

YSGOL
BRYNTEG
SCHOOL



A fo ben bid bont

Disciplinary Policy and Procedure (Sep2013)

Date adopted: 17th November 2016

Headteacher Signature.

Chair of Governors Signature:

To be reviewed: in accordance with BCBC guidance

DISCIPLINARY POLICY AND PROCEDURE

SCOPE

This policy will apply to all staff employed by the school except those under probation.

SEPTEMBER 2013

Introduction

- 1.1 This model procedure presupposes that a delegation is in place allowing the head teacher to deal with accusations constituting lesser misconduct. Where this is not the case, suitable adjustments will need to be made. 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.
- 1.2 The governing body is responsible for the conduct and discipline of school staff and is required to have a procedure in place for dealing with staff disciplinary matters.
- 1.3 The School's policy on discipline is to maintain appropriate standards of conduct among staff, as identified in the School's Code of Conduct, and breaches of professional and occupational codes of practice, and to ensure that all members of staff are treated fairly and consistently in all disciplinary matters.
- 1.4 Clear disciplinary rules benefit both the school and its members of staff. They set standards of conduct and behaviour at work make clear to all members of staff what is expected of them and help promote effective and efficient service delivery across the school's activities.
- 1.5 It is important that all members of staff are aware of and understand this policy and know what is expected of them. It is equally important that members of staff understand what will happen if they do not comply with the rules of the School.
- 1.6 This procedure is a way of helping and encouraging improvement in members of staff whose conduct is unsatisfactory and is not to be viewed as simply a means of imposing sanctions or punishment.
- 1.7 All disciplinary proceedings and decisions will be confidential within the remit of Data Protection and Freedom of Information Acts.
- 1.8 No disciplinary action will be taken against a member of staff until the incident/case has been fully investigated.
- 1.9 Members of staff have a statutory right to be accompanied where they are required to attend a disciplinary hearing. The companion may be a fellow member of staff, or a trade union official. No external legal representation will be allowed. The member of staff will be advised of the right of accompaniment in advance of the hearing to make these arrangements.

- 1.10 When members of staff are choosing a companion they must bear in mind that it would not be reasonable to request being accompanied by a colleague whose presence would lead to a conflict of interest.
- 1.11 Where the subject of the disciplinary proceedings is a professional member of staff whose membership of a professional body is mandatory within that occupation and who's right to practise within that profession may be prejudiced by the disciplinary proceedings, the committee have the discretion to allow the employee to be accompanied at the Hearing by a Legal Representative. Any request by member of staff for Legal Representation will be considered on its merits.
- 1.12 No disciplinary action will be taken against a Trade Union official until the full-time official of the Trade Union has been informed.
- 1.13 In certain situations the breach in discipline may require the implementation of specific departmental procedures to deal with issues of a specific nature e.g. Child Protection.
- 1.14 Where a member of staff is charged with a criminal offence, the fact that the criminal offence has not yet been tried in the courts will not necessarily prevent disciplinary action being taken, arising from the same events.
- 1.15 Where there are reasonable grounds to suspect there has been misappropriation of School funds or other financial impropriety, the Section 151 Officer, must be informed. Under the Authority's Financial Procedure Rules, any matter that is considered to be evidence of a criminal act may be reported to the Police.
- 1.16 Where there are reasonable grounds to suspect there has been misappropriation of Council funds or Legal impropriety, the Monitoring Officer must be informed. Under the Authority's Procedure Rules, any matter that is considered to be evidence of a criminal act may be reported to the Police.
- 1.17 If a member of staff fails to attend an investigatory hearing, disciplinary hearing, or appeal hearing, a decision whether or not to postpone or adjourn the hearing, or to proceed with it in the employee's absence, will be taken by the committee conducting the hearing.
- 1.18 In the event of a hearing proceeding in the member of staff's absence, he/she will be given an opportunity to submit any written representations, witness statements and documentary evidence which he/she so wishes and these will be considered at the hearing. In addition, the employee will have the right to be represented at each stage of the disciplinary procedure and during the initial investigation, and have his/her case presented by such representative.
- 1.19 A member of staff may request an adjournment e.g. to allow time for the representative to prepare their case.

