

URMSTON GRAMMAR DISCIPLINARY PROCEDURE FOR ALL STAFF

CONTENTS

- A. Introduction
- 1. Guiding Principles
- 2. Scope of the Procedure
- 3. Conduct that may attract disciplinary action
- 4. Disciplinary Investigation
- 5. Suspension
- 6. Informal Action
- 7. Formal Action
- 8. Cases where it is decided that the employee should cease to work at the school
- 9. Appeals
- 10. Inability or refusal to attend a disciplinary or appeal hearing
- 11. Composition of the disciplinary panel
- 12. Composition of the appeal panel
- 13. Resignation
- 14. Keeping records

APPENDICES

Appendix A – Acts of Gross Misconduct

Appendix B – Protocol for Disciplinary Suspension

Appendix C – Protocols for Disciplinary Hearings

- Conducted by the Principal
- Conducted by the Staff Disciplinary Committee of the Governing Body

Appendix D – Appeal against Disciplinary Action

Appendix E – Schedule for Investigation for Principals without delegated responsibilities

Appendix F – Scheduled for Investigation for Principals with delegated responsibilities or Chair of Governors with investigating responsibilities

Appendix G – Disciplinary Appeals Conducted by the Appeals Committee of the Governing Body (incorporating dismissal appeal responsibilities)

1. INTRODUCTION

- 1.1) This policy was originally developed by Trafford Local Authority and the recognised Teacher Associations/Trade Unions. As an Academy the Governing Body has adopted this and agreed that this disciplinary procedure applies to all staff employed by Urmston Grammar
- 1.2) It is recognised that the disciplinary procedure should not be viewed primarily as a means of imposing sanctions. It is also intended that improvement in individual conduct should be emphasised and encouraged.
- 1.3) This procedure is based on the standards set out in the ACAS Code of practice on Disciplinary and Grievance Procedures and the minimum Statutory Dismissal and Disciplinary Procedures, contained in the Employment Act 2002.
- 1.4) HR regularly review all the policies and procedures in place for schools to ensure there are no negative equality impacts.

2. GUIDING PRINCIPLES

- 2.1) The main principles upon which the procedure is based are:-
 - No disciplinary action will be taken against an employee until the case has been fully investigated
 - At every stage of the procedure an employee will be advised of the nature of the complaint against him/her and will be given the opportunity to state his/her case before any decision is made.
 - At all stages of the Disciplinary Procedure an employee will have the right to be accompanied by a Trade Union representative or a work colleague of their choice. The colleague/Trade Union Representative would be present to observe the proceedings and advise the employee, but he/she cannot answer questions on the employee's behalf.

Under normal circumstances, there is no entitlement to external legal representation. However, in cases where the charges faced are potentially so serious that disciplinary action could bar an employee from working again in their chosen career, careful consideration will be given to any request from the employee for legal representation. It will be subject to the schools discretion and decisions will be made on a case-by-case basis (advice available from HR).

- No disciplinary action will be taken against a Trade Union Representative either in relation to his/her conduct whilst acting in the capacity of a Trade Union Representative or at any other time, without prior consultation with the appropriate Branch Secretary and District Officer (subject to the employee's

agreement to this consultation). The Trade Union Representative also has the right to have his/her District Officer present at any Disciplinary Hearing

- To ensure disciplinary issues are dealt with fairly and effectively and with clear outcomes at all stages
- Disciplinary action will only be taken after the full facts of the case have been established and the employee has been given the opportunity to state their case at a Disciplinary Hearing
- No employee will be dismissed for a first disciplinary offence except in the case of gross misconduct
- Disciplinary matters will normally be pursued sequentially through the stages of the procedure, but the procedure may be implemented at any stage or stages if the employee's alleged misconduct warrants such action. Matters of a serious nature, where dismissal is a possible outcome, will be considered under Stage 3
- Principals and Governing Bodies will be responsible for applying this procedure in a fair and equitable way and seeking, guidance and support from their Human Resources support service where appropriate
- All parties will ensure that investigation, hearing and appeal processes progress as quickly as is reasonably possible for the benefit of the organisation and the employee
- Employees have the right of appeal against any disciplinary action taken under this procedure
- Records will be treated as confidential in accordance with the Data Protection Act 1998
- Reasonable adjustments will be made where required to assist employees with a disability

3. SCOPE OF THE PROCEDURE

- 3.1) This recommended procedure is subject to the provisions of Relevant Education Acts. It applies to all staff, including the Principal.
- 3.2) Separate procedures exist for dealing with sickness absence, but unauthorised absence will be dealt with under these procedures
- 3.3) Separate procedures exist for dealing with unsatisfactory performance
- 3.4) The procedure is **not** intended to apply in the following circumstances:

- termination of a fixed term contract of employment where the term of that contract expires without being renewed.
 - termination of a temporary appointment where the reason for the termination is that the need for the employee's service has expired or is about to expire.
 - termination of employment by reason of redundancy. If an employee is selected for redundancy and believes he/she has been selected unfairly then he/she will have the right of appeal to the appropriate Governing Body Appeals Panel purely and simply on the basis of how he/she was selected for redundancy.
 - resignation of the employee where there are no disciplinary allegations, or other termination by mutual consent.
 - to contractors, external consultants and agency staff, with the exception of those staff that have acquired employment rights, advice should be sought from HR regarding this.
- 3.5) The Education Act 2002 has given greater powers to Governing Bodies to delegate their powers, including their powers to dismiss staff, to Principals. Principals who were appointed on or after 1 September 2003 automatically have the power to dismiss rather than refer a case to a committee of the Governing Body for consideration. Principals who were appointed prior to 1 September 2003 can be given delegated responsibility for the dismissal of staff by the Governing Body. This procedure is also compatible with the School Staffing (England) Regulations 2009; the "2009 regulations".

4. CONDUCT THAT MAY ATTRACT DISCIPLINARY ACTION

- 4.1) It is impossible to provide a comprehensive and exhaustive list of all the issues that might give rise to a disciplinary investigation and formal disciplinary action but some of the more common are attached at Appendix A.

5. DISCIPLINARY INVESTIGATION

The Investigatory Process

- 5.1) Prior to invoking the formal Disciplinary Procedure, an investigation will be conducted to determine whether it is appropriate to pursue disciplinary action. The Principal will decide who is appropriate to undertake the investigation; either themselves or another nominated officer.
- 5.2) At all stages of the investigation advice can be sought from HR.
- 5.3) The Investigating Officers' task is to ascertain the facts, assemble the evidence to support them and, if deciding that the matter should proceed to a Disciplinary

Hearing, prepare a report to present at the hearing. The Investigating Officer(s) may ascertain the facts either through interviewing witnesses, the scrutiny of files/records /documents etc. or a combination of both. The Investigating Officer(s) should ensure that they fully understand the allegations of misconduct that have been made against the employee, and what it is that they are being asked to investigate; as determining the scope of matters under investigation influences how best the matter should be approached and gives an indication of the necessary resources. It may be the case that, during the course of the logical process of the investigation, evidence is uncovered that supports further allegations of misconduct and in such circumstances, advice and guidance can be sought from HR.

