

## **Staff Disciplinary Policy**

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## 1 INTRODUCTION

1.1 Governing bodies are required to promote good employee relations and to ensure that at all times employees are treated in a fair and reasonable manner. This procedure has been designed to assist and encourage improvements in employee conduct, whilst providing an equitable method of dealing with cases of alleged unacceptable behaviour.

1.2 The governing body has a legal responsibility for adopting a disciplinary procedure for all employees. All staff are expected to comply with the conditions of service, the articles of government and appropriate legislation.

1.3 The Headteacher has the prime responsibility for the day-to-day management and discipline within the school and the advice of the LEA will be available to them at any stage in this procedure. This advice should be sought through the Education Human Resources section and given due consideration.

## 2 APPLICATION OF THE PROCEDURE

2.1 This procedure will apply to all employees, including the Headteacher and those employees employed directly to

work at the school and where the school has a responsibility for their recruitment and dismissal.

2.2 This procedure does not apply to:

- a) agency staff, consultants, either freelance or employees of consultancy companies, peripatetic staff, secondees from other organisations, who will be neither employees of the governing body nor the local education authority, but subject to the human resource policies and procedures of their own employer;
- b) other employees centrally employed by the London Borough of Havering, who will be subject to the corporate Disciplinary procedure.

2.3 This procedure should not be used where employment is terminated in circumstances other than serious discipline, such as:

- a) at the end of a predetermined limited or fixed term contract for which an employee has been specifically engaged;
- b) on the grounds of redundancy;
- c) where, following a period of probationary service, dismissal arises from unsuitability for confirmation of appointment;
- d) on the grounds of capability due to ill-health or poor performance.

2.4 This procedure will be subject to variation where:

- a) a disciplinary matter concerns an accredited representative of a recognised trade union. In such cases the Executive Director

of Education (or their representative) should be advised and any potential action, under the terms of this procedure, will be first discussed with a higher level official of the relevant trade union;

- b) an employee is disabled, when procedures may be varied to accommodate the nature of any disability to ensure fair process;
- c) a complaint is addressed under the terms of Havering's Child Protection Guidelines, when those procedures may apply first and/or in conjunction with this procedure.

### 3 ROLES AND RESPONSIBILITIES

#### 3.1 Governing Body

- 3.1.1 The governing body is responsible for the adoption of the disciplinary procedure. Any amendments shall be negotiated with the borough representatives of the recognised trade unions.
- 3.1.2 The governing body should establish a disciplinary committee and an appeals committee. The quorum for both is at least three governors, to be chosen from those appointed by the governing body. No governor who has had prior involvement in the case should sit on either committee.
- 3.1.3 The functions of these committees generally depend upon the disciplinary powers delegated to the Headteacher.
  - 3.1.3.1 Power of Dismissal Retained By The Governing Body The disciplinary

committee will conduct all disciplinary hearings where dismissal is a potential outcome. The appeals committee will hear and decide upon all appeals against the disciplinary sanctions decided by the Headteacher or disciplinary committee.

Or

#### 3.1.3.2 Power of Dismissal Delegated To The Headteacher

The appeals committee will hear and decide upon all appeals against any formal disciplinary sanction decided by the Headteacher, including a decision to dismiss.

#### 3.1.4 Where the governing body has delegated the power of

dismissal, the disciplinary committee will need to hear any case where the Headteacher must be excluded from the matter, because of prior involvement or because they are the principal witness.

### 3.2 Headteacher

3.2.1 The Headteacher is responsible for the day-to-day running of the school and for maintaining and developing the ethos and culture, which supports learning and teaching. The conduct and discipline of all the employees who work in the school is an important part of that culture and ethos.

3.2.2 The Headteacher is responsible for:

- a) holding a copy of the full procedure on file in the school office, which is available to all employees on request;
- b) ensuring that all staff are given a copy of Appendix 1 - Disciplinary Rules and Standards of Conduct for

School based staff;

- c) discharging the function of Investigating Officer, delegating such a function to other senior employees, or securing the Investigating Officer function by agreement with other schools, local education authority officers or external consultants who are qualified through skills, training or experience to carry out such a role. It is likely that the Headteacher will be the first point of call to receive a complaint against an employee and will need to undertake a brief enquiry in order to decide whether or not it may be a disciplinary issue and if a full investigation is required. See Section 6. In line with the rules of natural justice, if the Headteacher undertakes the role of the Investigating Officer, they must not make any disciplinary decision. In such cases the Headteacher can only present the facts of a case to a disciplinary committee;
- d) chairing disciplinary proceedings to hear complaints that merit a level of sanction up to a final warning. A Headteacher may dismiss an employee if they have been delegated the power to dismiss by the Governing Body.