2. Principles

- 2.1 An investigator will be impartial, suitably qualified and experienced. 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.
- 2.2 Where it is decided to deal with a disciplinary matter through lesser misconduct procedures, the member of staff will be informed of the allegation against them and will be given the opportunity to defend the allegation at the disciplinary hearing before the head teacher, or the chair of governors for allegations against the head teacher.
- 2.3 A member of staff 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 member of staff being disciplined for gross misconduct as they are not moderating or amending their behaviour.
- 2.4 Where it is decided to proceed to the formal stage, i.e. the allegations amount to gross misconduct, the member of staff will be informed of the allegation, date, time and place of any hearing with the governing body staff disciplinary and dismissal committee (subject to mutual agreement), the purpose of the hearing and the stage reached in the disciplinary procedure.
- 2.5 The member of staff will be provided with the membership of the staff disciplinary and dismissal committee prior to a hearing and advised of their right of objection to any committee member on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case.
- 2.6 The member of staff 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.
- 2.7 The member of staff will have the right to be accompanied by a companion or a representative of their trade union during the investigation, the disciplinary hearing and the appeal hearing.
- 2.8 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 member of staff. Dismissal under these circumstances will be without notice or payment in lieu of notice.
- 2.9 A member of staff will have the right to appeal against any disciplinary sanction imposed by the head teacher or chair of governors (in respect of lesser misconduct matters), or the staff disciplinary and dismissal committee (in respect of gross misconduct matters).
- 2.10 The process will be supportive towards the needs of the member of staff.
- 2.11 Investigations and hearings will be conducted (all or part) in English or Welsh, or with access to interpretation, at the request of the member of staff.

3. Informal discussion with the head teacher – outside of disciplinary process

- 3.1 There will be occasions when it is appropriate for a member of staff's actions to be discussed with them as part of normal supervisory arrangements and without recourse to the formal procedures. In these circumstances the member of staff 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 head teacher however, this would be carried out by the chair of governors with advice and support from the Local Authority HR adviser.
- 3.2 The aim of this action is to ensure that problems are discussed so as to encourage and help the member of staff 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.
- 3.3 Where discussions and support structures which have been put in place to help the member of staff do not lead to the necessary improvement or the relevant changes in conduct, within the agreed timescale, the member of staff will normally be advised in writing of further action to be taken, which may be formal.

4. Formal procedure for lesser misconduct

- 4.1 Responsibility for disciplinary matters where the allegation could constitute lesser misconduct is usually delegated by the governing body to the head teacher.
- 4.2 If an allegation which could constitute lesser misconduct is made against the head teacher, the chair of governors will be responsible for disciplinary action.

5. The investigation

- 5.1 As soon as the alleged breach of discipline has been brought to the attention of the head teacher or the chair of governors (in the case of the head teacher) a full investigation must be carried out. Where possible the head teacher or chair of governors will arrange for any investigation to be carried out, e.g. by the LA, diocesan authority (where appropriate) or a person who is unbiased.
- 5.2 The member of staff 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.
- 5.3 The member of staff will be given the opportunity to respond to the allegation and will have the right to be accompanied by a companion or a representative of their trade union at an investigation interview meeting.

- 5.4 Once the investigation has been concluded, the investigating officer will present the findings to the head teacher or the chair of governors (in the case of a head teacher) 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.
- 5.5. The head teacher or chair of governors (in the case of a head teacher) may conclude that:
- no further action will be taken
 - matters can be dealt with by informal discussion (refer to paragraphs in point 3 of this procedure)
 - there appears to be sufficient evidence for a hearing before the head teacher or chair of governors (if the head teacher 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.
- 5.6 Where dismissal could result because a member of staff is currently on a final written warning, the case must be referred to the staff disciplinary and dismissal committee.

6. The hearing before the head teacher or chair of governors

- 6.1 Conduct that is considered to fall within the scope of lesser misconduct has been delegated to the head teacher to deal with. The chair of governors will deal with lesser misconduct allegations against the head teacher. A hearing will take place with the head teacher or the chair of governors (in respect of the head teacher) 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).
- 6.2 The member of staff will be sent a copy of these procedures 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 companion of their choice.
- 6.3 There are five possible outcomes following on from such a hearing:

- informal action
- first written warning
- second written warning
- final written warning
- referral to a disciplinary hearing before the governing body's staff disciplinary and dismissal committee.

6.4 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 a member of staff a written warning. The sanctions used will depend on the circumstances of the member of staff's behaviour.

6.5 Further advice on each of these sanctions is set out below. The sanctions a member of staff could receive will be in line with the nature and severity of the allegation. However, there may be occasions where a member of staff 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.

