

Guidance for Schools Volume 1 Section 16

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Service Group: Human Resources

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SECTION 16 – DISCIPLINARY PROCEDURE

Key Revisions – October 2011

Paragraph 3

Reference to “Normal” retirement Age removed in line with legislation.

SECTION 16

Part 1

DISCIPLINARY PROCEDURE

1. INTRODUCTION

- 1.1 This procedure has been developed in consultation with relevant recognised Trade Unions and Professional Associations and is recommended for adoption by the Governing Bodies of Community and Voluntary Controlled Schools. Foundation and Voluntary Aided Schools should refer to Part 2 and non maintained schools who purchase HR advisory services through Blue book should refer to Part 3. If any School chooses not to adopt part 1, 2, or 3, they should be aware of the requirement to develop their own written disciplinary procedure in consultation with their trade union/staff representatives.
- 1.2 The procedure recommends appropriate management levels for different levels of action, but this will vary dependent upon persons available who are suitably trained.
- 1.3 The procedure takes due account of the ACAS Code of Practice – Disciplinary and Grievance Procedures which came into effect from 6 April 2009; The School Standards and Framework Act 1998; The School Government Regulations 1999, the School Staffing Regulations and the Education Act 2002, as relevant and appropriate to disciplinary practices and procedures in employment.
- 1.4 The procedure takes effect from 7 June 2010 and supersedes all previous disciplinary procedures and practices.

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2. PURPOSE

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

*performance would usually be dealt with through capability routes.

3. EXCEPTIONS

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

- redundancy, provided the appropriate procedure has been followed;
- expiry of the agreed probationary period if applicable;
- failure to satisfactorily complete NQT Induction
- on the expiry of a fixed term contract of employment;
- lack of professional competence; (where the appropriate Capability Procedure has been followed);
- dismissal due to long-term ill health, provided the appropriate procedure has been followed;
- unsatisfactory attendance due to ill-health; (Absence Management Policy);
- dismissal for some other substantial reason.

4. PRINCIPLES

- 4.1 The Council and the Governing Body will take all necessary measures to ensure that the rules and regulations which are in force are communicated to all employees, eg via inductions, employee handbooks, notice boards, etc. It is the responsibility of individual employees to ensure that they are aware of and understand these rules and regulations. Details are available from the Headteacher.
- 4.2 The day-to-day supervision of staff is part of the normal management process and is outside the formal procedure for dealing with breaches of discipline. There is likely to be less recourse to the formal procedure if deficiencies in an employee's conduct are brought to their attention at the earliest possible stage by their immediate supervisor. In principle, it is intended that day-to-day managerial approaches are adopted wherever possible. (See Informal Support and Guidance Strategy - Appendix F).
- 4.3 The procedure is designed to establish the facts quickly and to deal consistently and fairly with disciplinary issues. No disciplinary action will be taken until the matter has been investigated fully and a formal disciplinary hearing held. (See Appendix D).
- 4.4 When allegations or concerns first come to light it is appropriate to hold a meeting with the member of staff as soon as reasonably practicable which covers the following:
- informs them of the allegation
 - invite an immediate response (to help management form a view as to whether further investigation is needed)
 - advise the employee to seek advice/support from their Trade Union and that they will be able to attend any further investigatory interviews
 - inform the member of staff that they will be kept informed about decisions to proceed with further investigations or if the matter is concluded.
- 4.5 The employee should be given as much notice as possible of the hearing to allow them to prepare their response (we would normally suggest a minimum of 10 working days). If less than 5 days notice is to be given then the hearing can only proceed if agreed by both parties. The invite letter should inform the employee precisely what the complaint is made against. (See standard letter at Appendix A). This letter should be sent by recorded delivery if personal service is not practicable. Any supporting papers should be circulated as far in advance of the disciplinary hearing as possible. Where appropriate, copies will be provided to the employee's companion. The employee will be given the opportunity to state their case at the disciplinary hearing. Please note that if new evidence or facts emerge during the hearing, it may be necessary to adjourn the hearing to further investigate and then reconvene the hearing when these enquires have been completed.

- 4.6 If an employee fails to attend the disciplinary hearing without good cause, a decision may be taken in their absence. If there are medical reasons for non-attendance, the employee is required to produce a doctor's statement (the cost of which would be refunded by the School) and may be referred to occupational health. In normal circumstances an employee is expected to attend a disciplinary hearing or investigation meeting even when they may be regarded as being unfit to attend for their normal work. If an employee produces a medical certificate from their GP attesting that they are unfit for work due to a reason unconnected with the disciplinary hearing or matter under investigation then a postponement may be considered by the employer as reasonable in those circumstances. However, if the reason for the absence as attested by the employee's GP is stress related to or arising from the disciplinary hearing or matter under investigation then this will not be regarded as a legitimate reason for postponing the matter. If the cause of the stress is the potential disciplinary matter under consideration it follows that the conclusion of the matter will resolve the issues causing the stress and the absence arising from it. If the matter is of such gravity that it must be dealt with immediately then the hearing will proceed in the employee's absence. Any decision to proceed with a subsequently re-arranged hearing at which the employee again fails to attend will take into account the reason for the non-attendance, medical advice from the County's Occupational Health Physician (if appropriate), the seriousness of the matter being considered and whether or not the employee has a companion to respond on their behalf.
- 4.7 The employee will have the right in law to be accompanied by a companion at all stages of the disciplinary procedure, good practice would also allow an employee to be accompanied during any investigation interviews, and this request must not be refused if it has no undue impact on the investigation progressing in a timely fashion. A companion may be a fellow employee, an official employed by a trade union or a work based trade union representative.
- 4.8 An employee has the right to appeal against any formal disciplinary warning imposed (see paragraph 10).
- 4.9 An employee will be required to acknowledge receipt of a warning letter and confirm that its implications are understood.
- 4.10 The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- 4.11 Repeated acts of misconduct where the warnings are current, whether of a similar or dissimilar nature, will result in the cumulative application of this procedure (see NB paragraph 5.4).
- 4.12 An employee will not be dismissed for a first breach of discipline except in the case of gross misconduct when dismissal may be immediate and without notice or payment in lieu of notice.
- 4.13 In the course of a disciplinary investigation or hearing an employee might raise a grievance that is related to the case. Depending on the nature of the grievance the disciplinary process may be suspended for a short while whilst the grievance is dealt with. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

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Where the grievance relates to the employer's decision to impose a disciplinary sanction, the grievance procedure **does not** apply and the grounds for the employee's grievance may be dealt with as part of the appeal against the sanction.

Where the grievance is raised at the outset of the investigation or notification of the hearing and the grievance relates to the case eg the suitability or impartiality of the manager conducting the investigation or the hearing or the refusal of the manager conducting the investigation to include witnesses proposed by the employee then the disciplinary process may be suspended for a short while to enable the grievance to be considered as a separate process.

Where the grievance is raised during the disciplinary hearing, or after the disciplinary hearing but before any appeal, then the grievance will be dealt with as part of the disciplinary or the appeal hearing. In effect, the grievance becomes part of the employee's response to the case being presented at the disciplinary hearing or becomes one of the grounds for the appeal.

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5. **SANCTIONS**

Minor issues of conduct will be dealt with informally, normally by the employee's immediate supervisor, either via day to day management or the informal support and guidance strategy set out in Appendix F. Where the matter is more serious or the behaviour or actions continue, the following procedures and sanctions will apply:-

5.1 **Stage 1 - Verbal Warning**

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

Recommended management level: Headteacher/Deputy Headteacher/Bursar
(depending on School size and occupational group)

5.2 **Stage 2 - Written Warning**

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

Recommended management level: Headteacher/Deputy Headteacher/Bursar
(depending on School size and occupational group)

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5.3 **Stage 3 - Final Written Warning**

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

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

Recommended management level: Headteacher

5.4 **Stage 4 – Dismissal**

If, during the currency of a final warning, further misconduct which would warrant a formal warning occurs, dismissal with notice/pay in lieu of notice will, other than in exceptional circumstances, result (see NB below).

Regulations made under Sections 35 and 36 of the Education Act 2002 provide for the delegation by the Governing Body of an initial staff dismissal determination to the Headteacher. Where the Headteacher is not exercising delegated responsibilities for or the Headteacher is being considered for dismissal, the initial dismissal decision should be delegated to a Governors Staff Dismissal Committee of at least three governors, unless there are not enough governors who have not been involved in any previous action or decision connected to the dismissal. In this case the decision should be delegated to a panel of two governors. Wherever such a determination is being contemplated following investigation, the County Solicitor, the Chair of Governors and the Local Authority must be informed.

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

If a disciplinary hearing determines that the employee should cease to work at the School, the Headteacher or Chair of the Governors Staff Dismissal Committee, will confirm the decision in writing, stating the grounds for the determination to dismiss and right of appeal. A copy of this letter must be sent to the Learning & Achievement Operations Director or their nominated representative.

The Learning & Achievement Operations Director or their nominated representative has the right to attend, in an advisory capacity, any disciplinary hearing which could result in the determination to dismiss.

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The Learning & Achievement Operations Director must give effect to that determination within 14 days by writing to the employee stating the reasons for dismissal and the date of termination. In accordance with Sections 35 and 36 of the Education Act 2002 the employee can be dismissed prior to the period allowed for the employee to lodge an appeal and for that appeal to be heard. The termination may be rescinded if an appeal is upheld.

NB *It is for the headteacher/governors dismissal committee, advised by the nominated representative of the Local Authority, to determine whether there are such exceptional circumstances and each situation will be considered on its own merits.*

Examples of such circumstances could be:

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

5.4.1 Where there has been a misconduct which has resulted in dismissal or a member of staff has resigned where dismissal was an option and there is a child protection element, the employer is required to make a referral to the Independent Safeguarding Authority. In cases where there is no child protection element, but misconduct has resulted in dismissal, or the employee has resigned when dismissal was an option, in the case of teachers the employer is required to make a referral to the GTC. When considering a referral advice should be sought from a Local Authority HR Officer.

5.5 **Disciplinary Warnings – Record Keeping**

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

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

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

The DfES Guidance: Dealing with Allegations of Abuse against Teachers and Other Staff (2011) sets out how records of such allegations must be kept. It says “The record should be retained at least until the person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.”