- 5.4) Detailed, dated records should be kept of any interviews held and witnesses should be informed that hand-written notes will be taken during the meeting and will be typed up to provide a statement, which they will have the opportunity to consider for the accuracy of its tone and content, and be invited to sign as a true record. The Investigating Officer(s) must ensure that witness statements are signed and dated as soon as possible following the interview. The employee should be informed that any agreed changes may be made to the relative accuracy of the tone and content, but that he/she cannot retract what he/she has said. Where there is no agreement and/or the employee refuses to sign for any reason, the Investigating Officers reserve the right to produce the document as their note of the interview, in any disciplinary proceedings that may ensue. Where the employee signs their statement, he/she should be advised that their statement may be produced as evidence should disciplinary proceedings follow and where this is the case, they will be expected to attend the hearing as a witness.
- 5.5) Where it is necessary to interview service users such as pupils, specialist advice can be sought from support workers/social workers where they are involved, or from MARAT or HR who can liaise with the appropriate persons to provide advice. It is recommended that pupils who are witnesses are asked to write down their version of events as soon as possible after the event, and ideally before they have an opportunity to discuss with other witnesses/friends. It may be appropriate for the SENCo to interview the pupil rather than the Investigating Officer, if this is the case they should be provided with a list of questions for the pupil and asked to take clear notes. The Investigating Officer(s) can seek advice and guidance from HR on how best matters should be progressed. It is not appropriate for a service user to be called to a disciplinary hearing as a witness, instead statements from the individual should be taken and shared as part of the investigation process with the employee against whom the allegations are made. The employee should then be invited to ask questions that can be investigated further and the statements then submitted as evidence, in the event that matters progress to a disciplinary hearing.
- 5.6) In more serious or complex cases HR can provide specialist advice i.e. if there is alleged gross misconduct or the potential for adverse publicity or police involvement.

- 5.7) Where an employee is unable to participate in the investigation process due to ill health and the Investigating Officer(s) feel that it is necessary to interview him/her to ascertain the facts, the general principles detailed under paragraph 11.1 regarding an immediate referral to Occupational Health should be followed.
- 5.8) At any stage during the investigatory process the Investigating Officer(s) can recommend that the police should be involved e.g. if the possession of illegal drugs is involved or in the event of claims of abuse, theft or fraud. The involvement of the police should not be viewed as a reason to suspend the internal process of the investigation unless the internal investigation would prejudice the police investigation. Usually, the police investigation will run parallel to the internal investigation but by definition, the results of any police investigation may take some considerable time to be made known. In view of this, the internal investigation should continue in the normal manner with the emphasis on fairness and equality, and any recommendation made as a consequence of the internal investigation may be made without waiting for the results of the police investigation.
- 5.9) In cases where the police are investigating a matter or a court case is pending, a decision on whether the disciplinary procedure should await the outcome of such external investigations or proceedings shall be made by the Principal in the light of the circumstances of the particular case, taking into account, where appropriate, regulations on allegations of abuse by professionals.
- 5.10) When, during the course of an investigation, it becomes apparent that there are any safeguarding concerns with regards to vulnerable adults or children (that haven't previously been identified), the appropriate process should be invoked. The Local Authority Designated Officer (LADO) should be contacted, or alternatively another officer from The Safeguarding Team.
- 5.11) During the process of the investigation, it will be necessary to interview the employee(s) in question. This should be done as soon as reasonably practicable. Employees should be informed in writing of the allegations against them prior to the interview. However in exceptional circumstances where this is not possible, written confirmation of the allegations should be provided as soon as is practical. They should also be given the right to be accompanied.
- 5.12) Having established the facts, the Investigating Officer(s) will recommend to the Principal / Chair of Governors (whoever was not involved in the investigation) whether to drop the matter, deal with it informally or for it to be handled formally by a Staff Disciplinary Panel. It is not the purpose of the Investigating Officers to impose a disciplinary penalty. It should be noted that the Investigating Officers' recommendations must not contain details of the case itself, nor any statements, documents, etc. as the Principal/Chair of Governors may be involved in the disciplinary proceedings at a later stage.
- 5.13) If it is determined that there is no requirement to hold a Disciplinary Hearing then the employee and his/her representative, if appropriate, must be notified in writing of this decision within **5 working days** of the conclusion of the

investigation and if currently under suspension, appropriate arrangements will be made for the employee to return to the workplace (see Appendix 2).

- 5.14) If the Principal /Chair of Governors agrees with the Investigating Officers' recommendation for the matter to be handled formally by a Disciplinary Panel and gives their sign-off to proceed, then the Investigating Officers should produce a report establishing that there is substance to the allegation(s) and include the full details of the case, witness statements and evidence. The Investigating Officers will be expected to present the case, together with relevant documents and evidence, at the Disciplinary Hearing. The Investigating Officers **will not** participate in making any decision as a consequence of a hearing. A Staff Disciplinary Panel will be convened where possible within **15 working days** of the recommendation having been made by the Principal /Chair of Governors. In preparing a case for a Disciplinary Hearing both parties should aim to exchange all papers and documents, including the Disciplinary Report to be tabled, no later than **5 working days** prior to the hearing. Both parties must respect the need for confidentiality, at all times, in relation to any information exchanged.

Allegations relating to fraud and related misconduct

- 5.15) It is possible that many cases of fraud, corruption, deception etc. will come to the attention of the EFA or the school auditors before the school or HR are aware of them. In these cases once EFA have reached the stage where they have enough evidence to pursue the case, they will ensure that there is communication with the other parties. When irregularities of this nature firstly come to the attention of the school or HR they should contact the EFA and the Board of Trustees to inform them.
- 5.16) In all of these cases once appropriate parties have been made aware of the allegations there should be a case conference attended by the Nominated Officer from the EFA as appropriate, an HR Partner and the Principal/Chair of Governors in order to share information on the case and to agree the approach to be taken, including the role of the EFA and how they link into the disciplinary investigation.
- 5.17) In complex investigations further case conferences may need to be held to further agree and review action.
- 5.18) Where the allegation is of fraud, it is recommended that the second Investigating Officer is from the EFA, due to their expertise in this area. However the individual selected should not have undertaken the preliminary fraud investigation. In other cases the EFA may give the Investigating Officers advice, and/or act as expert witnesses.

6. SUSPENSION

- 6.1) If the matter to be investigated is thought to involve serious misconduct or that it will not be practical to carry out an investigation into the circumstances of the

alleged misconduct whilst the employee remains on duty, the employee may be immediately suspended from duty on full pay by the Principal while the investigation proceeds. Similarly, if during the course of an investigation it is considered that a serious breach of discipline may have occurred, the employee may be suspended from duty on full pay by the Principal. Any decision to suspend will be confirmed in writing as soon as reasonably practical and this will be both a neutral and a precautionary, not a disciplinary, act, pending the outcome of the investigation. The Chair of Governors must be informed of a suspension.

- 6.2) The original suspension should be considered by the Chair of Governors within 15 working days and in exceptional circumstances 20 working days, who may:
- a) continue the suspension until the completion of the investigation or any subsequent disciplinary hearing;
 - b) continue or end the suspension while awaiting the outcome of police investigations and/or any criminal proceedings and/or any appeal or to refer the matter to the police if it is not already in their hands; or
 - c) end the suspension.