### 3.3 All Employees

- 3.3.1 All employees are responsible for their behaviour and conduct and, particularly, for understanding and adhering to the:
  - a) disciplinary rules and standards of conduct in Appendix 1;
  - b) financial regulations of the council as they apply to the school, which include accounting and procurement;
  - c) rules governing relationships with elected members of the council and senior officers of council departments;
  - d) guidelines concerning financial relationships and other remunerated work;
  - e) health and safety regulations.

3.3.2 All employees must also:

- a) co-operate with any investigation and with the terms of this procedure;
- b) attend any disciplinary hearing they are called to unless there is good reason for not doing so;
- c) arrange for any witnesses to attend on their behalf;
- d) respond to management efforts to improve standards of conduct and work performance.

3.3.3 All employees are entitled to be represented by a trade union representative or a work colleague (from the school or another school or Council workplace). Each employee is responsible for making sure that their representative has the appropriate experience, qualifications and skills to be able to represent them in a disciplinary process. Also see paragraph 4.3.

#### 4. GENERAL PRINCIPLES

- 4.1 No disciplinary action will be taken against an employee until the case has been fully investigated.
- 4.2 At every stage in the procedure the employee will be advised of the nature of the complaint in writing and given the opportunity to prepare and present his or her case before any decision is made.
- 4.3 At all stages the employee will have the right to be assisted by a representative of a trade union or a work colleague. A second representative may attend in the capacity of notetaker or as observer. In more serious or complex cases, the employee may be accompanied by a second person to assist the main representative during the proceedings.

Employees are not permitted to be represented by solicitors or barristers. The reason for this is that a disciplinary procedure is not a judicial process.

- 4.4 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice. Also see Section 9.3.
- 4.5 An employee will have the right to appeal against a second and a final written warning as well as dismissal, including summary dismissal.
- 4.6 The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- 4.7 No formal disciplinary action will be taken against a union or employee representative until the circumstances of the case have been discussed with a higher level official of that union.
- 4.8 In case disciplinary action against a Headteacher may be needed, governors should designate a person to act in the role normally performed by the Headteacher - who could, for example, be the Chair of governors. All of the provisions of this document will apply, and the early advice of the Executive Director of Education will be sought.
- 4.9 Maintaining standards of acceptable conduct and work performance calls for objectivity and fairness. It is important to keep an open mind and not prejudge the issues.
- 4.10 While consistency is important, it is essential to take account of the situations and people involved. Any decision to discipline an employee must be reasonable in all the circumstances.
- 4.11 If an employee initiates a grievance in response to disciplinary proceedings which have been started against

the aggrieved employee, the grievance cannot be considered until the disciplinary process has been completed.

4.12 Following receipt of a medical certificate from the employee's GP, the Council's Occupational Health Physician will advise on the effect of a medical condition on an employee's ability to attend a disciplinary hearing. If the Council's Occupational Health Physician has no objection and the employee and their

trade union representative are formally notified, a disciplinary investigation can be held during a period of sickness absence.

4.13 Where an employee is unable to attend a hearing they will be entitled to be represented in their absence. If a Headteacher intends to proceed with disciplinary action in the absence of the employee, it is advisable that this action is taken with the agreement of the appropriate trade union. However, where there is no agreement, and neither the employee nor the representative attends the hearing, then the Chair of the hearing will:

- try to find out why they have failed to attend, how reasonable the explanation is, and when the employee is likely to be available;
- take into account the effect on the Council of any delay to the procedure;
- decide whether it is reasonable to rearrange the hearing or to go ahead.

4.14 The decision to proceed must be reasonable in the circumstances. If the failure to attend is wilful, deliberate or tactical, this should not allow a delay to the disciplinary process.

4.15 In any event, normally a hearing will only be arranged on one further occasion and will then go ahead should the employee fail to attend. This is not intended to penalise an

employee whose illness genuinely precludes attendance. However, it is unsatisfactory to have a hearing adjourned indefinitely, especially if the employee is suspended and a hearing should be arranged as soon as possible. Each case should be evaluated on its merits but delays should be kept to a minimum.

- 4.16 In exceptional circumstances, and having heard representation from both sides, the Hearing Officer (Headteacher or Chair of the disciplinary committee) can allow written evidence to be submitted e.g. if a witness is in hospital, or is recovering from a serious illness, or is a member of the public who does not wish to attend the disciplinary hearing to give evidence. Any that is submitted should be made available to all parties. Normally written evidence cannot be submitted on the day of the disciplinary hearing.
- 4.17 Where it has been determined that an employee has maliciously accused colleagues, the employee will be subject to disciplinary action.
- 4.18 Provided that all the parties concerned with disciplinary proceedings are agreed, legitimate variations may be made to the procedure in particular cases. Such variations must be soundly based and be reasonable in the circumstances. Also see paragraph 2.4.
- 4.19 Details of all disciplinary proceedings and outcomes should remain confidential to those who need to be involved.
- 4.20 The governing body is advised that in order to avoid possible cases of unfair treatment or discrimination, they should seek advice and assistance at all times from the LEA on the operation of disciplinary procedures. The Executive Director of Education or his/her representative shall be entitled to attend all disciplinary hearings where dismissal is a possible outcome.