- Any such retained documentation should be kept under confidential cover and accessed only by persons specifically authorised to do so by the Head Teacher or Governing Body.
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6. GROSS MISCONDUCT

- 6.1 This is misconduct of such gravity as to warrant summary dismissal. If the Headteacher is exercising their right of delegated responsibility for dealing with staffing matters as defined by the School Staffing Regulations, an investigation will normally be delegated to the Deputy Headteacher or other appropriate senior member of staff in consultation with the relevant Council Officers. If, as a result of a full investigation and disciplinary hearing, the Headteacher or Governors' Staff Dismissal Committee has reason to believe gross misconduct has occurred, they will normally determine that the person should cease to work at the School without the need for notice.

The Learning & Achievement Operations Director or their nominated representative has the right to attend, in an advisory capacity, any disciplinary hearing which could result in the determination to dismiss.

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

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

- An inappropriate relationship, or an attempt to establish an inappropriate relationship, with a pupil, whether of a sexual nature or otherwise.
- Behaviour towards a child or children in a way that demonstrates they are unsuitable to work with children. (DfES Guidance: Safeguarding Children and Safer Recruitment in Education – 1 January 2007).
- Theft or unauthorised possession of items belonging to other employees, the Council or clients.
- Physical assault, violence, abusive or threatening behaviour, in the course of an employee's duties whether or not on School/Council property. (Please also note paragraph 8 below).
- Unlawful discrimination (see Paragraph 8 below).
- Falsification and irregular practice in respect of cash, records or returns.
- Fraud, or attempt to defraud.
- Deliberate misuse of Data Protection information.
- Unauthorised access to information held on computer including internet sites containing offensive or obscene material.
- Deliberately accessing information held on a computer, including internet sites containing offensive or obscene material, which damages or has potential to damage public confidence in the service provided.

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- Serious insubordination.
- Gross negligence or a deliberate act or acts which causes unacceptable risk, loss or damage to Council property, injury, or damages the public reputation of the School/Council.
- A criminal conviction or caution, whether or not the offence is related to or committed in connection with employment, which may affect the employee's suitability or availability for continued employment in their current role.
- A sustained serious/significant breach in professional standards/codes of practice which bring in to question your suitability for the role.

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7. **SUSPENSION DURING AN INVESTIGATION**

- 7.1 An employee may be suspended which must be on full pay. This is not a disciplinary step, but a means to enable an unhindered investigation to establish the facts, and may occur at any time during the investigation. Suspension must be confirmed in writing within 3 calendar days (see standard letter at Appendix C).
- 7.2 The Governing Body has the power to suspend the Headteacher. This power should be delegated to a committee or panel of the Governing Body eg the Personnel Committee or to a member of the Governing Body eg the Chair. Other members of staff may be suspended by the nominated committee, Governing Body member or the Headteacher (or the Deputy Headteacher in the absence of the Headteacher).
- 7.3 Suspension is not a disciplinary sanction but nonetheless will be viewed by the individual as a very serious step which has the potential to “cast a shadow” on an employee’s reputation, it therefore needs to be considered very carefully before being taken and should only happen once a preliminary review of the facts has taken place (see explanatory note below). It should not be undertaken without good reason and without first consulting the school's HR Adviser and considering the alternatives to suspension outlined in 7.4 below. Circumstances in which suspension could properly occur include:
- (a) Where this would allow a more objective examination of the allegation and the employees presence could interfere with the investigation;
 - (b) Where the member of staff is the subject of a police investigation and the alleged offence is considered relevant to their professional duties;
 - (c) Where there is a reasonable ground to believe that it would seriously affect the interests of the School and/or the employee if they were to remain at work; or
 - (d) Where a child/or children is/are at risk. (See Section 23 Child Protection - Staff facing allegations of abuse).

This list is not to be regarded as exhaustive.

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

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

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8. **EQUAL OPPORTUNITIES**

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

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

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

In all respects trade union/association representatives will adhere to the rules of conduct applicable to all other employees. No formal disciplinary action may be taken until the circumstances of the case have been investigated and discussed, after obtaining the employee's agreement, with the appropriate full-time Trade Union official. The LA should be informed immediately when such an allegation is made or concern raised.

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

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10. APPEALS

10.1 Formal Verbal Warnings/Written Warnings

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

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

The employee will have the right to be accompanied at all stages of the appeals process. (See paragraph 4.7 for definition of 'accompanied'.)

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

* Where three such Governors are not available then the appeal may be heard by no less than two. If the initial disciplinary decision was heard by a committee of Governors then the Appeals Committee **must** comprise at least the same number of governors who made the original decision.

10.2 Dismissal

An employee who wishes to appeal against the Headteacher's or Governors' determination that the employee should cease to work at the School should inform the Clerk to the Governors in writing within 10 working days of receipt of the disciplinary letter, stating the grounds for the appeal.

The appeal would be heard by the **Appeals Committee of the Governing Body** normally within 15 working days of the appeal being lodged. The Learning & Achievement Operations Director or their nominated representative will be informed of the meeting and will attend in an advisory capacity.

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

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

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

10.6 Further information on appeals is in Section 2 Appendix A of Guidance for Schools.

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11. WITNESSES

- 11.1 If an employee is invited to a disciplinary hearing they have the right to request that relevant witnesses to the alleged offence are called. It is the employees responsibility to invite these witnesses. The investigating officer is responsible for calling any witnesses they feel are relevant to the allegations.
- 11.2 Witnesses should only be invited to a hearing, by either side, who have relevant information to the disciplinary matter in hand. Where there is dispute about the relevance of a witness (i.e. they have not witnessed the events under investigation, or a significant number of witnesses are being called to provide the same information, in the case of character witnesses) the Chair of the panel will make the final decision about whether to hear from any individual.
- 11.3 When an employee wishes to invite witnesses the letter in Appendix G can be used to ensure that individuals are not placed under any undue pressure. No discussions should take place regarding the case that could prejudice their evidence, and this should not be used to re-interview witnesses
- 11.4 When the disciplinary involves one person making allegations against another then natural justice requires that person to be seen by the panel and questioned by the person they are accusing or their representative. This may not be appropriate when the accusation is part of a severe bullying/harassment allegation or when it involves pupils of the school (see 11.5)
- 11.5 In the majority of circumstances and subject to 11.2 above, it would be inappropriate for the Chair of a panel to decide not to hear from any witness the respondent feels has relevant information about the case. If the chair of the panel does decide not to hear from a witness the reason for the decision should be clearly outlined to the employee and their companion in advance of the hearing to allow witness statements to be produced if necessary. Where a witness is stood down just before the hearing and there is no opportunity available for a witness statement to be produced then a revised date for a hearing should be considered where appropriate.
- 11.6 On occasions allegations will be made by pupils or they may have witnessed key events. In these circumstances we would not expect a pupil to be present at a disciplinary hearing. It may, however, be appropriate for the employees representative to be present at interviews held with any children so that they can confirm leading questions have not been asked or allow the employee or their representatives to highlight questions they would like put to the pupils. In these circumstances a balance will always have to be struck between the rights of the accused member of staff and that of the pupil. At the very least a record of all the questions asked of the child/young person should be recorded and made available along with the responses to ensure transparency in relation to the evidence gathered.

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

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

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STANDARD LETTER: INVITATION TO DISCIPLINARY HEARING

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

CONFIDENTIAL

(Name)
(Address)

Dear

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

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

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

As this hearing may result in disciplinary action, [not excluding your dismissal*] you are entitled to be accompanied by a companion (for definition see paragraph 4.7 of the Procedure – attached). You also have the right to call relevant witnesses, if you wish to do this please inform xx by xx of the names of those witnesses so that appropriate house keeping arrangements can be made.

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

Please confirm by xx that you will be able to attend by telephoning (name and contact and extension number). If you fail to attend and do not provide a reasonable explanation, a decision may be taken in your absence (see paragraph 4.6 of the Procedure).

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

Yours sincerely

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

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

CONFIDENTIAL

(Name)
(Address)

Dear

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

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

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

The improvement in conduct expected is outlined in the attached notes, which you are also required to sign, but in brief the expectations are
.....
within (specify the time period).

You should note that any similar or dissimilar misconduct during the currency of this warning may lead to further disciplinary action, [not excluding your dismissal from the Council's employment].

You have the right to appeal against this decision by writing, stating the reason for your appeal, to the Clerk to the Governing Body within 10 working days (see paragraphs 10.1 of the Schools Disciplinary Procedure) of receiving this disciplinary warning. The Appeals Committee of the Governing Body has the following powers:

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

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

Yours sincerely

* delete as appropriate.

** include the following on the copy:

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

Signed _____ Dated _____

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STANDARD LETTER : Dismissal

CONFIDENTIAL

(Name)
(Address)

Dear

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

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

After full consideration of all the evidence, I/We had no alternative but to conclude that you should no longer work at the school. We have informed the Local Authority to effect determination that you are summarily dismissed without notice or pay in lieu of notice*/ dismiss you with notice for (outline reasons).

You have the right to appeal against this decision by writing, stating the reason for your appeal, to the Clerk to the Governing Body within 10 working days (see paragraphs 10.2 of the Schools Disciplinary Procedure) of receiving this disciplinary warning. The Appeals Committee of the Governing Body has the following powers:

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

Yours sincerely

* only possible in cases of gross misconduct/SOSR.

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STANDARD LETTER : CONFIRMATION OF SUSPENSION

CONFIDENTIAL

(Name)
(Address)

Dear

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

(State briefly the issues/incident to be investigated)
.....
.....

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

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

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

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

I would like to take this opportunity to remind you that the school buy into the County Council's Counselling Service, a free independent support service contactable on 0800 174319. *

* Include only if subscribe to service.

Yours sincerely

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PROCESS TO BE FOLLOWED AT A DISCIPLINARY HEARING

1. GENERAL

For purposes of this procedure the following definitions apply:

- Hearing - a formal disciplinary hearing convened in accordance with this procedure and held before the recommended management level as set out in paragraph 5 of the Disciplinary Procedure.
- Panel - the recommended manager (Headteacher, Deputy Headteacher/Bursar) as set out in Paragraph 5 together with the manager's professional adviser, normally the school's HR Adviser or other appropriate LA officer.
- Committee - a group of members of the governing body convened to hear a case in accordance with this procedure.