The Chair of Governors will notify the individual in writing of the outcome of their determination.

- 6.3) The Protocol for Disciplinary Suspension (see Appendix 2) provides further guidance on determining whether suspension is appropriate in all the circumstances and sets out the approach to be followed where the decision is to suspend.

7. INFORMAL ACTION

- 7.1) Cases of minor misconduct are usually best dealt with informally. There will, however, be situations where matters are more serious or where an informal approach has been tried but is not working.
- 7.2) Line Managers play an important role in the day-to-day management of employees and should seek to deal with minor lapses in conduct through informal counselling in the first instance.
- 7.3) Matters should be addressed promptly and should not be delayed until the next planned supervision meeting/one-to-one.
- 7.4) An informal discussion should take place between the Line Manager and the employee concerned. The Line Manager should discuss with the employee the required standard, the manner in which the employee has failed to meet this standard and the possible reason(s) for that failure. The objective of this is to assist the employee to resolve a problem that is having a detrimental effect on

his/her performance. The informal process is designed to work through difficulties before they become so significant that disciplinary action may be necessary.

- 7.5) A written record of the meeting should be made, including details of any agreed action, training or other support to be made available to the employee. A copy should be given to the employee and it will be confirmed in writing that his/her conduct/performance will be monitored over an agreed period. Counselling does not form part of the formal Disciplinary Procedure and therefore no formal warnings must be given under any circumstances.
- 7.6) If informal action does not bring about an improvement, or the misconduct is considered to be too serious to be classed as minor, managers should provide employees with a clear signal of their dissatisfaction by taking formal action.

8. FORMAL ACTION

- 8.1) Where, following a Disciplinary Hearing, an employee is found guilty of misconduct, the Principal/ Staff Disciplinary Committee can take the following forms of disciplinary action:

- First Written Warning
- Final Written Warning
- Dismissal, or Action Short of Dismissal

Before making a decision, the Principal/ Staff Disciplinary Committee of the Governing Body should take account of the employee's 'live' disciplinary and general record, length of service, actions taken in any previous similar case, the explanations given by the employee and most importantly, whether the intended disciplinary action is reasonable under the circumstances.

STAGE 1 - FIRST WRITTEN WARNING

If informal action does not correct the situation or if the case warrants it, a First Written Warning may be issued by a Disciplinary Panel. The employee will be provided with written reason(s) of the decision within **5 working days** of the hearing.

A First Written Warning will remain live for disciplinary purposes on an employee's personal file for a period of 1 year from the date the warning was issued.

STAGE 2 - FINAL WRITTEN WARNING

If an employee's conduct still does not meet the standards required by the Authority or if the case warrants it or a further offence is committed requiring

disciplinary action, a Final Written Warning may be issued by a Disciplinary Panel. The employee will be provided with written reason(s) of the decision within **5 working days** of the hearing.

A Final Written Warning will remain live for disciplinary purposes on an employee's personal file for a period of 2 years from the date the warning was issued.

STAGE 3 – DISMISSAL OR ACTION SHORT OF DISMISSAL

If conduct is still unsatisfactory, or the employee continues to fail to reach an acceptable and agreed standard, or the case warrants it, dismissal will normally result. Only the Staff Disciplinary Committee of the Governing Body can take the decision to dismiss at a Disciplinary Hearing. The employee will be provided, within **5 working days** of the decision, written reasons for dismissal, the date on which the employment contract was terminated, as well as the right of appeal. Notice of dismissal will be confirmed in writing, using recorded delivery, under the signature of the Chair of the Disciplinary Panel and a copy sent to the Trade Union Representative (if appropriate), and a copy to HR.

Action Short of Dismissal

Where dismissal would normally be considered but there are exceptional circumstances, action short of dismissal may be considered. The following penalties can be applied in conjunction with a final written warning:

- Transfer to equivalent work
- Demotion to another job with loss of pay (after 12 weeks eligible to apply for suitable vacancies).

If a transfer or demotion emerges as a possible option, the employee must be informed that any reassignment of, or variation to their contract must be based on the availability of a post, which falls within the competence of the employee and takes into account the circumstances of the case. The Chair of the Disciplinary Panel should inform the employee of their decision and agree a reasonable timescale for the identification of any suitable post(s).

Where such a post exists, the employee must agree to the terms of the reassignment/variation. In the event that no appropriate post can be identified, or the employee is not willing to accept this alternative, then the **original sanction of dismissal will apply**. There is no requirement to create a post where one does not already exist.

Action short of dismissal should only be explored where the seriousness of the disciplinary offence warrants action under Stage 3 of the Disciplinary Procedure. It would not be appropriate to take such action under Stage 1 or 2 of the procedure.

9. CASES WHERE IT IS DECIDED THAT THE EMPLOYEE SHOULD CEASE TO WORK AT THE SCHOOL

- 9.1) Where the employee is dismissed from their employment, the dismissal and notice periods will take immediate effect from the date of the hearing. If the individual is successful in appealing against the decision the employee will be immediately reinstated to their original position.
- 9.2) We will refer a case of teacher gross misconduct to the National College for Teaching and Leadership (National College) if we believe the case is so severe that the National College should consider whether the teacher should be prevented from teaching.
- 9.3) Cases involving misconduct towards children or young people will be reported as required to the **Disclosure and Barring Service (DBS)**.
- 9.4) In the case of gross misconduct being alleged and established on the balance of probabilities, the employee will be liable to summary dismissal. (see para 3.5)

10. APPEALS

- 10.1) An employee against whom disciplinary action has been taken under this procedure shall have a right of appeal to the Staff Disciplinary Committee of the Governing Body.
- 10.2) An employee who wishes to exercise a right of appeal must do so by completing and returning the appeal form (**Appendix D**) within 10 working days of the disciplinary hearing. The form should be sent to the Clerk to the Governors outlining the grounds of appeal.
- 10.3) An appeal will normally be heard, where possible and subject to the availability of the Governing Body's Staff Disciplinary Committee within 25 working days of receipt of the employee's written notice of appeal. Every effort will be made to hear the appeal within a reasonable timescale and the individual should be notified of the reasons for any delay.
- 10.4) At an appeal hearing the case for the school will normally be presented by the person responsible for deciding on the outcome, which is the subject of appeal. As part of their case they will explain the reasons for their decision.
- 10.5) Where the individual does not provide full details of their grounds of appeal, together with the names of any witnesses they wish to call at the time of submitting their appeal, then this may result in a delay in convening an Appeal Panel.
- 10.6) Additional evidence/information submitted at a later date will only be considered in exceptional cases and with the agreement of all parties.