## 5. INFORMAL STAGE: COUNSELLING AND STANDARD SETTING

5.1 A counselling stage rather than formal disciplinary proceedings can be, in many cases, particularly in regard to minor breaches of discipline, the most appropriate way to resolve problems.

5.2 The standard setting/counselling stage is an informal one to one discussion between the Headteacher (or their Line Manager) and the employee. It should involve a discussion aimed at identifying any shortcomings in conduct and ascertaining any difficulties or problems the employee may be facing. The emphasis should be on finding

solutions to identified problems and clearly setting out the standards of conduct and behaviour required, so that the shortcomings can be remedied. Any support and training for the employee should be identified. A date should be set for the employee's conduct and behaviour to be reviewed. Written confirmation of any such counselling/standard setting should be given to the employee. A copy should be placed on the employee's personal file.

5.3 Standard setting letters are not part of the formal disciplinary process although they may prove important if the case proceeds and the formal procedure is later instigated. If this remedial action results in improved

work performance, then managers must acknowledge this in writing to the employee.

- 5.4 Counselling may also be used as an alternative to disciplinary action where alcohol dependency, drug abuse or early signs of mental illness affect conduct and behaviour. Please also refer to the Model Procedures for Managing Sickness Absence For School Based Staff. Section IV.

## 6. INVESTIGATIONS

6.1 Following receipt of a complaint or an allegation, discovery of inappropriate conduct or behaviour, or a management decision to pursue disciplinary action, an investigation may be required. An investigation can be of two types:

- a) a brief enquiry
- b) a disciplinary investigation

6.2 A brief enquiry may be carried out in a wide variety of circumstances and particularly where a potentially very serious complaint has been received – for example, one that might require suspension or, if warranted, a complaint that would amount to gross misconduct. The purpose of a brief enquiry is to gather sufficient information to be able to determine whether there is a prima facie case that merits a full disciplinary investigation. A brief enquiry may be carried out very quickly and, at this stage, the employee should be made aware that they are the subject of a complaint. The Headteacher may undertake this level of investigation/enquiry and still hear the case, provided any disciplinary investigation is conducted by another appropriate person.

6.3 A disciplinary investigation, if required, will be carried out by an appointed Investigating Officer. The purpose of this

investigation is to determine whether or not the complaint is supported by sufficient evidence that it merits consideration by a disciplinary committee.

6.4 Any complaint against an employee should be received in writing. If, initially, a verbal complaint is made, the person(s) making the complaint should be advised to confirm the details in writing and this statement should be signed and dated. The employee should be given a copy of the complaint(s) and be given a full opportunity to respond.

6.5 The Investigating Officer will be responsible for:

- making sure that the employee has full written details of the allegation, including any written statements/complaints;
- notifying the employee (in advance) of the date and time of investigation meeting;
- advising the employee that they can be accompanied at the investigation meeting by a trade union representative or work colleague, and that, although the person can support the employee and assist the process when required, they cannot speak on the employee's behalf;
- investigating the complaint promptly and carefully before memories fade;
- collecting evidence, relevant facts and witness statements;
- ensuring that, as far as possible, all parties involved in a potential disciplinary case are interviewed;
- unless it would hinder an external investigation ( e.g. where there are allegations of fraud or child abuse etc) talking to the employee to get their version of the events;
- when doing so, making it plain that the investigation is not a disciplinary hearing;
- deciding if a disciplinary hearing is necessary; □ submitting full details to a disciplinary hearing.

- 6.6 Although the investigation should be carried out swiftly, while matters are fresh in people's minds, nonetheless it must be thorough and fully concluded before any next step is taken.

Enquires should be conducted with thought and care. Snap decisions made in the heat of the moment should be avoided. The disciplining of an employee is a serious matter and should never be regarded lightly or dealt with casually.

- 6.7 It is not part of the investigation (or of the Investigating Officer's role) to assume or try to establish guilt or culpability. The Investigating Officer's role is to gather evidence and all the facts, which should be recorded. They must not be selective and must not highlight facts that strengthen or suppress any facts that weaken the case.