7. Informal action

7.1 As a result of the hearing, the head teacher or the chair of governors (in respect of the head teacher), with support from the LA HR adviser, 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 head teacher however this will be carried out by the chair of governors with advice and support from the LA HR adviser.

7.2 The aim of this action is to ensure that problems are discussed so as to encourage and help the member of staff to improve. The member of staff 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.

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

8. Warnings

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

8.2 Suitable periods would be:

- first written warning – three months
- second written warning – six months
- final written warning – twelve months.

8.3 In extreme circumstances it may be necessary to extend the period of the warning. The extension to any warning will not exceed 12 months more than the initial warning.

9. First and second written warning

9.1 A warning will be confirmed in writing with a copy to any person who accompanies the member of staff 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.

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

10. Final written warning

10.1 A final written warning may be issued where lesser misconduct recurs despite attempts by senior managers to support the member of staff 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.

10.2 Final warnings may be given following a hearing before the head teacher or the chair of governors (in respect of the head teacher) who will issue a final written warning to the member of staff in the presence of their trade union official or companion.

10.3 With the agreement of the member of staff a final warning will be copied to any person who accompanies the member of staff 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
- that the next stage will be dismissal
- the right to appeal, the time limit within which the appeal should be made, and how the appeal should be made.

10.4 The member of staff will be required to indicate receipt of the written confirmation of final warning. A record of the warning will be placed on the member of staff's

file. Where a member of staff's conduct is satisfactory for the specified period (usually 12 months) following a final warning, such warning shall be expunged from their record and therefore cannot be referred to again once spent. At the end of the period of the final written warning, if the member of staff's behaviour has not improved, the matter can be referred to the staff disciplinary and dismissal committee for a formal hearing which could result in dismissal. The member of staff must be informed of this at the time the final written warning is issued.

11. Appeals against formal warnings

- 11.1 There is a right of appeal against any disciplinary action (refer to paragraphs 24 of this procedure for information on appeals).

12. Referral for consideration under procedures for gross misconduct

- 12.1 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 head teacher (or chair of governors in respect of the head teacher) with support from the LA or diocesan officer or another agreed appropriate person, concludes that this is the case, a referral for formal disciplinary action for gross misconduct may be justified. In these circumstances the member of staff 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 a member of staff or head teacher and their respective trade union representatives to be informed of this decision will be through a meeting with the head teacher or chair of governors (in respect of the head teacher). As this is likely to be a rare occurrence this meeting does not form part of the lesser misconduct process.

13. Gross misconduct (where the allegation does not relate to child protection issues)

- 13.1 The term gross misconduct is used to mean an act, or omission, or a series of actions or omissions by a member of staff 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.
- 13.2 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.
- 13.3 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.

- 13.4 Gross misconduct allegations are usually sent to the head teacher or chair of governors (if the allegation is about the head teacher). On receipt of an allegation the head teacher 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 member of staff and their trade union representative will be informed of the allegation immediately and that the formal disciplinary process is being engaged.
- 13.5 The head teacher or chair of governors will arrange for the allegation to be thoroughly and fairly investigated. At this point the member of staff may be suspended by the head teacher or chair of governors, on full pay and in line with the governing body's agreed procedure (refer to paragraph 26).
- 13.6 Both the head teacher and chair of governors can suspend staff 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 to be minuted.
- 13.7 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 member of staff and the governing body.
- 13.8 However, if after making the initial assessment of the allegation the conclusion of the head teacher or chair of governors (in respect of an allegation against the head teacher) is that beyond any doubt it is impossible for the allegation to be true, the head teacher or chair of governors may take no further action. The member of staff and their union representative will be informed immediately of this decision.

14. The investigation

- 14.1 As a possible outcome for gross misconduct hearings is dismissal, it is important that investigations into gross misconduct allegations are unbiased and thorough. Consequently, and wherever possible, all investigations will be carried out by an appropriate person who has no connection or involvement with the case and has the relevant skills.
- 14.2 The governing body may engage, for example, LA or diocesan officers, ex-head teachers or ex-LA officers, who are impartial and have no connections with the case. Only in exceptional circumstances would the chair of governors, members of staff or governors be asked to investigate gross misconduct cases.
- 14.3 The chair of governors is responsible for controlling and managing all aspects of the disciplinary process including the engagement of an appropriate investigator.
- 14.4 The member of staff has the right to object to an investigator if they have reasonable doubts as to their ability to act impartially.
- 14.5 Prior to the investigation, the member of staff will be informed in writing of their rights under the school's disciplinary procedure, including the right to be accompanied by a companion or a representative of their trade union, at all meetings held in connection with the disciplinary matter.