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

(a) Membership

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

(b) Administration

The administration arrangements for a hearing will be the responsibility of the presenting manager except where the case is to be heard by a panel of members of the Governing Body in which case it will be the responsibility of the Clerk to the Governing Body in liaison with the presenting manager. In most cases administrative support will be provided through the School office but where this is not appropriate, eg for purposes of confidentiality, such support may be commissioned from the LA. If dismissal is a possible outcome from the hearing then the LA must be informed.

(c) Powers

The Disciplinary Hearing can:-

- determine to dismiss the employee (Headteacher or Staff Dismissal Committee only). The employee will be given the right to appeal to the Governors' Appeals Committee by writing to the Clerk to Governors within 10 working days.
- determine not to dismiss (Headteacher or Staff Dismissal Committee only).

- either determine there is no case to answer or to issue a formal warning in accordance with the Disciplinary Procedure. The employee will be given the right to appeal to the Governors' Appeals Committee by writing to the Clerk to the Governors within 10 working days.

(d) **Methods of Operation**

- Strict confidentiality will be observed with regard to the hearing and all related documentation.

The rules of "natural justice" will be applied as far as possible for hearings. Accordingly, the employee can arrange to be represented or supported by a companion (as defined by paragraph 4.7); call witnesses and submit documents to the hearing.

- hearings are conducted as informally as possible within the guidelines set out in paragraph 3 below.

2. **ACTION PRIOR TO THE HEARING**

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

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

- arrange for the hearing to be heard as soon as reasonably practical.
- give all parties to the hearing as much notice as possible of the hearing in writing, of the time and place of the hearing (we would normally suggest a minimum of 10 working days). If less than 5 days notice is to be given then the hearing can only proceed if agreed by both parties).
- invite relevant documents in support of their respective cases from the employee and their representative and the presenting manager/ Headteacher - with an instruction that the Clerk/administrator should receive any documents in time for circulation with the agenda i.e. 5 working days before the hearing, to allow circulation to all parties.
- table at the hearing any late documents received, subject to the agreement of all parties. If there are late submissions and agreement cannot be reached the Chair of the panel will make the final decision on whether they should be considered.
- circulate the list of witnesses who have been invited by both sides

(b) Every effort should be made by the parties to exchange written evidence prior to the hearing, late submission of evidence should be avoided if at all possible.

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3. THE HEARING

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

3.1 Preliminaries:

- 3.1.1 Confirm who will Chair the Hearing and that the Panel or Committee is eligible to hear the case in accordance with the Disciplinary Procedure.
- 3.1.2 Invite both parties and their advisers/companion to enter the meeting.
- 3.1.3 After introduction, ask both parties who will be their chief spokesperson and inform them of the procedure to be adopted.
- 3.1.4 State precisely what the complaint/allegation is, as outlined in the letter of invitation to the hearing and/or outlined in any disciplinary reports.
- 3.1.5 Confirm the list of witnesses (if any) to be called by both parties

3.2 The Procedure:

- 3.2.1 Invite the presenting manager to make their opening statement and to call witnesses, if appropriate.
- 3.2.2 Where no witness has been called, the employee, or their companion, may question the manager on their case, or parts of it, once it has been presented.
- 3.2.3 Where a witness has been called and given evidence, the employee, or their companion may ask questions of the witness. The manager then has a right to ask questions on any matter arising from the employee's questions. The Panel or Committee may ask questions of the manager and their witness.
- 3.2.4 The employee, or their companion, then has a right to question on any matter arising from the Panel or Committee's questions.
- 3.2.5 Invite the employee, or their representative, to make their opening statement and to put their case and call witnesses if appropriate.
- 3.2.6 Where no witness has been called, the manager may question the employee, or their companion, on their case, or parts of it, once it has been presented. Any question asked of the employee should be answered by them and not their companion.
- 3.2.7 Where a witness has been called and given evidence, the manager may question the witness. The employee, or their representative, then has the right to question on any matter arising from the manager's questions.
- 3.2.8 The Panel or Committee may ask questions of the employee, or their companion, and their witnesses. The manager then has a right to question on any matter, arising from the Panel or Committee's questions.

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- 3.2.9 Witnesses will leave the room after having given, or having been questioned on their evidence. Whilst witnesses are normally only required to be present whilst giving evidence, management witnesses may remain throughout the hearing at the discretion of the Chair eg where it is felt that this may assist either party in the presentation of their case to the hearing. However, due care will be taken by the Panel or Committee to ensure that any use of this discretion does not compromise or impede either side's case or of any individual witnesses evidence.
- 3.2.10 There should be no discussion on the case or associated matters between the witnesses before or after giving evidence.
- 3.2.11 At the discretion of the Chair of the Hearing, further questions by one part of the other may be permitted if, in the view of the Chair, it would assist in clarifying the relevant issues or eliciting further evidence.
- 3.2.12 Invite the presenting manager to make their closing statement.
- 3.2.13 Invite the employee, or their companion, to make their closing statement.
- 3.2.14 The Panel or Committee may ask further questions of the manager and/or the employee, or their companion.
- 3.2.15 Both parties should leave the room while the Panel or Committee considers their decision.
- 3.2.16 While considering their decision the Panel may view that they need further information or clarification by one or other party. In these circumstances both sides should be recalled, even if clarification is only required from one party.
- 3.2.17 Both parties to be invited back to hear the Panel or Committee's decision.
- 3.2.18 No further discussion or debate will take place.
- 3.2.19 The Panel or Committee's decision will be confirmed in writing within 5 working days.

4. THE DECISION

- (a) The Headteacher/Panel will examine all of the issues fully before reaching a decision.
- (b) Following the adjournment, the Headteacher/Chair of the Panel will inform both parties of the decision reached. This will be confirmed in writing by the Headteacher/Chair of the Panel.
- (c) If the outcome of the hearing is dismissal the LA will be asked to confirm the dismissal in writing.

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ROLE OF THE COMPANION

1. A companion can be:
 - A fellow employee at Somerset County Council
 - An official employed by a trade union
 - A workplace based trade union representative, certified in writing by the trade union as having experience of, or having received training in, acting as a worker's companion at a disciplinary or grievance hearing.

2. The companion will be allowed to address the hearing in order to:
 - put the employee's case and ask questions on behalf of the employee
 - sum up the employee's case
 - respond on the employee's behalf to any view expressed at the hearing
 - confer with the employee during the hearing

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

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INFORMAL SUPPORT AND GUIDANCE STRATEGY

1. Introduction and Preamble

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

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

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

2. The Meeting

- 2.1 At the meeting, the manager should outline their concerns with clear supporting evidence.
- 2.2 The manager should listen to any feedback/response from the member of staff.
- 2.3 The manager should confirm their expectations of the member of staff.
- 2.4 The manager should state what support and guidance will be available to the member of staff to assist them to reach and maintain the required standards.
- 2.5 In most circumstances a review meeting will be required and the manager should set an appropriate review date eg three months. However some issues may be concluded in a single meeting.
- 2.6 Once the meeting has taken place the discussion should be followed up with a letter of guidance and expectation. A model letter is attached as Appendix F2.
- 2.7 Following the meeting the manager should monitor and record any positives and negatives in preparation for the review. The manager should, however, bring to the attention of the employee any instances relevant to the issues causing concern as and when they occur during the review period.

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INFORMAL SUPPORT AND GUIDANCE STRATEGY

MODEL LETTER OF INVITATION

CONFIDENTIAL

(Name)

(Address)

Dear

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

(details of event/concerns)

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

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

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

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

Yours sincerely

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

CONFIDENTIAL

(Name)

(Address)

Dear

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

At the meeting we spoke about the following points

(details of events/concerns)

Your response to those concerns was

(details of response(s))

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

(Details of expectations, advice and guidance)

Continued support is available as follows

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

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

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

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

Yours sincerely

Headteacher/Manager

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

Signed: Date:

* include if a review period has been set.

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MODEL LETTER OF INVITE TO WITNESS

CONFIDENTIAL

(Name)
(Address)

Dear

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

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

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

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

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

Yours sincerely

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Guidance for Schools - Volume 1 Section 16 - Disciplinary Procedure

SIX Document Title/ Search Keyword(s): **Volume 1, Section 16**

Service Group: Human Resources

Contact Details: Kathryn Nation
01823 355644

Part 2: Foundation and Voluntary Aided Schools

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- [Appendix G – Standard Letter: Inviting Witnesses](#)

SECTION 16

Part 2

DISCIPLINARY PROCEDURE - FOUNDATION AND VOLUNTARY AIDED SCHOOLS

1. INTRODUCTION

- 1.1 This procedure applies to all staff employed in Foundation and Voluntary Aided Schools with delegated budgets maintained by Somerset County Council. It has been approved by the appropriate Diocesan Board for adoption by the Governing Body. # If any school maintained by Somerset County Council chooses not to adopt Section 1 or Section 2 they should be aware of the requirement to develop their own written disciplinary procedure in consultation with their trade union/staff representatives.
- 1.2 The procedure recommends appropriate management levels for different levels of action, but this will vary dependent upon persons available who are suitably trained.
- 1.3 The procedure takes due account of the ACAS Code of Practice – Disciplinary and Grievance Procedures which came into effect from 6 April 2009. The School Standards and Framework Act 1998; The School Government Regulations 1999 and the Education Act 2002 as relevant and appropriate to disciplinary practices and procedures in employment.
- 1.4 The procedure takes effect from 1 June 2010 and supersedes all previous disciplinary procedures and practices.

Church Schools only

2. PURPOSE

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

* performance would usually be dealt with through the capability routes.

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3. EXCEPTIONS

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

- redundancy, provided the appropriate procedure has been followed;
- expiry of the agreed probationary period if applicable;
- failure to satisfactorily complete NQT Induction;
- on the expiry of a fixed term contract of employment;
- lack of professional competence; (where the appropriate Capability Procedure has been followed);
- dismissal due to long-term ill health, provided the appropriate procedure has been followed;
- unsatisfactory attendance due to ill-health; (Absence Management Policy);
- dismissal for some other substantial reason.