- 6.8 Everyone who has been involved should be asked to provide a statement. The investigation may include gathering documentary evidence and interviewing witnesses. It may also involve interviewing the employee unless it would hinder an external investigation, e.g. in cases of theft, fraud, child protection allegations etc., where other agencies may be involved. Where an individual's statement contains contradictions, clarification should be sought. They will be asked to sign the statement as a true record. It should be made clear to those asked to provide statements or evidence, that they are expected to make time available as a matter of urgency, so that the matter can proceed and be settled in good time. Keeping an investigation hanging over an employee is in no-one's interests. Also refer to paragraph 6.15.

- 6.9 Having gathered all relevant facts the Investigating Officer should discuss their findings with an HR Advisor and then, based on the evidence they have gathered, decide whether:

- a) no further action is to be taken. There may be no case to answer;

- b) the allegation is a minor breach and therefore a standard setting letter should be issued;
  - c) the allegation should proceed to a formal disciplinary hearing.
- 6.10 If, following the investigation, it is decided that no disciplinary action should be taken, the employee must be notified of this in writing. In cases of alleged bullying, harassment, discrimination or abuse, all records of the investigation will be retained in a sealed envelope on the employee's personal file. The intention here is not in any way to victimise the employee, but to act prudently, in case similar allegations are made in the future. In all other cases, records of the investigation should not be retained.
- 6.11 Where any complaint and investigation involves financial matters, the appropriate officer of the local authority will be informed and the Investigating Officer may seek advice, support and assistance from council officers experienced in accountancy, audit and procurement, for example.
- 6.12 Where a complaint involves an allegation of any form of abuse against a pupil, Appendix 10 of the agreed Child Protection Guidelines need to be referred to, prior to any internal disciplinary investigation taking place. In such cases, guidance should be sought from an HR Advisor in the first instance.
- 6.13 In some very complex or sensitive cases, it may be wise to arrange for an appropriate person independent of the department or school to investigate the case. When there is a complaint of racial or sexual harassment, it is advisable to interview the complainant as part of the investigation, as well as the person complained against and any witnesses.
- 6.14 Where a parent or member of the public makes a complaint about an employee's conduct, or conduct related work performance, the Investigating Officer will need to

interview them. The parent, or member of the public must be informed

that the investigation is confidential and they must not discuss the details of the investigation with anyone else.

6.15 If a complaint is made by a pupil, the Investigating Officer should interview the pupil and record in writing a detailed statement of the interview. This record of the interview should be read to the pupil and the pupil should be asked to confirm its accuracy. This can either be signed by the pupil or endorsed by the Investigating Officer to indicate its accuracy has been confirmed by the pupil. This record can be submitted as the written evidence if an actual statement has not been received from the pupil. The parents of the pupil/s concerned should be informed if they have been interviewed and asked to provide a statement.

6.16 To assist the investigation, but not to prejudice in any way the Investigating Officer should obtain the employee's personal details, such as length of service, past disciplinary record and any current warnings, as well as any necessary records and documents.

## 7 SUSPENSION

7.1 Suspension is a neutral act and not a form of disciplinary action and all employees will receive full pay during their period of suspension (irrespective of the final outcome).

7.2 Consideration should be given to what alternatives to suspension may be appropriate. The nature of the allegation and circumstances within the school will need to be taken into account when considering this and it is advisable to discuss any such action with an HR Advisor. Also refer to paragraph 7.8 and paragraph 9.3.5.1.

7.3 Suspension from work may arise, but not exclusively, in the following sets of circumstances:

- a) an allegation or complaint of gross misconduct arises;
- b) the employee has been arrested, detained or charged for an offence that, if proven, may mean that continued employment is unlikely;
- c) a potential complaint requires a period of 'cooling off', for example a serious fight or disagreement between employees that fractures the normal working relationship;
- d) the employee appears to be a danger to themselves, the pupils, the other employees or members of the public, or Council/school property is at risk;
- e) a complaint has been received under the terms of the child protection procedures or the procedures for allegations of abuse against the employee;
- f) the employee's continued presence in the workplace would impede an investigation.

7.4 The Chair of the governing body may suspend the Headteacher or any employee of the school and where this is the case must inform the Headteacher. In the absence of the Chair, the Vice-Chair may exercise this power. Where the delegated budget of the school has been withdrawn, the Executive Director, Education, may suspend the Headteacher and any other employee and this power may be delegated to the Executive Director's, Education, representative.

7.5 The Headteacher (including an acting or interim Headteacher) may also suspend another school employee and this power is delegated to any Deputy Headteacher in the absence of the Head. The Headteacher will inform the Chair of the governing body of any suspension and, in a community or voluntary controlled school, will also inform the Executive Director, Education. Before deciding on a suspension, the Headteacher, or another appropriate employee will need to have conducted a brief enquiry to be assured that suspension is appropriate and to have considered any suitable alternative options. Please refer to paragraph 6.2.