14.6 Notes will be taken of the meeting and a copy given to the member of staff 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.

15. The investigation report

15.1 The report, once completed, will be given to the head teacher and the chair of governors (or chair of governors and another governor in respect of investigations into the conduct of the head teacher) that 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.

15.2. This discussion and decision will be minuted by the clerk. The member of staff 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.

15.3 A copy of the investigation report, including all interview notes, will automatically be provided to the member of staff against whom the allegation has been made, within seven days of the hearing, if the case is to proceed as outlined above.

15.4 The member of staff will be advised that, wherever possible, any documents they wish to refer to at the hearing should be provided no later than two working days before the hearing;

15.5 The disciplinary hearing will be advised by a Human Resources Adviser.

16. Allegations that involve issues of child protection – receipt of an allegation

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

16.2 The head teacher or chair of the governors (in respect of the head teacher) will make an initial assessment (but not investigate) to determine the nature and circumstances of the allegation, i.e. witnesses, when it occurred, etc.

16.3 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, head teacher and the lead child protection officer in the LA, to determine whether a referral to social services and/or the police is required.

16.4 If the allegation is about the head teacher the chair of governors will have the same discussion without the head teacher being present. If the conclusion of all parties is that it is impossible for the allegation to be true the head teacher or chair of governors may not take any further action against the member of staff and no referral to the statutory authorities is required.

16.5 If there is any doubt and agreement between these parties cannot be reached, the matter will be referred to the statutory authorities.

- 16.6 If however, the initial assessment by the head teacher or chair of governors (if the allegation is about the head teacher), 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.
- 16.7 The member of staff and their union representative will normally be informed of the decision and that an allegation has been made (but not the detail), as agreed by the statutory authorities, that a referral is being made. The head teacher/chair of governors will also consider with the LA lead child protection officer and human resources what safeguards may need to be put in place using the LA's guidance for schools on handling allegations.
- 16.8 However, there may be some circumstances where this will not be appropriate. At this point the head teacher or chair of governors (if the allegation is about the head teacher) may suspend the member of staff, on full pay, in line with the governing body's agreed procedures (refer to paragraph 25) 16.9 Both the head teacher and chair of governors can suspend a member of staff but only the governing body can end a suspension. If the governing body has delegated this function to the chair of governors/the chair of the staff disciplinary and dismissal committee, the decision has to be minuted.
- 16.10 Suspensions will be reviewed at intervals set out in the disciplinary policy and the outcome reported to the member of staff and the governing body.
- 16.11 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 staff disciplinary process. This will happen even if the statutory authorities take the decision not to pursue a criminal investigation.
- 16.12 The head teacher and chair of governors or the chair of governors and another governor (if the head teacher is the subject of the allegation), with advice from the 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.
- 16.13 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.

17. Referral for an independent investigation

- 17.1 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.

- 17.2 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 head teacher.
- 17.3 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.
- 17.4 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 statutory authorities have completed their investigation. Once the statutory authorities have completed their investigation the independent investigator will then be able to conduct their investigation.

18. The independent investigation

- 18.1. 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.

19. The independent investigation report

- 19.1 The report, once completed, will be given to the head teacher and chair of governors, or chair of governors and another governor in respect of investigations into the conduct of the head teacher. 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 allegations are well-founded, that they constitute gross misconduct behaviour and that they will require a disciplinary 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 head teacher or chair of governors (if the allegation is against the head teacher)
 - there is no evidence to support the child protection allegation and no further action needs to be taken against the member of staff.
- 19.2 If there is any doubt at all, or agreement cannot be reached by the head teacher or the chair of governors, or the chair of governors and another governor in respect of the head teacher, the matter will be referred for a full hearing before the staff disciplinary and dismissal committee.
- 19.3 The member of staff and trade union representative will be informed of the decision as soon as reasonably practicable.
- 19.4. The chair of governors will ensure that all relevant papers, including the full investigation report, are sent to the member of staff and/or their union representative, the person presenting the case against the member of staff, and

members of the staff disciplinary and dismissal committee within seven days of the hearing.

19.5 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.

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

20.1 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.

20.2 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.

21. The disciplinary hearing in respect of all gross misconduct cases

21.1 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 member of staff has subsequently resigned or is on sick leave.