4. PRINCIPLES

- 4.1 The Governing Body will take all necessary measures to ensure that the rules and regulations which are in force are communicated to all employees, eg via inductions, employee handbooks, notice boards, etc. It is the responsibility of individual employees to ensure that they are aware of and understand these rules and regulations. Details are available from the Headteacher.
- 4.2 The day-to-day supervision of staff is part of the normal management process and is outside the formal procedure for dealing with breaches of discipline. There is likely to be less recourse to the formal procedure if deficiencies in an employee's conduct are brought to their attention at the earliest possible stage by their immediate supervisor. In principle, it is intended that day-to-day managerial approaches are adopted wherever possible. (See Informal Support and Guidance Strategy - Appendix F).
- 4.3 The procedure is designed to establish the facts quickly and to deal consistently and fairly with disciplinary issues. No disciplinary action will be taken until the matter has been investigated fully and a formal disciplinary hearing held. (See Appendix D).
- 4.4 When allegations or concerns first come to light it is appropriate to hold a meeting with the member of staff as soon as reasonably practicable which covers the following:
- informs them of the investigation
 - invite an immediate response (to help management form a view as to whether further investigation is needed)
 - advise the employee to seek advice/support from their Trade Union and that they will be able to attend any further investigatory interviews
 - inform the member of staff that they will be kept informed about decisions to proceed with further investigations or if the matter is concluded.
- 4.5 The employee should be given as much notice as possible of the hearing to allow them to prepare their response (we would normally suggest a minimum of 10 working days). If less than 5 days notice is to be given then the hearing can only proceed if agreed by both parties. The invite letter should inform the employee precisely what the complaint is made against. (See standard letter at Appendix A). This letter should be sent by recorded delivery if personal service is not practicable. Any supporting papers should be circulated as far in advance of the disciplinary hearing as possible. Where appropriate, copies will be provided to the employee's companion. The employee will be given the opportunity to state their case at the disciplinary hearing. Please note that if new evidence or facts emerge during the hearing, it may be necessary to adjourn the hearing to further investigate and then reconvene the hearing when these enquiries have been completed.
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- 4.6 If an employee fails to attend the disciplinary hearing without good cause, a decision may be taken in their absence. If there are medical reasons for non-attendance, the employee is required to produce a doctor's statement (the cost of which would be refunded by the School) and may be referred to occupational health. In normal circumstances an employee is expected to attend a disciplinary hearing or investigation meeting even when they may be regarded as being unfit to attend for their normal work. If an employee produces a medical certificate from their GP attesting that they are unfit for work due to a reason unconnected with the disciplinary hearing or matter under investigation then a postponement may be considered by the employer as reasonable in

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

- 4.7 The employee will have the right in law to be accompanied by a companion at all stages of the disciplinary procedure, good practice would also allow an employee to be accompanied during any investigation interviews, and this request must not be refused if it has no due impact on the investigation progressing in a timely fashion. A companion may be a fellow employee, an official employed by a trade union or a work based trade union representative.
- 4.8 An employee has the right to appeal against any formal disciplinary warning imposed (see paragraph 10).
- 4.9 An employee will be required to acknowledge receipt of a warning letter and confirm that its implications are understood.
- 4.10 The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- 4.11 Repeated acts of misconduct where the warnings are current, whether of a similar or dissimilar nature, will result in the cumulative application of this procedure (see NB paragraph 5.4).
- 4.12 An employee will not be dismissed for a first breach of discipline except in the case of gross misconduct when dismissal may be immediate and without notice or payment in lieu of notice.
- 4.13 In the course of a disciplinary investigation or hearing an employee might raise a grievance that is related to the case. Depending on the nature of the grievance the disciplinary process may be suspended for a short while whilst the grievance is dealt with. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

Where the grievance relates to the employer's decision to impose a disciplinary sanction, the grievance procedure **does not** apply and the grounds for the employee's grievance may be dealt with as part of the appeal against the sanction.

Where the grievance is raised at the outset of the investigation or notification of the hearing and the grievance relates to the case eg the suitability or impartiality of the manager conducting the investigation or the hearing or the refusal of the manager conducting the investigation to include witnesses proposed by the employee then the disciplinary process may be suspended for a short while to enable the grievance to be considered as a separate process.

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Where the grievance is raised during the disciplinary hearing, or after the disciplinary hearing but before any appeal, then the grievance will be dealt with as part of the disciplinary or the appeal hearing. In effect, the grievance becomes part of the employee's response to the case being presented at the disciplinary hearing or becomes one of the grounds for the appeal.

5. **SANCTIONS**

Minor faults will be dealt with informally, normally by the employee's immediate supervisor either via day to day management or the informal support and guidance strategy set out in Appendix F. Where the matter is more serious or the behaviour or actions continue, the following procedures and sanctions will apply:-

5.1 **Stage 1 - Verbal Warning**

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

Recommended management level: Headteacher/Deputy Headteacher/Bursar
(depending on School size and occupational group)

5.2 **Stage 2 - Written Warning**

If the misconduct is serious i.e. impact on employer's business is/could be serious, or if further misconduct occurs whilst a verbal warning is current, the employee will be given a WRITTEN WARNING letter (standard letter at Appendix B), they will be advised of the reason for the warning, the length of time that it will remain current, the improvement required and of the right to appeal. A copy of this written warning will be placed in the employee's file. The warning will remain current for a minimum of six months and a maximum of twelve months, after which it becomes spent.

Recommended management level: Headteacher/Deputy Headteacher/Bursar
(depending on School size and occupational group)

5.3 **Stage 3 - Final Written Warning**

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

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

Recommended management level: Headteacher

5.4 Stage 4 - Dismissal

If, during the currency of a final warning, further misconduct which would warrant a formal warning occurs, dismissal with notice/pay in lieu of notice will, other than in exceptional circumstances, result (see NB below).

Regulations made under Sections 35 and 36 of the Education Act 2002 provide for the delegation by the Governing Body of an initial staff dismissal determination to the Headteacher. Where the Headteacher is not exercising delegated responsibilities for or the Headteacher is being considered for dismissal, the initial dismissal decision should be delegated to a Governors Staff Dismissal Committee of at least 3 governors, unless there are not enough governors who have not been involved in any previous action or decision connected to the dismissal. In this case the decision should be delegated to a panel of two governors. **No dismissal should take place without first informing the Chair of the Governing Body. It is strongly recommended that legal advice is sought.**

If the Governing Body has conferred advisory rights to the Learning & Achievement Operations Director, then their nominated representative should be informed and invited to attend the hearing. In case of VA schools, the Diocese should also be informed.

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

If a disciplinary hearing determines that the employee should cease to work at the School, the Headteacher or Chair of the Governors Staff Dismissal Committee, will confirm the decision in writing, stating the grounds for the determination to dismiss and right of appeal. A copy of this letter must be sent to the Learning & Achievement Operations Director.

If an employee of the Local Authority is working at the school, then providing this procedure has been followed, the Headteacher or Committee of Governors as described above can determine that the employee should cease to work at the school. Written reasons for the determination to dismiss should be provided to the employee together with details of the right of appeal as detailed in paragraph 10.2.

Subject to appeal, the Learning & Achievement Operations Director must give effect to that determination within 14 days by writing to the employee stating the reasons for dismissal and the date of termination.

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

NB *It is for the headteacher/governors dismissal committee, advised by the HR and/or Legal adviser, to determine whether there are such exceptional circumstances and each situation will be considered on its own merits.*

Examples of such circumstances could be:

- *distressing, unforeseen family or external circumstances affecting the employee.*

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- *where the employee has a serious or terminal illness and the headteacher or governors committee determine not to exercise a decision that would lead to dismissal.*

5.4.1 Where there has been a misconduct which has resulted in dismissal or a member of staff has resigned where dismissal was an option and there is a child protection element, the employer is required to make a referral to the Independent Safeguarding Authority. In cases where there is no child protection element, but misconduct has resulted in dismissal, or the employee has resigned when dismissal was an option, in the case of teachers the employer is required to make a referral to the GTC. When considering a referral legal or HR advice should be sought.

5.5 Disciplinary Warnings – Record Keeping

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

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

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

The DfES Guidance: Dealing with Allegations of Abuse against Teachers and Other Staff (2011) sets out how records of such allegations must be kept. It says “The record should be retained at least until the person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.”

* Any such retained documentation should be kept under confidential cover and accessed only by persons authorised to do so by the Head Teacher or Governing Body.

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6. GROSS MISCONDUCT

6.1 This is misconduct of such gravity as to warrant summary dismissal. In the case of alleged gross misconduct, it will normally be necessary to suspend the employee from work on full pay, (please refer to paragraph 7) while the alleged offence is investigated. If the Headteacher is exercising their right of delegated responsibility for dealing with staffing matters as defined by Sections 35 and 36 of the Education Act 2002, an investigation will normally be delegated to the Deputy Headteacher or other appropriate senior member of staff. If, as a result of a full investigation and disciplinary hearing, the Headteacher or Governors' Staff Dismissal Committee has reason to believe gross misconduct has occurred, they will normally determine that the person should cease to work at the School without the need for notice.

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

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

- An inappropriate relationship, or an attempt to establish an inappropriate relationship, with a pupil, whether of a sexual nature or otherwise.
- Behaviour towards a child or children in a way that demonstrates they are unsuitable to work with children. (DfES Guidance: Safeguarding Children and Safer Recruitment in Education – 1 January 2007).
- Theft or unauthorised possession of items belonging to other employees, the school, the Council, Diocesan Board or clients.
- Physical assault, violence, abusive or threatening behaviour, in the course of an employee's duties whether or not on School/Council/Diocesan Board property. (Please also note paragraph 8 below).
- Unlawful discrimination (see Paragraph 8 below).
- Falsification and irregular practice in respect of cash, records or returns.
- Fraud, or attempt to defraud.
- Deliberate misuse of Data Protection information.
- Unauthorised access to information held on computer including internet sites containing offensive or obscene material.
- Deliberately accessing information held on a computer, including internet sites containing offensive or obscene material, which damages or has potential to damage public confidence in the service provided.
- Serious insubordination.
- Gross negligence or a deliberate act or acts which causes unacceptable risk, loss or damage to School/Council/Diocesan Board property, injury, or damages the public reputation of the School/Council/Diocesan Board.
- A criminal conviction or caution, whether or not committed in connection with employment, which may affect the employee's suitability or availability for continued employment in their current role.
- A sustained serious/significant breach in professional standards/codes of practice which bring in to question your suitability for the role.