- 7.6 The employee has the right to be accompanied by a trade union representative or work colleague when being informed of the suspension.
- 7.7 Normally an employee will be told the precise reasons why they are suspended. Where this is inappropriate (for example it may prejudice an investigation) the employee should be given broad reasons. It is, for example, appropriate to tell an employee about suspension pending an investigation into alleged falsification of attendance sheets without going into detail.
- 7.8 A suspension will be for as short a period as possible, unless there are exceptional circumstances, in which case the period may be extended. For example, a suspension arising from a criminal investigation or allegation of gross misconduct may last for a longer period. Suspensions will be regularly reviewed by the Chair of the governing body in consultation with the Headteacher. Also see paragraph 7.13.
- 7.9 If it is necessary to remove the employee from the school premises as soon as possible and it has proved difficult to arrange a meeting with trade union representation or work colleague within the necessary timescale, then arrangements should be made for the employee to remain at home on special leave with pay until a suspension meeting is arranged. In such cases the suspension meeting should be arranged within a maximum of five working days.
- 7.10 A letter confirming the suspension and signed by the Headteacher will be sent to the employee within three working days. A model letter is attached as Appendix 2 - Notice of Suspension of Duty.
- 7.11 Any suspended employee who desires access to the school premises for the purpose of preparing his/her case must seek permission from the Headteacher and, in the case of a Headteacher, from the Chair of Governors. Access may be

restricted or denied in exceptional circumstances, but a decision should be given within two working days. In these circumstances the terms of the suspension may also restrict the suspended employee's access to other Council premises, or to other employees, clients or customers of the Council.

- 7.12 A suspended employee shall not undertake any additional employment during periods the employee would normally (but for the suspension) be at work for the school. Failure to comply with these obligations may result in dismissal for gross misconduct. This will be detailed in the letter of suspension to the employee. Refer to the model letter, Notice of Suspension of Duty, in Appendix 2.
- 7.13 Normally any subsequent disciplinary hearing will take place within twenty working days of the first day of suspension, but the period of suspension may be extended if investigations have not been completed. Suspensions must be reviewed by the Chair of Governors after twenty working days and should normally continue to be reviewed every two weeks, although the particular circumstances of the case will need to be taken into account when deciding on an appropriate timeframe. Extensions to the agreed timeframe should only apply in exceptional circumstances. Refer to the model letter in Appendix 3 - Notice of Continuing Suspension.
- 7.14 Only the Governing Body may end the suspension of any employee, which includes the suspension of the Headteacher. This responsibility can be delegated to a sub committee of governors e.g. staff discipline or personnel committee. The Chair of Governors may take responsibility for this decision in an emergency and if there is not sufficient time to call a meeting of the appropriate governors. The governing body/Chair of Governors should consult the Headteacher before ending the suspension of an employee.

7.15 Despite the neutrality of suspension in formal disciplinary terms, its implications can be extremely traumatic for the employee. Where an employee returns to work after a period of suspension, they will first attend a meeting with the Headteacher, or the Chair of the governing body in the case of a Headteacher, to discuss a managed return to normal working patterns and professional relationships.

## 8. FORMAL STAGE: DISCIPLINARY HEARING

8.1 A formal disciplinary hearing is appropriate if the employee's conduct related work performance, and/or conduct does not improve after:-

- a) the standard setting stage/counselling stage;
  - b) a previous disciplinary hearing and the issue of a written warning;
- or
- c) if a serious disciplinary offence has allegedly occurred.

8.2 Once it has been decided that there is a case to answer, a disciplinary hearing will be convened normally within twenty working days of the formal decision being made.

8.3 The object of the disciplinary hearing is:

- a) to ensure that the case has been fully investigated;
- b) for both parties to have the opportunity to make representations before any decision is taken concerning disciplinary action;
- c) to make a fair and impartial judgement on the basis of all the evidence produced;
- d) for the Headteacher/Disciplinary committee to decide on the level of sanction to apply (if appropriate).