11. INABILITY OR REFUSAL TO ATTEND A DISCIPLINARY OR APPEAL HEARING

- 11.1) Where an employee fails to attend a hearing due to sickness, whether they advise the panel in advance of or on the date of the hearing, the hearing should be postponed and the individual referred to Occupational Health if appropriate. The purpose of the referral is to obtain a medical opinion as to the staff member's fitness to attend a hearing or if this is not possible, their fitness to discuss the case with their representative and provide a written submission. Where the medical opinion is that the individual is fit to attend, arrangements should be made for the hearing to take place as soon as is reasonably possible, giving at least **5 working days** notice of the new hearing date. Where the medical opinion is that the employee is not fit to attend, but is fit to consult with their representative and provide a written submission, a new hearing date should be set, allowing sufficient time for the individual to consult with their representative and prepare a written submission. Where the medical response is that the employee is not fit to attend, or to consult with their representative or provide a written submission, the matter should be held in abeyance and reviewed in 2 weeks' time, in consultation with the individual and their representative. The hearing should not be postponed indefinitely and following the review, it may be concluded that the hearing should go ahead based upon the information available.
- 11.2) The only exception to this is that if a woman is prevented from attending a hearing due to a pregnancy-related illness, the hearing should be postponed until she has recovered.
- 11.3) If an employee, or his/her representative, has a justifiable reason (other than sickness – see 11.1) for being unable to attend a hearing, it will be re-arranged for as soon as is reasonably possible, giving at least **5 working days** notice of the new hearing date. If the employee, or his/her representative, is unable to attend the re-arranged hearing, it will normally proceed in his/her absence, but with his/her representative being provided with an opportunity to make representations on the employee's behalf. Alternatively, where both the employee and their representative are unable to attend the re-arranged hearing, they have the option to submit written representation. A Disciplinary or Appeal Hearing cannot be unreasonably delayed pending the availability of a full time Trade Union Official.
- 11.4) Should an employee refuse to attend a hearing, it will proceed in his/her absence.

12. COMPOSITION OF THE DISCIPLINARY PANEL

- 12.1) Officers involved in the Disciplinary Investigation must not sit on any subsequent Disciplinary Panel, they may, however, be involved in any suspension.

- 12.2) The Disciplinary Panel will either be the Principal or the Staff Disciplinary Committee of the Governing Body.
- 12.3) It is recommended that an HR Partner or advisor advises the panel.
- 12.4) At the Disciplinary Hearing, the panel should follow the procedure attached at Appendix C.

13.COMPOSITION OF THE APPEAL PANEL

- 13.1) The Appeal Panel will consist of a relevant committee of the Governing Body. It is recommended that the panel is advised by an HR Partner or advisor. Where the original Disciplinary Panel consisted of three people, the composition of the Appeal Panel should mirror this in terms of numbers.
- 13.2) Unless there has been any fresh evidence unearthed, or a significant change in circumstances affecting the case in question, the Appeal Panel will determine whether the previous decision was appropriate given all the circumstances and evidence heard.
- 13.3) At the appeal hearing, the Appeal Panel should follow the procedure attached at Appendix E.
- 13.4) The Appeal Panel may decide to uphold the appeal, substitute a lesser disciplinary sanction or confirm the disciplinary action taken.

14.RESIGNATION

- 14.1) An employee may, in some cases, wish to submit their immediate resignation, either during the investigation into the allegations, or prior to the hearing date, in order to bring matters to an early conclusion.
- 14.2) The Principal/Chair of Governors can consult with HR and should determine whether it is appropriate to accept the employee's immediate resignation.
- 14.3) Whilst an employee is contractually obliged to serve their notice period, it is likely that the school will accept an immediate resignation in the majority of cases. However, where the allegations are deemed to be of a serious nature, it may be appropriate to proceed with the investigation/hearing and reach a decision with regards to the individual's employment with the school.
- 14.4) In determining whether the allegations warrant such action, careful consideration should be given to a number of factors, such as whether there are external organisations involved i.e. Disclosure Barring Service (DBS), whether statutory provisions may have been breached and the possible implications for future employers.

- 14.5) Where an individual wishes to submit their resignation prior to an investigation into allegations of professional abuse being concluded, the individual should be informed that the investigation will continue until a conclusion is reached due to the nature of the allegation, and they should be informed that their resignation can not be accepted.
- 14.6) Where the decision is made to proceed with the investigation/hearing, the employee should be informed that they are required to serve their contractual notice period from the date their resignation is tendered and that matters will be progressed during this time. Where the individual has been suspended, this suspension will continue as normal.

15. KEEPING RECORDS

- 15.1) It is important, and in the interests of both the school and employee, that written records are kept during the disciplinary process. It is not necessary to take verbatim notes i.e. word for word, but the written records need to accurately reflect what is said.
- 15.2) Disciplinary interviews/hearings **must not** be recorded by any other means i.e. tape recordings, mobile telephones, video, photographs or any other electronic communications. The only exception to this is where there is an investigation into fraud. In these scenarios the interview may be for prosecution evidence as well as for disciplinary purposes. The interview may be taped and then this used for prosecution evidence, however as per 15.1, written records should also be taken for the disciplinary investigation.
- 15.3) Copies of meeting records should be given to the employee including copies of any formal minutes that may have been taken. In certain circumstances some information may be withheld, for example to protect a witness.
- 15.4) The Governors have a duty to carry out their functions under The Education Acts with a view to safeguarding and promoting the welfare of children under Section 175 of the Education Act 2002. The management of a case where an allegation has been made might indicate that a person is unsuitable to work with children in their present position or in any other capacity. Therefore, in line with safeguarding and promoting the welfare of children, previous patterns of behaviour will be considered as part of an investigation. If any management notes are taken of a concern, these must be verbally shared with the member of staff.
- 15.5) Records of allegations involving the abuse of vulnerable people will be kept separate from the employee's personal file for the duration of the individual's employment. This will apply in all cases, including where there was no case to answer or no disciplinary action was taken following a hearing. Employees should be informed that these records are kept.

- 15.6) Disciplinary warnings will be kept on an employee's personal file after they have expired, as a record of the individual's employment history. In the event of any future disciplinary proceedings, these time-expired warnings will not be taken into consideration in determining the sanction. However, time-expired warnings may be taken into account for referencing purposes. The retention of these records will be reviewed at appropriate intervals and employees should be informed that these records are kept.
- 15.7) Where the employee's performance has been satisfactory throughout the period of the 'live' warning and the warning subsequently lapses, the School should write to the employee to confirm that the warning has expired. A copy of this letter should be retained on the employee's personal file.
- 15.8) Under the Data Protection Act 1998, employees can request and have access to personal data that the School holds about them.

16.SUPPORT

- 16.1) A free, confidential and external telephone counselling service is available to all employees of Schools which purchase the Occupational Health SLA, via BDMA. Professional counsellors can be contacted on 0800 919 765.