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7. **SUSPENSION DURING AN INVESTIGATION**

- 7.1 An employee may be suspended which must be on full pay. This is not a disciplinary step, but a means to enable an unhindered investigation to establish the facts, and may occur at any time during the investigation. Suspension must be confirmed in writing within 3 calendar days (see standard letter at Appendix C).
- 7.2 The Governing Body has the power to suspend the Headteacher. This power should be delegated to a committee or panel of the Governing Body eg the Personnel Committee or to a member of the Governing Body eg the Chair. Other members of staff may be suspended by the nominated committee, Governing Body member or the Headteacher (or the Deputy Headteacher in the absence of the Headteacher).
- 7.3 Suspension is not a disciplinary sanction but nonetheless will be viewed by the individual a very serious step which has the potential to “cast a shadow” on an employee’s reputation, it therefore needs to be considered very carefully before being taken and should only happen once a preliminary review of the facts has taken place (see explanatory note below). It should not be undertaken with good reason and without first consulting the school’s HR Adviser and considering the alternatives to suspension outlined in 7.4 below.

Circumstances in which suspension could properly occur include:

- (a) Where this would allow a more objective examination of the allegation and the employees presence could interfere with the investigation;
- (b) Where the member of staff is the subject of a police investigation and the alleged offence is considered relevant to their professional duties;
- (c) Where there is a reasonable ground to believe that it would seriously affect the interests of the School and/or the employee if they were to remain at work; or
- (d) Where a child/or children is/are at risk. (See Section 23 Child Protection - Staff facing allegations of abuse).

This list is not to be regarded as exhaustive.

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

- 7.4 Paid leave of absence , mutual agreement to refrain from work, alternative duties or locations should also be seriously considered first as an alternative to suspension.
- 7.5 Any suspension should be kept under review throughout the investigation and may be lifted at any stage but may only be done by the nominated Governing Body committee, or member. The employee should be informed of this in person and an appropriate written statement confirming the end of the period of suspension will be issued to the employee following this meeting.

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- 7.6 If an employee is suspended then a management contact should be identified who is responsible for maintaining contact with the suspended employee and who they can contact on work related issues.
- 7.7 The LA must be informed immediately about the imposing or lifting of a suspension.

8. **EQUAL OPPORTUNITIES**

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

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

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

In all respects trade union/association representatives will adhere to the rules of conduct applicable to all other employees. No formal disciplinary action may be taken until the circumstances of the case have been investigated and discussed, after obtaining the employee's agreement, with the appropriate full-time Trade Union official. The LA should be informed immediately when such an allegation is made or concern raised.

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

10. **APPEALS**

10.1 **Formal Verbal Warnings/Written Warnings**

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

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

The employee will have the right to be accompanied at all stages of the appeals process. (See paragraph 4.7 for definition of 'accompanied'.)

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

* Where three such Governors are not available then the appeal may be heard by no less than two. If the initial disciplinary decision was heard by a committee of Governors then the Appeals Committee must comprise at least the same number of governors who made the original decision.

10.2 **Dismissal**

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

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

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

10.5 If the decision to dismiss is confirmed by the Appeals Committee the employee will be informed, in writing that the dismissal notice already issued will stand. A copy of the notification will be sent to the Learning & Achievement Operations Director.

10.6 Further information on appeals is in Section 2 Appendix A of Guidance for Schools.

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11. **WITNESSES**

11.1 If an employee is invited to a disciplinary hearing they have the right to request that relevant witnesses to the alleged offence are called. It is the employees responsibility to invite these witnesses. The investigating officer is responsible for calling any witnesses they feel are relevant to the allegations.

11.2 Witnesses should only be invited to a hearing, by either side, who have relevant information to the disciplinary matter in hand. Where there is dispute about the relevance of a witness (i.e. they have not witnessed the events under investigation, or a significant number of witnesses are being called to provide the same information, in the case of character witnesses) the Chair of the panel will make the final decision about whether to hear from any individual.

11.3 When an employee wishes to invite witnesses the letter in Appendix G can be used to ensure that individuals are not placed under any undue pressure. No discussions should take place regarding the case that could prejudice their evidence, and this should not be used to re-interview witnesses

11.4 When the disciplinary involves one person making allegations against another then natural justice requires that the person to be seen by the panel and questioned by the person they are accusing or their representative. This may not be appropriate when the accusation is part of a severe bullying/harassment allegation or when it involves pupils of the school (see 11.5).

- 11.5 In the majority of circumstances subject to 11.2 above, it would be inappropriate for the Chair of a panel to decide not to hear from any witness the respondent feels has relevant information about the case. If the Chair of the panel does decide not to hear from a witness the reason for the decision should be clearly outlined to the employee and their companion in advance of the hearing to allow witness statements to be produced if necessary. Where a witness is stood down just before the hearing and there is no opportunity available for a witness statement to be produced then a revised date for the hearing should be considered where appropriate.
- 11.6 On occasions, allegations will be made by pupils or they may have witnessed key events. In these circumstances we would not expect a pupil to be present at a disciplinary hearing. It may, however, be appropriate for the employees representative to be present at interviews held with any children so that they can confirm leading questions have not been asked or allow the employee or their representative to highlight questions they would like put to the pupils. In these circumstances a balance will always have to be struck between the rights of the accused member of staff and the pupil. At the very least a record of all the questions asked of the child/young person should be recorded and made available along with the responses to ensure transparency in relation to the evidence gathered.

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

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

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STANDARD LETTER : INVITATION TO DISCIPLINARY HEARING

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

CONFIDENTIAL

(Name)
(Address)

Dear

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

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

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

As this hearing may result in disciplinary action, [not excluding your dismissal*] you are entitled to be accompanied by a companion (for definition see paragraph 4.7 of the Procedure – attached). You also have the right to call relevant witnesses, if you wish to do this please inform xx by xx of the names of those witnesses so that appropriate house keeping arrangements can be made.

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

Please confirm by xx that you will be able to attend by telephoning (name and contact and extension number). If you fail to attend and do not provide a reasonable explanation, a decision may be taken in your absence (see paragraph 4.8 of the Procedure).

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

Yours sincerely

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

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

CONFIDENTIAL

(Name)
(Address)

Dear

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

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

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

The improvement in conduct expected is outlined in the attached note, which you are also required to sign, but in brief the expectations are
.....
within (specify the time period).

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

You have the right to appeal against this decision by writing, stating the reason for your appeal, to the Clerk to the Governing Body within 10 working days (see paragraphs 10.1 of the Schools Disciplinary Procedure) of receiving this disciplinary warning. The Appeals Committee of the Governing Body has the following powers:

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

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

Yours sincerely

* delete as appropriate

** include the following on the copy:

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

Signed _____ Dated _____

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STANDARD LETTER : Dismissal

CONFIDENTIAL

(Name)
(Address)

Dear

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

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

After full consideration of all the evidence, I/We had no alternative but to summarily dismiss* you/ dismiss you with notice for (outline reasons)

You have the right to appeal against this decision by writing, stating the reason for your appeal, to the Clerk to the Governing Body within 10 working days (see paragraphs 10.2 of the Schools Disciplinary Procedure) of receiving this disciplinary warning. The Appeals Committee of the Governing Body has the following powers:

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

Yours sincerely

* only possible in cases of gross misconduct/SOSR.

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STANDARD LETTER : CONFIRMATION OF SUSPENSION

CONFIDENTIAL

(Name)
(Address)

Dear

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

(State briefly the issues/incident to be investigated)
.....
.....

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

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

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

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

* Include only if subscribe to service.

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

Yours sincerely

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PROCESS TO BE FOLLOWED AT A DISCIPLINARY HEARING

1. GENERAL

For purposes of this procedure the following definitions apply:

- Hearing - a formal disciplinary hearing convened in accordance with this procedure and held before the recommended management level as set out in paragraph 5 of the Disciplinary Procedure.
- Panel - the recommended manager (Headteacher, Deputy Headteacher/Bursar) as set out in Paragraph 5 together with the manager's professional adviser, normally the school's HR Adviser or other appropriate LA officer.
- Committee - a group of members of the governing body convened to hear a case in accordance with this procedure.

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

(a) Membership

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

(b) Administration

The administration arrangements for a hearing will be the responsibility of the presenting manager except where the case is to be heard by a panel of members of the Governing Body in which case it will be the responsibility of the Clerk to the Governing Body in liaison with the presenting manager. In most cases administrative support will be provided through the School office but where this is not appropriate, eg for purposes of confidentiality, such support may be commissioned from the LA.

(c) Powers

The Disciplinary Hearing can:-

- determine to dismiss the employee (Headteacher or Staff Dismissal Committee only). The employee will be given the right to appeal to the Governors' Appeals Committee by writing to the Clerk to Governors within 10 working days.
- determine not to dismiss (Headteacher or Staff Dismissal Committee only).

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- either determine there is no case to answer or to issue a formal warning in accordance with the Disciplinary Procedure. The employee will be given the right to appeal to the Governors' Appeals Committee by writing to the Clerk to the Governors within 10 working days.

(d) **Methods of Operation**

- Strict confidentiality will be observed with regard to the hearing and all related documentation.
- The rules of "natural justice" will be applied as far as is possible for hearings. Accordingly, the employee can arrange to be represented or supported by a companion (as defined by paragraph 4.7); call witnesses and submit documents to the hearing.
- hearings are conducted as informally as possible within the guidelines set out in paragraph 3 below.

2. **ACTION PRIOR TO THE HEARING**

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

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

- arrange for the hearing to be heard as soon as reasonably practical.
- give all parties to the hearing as much notice as possible of the hearing in writing, of the time and place of the hearing (we would normally suggest a minimum of 10 working days). If less than 5 days notice is to be given then the hearing can only proceed if agreed by both parties).
- invite relevant documents in support of their respective cases from the employee and their representative and the presenting manager/ Headteacher - with an instruction that the Clerk/administrator should receive any documents in time for circulation with the agenda ie 5 working days before the hearing, to allow circulation to all parties.
- table at the hearing any late documents received, subject to the agreement of all parties. If there are late submissions and agreement cannot be reached, the Chair of the Panel will make the final decision on whether they should be considered.
- Circulate the list of witnesses who have been invited by both sides.

(b) Every effort should be made by the parties to exchange written evidence prior to the hearing, late submission of evidence should be avoided if at all possible.