- 8.4 The employee will be advised of the right to be accompanied by a trade union representative or by a work colleague. The employee should be encouraged and advised to make sure that he/she is so accompanied.
- 8.5 The employee will be informed in writing with a minimum of ten working days' notice, of the intention to hold a disciplinary hearing. A model letter is attached as Appendix 4 – Notice of Disciplinary Hearing.
- 8.6 This letter, which will be copied to the employee's representative, should contain the following information:-
- a) the date, time and location of the hearing;
  - b) specific details of the nature of the allegations;
  - c) the name/s of the committee members hearing the case;
  - d) the name/s of any representatives of the Executive  
Director of Education/ HR Advisors attending the hearing;
  - e) that the employee has the right to be represented by a trade union representative or work colleague, and if the case is more serious or complex, the employee may be accompanied by a second person to assist the main representative during the proceedings, as and when required;
  - f) the names of any management representatives and witnesses attending the hearing
  - g) in cases of gross misconduct, or where an employee has a final written warning, that the outcome of the hearing may result in dismissal;
  - h) that the employee has the right to call witnesses and to produce documentary evidence;
  - i) unless there are exceptional circumstances or reasons to prevent this, all documentary evidence must be included with this letter. Also see paragraph 8.9;

j) a copy of the Model Disciplinary Procedure for School Based Staff should also be attached.

8.7 The employee must provide the Headteacher/Chair of the disciplinary committee (Hearing Officer) with:

- a) the details of any witnesses to be called to give evidence to the disciplinary hearing three working days before the disciplinary hearing;
- b) any documentary evidence which they intend to use as part of their evidence. Also see paragraph 8.9.

Unless there are exceptional circumstances or reasons that prevent these timescales from being met, this information must be received by the school no later than three working days before the date of the disciplinary hearing.

8.8 If a disciplinary committee is required then the members should have had no previous involvement in the case.

8.9 If there is other evidence being relied upon by either party, such as videos, tapes, photos etc, then each party must organise for this to be available to the other party prior to the disciplinary hearing, so they have an opportunity to respond to it within their statement of case. This evidence will also need to be made available to the Hearing Officer/disciplinary committee either prior to or on the day of the disciplinary hearing.

8.10 Taking into account the provisions of paragraph 4.13, where the employee or their representative is unable or fails to attend the hearing, if it is considered necessary to rearrange the hearing then it will (as far as is practicable) be rearranged to a date and time within 5 working days of the original hearing.

- 8.11 Where the employee and/or their representative fails to attend a re-arranged disciplinary hearing, the school will attempt to make contact with the employee to find out whether they are delayed by accident, emergency or unforeseen circumstances, but may continue with the hearing.
- 8.12 The outcome of the disciplinary hearing, should it be decided that disciplinary action should be taken, might be a first, second or final written warning, as is deemed appropriate. The severity of the action taken will relate to the gravity of the misconduct and, before a decision is reached, account will need to be taken of all appropriate factors.
- 8.13 In cases where the possible outcome of a disciplinary hearing could be dismissal, the Executive Director of Education (or their representative) will be invited to offer advice and to attend where he/she considers it appropriate.
- 8.14 The Headteacher will inform the Chair of Governors of any formal disciplinary action taken, without giving the full details of the case.
- 8.15 For details of the procedure to be followed at a disciplinary hearing please see Appendix 5.

## 9. DISCIPLINARY ACTION

- 9.1 The possible outcomes of a disciplinary hearing are:
- a) no sanction;
  - b) written advice (setting of standards) (refer to section 5);
  - c) first written warning;
  - d) second written warning;
  - e) final written warning;

f) dismissal, or summary dismissal.

## 9.2 Written Warnings

### 9.2.1 First Written Warning

9.2.1.1 Where counselling or standard setting have proved ineffective, or the misconduct is of a more serious nature, following a disciplinary hearing, a written warning may be given to the employee. A first written warning expires after six months. Also refer to paragraph 9.4.

### 9.2.2 Second Written Warning

9.2.2.1 A second written warning is generally applicable where a first written warning (above) has not resolved matters and there has been a recurrence of the behaviour or conduct that was the subject of the original complaint, or this level of misconduct warrants a second written warning. A second written warning expires after twelve months. Also refer to paragraph 9.4.

9.2.2.2 When issuing a first or second written warning, the Hearing Officer/disciplinary committee should make it clear that any further disciplinary lapse may result in further disciplinary action.

### 9.2.3 Final Written Warning

9.2.3.1 Where a first and/or second written warning has proved ineffective, or the misconduct is of a more serious nature,

but does not warrant dismissal, a final written warning may be given. A final written warning expires after two years. Also refer to paragraph 9.4.

9.2.3.2 Consideration of dismissal via the route of formal written warnings is normally done through a three stage process; namely: a first written warning, a second written warning and a final written warning. This does not, however, mean that three warnings must always be given before any dismissal is considered. There may be occasions when misconduct is considered not to be so serious as to justify dismissal, but serious enough to warrant only one written warning, which will be both first and final.

9.2.3.3 A final written warning must contain a statement that any further misconduct may lead to dismissal.

9.2.4 Please see the model letter in Appendix 6 – Outcome of Disciplinary Hearing (Warnings).

### 9.3 Dismissal

9.3.1 An employee will not be dismissed for a first breach of discipline, except in a case of gross misconduct. Also see Section 9.5 on Spent Warnings.

