's Absence Management Policy and procedures will continue to be implemented as normal throughout any disciplinary process. The School will seek to keep the employee at work wherever possible through temporary redeployment etc.

**REPRESENTATION**

Employee's rights of representation;

<p>Informal discussions, Counselling sessions, Investigatory meetings or Suspension meetings</p>	<p>Employees do not have a statutory right to be accompanied.</p> <p>Accompaniment (and HR involvement) may, however, be agreed during the informal process.</p> <p>The School allows employees to be accompanied at investigatory meetings and at suspension meetings (where practicable) as good practice.</p>
<p>Disciplinary Hearings and Appeal Hearings</p>	<p>Employees do have a statutory right to be represented</p>

The right for employees to be represented at Disciplinary Hearings and Appeal Hearings is because such Hearings may result in:

- a) a formal warning being issued
- b) some other disciplinary action (i.e. suspension without pay, demotion or dismissal), or
- c) confirmation of a warning or some other disciplinary action

The employee may be accompanied by:

- a) a trade union representative
- b) an official employed by a trade union (regardless of whether the employee is a member of the union or the union is recognised by the School)
- c) a colleague or friend of their choice who does not have a conflict of interest in the case

A conflict of interest will include but may not be limited to:

- a) a representative who has a personal interest in the outcome.
- b) a representative who is the same person for more than one party to the case.

The School reserves the right to vet / refuse representatives where there is a potential conflict of interest / safeguarding / protection or access to sensitive client information issue. The School will consider a request for legal representation where professional registration may be at risk (in which case the School will also have access to legal representation)

Colleagues do not have to accept a request to accompany an employee and should not be pressurised to do so.



An employee who has agreed to accompany a colleague also employed by the School (whether this is a trade union official or colleague) is entitled to take a reasonable paid time off to fulfil that responsibility. It is also good practice to allow the colleague to familiarise themselves with the case and confer with the employee before and after disciplinary meetings.

To exercise the statutory right to be accompanied at a Hearing, employees must make a reasonable request (this does not have to be in writing). What is reasonable will depend on the circumstances of each individual case. The employee must advise the School whom they have chosen as a representative before a Disciplinary Hearing or Appeal Hearing takes place.

The School will allow a representative to have a say in the date and time of a Disciplinary Hearing / Appeal Hearing where possible. If the representative cannot attend on the proposed date, the employee can suggest an alternative time and date, as long as it is reasonable and it is not more than five working days after the original date.

The representative should be allowed to:

- a) address the Hearing to put and sum up the employee's case,
- b) respond to any views expressed at the meeting on behalf of the employee and
- c) confer with the employee during the Hearing.

The representative does not have the right to:

- a) answer questions on the employee's behalf,
- b) address the Hearing if the employee does not wish it, or
- c) prevent the parties from explaining their case.

## WITNESSES

The main issue in terms of calling witnesses to the Disciplinary Hearing is that the rules of natural justice are satisfied. These are that the employee understands the allegations made against them and has a reasonable opportunity to put his or her side of the case to the School and that the School gives the employee's arguments proper and open-minded consideration.

It is important to note that both the School and the employee will need to give advance notice if they intend to call witnesses.

Witnesses may wish for a representative to be present, however, it is a conflict of interest for more than one party to have the same representative (please see section on **Representation**).

### **School's Witnesses**

The School is not required to call witnesses to present the evidence against the employee and remains free to present its evidence in writing.

The employee is not entitled to insist on the School's witnesses being called in person so that the employee can cross-examine them. Rather, the employee should be given an opportunity 'to raise points about any information provided by witnesses'. This does not depend on the witness being present at the Hearing: it could refer to evidence given by the witness in writing to be considered at the Disciplinary Hearing.

### **Employee's Witnesses**

An employee can call witnesses however, there are clear limits on the employee's right to do this such as, their evidence is relevant to the case in question, the overall request is reasonable and the witness in question is willing to take part. Please note that the petitioning of Service Users is not acceptable and is in itself a disciplinary act.

An employee's right to call witnesses is not absolute. The Code only says that the employee should be given a 'reasonable opportunity' to do so. This clearly allows the School to refuse to hear witnesses who do not have any relevant evidence to give, or who merely confirm what the School already accepts (i.e. an employee's previous good conduct.) Similarly, if the employee wishes to call a large number of witnesses making substantially the same point, the School can agree to only hearing a reasonable number of them.

Some of the factors that an Employment Tribunal might consider to determine whether a 'reasonable opportunity' has been given are:

- a) the importance and relevance of the proposed witness
- b) whether there would be any substantial delay if the proposed witness were to attend, and
- c) whether a hostile environment would result from the proposed witness attending

An employee does not have the power to summon witnesses. If the employee nominates someone but that person is unwilling to attend the Hearing, it is unreasonable to expect the School to force the individual to do so. His or her evidence should be taken into consideration as part of the overall investigation and the employee should have a chance to respond to it but a Disciplinary Hearing is not a court of law.

**REASONABLE ADJUSTMENTS**

The Equality Act 2010 require employers to make reasonable adjustments for disabled employees. This means, wherever possible, removing barriers, including physical features and working practices, that might get in the way of a disabled person doing his or her job effectively, or otherwise being placed at a substantial disadvantage.

It is important that supervisors / managers consider whether any misconduct may be disability-related before taking disciplinary action.

In terms of making reasonable adjustments when implementing disciplinary procedures, managers / supervisors should consider the following in relation to the employee concerned:-

- a) ensuring that all meetings / Hearings are held in accessible locations
- b) ensuring that the employee has adequate support at meetings etc.
- c) ensuring that information is in an accessible format (i.e. do not assume that the information can be provided in the same standard written format for all).
- d) accessing advice / clarification from HR / occupational health as appropriate.

## MEDIATION

An independent third party or mediator can sometimes help resolve disciplinary issues where working relationships become an issue. Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement.

An agreement comes from those in dispute, not from the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should do. The mediator is in charge of the process of seeking to resolve the problem – but not the outcome.

Mediators may be employees trained and accredited by an external mediation service who act as internal mediators in addition to their day jobs or they may be from an external mediation provider. They can work individually, or in pairs as co-mediators.

### Cases when Mediation may be Suitable

There are no hard and fast rules for when mediation is appropriate but it can be used:

- a) for conflict between a line manager / supervisor and their team members
- b) at any stage of the conflict, as long as any on-going formal procedures are put in abeyance, or where mediation is included as a stage in the procedure
- c) to rebuild relationships after a formal dispute has been resolved
- d) to address a range of issues, including relationship breakdown, personality clashes, communication problems and bullying and harassment

Disciplinary matters may not obviously lend themselves to the possibility of mediation. However, disciplinary, capability and grievance issues can become blurred and any underlying relationship issues may be able to be addressed through mediation.

### Cases when Mediation may be Unsuitable

Mediation may not be suitable if:

- a) used as a first resort – because the manager / supervisor and employee should be encouraged to speak to each other before they seek a resolution via mediation
- b) managers / supervisors use it to avoid their management responsibilities
- c) a decision about right or wrong is needed
- d) an employee bringing a discrimination or harassment case wants it investigated (the School's Anti-Harassment and Bullying Policy refers)
- e) the parties do not have the power to settle the issue
- f) one side is completely intransigent and using mediation will only raise unrealistic expectations of a positive outcome

An Employment Tribunal cannot increase or decrease any award if either the School or employee fails to agree to mediation.

For more information about mediation, please see the ACAS website at [www.acas.org.uk](http://www.acas.org.uk) and the ACAS/CIPD guide 'Mediation: An Employer's Guide' which can be downloaded from the website.