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3. THE HEARING

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

3.1 Preliminaries:

- 3.1.1 Confirm who will Chair the Hearing and that the Panel or Committee is eligible to hear the case in accordance with the Disciplinary Procedure.
- 3.1.2 Invite both parties and their advisers/companion to enter the meeting.
- 3.1.3 After introduction, ask both parties who will be their chief spokesperson and inform them of the procedure to be adopted.
- 3.1.4 State precisely what the complaint/allegation is, as outlines in the letter of invitation to the hearing and/or outlined in any disciplinary reports.
- 3.1.5 Confirm the list of witnesses (if any) to be called by both parties.

3.2 The Procedure:

- 3.2.1 Invite the presenting manager to make their opening statement and to call witnesses, if appropriate.
- 3.2.2 Where no witness has been called, the employee, or their companion, may question the manager on their case, or parts of it, once it has been presented.
- 3.2.3 Where a witness has been called and given evidence, the employee, or their companion may ask questions of the witness. The manager then has a right to re-question on any matter arising from the employee's questions. The Panel or Committee may ask questions of the manager and their witness.
- 3.2.4 The employee, or their companion then has a right to question on any matter arising from the Panel or Committee's questions.
- 3.2.5 Invite the employee, or their representative, to make their opening statement and to put their case and call witnesses if appropriate.
- 3.2.6 Where no witness has been called, the manager may question the employee, or their companion, on their case, or parts of it, once it has been presented. Any questions asked of the employee should be answered by them and not their companion.
- 3.2.7 Where a witness has been called and given evidence, the manager may question the witness. The employee, or their representative, then has the right to question on any matter arising from the manager's questions.
- 3.2.8 The Panel or Committee may ask questions of the employee, or their companion, and their witnesses. The manager then has a right to question on any matter arising from the Panel or Committee's questions.

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- 3.2.9 Witnesses will leave the room after having given, or having been questioned on, their evidence. Whilst witnesses are normally only required to be present whilst giving evidence, management witnesses may remain throughout the hearing at the discretion of the Chair eg where it is felt that this may assist either party in the presentation of their case to the hearing. However, due care will be taken by the Panel or Committee to ensure that any use of this discretion does not compromise or impede either side's case or any individual witnesses evidence.
- 3.2.10 There should be no discussion on the case or associated matters between the witnesses before or after giving evidence.
- 3.2.11 At the discretion of the Chair of the Hearing, further questions by one part of the other may be permitted if, in the view of the Chair, it would assist in clarifying the relevant issues or eliciting further evidence.
- 3.2.12 Invite the presenting manager to make their closing statement.
- 3.2.13 Invite the employee, or their companion, to make their closing statement.
- 3.2.14 The Panel or Committee may ask further questions of the manager and/or the employee, or their companion.
- 3.2.15 Both parties to leave the room while the Panel or Committee considers their decision.
- 3.2.16 While considering their decision the Panel may view that they need further information or clarification by one or other party. In these circumstances both sides should be recalled, even if clarification is only required by one party.
- 3.2.17 Both parties to be invited back to hear the Panel or Committee's decision.
- 3.2.18 No further discussion or debate will take place.
- 3.2.19 The Panel or Committee's decision will be confirmed in writing within 5 working days.

4. **THE DECISION**

- (a) The Headteacher/Panel will examine all of the issues fully before reaching a decision.
- (b) Following the adjournment, the Headteacher/Chair of the Panel will inform both parties of the decision reached. This will be confirmed in writing by the Headteacher/Chair of the Panel.
- (c) A copy of the decision will be provided to the Learning & Achievement Operations Director

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ROLE OF THE COMPANION

3. A companion can be:
 - A fellow school employee
 - An official employed by a trade union
 - A workplace based trade union representative, certified in writing by the trade union as having experience of, or having received training in, acting as a worker's companion at a disciplinary or grievance hearing.

4. The companion will be allowed to address the hearing in order to:
 - put the employee's case and ask questions on behalf of the employee
 - sum up the employee's case
 - respond on the employee's behalf to any view expressed at the hearing
 - confer with the employee during the hearing

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

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INFORMAL SUPPORT AND GUIDANCE STRATEGY

1. Introduction and Preamble

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

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

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

2. The Meeting

- 2.1 At the meeting, the manager should outline their concerns with clear supporting evidence.
- 2.2 The manager should listen to any feedback/response from the member of staff.
- 2.3 The manager should confirm their expectations of the member of staff.
- 2.4 The manager should state what support and guidance will be available to the member of staff to assist them to reach and maintain the required standards.
- 2.5 In most circumstances a review meeting will be required and the manager should set an appropriate review date eg three months. However some issues may be concluded in a single meeting.
- 2.6 Once the meeting has taken place the discussion should be followed up with a letter of guidance and expectation. A model letter is attached as Appendix F2.
- 2.7 Following the meeting the manager should monitor and record any positives and negatives in preparation for the review. The manager should, however, bring to the attention of the employee any instances relevant to the issues causing concern as and when they occur during the review period.

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INFORMAL SUPPORT AND GUIDANCE STRATEGY

MODEL LETTER OF INVITATION

CONFIDENTIAL

(Name)

(Address)

Dear

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

(details of event/concerns)

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

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

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

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

Yours sincerely

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

CONFIDENTIAL

(Name)

(Address)

Dear

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

At the meeting we spoke about the following points

(details of events/concerns)

Your response to those concerns was

(details of response(s))

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

(Details of expectations, advice and guidance)

Continued support is available as follows

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

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

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

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

Yours sincerely

Headteacher/Manager

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

Signed: Date:

* include if a review period has been set.

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MODEL LETTER OF INVITE TO WITNESS

CONFIDENTIAL

(Name)

(Address)

Dear

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

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

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

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

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

Yours sincerely

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Guidance for Schools - Volume 1 Section 16 - Disciplinary Procedure

SiX Document Title/ Search Keyword(s): **Volume 1, Section 16**

Service Group: Human Resources

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Part 3: Non Maintained Schools/Academies

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SECTION 16

Part 3

DISCIPLINARY PROCEDURE – NON MAINTAINED SCHOOLS/ACADEMIES

1. INTRODUCTION

- 1.1 It is recommended that this policy is adopted by all non maintained schools who purchase HR Advisory Services through Blue Book. If not adopted, they should be aware of the requirement to develop their own written disciplinary procedure in consultation with their trade union/staff representatives.
- 1.2 The procedure recommends appropriate management levels for different levels of action, but this will vary dependent upon persons available who are suitably trained.
- 1.3 The procedure takes due account of the ACAS Code of Practice – Disciplinary and Grievance Procedures which came into effect from 6 April 2009. The School Standards and Framework Act 1998; The School Government Regulations 1999 and the Education Act 2002 as relevant and appropriate to disciplinary practices and procedures in employment.
- 1.4 The procedure takes effect from 1 June 2010 and supersedes all previous disciplinary procedures and practices.

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2. PURPOSE

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

* performance would usually be dealt with through the capability routes.

3. EXCEPTIONS

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

- redundancy, provided the appropriate procedure has been followed;
- expiry of the agreed probationary period if applicable;
- failure to satisfactorily complete NQT Induction;
- on the expiry of a fixed term contract of employment;
- lack of professional competence; (where the appropriate Capability Procedure has been followed);
- dismissal due to long-term ill health, provided the appropriate procedure has been followed;
- unsatisfactory attendance due to ill-health; (Absence Management Policy);
- dismissal for some other substantial reason.

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4 PRINCIPLES

- 4.1 The Governing Body will take all necessary measures to ensure that the rules and regulations which are in force are communicated to all employees, eg via inductions, employee handbooks, notice boards, etc. It is the responsibility of individual employees to ensure that they are aware of and understand these rules and regulations. Details are available from the Headteacher.
- 4.2 The day-to-day supervision of staff is part of the normal management process and is outside the formal procedure for dealing with breaches of discipline. There is likely to be less recourse to the formal procedure if deficiencies in an employee's conduct are brought to their attention at the earliest possible stage by their immediate supervisor. In principle, it is intended that day-to-day managerial approaches are adopted wherever possible. (See Informal Support and Guidance Strategy - Appendix F).
- 4.3 The procedure is designed to establish the facts quickly and to deal consistently and fairly with disciplinary issues. No disciplinary action will be taken until the matter has been investigated fully and a formal disciplinary hearing held. (See Appendix D).
- 4.4 When allegations or concerns first come to light it is appropriate to hold a meeting with the member of staff as soon as reasonably practicable which covers the following:
- informs them of the investigation
 - invite an immediate response (to help management form a view as to whether further investigation is needed)
 - advise the employee to seek advice/support from their Trade Union and that they will be able to attend any further investigatory interviews
 - inform the member of staff that they will be kept informed about decisions to proceed with further investigations or if the matter is concluded.
- 4.5 The employee should be given as much notice as possible of the hearing to allow them to prepare their response (we would normally suggest a minimum of 10 working days). If less than 5 days notice is to be given then the hearing can only proceed if agreed by both parties. The invite letter should inform the employee precisely what the complaint is made against. (See standard letter at Appendix A). This letter should be sent by recorded delivery if personal service is not practicable. Any supporting papers should be circulated as far in advance of the disciplinary hearing as possible. Where appropriate, copies will be provided to the employee's companion. The employee will be given the opportunity to state their case at the disciplinary hearing. Please note that if new evidence or facts emerge during the hearing, it may be necessary to adjourn the hearing to further investigate and then reconvene the hearing when these enquiries have been completed.
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- 4.6 If an employee fails to attend the disciplinary hearing without good cause, a decision may be taken in their absence. If there are medical reasons for non-attendance, the employee is required to produce a doctor's statement (the cost of which would be refunded by the Academy) and may be referred to occupational health. In normal circumstances an employee is expected to attend a disciplinary hearing or investigation meeting even when they may be regarded as being unfit to attend for their normal work. If an employee produces a medical certificate from their GP attesting that they are unfit for work due to a reason unconnected with the disciplinary hearing or matter under

investigation then a postponement may be considered by the employer as reasonable in those circumstances. However, if the reason for the absence as attested by the employee's GP is stress related to or arising from the disciplinary hearing or matter under investigation then this will not be regarded as a legitimate reason for postponing the matter. If the cause of the stress is the potential disciplinary matter under consideration it follows that the conclusion of the matter will resolve the issues causing the stress and the absence arising from it. If the matter is of such gravity that it must be dealt with immediately then the hearing will proceed in the employee's absence. Any decision to proceed with a subsequently re-arranged hearing at which the employee again fails to attend will take into account the reason for the non-attendance, medical advice from the Academies Occupational Health provider (if appropriate), the seriousness of the matter being considered and whether or not the employee has a companion to respond on their behalf.