APPENDIX A

ACTS OF GROSS MISCONDUCT

The following list is not intended to be comprehensive or exhaustive and merely serves to provide examples of gross misconduct, which by the application of the School's Disciplinary Procedure could lead to dismissal. These are examples, which could, dependent on the seriousness of the offences, result in summary dismissal: -

- Prolonged unauthorised absence from work (at least 10 working days without contact);
- While purporting to be absent sick, working or engaging in activities, which are likely to be inconsistent with the reason for absence and/or which are unlikely to be conducive to recovery;
- Inappropriate conduct towards or contact with pupils;
- Serious breaches of the school's Financial Regulations or Code of Conduct;
 - Theft or incitement to steal
 - Fraud, which may include acts of fraud against the school not directly related to the employee's job role
 - Corruption
 - Physical violence, bullying or harassment
 - Unlawful discrimination or harassment on the grounds of gender, race (including colour, nationality and ethnic origin or national origins), disability, age, sexual orientation, religion or belief
 - Deliberate and serious damage to property
 - Serious misuse of the schools property or name
 - Deliberately accessing internet sites containing pornographic, offensive or obscene material
 - Abuse of e-mail or other communication systems used and/or owned by the school
 - Serious insubordination
 - Bringing the school into serious disrepute
 - Serious incapability at work brought on by alcohol or illegal drugs
 - Causing loss, damage or injury through serious negligence
 - A serious breach of health and safety rules
 - A serious breach of confidence
 - Grossly offensive behaviour
 - Fraudulent timekeeping

- False and misleading statements e.g. on application forms, on medical questionnaires or at medical examination, at an accident investigation or at a disciplinary investigation
- Bringing firearms or offensive weapons on the school's premises
- Accepting profits or bribes for personal gain, including the inappropriate acceptance of certain gifts and hospitality
- Allowing one's private interests or duty to conflict with the interests of the school
- Failure to account for, report or record any matter for which it is the employee's duty to do so.
- Falsification of documents likely to be of financial benefit to the employee or other persons e.g. time sheets, bonus/expense claims, qualifications etc;
- Obtaining a job by lies or deception in the course of selection procedures;
- Making false claims under any of the school's policies and/or procedures;
- Being incapable of adequately performing duties as a result of the intake of alcohol or misuse of drugs;
- An act committed outside the place of work where the act has an adverse bearing on the employee's suitability for the job or which would bring the school into disrepute.

ACTS OF MISCONDUCT

The following are examples of misconduct but are not intended to be exhaustive:

- Regular lateness for work;
- Regular failure to follow employment rules e.g. reporting absence;
- Refusal to obey a reasonable instruction of a manager;
- Negligence at work leading to loss, damage or wastage of academy or other property;
- Improper, disorderly or unacceptable conduct at, in or near the school;
- Wilfully inadequate work performance (poor performance or lack of capability will normally be the subject of Capability procedure);
- Private trading;
- Consistently poor standards of dress or hygiene.

APPENDIX B

PROTOCOL FOR DISCIPLINARY SUSPENSION

1. Introduction

This protocol provides further guidance on managing disciplinary suspension and temporary redeployment cases and must be followed in all cases, to ensure that individuals are managed fairly and investigations are undertaken and completed in a timely manner.

2. What is suspension and when should it be considered?

Suspension is the temporary removal of a staff member from his/her place of work. Staff can be suspended at the outset of an investigation, or during an investigation, for a variety of reasons, as follows:

- The alleged misconduct is of such a potentially serious nature (i.e. gross misconduct),
- It would be dangerous or impractical to continue to allow the employee to remain at work,
- Relationships have broken down,
- There are risks to the School's property or responsibilities to other parties,
- There is a danger that the employee's continuing presence at work would jeopardise investigations into the alleged misconduct.

Suspension is not a disciplinary act and does not imply that there has been any misconduct. It is a neutral and precautionary measure to allow for an effective investigation to take place, in the interest of all or any of the parties concerned.

There may be occasions where the staff member holds a number of posts either within or across different schools or the Local Authority. Where this is the case, the Principal will notify the other organisations. In normal circumstances, if the decision is taken that the matter warrants suspension, then the staff member should be suspended from all employment with the school, and where applicable with other schools and/or the Local Authority. However, the reasons and potential risks detailed above should be taken into consideration in reaching a decision.

3. What are the alternatives to suspension?

Suspension should only be used as a last resort.

Other options must be considered before a suspension is authorised, including the possibility of temporarily redeploying the employee to other duties.

4. Who can authorise suspension?

The power to suspend lies with the Principal* / Chair of Governors and advice can be taken from HR. The Chair of Governors should always be notified of any suspensions. A preliminary examination must be undertaken to examine the facts prior to the authorisation of a suspension and the decision must be determined and communicated as promptly as possible. Only the Governing Body can lift a suspension.

* Only the Chair of Governors may suspend the Principal

5. Communicating the suspension to the employee and staff

Suspension must be treated sensitively. Where suspension is determined to be the only realistic option, this decision must always be communicated to the employee orally and subsequently in writing (with a copy to the employee's Trade Union representative, where appropriate), as follows:

- The employee will be invited orally to a meeting with the Principal or his/her representative, together with an HR representative or a member of the Senior Leadership Team,
- The employee will be informed of the right to be accompanied by his/her Trade Union representative or a work colleague in advance of the meeting, and at any subsequent meeting, which may be convened during the period of suspension,
- Suspension should not be delayed due to the unavailability of a particular Trade Union representative or workplace colleague,
- The meeting, and the letter (which must be issued within **2 working days** of the suspension date) must cover the following:
 - The reason(s) for suspension,
 - The date from which the suspension is valid,
 - That the suspension does not constitute disciplinary action and does not involve any prejudgement,
 - That an internal disciplinary investigation is going to be conducted and that he/she will be expected to co-operate fully with that investigation,
 - That he/she must not enter their normal workplace during the period of suspension or have any contact regarding the details of the case with any other employees or service users,
 - That the employee will receive normal pay whilst suspended from duty, including contractual allowances and bonuses,
 - That he/she must immediately surrender all school equipment and property in their possession, which may include IT equipment,

vehicles, mobile phones, warrant cards, ID cards, any building 'access cards', office keys and/or school vehicle keys,

- That he/she will be instructed not to use the school's e-mail system/network and web services from the point of suspension,
- That he/she must make himself/herself available to attend any investigatory interviews when requested,
- The name and contact details of their designated Contact Officer,
- That he/she must not take up any other employment within their normal working hours with the school, during the period of suspension. Employees must submit a request to their Contact Officer should they wish to seek additional employment outside of their normal working hours.
- That failure to comply with these instructions and conditions of suspension may be treated as a disciplinary offence and appropriate action will be taken,
- The support available to the employee through the BDMA counselling service (see 6.2 below).

To avoid rumour and speculation, it is recommended that a brief, general statement should be made to the employee's line manager and the SLT. This should inform them that the employee has been suspended pending the outcome of an internal disciplinary investigation. Other colleagues may be told that the employee is unwell or absent for personal reasons

6. Contact during suspension and support mechanisms

The Contact Officer is a named individual, with responsibility for keeping the suspended employee and their Trade Union representative, where appropriate, up to date on the progress of the investigation in terms of its likely time of conclusion.

They are also responsible for:

- Facilitating investigatory meetings,
- Acting as a recognised point of contact for any issues the employee may wish to raise,
- Informing the employee of the consequences of the conclusions of the investigation and to inform them of any subsequent action.

Their Contact Officer would normally be their line manager, or another manager at an appropriate level within the school. The Contact Officer must have no role in the investigation or be linked with the allegation in any way.

Where the employee wishes to access information/evidence relevant to their case, arrangements for this can be made through the Principal or HR.