21.2. The member of staff 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 member of staff, any witnesses appearing in person and the LA and diocesan authority (if appropriate)
- the purpose of the hearing and the range of possible outcomes
- the right of the member of staff to be accompanied by a companion or representative of the member of staff's trade union
- 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 member of staff
- 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.

21.3 The clerk will arrange for the documentation from both parties to be distributed to the member of staff and their representative prior to the hearing, including up-to-date procedures, within seven days of the hearing.

21.4 The staff member 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.

21.5 If the staff member is absent due to sickness, the staff disciplinary and dismissal committee will usually postpone the hearing to seek medical advice from the Occupational Health unit. However, where the staff member may be absent for an indeterminate period, the staff disciplinary and dismissal committee may decide to hold the hearing provided that it has informed the member of staff and

their representative and has offered the member of staff the opportunity to send a representative or submit written evidence to present their case. The representative will have the same opportunity as the staff member to present evidence, call witnesses and sum up the staff member's case.

22. At the hearing

22.1 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 member of staff 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.

22.2 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 member of staff as soon as possible after the hearing. At this point the member of staff will also be informed of their right to appeal and the timescale within which this must be made.

23 Decision reached after the hearing has taken place

23.1 Each case will be dealt with on its merits, and the following factors will be taken into account:

- The employee's current disciplinary record
- Any mitigating circumstances
- The proposed penalty is reasonable in the circumstances

23.2 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 first, second 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.

23.2 Possible sanctions may be:

- relegation to a lower-graded position (if practical and appropriate) and loss of salary –demotion must be to a stated and available post.
- specified training and development
- issue of a formal warning (where the alleged behaviour constitutes lesser misconduct)
- dismissal of the member of staff without notice.

23.3 In extreme circumstances it may be necessary to extend the period of the warning. The extension to any warning will not exceed 12 months more than the initial warning.

23.4 In any incident involving a shortfall of monies or materials with a monetary value as a result of the improper actions of an employee, the school will take such steps to recover the shortfall from the member of staff, after formal disciplinary

action under this policy. This will not be used in cases of the theft by a third party of equipment or materials in the temporary charge of the employee.

- 23.5 Where genuine errors by the member of staff occur in submitting claims or record sheets any subsequent overpayment will be recovered through the agreed procedure for such matters.
- 23.6 The warning becomes effective from the date of the decision. Confirmation of all warnings will be issued within seven calendar days of the date of the decision.
- 23.7 Matters that are considered lesser misconduct will be dealt with by means of formal action set out in paragraphs 7-10.

24 Disciplinary hearing – appeal

- 24.1 A member of staff is entitled to appeal against a decision of the staff disciplinary and dismissal committee. The notice of the intention to appeal needs to be lodged with the clerk to the staff disciplinary and dismissal appeals committee within fourteen calendar days of receipt of the letter, the appeal notice will need to include the grounds for the appeal.
- 24.2 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 member of staff will be given notice of the date and time of the appeal hearing.
- 24.3 Agreeable times and dates will be arranged for all parties concerned where possible.
- 24.4 The staff disciplinary and dismissal appeals committee may, after considering all the facts presented to it, including any new evidence, come to one of four conclusions:
- uphold the decision of the staff disciplinary and dismissal committee
 - impose a lesser penalty
 - impose a higher penalty
 - conclude that no disciplinary action should be taken against the member of staff.
- 24.5 The decision of the staff disciplinary and dismissal appeals committee will be final and the staff member will be informed in writing.
- 24.7 The member of staff will be given a copy of the minutes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions.
- 24.8 If, as the result of an appeal, disciplinary action is withdrawn, all details thereof will be expunged from the member of staff's personal file and they will be informed accordingly. The member of staff will be given a copy of the minutes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions.

25. Suspension

- 25.1 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 member of staff from the school, for the protection of pupils, other staff or property or the orderly conduct of the school
 - the continued presence at work of the member of staff would be an obstacle to proper investigation of the allegations made against that member of staff.
- 25.2 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 continued effect of the suspension will be kept under review and the outcome of the review reported to the member of staff and the governing body.
- 25.3 The decision to suspend can be taken by the head teacher or the chair of governors but only the governing body can end a suspension. However the governing body has delegated the task of ending a suspension to the chair of governors/the chair of the staff disciplinary and dismissal committee.
- 25.4 The decision to suspend will be discussed with the head teacher, chair of governors (or vice chair if the chair is not available) in consultation with the chief education officer of the maintaining LA and, where applicable, the diocesan authority, prior to implementing any suspension or redeployment.
- 25.5 Written notice will be given to all relevant parties within seven days following a decision to suspend. If suspension was because of a child protection allegation the member of staff would be informed of the allegation, but not the detail.
- 25.5 During the period of suspension the employee will receive their normal pay until a disciplinary decision has been confirmed. If an employee reports sick while under suspension, the suspension will be lifted and the sickness absence procedure will apply. If the employee becomes fit to return while an investigation is on-going, further consideration will be given to reapplying the suspension. The investigation will continue (if possible) when sick leave occurs.
- 25.6 During suspension contact with an employee will be maintained through planned contacts by a nominated officer as part of member of staff welfare arrangements.