9.3.2 Where the Governing Body has delegated the power of dismissal to the Headteacher

9.3.2.1 A disciplinary hearing as outlined in Appendix 5 must be held before any decision to dismiss an employee is reached. A representative of the Executive Director of Education has the right to be present at all potential dismissal hearings in all community and voluntary controlled schools. It is strongly advised that all schools have an HR Advisor present at all disciplinary hearings and especially where dismissal is a possible outcome. The employee shall have the right of appeal to the Governors' appeal committee. Please see section 10. In cases where the Headteacher has been directly involved in the events leading to dismissal, or is the subject of disciplinary proceedings, the case will be heard by a Governors' disciplinary committee. This committee will comprise of three appointed governors.

Or

9.3.3 Where the Governing Body has not delegated the power of dismissal to the Headteacher

9.3.3.1 Three governors will need to be appointed to form a disciplinary committee and such a committee will hear all cases of potential dismissal. As with paragraph 9.3.2.1, a representative of the Executive Director of Education has the right to be present at all potential dismissal hearings in all community and voluntary controlled schools. It is strongly advised that all schools have an HR Advisor present at all disciplinary hearings and especially

where dismissal is a possible outcome. The employee shall have the right of appeal to the Governors' appeal committee. Please see section 10.

#### 9.3.4 Dismissal with Notice

9.3.4.1 This will apply in all situations of dismissal except in cases of gross misconduct.

#### 9.3.5 Dismissal without Notice (Summary Dismissal)

9.3.5.1 In cases of gross misconduct, dismissal without notice will be appropriate. However, it may be considered unreasonable to dismiss an employee for gross misconduct, if s/he has not been suspended. This is on the basis that, if the employer can keep an employee in the workplace up until a disciplinary hearing has been arranged, then perhaps the case is not one of gross misconduct. Also see Section 7.

9.3.5.2 Gross misconduct is generally seen as misconduct serious enough to destroy the trust and confidence between the employer and the employee, such that any further working relationship is impossible.

#### 9.3.6 Decision to Dismiss - Community Schools and Voluntary Controlled Schools

9.3.6.1 Where a decision to dismiss is made by a Community or Voluntary Controlled school, the Chair of Governors or

Headteacher must first write to the employee to inform them of their decision to dismiss and appeal rights and then to the Council (via the Education HR team), to formally request that the employee's employment is terminated with the Council. The LEA/Council will then write to the employee to confirm their dismissal and appeal rights.

9.3.7 Decision to Dismiss - Foundation and Voluntary Aided Schools

9.3.7.1 Where a decision to dismiss is made by a Foundation or Voluntary Aided school, the Chair of Governors or Headteacher must write to the employee directly to inform them of their decision to dismiss and their appeal rights. This letter should be copied to the Education HR team.

9.3.8 Please see the model letter in Appendix 7 – Outcome of Disciplinary Hearing (Dismissal).

9.4 Extended Time For Warnings

9.4.1 In exceptional circumstances and in consultation with the Chair of Governors, the time limit on warnings can be extended beyond the normal expiry period. This is particularly likely to happen when the employee is on a period of sickness absence following the issue of a warning, or where there has been a further lapse of conduct or behaviour. This may also be appropriate where a final warning is issued in circumstances which verge on gross misconduct, but where it has been decided to give the employee a last chance by issuing a

final written warning rather than dismissing them.

## 9.5 Spent Warnings

9.5.1 Spent warnings should be disregarded for the purpose of further disciplinary proceedings unless there are exceptional circumstances, e.g. child protection cases. Any documentation on the employee's personal file relating to spent warnings will continue to be held on the personal file, but placed in a sealed envelope.

## 9.6 Transfers

9.6.1 A governing body has no power to transfer an employee to a post in another school or to an unattached post.

## 10. APPEALS AGAINST DISCIPLINARY ACTION

10.1 There is a right of appeal against second and final written warnings as well as dismissal, including summary dismissal. There is no right of appeal for a first written warning.

10.2 An appeal is not designed to rehear a disciplinary case. Its purpose is to examine the grounds of appeal that the employee may raise, to investigate any valid grounds, and to remedy any defects in the decision resulting from the disciplinary hearing.

10.3 The appellant must state, in writing, their grounds of appeal to the Chair of Governors within ten working days of the letter confirming the outcome of the disciplinary hearing. If the employee requests a modest extension of time for submission of the

appeal details and if the request is granted, then it may be appropriate to extend the timescale for the date of the appeal hearing accordingly.