6.1 Contact frequency

Formal contact should be made with the employee within **2 weeks** from the date of suspension and at regular intervals thereafter.

6.2 Employee Support

The nature of suspension may result in employees feeling isolated from their normal support mechanisms. Staff with Trade Union representation will receive support from this organisation, but further support is available through Occupational Health and via the external staff counselling service, BDMA. This service is totally confidential and free of charge and counsellors can be contacted on 0800 919 765.

6.3 Annual Leave

While an employee is suspended from duty, any annual leave booked prior to the suspension will be honoured. Subsequent requests for annual leave during suspension will be considered at the line manager's discretion and subject to any potential detrimental effect on the investigation process.

7. Case monitoring and timescales for concluding the investigation

A time limit should **not** be set for a period of suspension; however, it is critical that the disciplinary investigation is carried out as promptly as possible; to enable a decision to be reached as to whether or not there is a case to answer. Ideally, the Investigating Officer(s) should be in a position to present their recommendations within **8 weeks** of the date of the suspension. The Principal/Chair of Governors should review suspensions after 4 weeks to assess progress and should investigations become protracted, all parties should be informed of the reasons for this and the likely timescale for completion.

If, during the course of the investigation it appears that the reason for suspension is no longer valid i.e. the allegations of serious/gross misconduct cannot be substantiated, the employee may be required to return to work, even when the rest of the investigation is continuing.

8. Action on conclusion of the disciplinary investigation

If it is determined that there is no case to answer, the employee and his/her representative, if appropriate, should be notified in writing of this decision within **5 working days** of the conclusion of the investigation and appropriate arrangements should be made for the employee to return to work as quickly as possible (see 8.1).

Where it is determined that a Staff Disciplinary Hearing should be held, then action should be taken in accordance with the Disciplinary Procedure. The suspending officer is not precluded from sitting on a subsequent Disciplinary Panel. However, the Investigating Officer(s) must not have any involvement in a subsequent Disciplinary Panel.

8.1 Facilitating the employee's return to work

It should be recognised that suspension is an emotive term and can be seen by both the individual and others as having negative connotations, including implied guilt. As a result, even where it has been decided that there is no case to answer, the employee may feel uncomfortable on their return to work and every effort should be made to help them settle back in as quickly as possible.

Ahead of their return, it may be appropriate to make a further brief, general announcement to the employee's work colleagues, advising them that the internal disciplinary investigation has been concluded and that the employee is returning to work.

The employee and their line manager should meet as soon as possible on the day of their return. The employee should be updated on any relevant work-related matters and any outstanding workloads should be prioritised.

APPENDIX C

PROTOCOL FOR DISCIPLINARY HEARINGS

DISCIPLINARY HEARING CONDUCTED BY THE PRINCIPAL

- 1) The employee will be given a minimum of 10 working days' advanced notice of the hearing. They will be informed in writing, of the purpose of the hearing, the allegation and a list of witnesses to be called by the investigating officer. The employee will also be supplied with copies of any documents to which it is intended to refer; and be advised of the right to be accompanied at the hearing by a Trade Union/Teacher Association representative or a work colleague of his/her choice, if he/she wishes, but by no-one else.
- 2) Not less than 5 working days in advance of the hearing the employee (or his/her representative) shall send to the Principal copies of any documents that he/she intends to refer to at the hearing, together with a list of witnesses that he/she intends to call.
- 3) The procedure to be followed at the disciplinary hearing:-
 - a) The Investigating Officer to present the case.
 - b) The Investigating Officer to call any witnesses.
 - c) Employee (or his/her representative) to ask questions of the Investigating Officer and witnesses.
 - d) Principal to ask questions of the Investigating Officer and witnesses.
 - e) Investigating Officer's witnesses to withdraw from proceedings, if applicable.
 - f) Employee (or his/her representative) to put his/her case.
 - g) Employee to call any witnesses.
 - h) Investigating Officer to ask questions of employee (and/or his/her representative) and witnesses.
 - i) Principal to ask questions of the employee (and/or his/her representative) and witnesses.
 - j) Employee's witnesses to withdraw from proceedings, if applicable.
 - k) Investigating Officer to sum up.

- l) Employee (or his/her representative) to sum up.
- 4) The Principal may adjourn the proceedings at any stage if this appears necessary or desirable. If adjourning for the purpose of enabling further information to be obtained he/she will specify the nature of that information. Any adjournment will normally be for a stated period.
 - 5) Following the summing up, both parties, together with their representatives will withdraw. If it is necessary to recall one of the parties for further information before a decision is taken both parties shall be recalled.
 - 6) On completion of his/her deliberations the Principal will normally announce his/her decision and the disciplinary action, if any, to be taken. He/she will also give an explanation for that action and will explain the employee's right of appeal under this procedure.
 - 7) The decision of the Principal shall be one of the following:
 - a) To exonerate the employee and direct that all reference to the matter be removed from his/her disciplinary record.
 - b) To find that the alleged breach of disciplinary is proven in whole or part and resolve that no further action be taken.
 - c) To find that the alleged breach of discipline is proven in whole or part and impose one of the disciplinary sanctions available to them.
 - 8) The decision of the Principal will be confirmed in writing to the employee within 5 working days. Where the decision is to impose a disciplinary sanction, the letter will also set out the employee's right of appeal against that disciplinary action and how to exercise it. A copy of the written notification will be included in the employee's personal file.

DISCIPLINARY HEARING CONDUCTED BY THE STAFF DISCIPLINE COMMITTEE OF THE GOVERNING BODY

The Staff Disciplinary Committee will not normally consist of less than 3 members of the school's Governing Body (excluding any members of staff of the school). Where this is not reasonably practicable, the Staff Disciplinary Committee may consist of two members (excluding members of staff of the school).

1. The employee will be given a minimum of 10 working days' advanced notice of the hearing; informed, by the Clerk to the Staff Disciplinary Committee, in writing, of the purpose of the hearing, the allegations and a list of witnesses to be called by the investigating officer. The employee will also be supplied with copies of any documents to which it is intended to refer, and be advised of the right to be accompanied at the hearing by a Trade Union/Teachers' Association representative or a work colleague of his/her choice if he/she wishes, but by no-one else.
2. Not less than 5 working days in advance of the hearing the employee (or his/her representative) shall send to the Clerk of the Staff Disciplinary Committee, copies of any documents that he/she intends to refer to at the hearing, together with a list of witnesses that he/she intends to call.
3. The procedure to be followed at the disciplinary hearing: -
 - a) The Investigating Officer to put the case.
 - b) The Investigating Officer to call any witnesses.
 - c) Employee (or his/her representative) to ask questions of the Investigating Officer and witnesses.
 - d) Staff Disciplinary Committee to ask questions of the Investigating Officer and witnesses.
 - e) Investigating Officer's witnesses to withdraw from proceedings.
 - f) Employee (or his/her representative) to put his/her case.
 - g) Employee to call any witnesses.
 - h) Investigating Officer to ask questions of employee (and/or his/her representative) and witnesses.
 - i) Staff Disciplinary Committee to ask questions of the employee (and/or his/her representative) and witnesses.
 - j) Employee's witnesses to withdraw from proceedings.