- 4.7 The employee will have the right in law to be accompanied by a companion at all stages of the disciplinary procedure, good practice would also allow an employee to be accompanied during any investigation interviews, and this request must not be refused if it has no due impact on the investigation progressing in a timely fashion. A companion may be a fellow employee, an official employed by a trade union or a work based trade union representative.
- 4.8 An employee has the right to appeal against any formal disciplinary warning imposed (see paragraph 10).
- 4.9 An employee will be required to acknowledge receipt of a warning letter and confirm that its implications are understood.
- 4.10 The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- 4.11 Repeated acts of misconduct where the warnings are current, whether of a similar or dissimilar nature, will result in the cumulative application of this procedure (see NB paragraph 5.4).
- 4.12 An employee will not be dismissed for a first breach of discipline except in the case of gross misconduct when dismissal may be immediate and without notice or payment in lieu of notice.
- 4.13 In the course of a disciplinary investigation or hearing an employee might raise a grievance that is related to the case. Depending on the nature of the grievance the disciplinary process may be suspended for a short while whilst the grievance is dealt with. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

Where the grievance relates to the employer's decision to impose a disciplinary sanction, the grievance procedure **does not** apply and the grounds for the employee's grievance may be dealt with as part of the appeal against the sanction.

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Where the grievance is raised at the outset of the investigation or notification of the hearing and the grievance relates to the case eg the suitability or impartiality of the manager conducting the investigation or the hearing or the refusal of the manager conducting the investigation to include witnesses proposed by the employee then the disciplinary process may be suspended for a short while to enable the grievance to be considered as a separate process.

Where the grievance is raised during the disciplinary hearing, or after the disciplinary hearing but before any appeal, then the grievance will be dealt with as part of the disciplinary or the appeal hearing. In effect, the grievance becomes part of the employee's response to the case being presented at the disciplinary hearing or becomes one of the grounds for the appeal.

5. **SANCTIONS**

Minor faults will be dealt with informally, normally by the employee's immediate supervisor either via day to day management or the informal support and guidance strategy set out in Appendix F. Where the matter is more serious or the behaviour or actions continue, the following procedures and sanctions will apply:-

5.1 **Stage 1 - Verbal Warning**

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

Recommended management level: Headteacher/Deputy Headteacher/
Bursar (depending on School size
and occupational group)

5.2 **Stage 2 - Written Warning**

If the misconduct is serious i.e. impact on employer's business is/could be serious, or if further misconduct occurs whilst a verbal warning is current, the employee will be given a WRITTEN WARNING letter (standard letter at Appendix B), they will be advised of the reason for the warning, the length of time that it will remain current, the improvement required and of the right to appeal. A copy of this written warning will be placed in the employee's file. The warning will remain current for a minimum of six months and a maximum of twelve months, after which it becomes spent.

Recommended management level: Headteacher/Deputy Headteacher/
Bursar (depending on School size
and occupational group)

5.3 **Stage 3 - Final Written Warning**

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

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

Recommended management level: Headteacher

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5.4 Stage 4 - Dismissal

If, during the currency of a final warning, further misconduct which would warrant a formal warning occurs, dismissal with notice/pay in lieu of notice will, other than in exceptional circumstances, result (see NB below).

It is up to the Governing Body to delegate responsibility for dismissal decisions. This would normally be to the Headteacher. Where the Headteacher is not exercising delegated responsibilities for or the Headteacher is being considered for dismissal, the initial dismissal decision should be delegated to a Governors Staff Dismissal Committee of 3 governors, unless there are not enough governors who have not been involved in any previous action or decision connected to the dismissal. In this case the decision should be delegated to a panel of two governors. **No dismissal should take place without first informing the Chair of the Governing Body. It is strongly recommended that legal advice is sought.**

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

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

5.4.1 Where there has been a misconduct which has resulted in dismissal or a member of staff has resigned where dismissal was an option and there is a child protection element, the employer is required to make a referral to the Independent Safeguarding Authority. In cases where there is no child protection element, but misconduct has resulted in dismissal, or the employee has resigned when dismissal was an option, in the case of teachers the employer is required to make a referral to the GTC. When considering a referral legal or HR advice should be sought.

5.5 Disciplinary Warnings – Record Keeping

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

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

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

The DfES Guidance: Dealing with Allegations of Abuse against Teachers and Other Staff (2011) sets out how records of such allegations must be kept. It says "The record should be retained at least until the person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer."

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* Any such retained documentation should be kept under confidential cover and accessed only by persons authorised to do so by the Head Teacher or Governing Body.

6. GROSS MISCONDUCT

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

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

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

- An inappropriate relationship, or an attempt to establish an inappropriate relationship, with a pupil, whether of a sexual nature or otherwise.
- Behaviour towards a child or children in a way that demonstrates they are unsuitable to work with children. (DfES Guidance: Safeguarding Children and Safer Recruitment in Education – 1 January 2007).
- Theft or unauthorised possession of items belonging to other colleagues, the school, partner organisations or clients.
- Physical assault, violence, abusive or threatening behaviour, in the course of an employee's duties whether or not on School property. (Please also note paragraph 8 below).
- Unlawful discrimination (see Paragraph 8 below).
- Falsification and irregular practice in respect of cash, records or returns.
- Fraud, or attempt to defraud.
- Deliberate misuse of Data Protection information.
- Unauthorised access to information held on computer including internet sites containing offensive or obscene material.
- Deliberately accessing information held on a computer, including internet sites containing offensive or obscene material, which damages or has potential to damage public confidence in the service provided.

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- Serious insubordination.
- Gross negligence or a deliberate act or acts which causes unacceptable risk, loss or damage to School property, injury, or damages the public reputation of the School or Partner Organisations.
- A criminal conviction or caution, whether or not committed in connection with employment, which may affect the employee's suitability or availability for continued employment in their current role.
- A sustained serious/significant breach in professional standards/codes of practice which bring in to question your suitability for the role.

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7. **SUSPENSION DURING AN INVESTIGATION**

- 7.1 An employee may be suspended which must be on full pay. This is not a disciplinary step, but a means to enable an unhindered investigation to establish the facts, and may occur at any time during the investigation. Suspension must be confirmed in writing within 3 calendar days (see standard letter at Appendix C).
- 7.2 The Governing Body has the power to suspend the Headteacher. This power should be delegated to a committee or panel of the Governing Body eg the Personnel Committee or to a member of the Governing Body eg the Chair. Other members of staff may be suspended by the nominated committee, Governing Body member or the Headteacher (or the Deputy Headteacher in the absence of the Headteacher).
- 7.3 Suspension is not a disciplinary sanction but nonetheless will be viewed by the individual a very serious step which has the potential to "cast a shadow" on an employee's reputation, it therefore needs to be considered very carefully before being taken and should only happen once a preliminary review of the facts has taken place (see explanatory note below). It should not be undertaken with good reason and we recommend consulting the school's HR Adviser and you are required to consider the alternatives to suspension outlined in 7.4 below.

Circumstances in which suspension could properly occur include:

- Where this would allow a more objective examination of the allegation and the employees presence could interfere with the investigation;
- Where the member of staff is the subject of a police investigation and the alleged offence is considered relevant to their professional duties;
- Where there is a reasonable ground to believe that it would seriously affect the interests of the School and/or the employee if they were to remain at work; or
- Where a child/or children is/are at risk. (See Section 23 Child Protection - Staff facing allegations of abuse).

This list is not to be regarded as exhaustive.

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

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

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8. EQUAL OPPORTUNITIES

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

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

9. TRADE UNION/ASSOCIATION, LAY REPRESENTATIVES

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

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

10. APPEALS

10.1 Formal Verbal Warnings/Written Warnings

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

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

The employee will have the right to be accompanied at all stages of the appeals process. (See paragraph 4.7 for definition of 'accompanied'.)

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

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

10.2 **Dismissal**

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

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

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

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

10.6 Further information on appeals is in Section 2 Appendix A of Guidance for Schools.

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11. **WITNESSES**

11.1 If an employee is invited to a disciplinary hearing they have the right to request that relevant witnesses to the alleged offence are called. It is the employees responsibility to invite these witnesses. The investigating officer is responsible for calling any witnesses they feel are relevant to the allegations.

11.2 Witnesses should only be invited to a hearing, by either side, who have relevant information to the disciplinary matter in hand. Where there is dispute about the relevance of a witness (i.e. they have not witnessed the events under investigation, or a significant number of witnesses are being called to provide the same information, in the case of character witnesses) the Chair of the panel will make the final decision about whether to hear from any individual.

11.3 When an employee wishes to invite witnesses the letter in Appendix G can be used to ensure that individuals are not placed under any undue pressure. No discussions should take place regarding the case that could prejudice their evidence, and this should not be used to re-interview witnesses

- 11.4 When the disciplinary involves one person making allegations against another then natural justice requires that the person to be seen by the panel and questioned by the person they are accusing or their representative. This may not be appropriate when the accusation is part of a severe bullying/harassment allegation or when it involves pupils of the school (see 11.5)
- 11.5 In the majority of circumstances subject to 11.2 above, it would be inappropriate for the Chair of a panel to decide not to hear from any witness the respondent feels has relevant information about the case. If the Chair of the panel does decide not to hear from a witness the reason for the decision should be clearly outlined to the employee and their companion in advance of the hearing to allow witness statements to be produced if necessary. Where a witness is stood down just before the hearing and there is no opportunity available for a witness statement to be produced then a revised date for the hearing should be considered where appropriate.
- 11.7 On occasions, allegations will be made by pupils or they may have witnessed key events. In these circumstances we would not expect a pupil to be present at a disciplinary hearing. It may, however, be appropriate for the employees representative to be present at interviews held with any children so that they can confirm leading questions have not been asked or allow the employee or their representative to highlight questions they would like put to the pupils. In these circumstances a balance will always have to be struck between the rights of the accused member of staff and the pupil. At the very least a record of all the questions asked of the child/young person should be recorded and made available along with the responses to ensure transparency in relation to the evidence gathered.