26. Examples of misconduct behaviour

26.1 The list below is offered only by way of example to indicate how behaviour may be regarded. This is not an exhaustive list and is provided for illustrative purposes only. Judging the level of misconduct and how it must be handled has to be undertaken on the facts of each case.

26.2 Lesser misconduct

Breaches of discipline under this heading will not normally result in dismissal for a first offence, but may result in dismissal if repeated.

Lesser misconduct might include:

- specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment, policies 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
- Causing damage to property/equipment through negligence/not having due regard to school property
- Causing unintentional superficial injury to a member of staff/pupil
- Using inappropriate language
- 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 mobile phones/text messaging/social networking sites during lesson time

26.3 **Gross Misconduct**

Gross misconduct can be defined as an act, or series of actions, that fundamentally repudiates the contract of employment so that the governing body would be justified in no longer tolerating the continued presence at work of the member of staff. These acts may justify summary dismissal without notice or payment in lieu of notice. The list below is offered only by way of example to indicate how behaviour may be regarded. This is not an exhaustive list and is provided for illustrative purposes only. Judging the level of misconduct and how it must be handled has to be undertaken on the facts of each case.

Gross misconduct might include:

- Specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment, policies etc.
- Fraudulent acts or theft of property belonging to the LA, the school, fellow members of staff or pupils
- Deliberate and serious damage to property belonging to the LA, the school, fellow members of staff or pupils

- Violent behaviour including physical assault
- Continuous bullying
- Harassment or unlawful discrimination on any grounds
- Physical, sexual or emotional abuse of pupils
- Sexual misconduct at work
- Physical violence
- Gross negligence
- Causing loss, damage or injury through serious negligence
- Serious incapability at work brought on by alcohol or other illegal substances on school premises
- Serious insubordination
- 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 of the LA or the school's health and safety rules and standards
- Criminal misconduct outside the workplace which reflects adversely upon the school or the 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
- Serious breaches of health and safety
- Humiliation of staff, victimisation of colleagues, parents/carers or pupils

27. Summary

27.1 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.

27.2 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

APPENDIX A

PROCEDURE TO BE ADOPTED AT THE HEARING AND APPEAL

1. The School's Dismissal and Appeal hearing shall be supported by a note taker (usually the clerk to governors) and a Human Resources Adviser.
2. The parties and their representatives shall be called in simultaneously before the panel. At the start of the hearing the Chairman will introduce those present and will explain the procedure.
3. The presenting officer will present the case calling, if appropriate, any witnesses.
4. The member of staff or his/her representative will be entitled to question the presenting officer and any witnesses.
5. The member of staff will present their case calling, if appropriate, any witnesses.
6. The presenting officer will be entitled to question the member of staff or his/her representative and any witnesses.
7. The Committee Members and the Human Resources Adviser will be entitled at any time during the hearing, with the consent of the Chairman, to ask questions.
8. The presenting officer will be given an opportunity to sum up. He/she will not be able to introduce any new evidence at this stage.
9. The member of staff or his/her representative will be given an opportunity to sum up but will not be able to introduce any new evidence at this stage.
10. All parties other than the Members of the School's Discipline Committee, the note taker and the Human Resources Adviser will withdraw while the Committee considers the information.
11. Once the Committee has received advice from the Human Resources Adviser, the Human Resources Adviser will withdraw while the Committee considered the appeal.
12. The Committee may recall the Human Resources Adviser, and note-taker to clarify any points.
13. The Committee may recall the parties to clarify any points but must recall both parties and their representatives and allow them to comment if they so wish.
14. After the Committee has reached a decision on the appeal the parties and their representatives will be recalled and the decision announced to them together with the reasons for it. The decision will be confirmed in writing by the Chair of Governors as soon as possible after the hearing.

NOTE:

The appellant may be represented by either his / her Trade Union Representative or by a work colleague.