- k) Investigating Officer to sum up.
 - l) Employee (or his/her representative) to sum up.
4. The Chair of the Staff Disciplinary Committee may adjourn the proceedings at any stage if this appears necessary or desirable. If adjourned for the purpose of enabling further information to be obtained, he/she will specify the nature of that information. Any adjournment will normally be for a stated period.
- 8) Following the summing up, both parties, together with their representatives will withdraw. If it is necessary to recall one of the parties for further information before a decision is taken, both parties shall be recalled.
- 9) On completion of the Staff Disciplinary Committee's deliberations, the Chair will normally announce the decision and the disciplinary action, if any, to be taken. He/she will also give an explanation for that action and, where appropriate, will explain the employee's right of appeal under this procedure.
- 10) The decision of the Staff Disciplinary Committee shall be one of the following:
- a. To exonerate the employee and direct that all reference to the matter be removed from his/her disciplinary record.
 - b. To find that the alleged breach of discipline is proven in whole or part and resolve that no further action be taken.
 - c. To find that the alleged breach of discipline is proven in whole or part and impose one of the disciplinary sanctions.
- 11) The decision of the Staff Disciplinary Committee will be confirmed to all parties in writing within 5 working days. Where the decision is to impose a disciplinary sanction the letter will also set out the employee's right of appeal, and how to exercise it, against that disciplinary action.
- 12) A copy of the written notification to the employee will be included in the employee's personal file.

APPENDIX D

APPEAL AGAINST DISCIPLINARY ACTION

Please complete this form in full if you have been disciplined and wish to appeal against this decision. You may complete it personally, or, with your permission, your representative may complete it on your behalf.

Please return this form, together with any supporting documents to the Clerk to the Governors, **within 10 working days** of the effective date of the disciplinary sanction.

You must clearly state why you wish to appeal and specify why you disagree with the Disciplinary Panel's decision. Please indicate below the grounds for your appeal:

- a) Appeal against the facts ☐
- b) Appeal against the decision ☐
- c) Appeal on procedural grounds ☐
- d) New information is available ☐

In all cases, you must clearly detail your reasons on Page 2 of this document. If you are appealing on the grounds that new information is available, you should also explain why this information has only just become available.

EMPLOYEE NAME		
Address		
Job Title		
School		
Telephone Number		
Name/Address of Representative	Name	
	Address	
Contact Tel No.		
Appeal Against Decision of (name)		

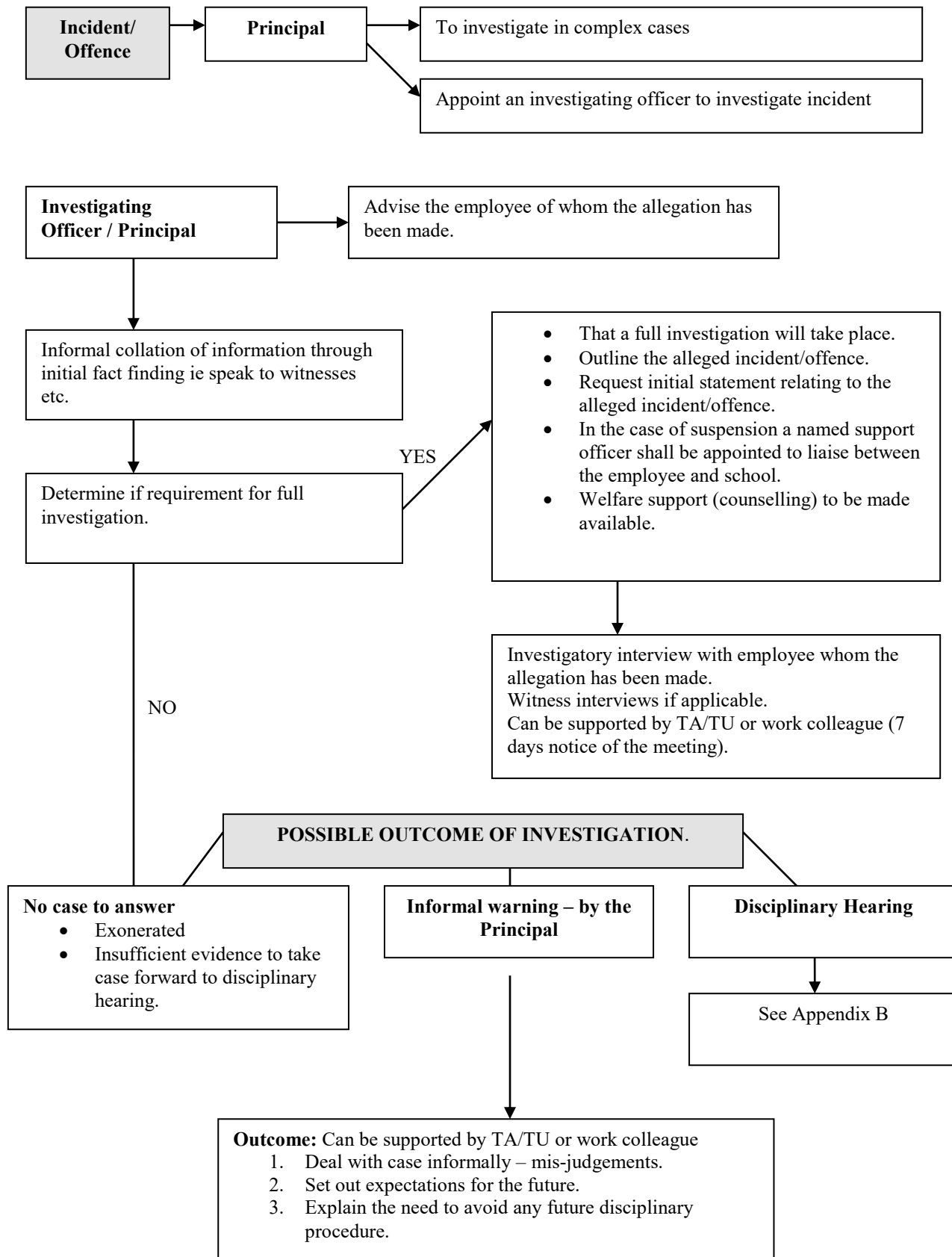
Nature of Decision (e.g. written warning, dismissal etc)		
What was the effective date of the disciplinary sanction?		
I wish to appeal against the decision because...		
Please provide the full names of the witnesses you wish to call		
Name		
Contact no.		
Address		
Name		
Contact no.		
Address		

If this form has been completed for the employee he/she must read it/have it read to him/her before he/she signs it.