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

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

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STANDARD LETTER : INVITATION TO DISCIPLINARY HEARING

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

CONFIDENTIAL

(Name)
(Address)

Dear

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

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

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

As this hearing may result in disciplinary action, [not excluding your dismissal*] you are entitled to be accompanied by a companion (for definition see paragraph 4.7 of the Procedure – attached). You also have the right to call relevant witnesses, if you wish to do this please inform xx by xx of the names of those witnesses so that appropriate house keeping arrangements can be made.

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

Please confirm by xx that you will be able to attend by telephoning (name and contact and extension number). If you fail to attend and do not provide a reasonable explanation, a decision may be taken in your absence (see paragraph 4.8 of the Procedure).

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

Yours sincerely

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

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

CONFIDENTIAL

(Name)
(Address)

Dear

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

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

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

The improvement in conduct expected is outlined in the attached note, which you are also required to sign, but in brief the expectations are
.....
within (specify the time period).

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

You have the right to appeal against this decision by writing, stating the reason for your appeal, to the Clerk to the Governing Body within 10 working days (see paragraphs 10.1 of the Schools Disciplinary Procedure) of receiving this disciplinary warning. The Appeals Committee of the Governing Body has the following powers:

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

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

Yours sincerely

* delete as appropriate

** include the following on the copy:

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

Signed _____ Dated _____

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STANDARD LETTER : Dismissal

CONFIDENTIAL

(Name)
(Address)

Dear

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

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

After full consideration of all the evidence, I/We had no alternative but to summarily dismiss* you/ dismiss you with notice for (outline reasons)

You have the right to appeal against this decision by writing, stating the reason for your appeal, to the Clerk to the Governing Body within 10 working days (see paragraphs 10.2 of the Schools Disciplinary Procedure) of receiving this disciplinary warning. The Appeals Committee of the Governing Body has the following powers:

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

Yours sincerely

* only possible in cases of gross misconduct/SOSR.

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STANDARD LETTER : CONFIRMATION OF SUSPENSION

CONFIDENTIAL

(Name)
(Address)

Dear

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

(State briefly the issues/incident to be investigated)
.....
.....

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

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

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

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

* Include only if subscribe to service.

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

Yours sincerely

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PROCESS TO BE FOLLOWED AT A DISCIPLINARY HEARING

1. GENERAL

For purposes of this procedure the following definitions apply:

- Hearing - a formal disciplinary hearing convened in accordance with this procedure and held before the recommended management level as set out in paragraph 5 of the Disciplinary Procedure.
- Panel - the recommended manager (Headteacher, Deputy Headteacher/Bursar) as set out in Paragraph 5 together with the manager's professional adviser, normally the school's HR Adviser or other appropriate professional.
- Committee - a group of members of the governing body convened to hear a case in accordance with this procedure.

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

(a) Membership

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

(b) Administration

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

(c) Powers

The Disciplinary Hearing can:-

- determine to dismiss the employee (Headteacher or Staff Dismissal Committee only). The employee will be given the right to appeal to the Governors' Appeals Committee by writing to the Clerk to Governors within 10 working days.
- determine not to dismiss (Headteacher or Staff Dismissal Committee only). [top of document](#)

- either determine there is no case to answer or to issue a formal warning in accordance with the Disciplinary Procedure. The employee will be given the right to appeal to the Governors' Appeals Committee by writing to the Clerk to the Governors within 10 working days.

(d) **Methods of Operation**

- Strict confidentiality will be observed with regard to the hearing and all related documentation.
- The rules of "natural justice" will be applied as far as is possible for hearings. Accordingly, the employee can arrange to be represented or supported by a companion (as defined by paragraph 4.7); call witnesses and submit documents to the hearing.
- hearings are conducted as informally as possible within the guidelines set out in paragraph 3 below.

2. **ACTION PRIOR TO THE HEARING**

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

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

- arrange for the hearing to be heard as soon as reasonably practical.
- give all parties to the hearing as much notice as possible of the hearing in writing, of the time and place of the hearing (we would normally suggest a minimum of 10 working days). If less than 5 days notice is to be given then the hearing can only proceed if agreed by both parties).
- invite relevant documents in support of their respective cases from the employee and their representative and the presenting manager/ Headteacher - with an instruction that the Clerk/administrator should receive any documents in time for circulation with the agenda ie 5 working days before the hearing, to allow circulation to all parties.
- table at the hearing any late documents received, subject to the agreement of all parties. If there are late submissions and agreement cannot be reached, the Chair of the Panel will make the final decision on whether they should be considered.
- Circulate the list of witnesses who have been invited by both sides.

(b) Every effort should be made by the parties to exchange written evidence prior to the hearing, late submission of evidence should be avoided if at all possible.

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3. THE HEARING

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

3.1 Preliminaries:

- 3.1.1 Confirm who will Chair the Hearing and that the Panel or Committee is eligible to hear the case in accordance with the Disciplinary Procedure.
- 3.1.2 Invite both parties and their advisers/companion to enter the meeting.
- 3.1.4 After introduction, ask both parties who will be their chief spokesperson and inform them of the procedure to be adopted.
- 3.1.4 State precisely what the complaint/allegation is, as outlines in the letter of invitation to the hearing and/or outlined in any disciplinary reports.
- 3.1.5 Confirm the list of witnesses (if any) to be called by both parties.

3.2 The Procedure:

- 3.2.1 Invite the presenting manager to make their opening statement and to call witnesses, if appropriate.
- 3.2.2 Where no witness has been called, the employee, or their companion, may question the manager on their case, or parts of it, once it has been presented.
- 3.2.3 Where a witness has been called and given evidence, the employee, or their companion may ask questions of the witness. The manager then has a right to re-question on any matter arising from the employee's questions. The Panel or Committee may ask questions of the manager and their witness.
- 3.2.4 The employee, or their companion then has a right to question on any matter arising from the Panel or Committee's questions.
- 3.2.5 Invite the employee, or their representative, to make their opening statement and to put their case and call witnesses if appropriate.
- 3.2.6 Where no witness has been called, the manager may question the employee, or their companion, on their case, or parts of it, once it has been presented. Any questions asked of the employee should be answered by them and not their companion.
- 3.2.7 Where a witness has been called and given evidence, the manager may question the witness. The employee, or their representative, then has the right to question on any matter arising from the manager's questions.
- 3.2.8 The Panel or Committee may ask questions of the employee, or their companion, and their witnesses. The manager then has a right to question on any matter arising from the Panel or Committee's questions.

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- 3.2.9 Witnesses will leave the room after having given, or having been questioned on, their evidence. Whilst witnesses are normally only required to be present whilst giving evidence, management witnesses may remain throughout the hearing at the discretion of the Chair eg where it is felt that this may assist either party in the presentation of their case to the hearing. However, due care will be taken by the Panel or Committee to ensure that any use of this discretion does not compromise or impede either side's case or any individual witnesses evidence.
- 3.2.10 There should be no discussion on the case or associated matters between the witnesses before or after giving evidence.
- 3.2.11 At the discretion of the Chair of the Hearing, further questions by one part of the other may be permitted if, in the view of the Chair, it would assist in clarifying the relevant issues or eliciting further evidence.
- 3.2.12 Invite the presenting manager to make their closing statement.
- 3.2.13 Invite the employee, or their companion, to make their closing statement.
- 3.2.14 The Panel or Committee may ask further questions of the manager and/or the employee, or their companion.
- 3.2.15 Both parties to leave the room while the Panel or Committee considers their decision.
- 3.2.16 While considering their decision the Panel may view that they need further information or clarification by one or other party. In these circumstances both sides should be recalled, even if clarification is only required by one party.
- 3.2.17 Both parties to be invited back to hear the Panel or Committee's decision.
- 3.2.18 No further discussion or debate will take place.
- 3.2.19 The Panel or Committee's decision will be confirmed in writing within 5 working days.

4. **THE DECISION**

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

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ROLE OF THE COMPANION

1. A companion can be:
 - A fellow school employee
 - An official employed by a trade union
 - A workplace based trade union representative, certified in writing by the trade union as having experience of, or having received training in, acting as a worker's companion at a disciplinary or grievance hearing.

2. The companion will be allowed to address the hearing in order to:
 - put the employee's case and ask questions on behalf of the employee
 - sum up the employee's case
 - respond on the employee's behalf to any view expressed at the hearing
 - confer with the employee during the hearing

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

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INFORMAL SUPPORT AND GUIDANCE STRATEGY

1. Introduction and Preamble

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

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Although the meeting is an informal one, the employee may request to be accompanied by a work colleague or work place Trade Union Representative and this should not be unreasonably refused
If you chose to write a letter inviting the employee to a meeting a model letter is attached as appendix F1.

2. The Meeting

- 2.1 At the meeting, the manager should outline their concerns with clear supporting evidence.
- 2.2 The manager should listen to any feedback/response from the member of staff.
- 2.3 The manager should confirm their expectations of the member of staff.
- 2.4 The manager should state what support and guidance will be available to the member of staff to assist them to reach and maintain the required standards.
- 2.5 In most circumstances a review meeting will be required and the manager should set an appropriate review date eg three months. However some issues may be concluded in a single meeting.
- 2.6 Once the meeting has taken place the discussion should be followed up with a letter of guidance and expectation. A model letter is attached as Appendix F2.
- 2.7 Following the meeting the manager should monitor and record any positives and negatives in preparation for the review. The manager should, however, bring to the attention of the employee any instances relevant to the issues causing concern as and when they occur during the review period.

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INFORMAL SUPPORT AND GUIDANCE STRATEGY

MODEL LETTER OF INVITATION

CONFIDENTIAL

(Name)

(Address)

Dear

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

(details of event/concerns)

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

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

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

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

Yours sincerely

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

CONFIDENTIAL

(Name)
(Address)

Dear

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

At the meeting we spoke about the following points

(details of events/concerns)

Your response to those concerns was

(details of response(s))

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

(Details of expectations, advice and guidance)

Continued support is available as follows

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

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

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

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

Yours sincerely

Headteacher/Manager

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

Signed: Date:

* include if a review period has been set.

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MODEL LETTER OF INVITE TO WITNESS

CONFIDENTIAL

(Name)

(Address)

Dear

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

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

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

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

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

Yours sincerely

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