Signature of Employee:	
Signature of Representative:	
Date:	

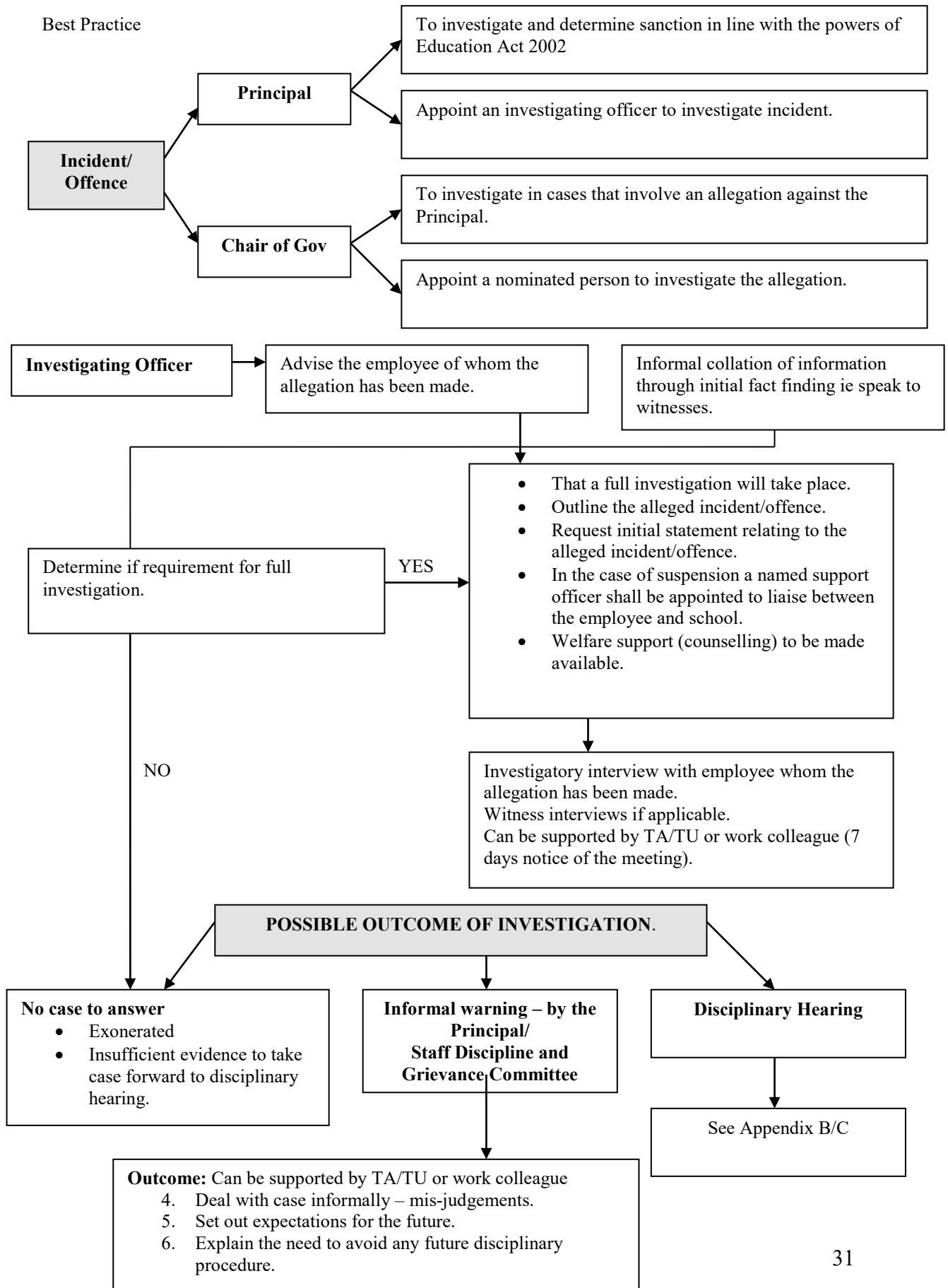
**APPENDIX E SCHEDULE FOR
INVESTIGATION FOR PRINCIPALS
WITHOUT DELEGATED RESPONSIBILITIES**

Best Practice



**APPENDIX F SCHEDULE FOR INVESTIGATION FOR
PRINCIPALS WITH DELEGATED RESPONSIBILITIES
OR CHAIR OF GOVERNORS WITH INVESTIGATION
RESPONSIBILITIES**

Best Practice



APPENDIX G

DISCIPLINARY APPEALS CONDUCTED BY THE APPEALS COMMITTEE OF THE GOVERNING BODY (INCORPORATING DISMISSAL APPEAL RESPONSIBILITIES)

1. The Appeals Committee will not normally consist of less than 3 members of the school's Governing Body (excluding any members of staff of the school). Where this is not reasonably practicable, the Appeals Committee may consist of two members (excluding members of staff of the school) who have not been part of the previous disciplinary hearing.
2. The employee will be given a minimum of 10 working days' advanced notice of the hearing; informed, by the clerk to the Appeals Committee of Governors, in writing, of the purpose of the hearing, the allegations and a list of witnesses to be called by the Management Representative. The employee will also be supplied with copies of any documents to which it is intended to refer, and be advised of the right to be accompanied at the hearing by a Trade Union/Teachers' Association representative or a work colleague of his/her choice if he/she wishes, but by no-one else.
3. Not less than 5 working days in advance of the hearing the employee (or his/her representative) shall send to the Clerk of the Appeals Committee copies of any documents that he/she intends to refer to at the hearing, together with a list of witnesses that he/she intends to call.
4. The procedure to be followed at the disciplinary hearing:-
 - a) The Management Representative to put the case.
 - b) The Management Representative to call any witnesses.
 - c) Employee (or his/her representative) to ask questions of the Management Representative and witnesses.
 - d), Appeals Committee to ask questions of the Management Representative and witnesses.
 - e) Management Representative's witnesses to withdraw from proceedings, if applicable.
 - f) Employee (or his/her representative) to put his/her case.
 - g) Employee to call any witnesses.
 - h) Management Representative to ask questions of employee (and/or his/her representative) and witnesses.
 - i) Appeals Committee to ask questions of the employee (and/or his/her

representative) and witnesses.

j) Employee's witnesses to withdraw from proceedings, if applicable

k) Management Representative to sum up.

l) Employee (or his/her representative) to sum up.

5. The Chair of the Appeals Committee may adjourn the proceedings at any stage if this appears necessary or desirable. If adjourned for the purpose of enabling further information to be obtained, he/she will specify the nature of that information. Any adjournment will normally be for a stated period.
6. Following the summing up, both parties, together with their representatives will withdraw. If it is necessary to recall one of the parties for further information before a decision is taken, both parties shall be recalled.
7. On completion of the Appeals Committee's deliberations, the Chair will normally announce the decision and the disciplinary action, if any, to be taken. He/she will also give an explanation for that action.
8. On completion of the Appeals Committee's deliberations, the Chair will normally announce the decision. The Appeals Committee may uphold or disallow, or partially uphold the appeal. If the decision is to partially uphold the appeal, the Appeals Committee may substitute a lesser form of disciplinary action. In the event of an appeal being allowed, without qualification, all reference to the matter shall be removed from the employee's disciplinary record and the employee notified accordingly.
9. The decision of the Appeals Committee of the Governing Body will be confirmed to all parties in writing within 5 working days. No further right of appeal will be available to the employee under this procedure.
10. The Appeals Committee will advise the LA of the appeal hearing outcome and any appropriate action to be undertaken.
11. At an appeal hearing the case for the school will normally be presented by the person responsible for deciding on the outcome, which is the subject of appeal. As part of their case they will explain the reasons for their decision.