10.4 The appellant must be clear, specific and thorough in their written submission of their grounds of appeal. Normally appeals can be raised on one or more of the following grounds:

- a) The procedure - a failure to follow procedure had a material effect on the decision;
- b) The evidence did not support the conclusion of the Hearing Officer;
- c) The penalty was too severe given the circumstances of the case.

The employee must cite specific examples of how they consider that the disciplinary procedure was not followed correctly and/or cite clearly the reasons why they consider that the evidence did not support the outcome of the hearing and/or the penalty given was too severe.

10.5 The appeal committee must hear any appeal where the grounds are clear, specific and thorough, even if they are not persuaded by the merit of the arguments in the appeal papers. New evidence will not be considered unless the appellant can demonstrate that it may significantly affect the previous decision and it has genuinely come to light since the disciplinary hearing, or it was really impossible for the employee to produce the evidence at that hearing. This ground of appeal is not an opportunity to state the case with different evidence. A view from the school's (management) representative may be sought with regard to the request for consideration of new evidence. The chair should also clarify the grounds with the employee before the appeal hearing gets underway.

- 10.6 An appeal should be heard as soon as possible and every effort should be made to hear the appeal within thirty working days of the date that the written grounds of appeal are lodged with the Chair of Governors. This timescale for the appeal hearing may be extended if there are any issues/concerns with the stated grounds of appeal that cannot be resolved within the thirty working day timeframe.
- 10.7 The appeal must be heard by a committee of appropriate Governors. If the original hearing was heard by a committee of Governors then a new committee of Governors (of the same number) will be required for the appeal hearing. It is strongly recommended that an HR Advisor be present to provide appropriate advice and support to the appeal committee.
- 10.8 The Headteacher or Chair of the original disciplinary committee will be required to present the case for the school at the appeal hearing and supported by the HR Advisor who was present at the original disciplinary hearing. If a committee of Governors heard the original disciplinary hearing then the Headteacher can be called as a witness.
- 10.9 The appellant should be given ten working days' written notice of the appeal hearing date. This notice will outline the date, time and venue of the appeal hearing. A model letter is attached as Appendix 8 - Notice of Appeal Hearing.
- 10.10 Witnesses can be called (if deemed appropriate) by either party. This would not normally include any new witnesses. Notification of any witnesses attending should be given, in writing, at least three working days before the appeal hearing.

- 10.11 Both the Headteacher or Chair of the original disciplinary committee and appellant are required to present a written statement of case for the appeal committee based on the grounds of appeal. The appellant will provide evidence as to why their grounds of appeal are valid and the Chair of the original committee (or the Headteacher) will respond to the grounds of appeal and provide their reasons for the original decision being made. This should include any witness statements and other evidence to be considered. This is in order that both sides and the appeal committee can read this evidence in advance. Copies of each party's statement of case should be given to Education Human Resources who will distribute them to each side. Both statements of case must be received by Education Human Resources at least three working days prior to the appeal hearing. Also see paragraph 8.9.
- 10.12 The appeal committee's role is to listen to both cases and decide, in light of the grounds of appeal and on the basis of all the evidence they have heard, whether the appeal against the initial disciplinary sanction should be upheld or not.
- 10.13 The appeal committee's decision is final and there is no further internal right of appeal. The appeal committee may ratify the original disciplinary sanction or uphold the appeal. If the latter, the original disciplinary sanction may be withdrawn completely or replaced by a lesser sanction, as considered fair and appropriate. Please refer to the model letter in Appendix 10 – Outcome of Appeal Hearing.
- 10.14 If the procedure followed during the original disciplinary hearing is considered to be so

fundamentally flawed that the breach may have had a negative impact (for the employee) on the decision made, then it is possible, and in these circumstances only, that a full rehearing of the case is appropriate.

10.15 For details of the procedure to be followed at an appeal hearing please see Appendix 9.

## 11. NOTIFICATION TO THE DEPARTMENT OF EDUCATION AND SKILLS (DfES)

11.1 The Teachers Misconduct team in the DfES must be notified of all cases of dismissal due to misconduct. They must also be notified if a teacher resigns from their post pending their potential dismissal.

## 12. CRIMINAL OFFENCES

12.1 The fact that a police investigation or a charge is pending is not in itself a reason for delaying or withholding disciplinary action, if the alleged offence is relevant to the employment, and enough evidence is available to enable the person hearing the complaint to be reasonably satisfied as to the relevant facts. On the other hand, a criminal offence committed outside the employment shall not be treated as an automatic reason for dismissal or any other disciplinary sanction. The main consideration is whether the offence is relevant to the duties of the employee and makes the employee unsuitable for employment in that type of work. An employee shall not be disciplined solely because a charge is pending or because of absence through having been remanded in custody. It is strongly recommended that advice be sought from an HR Advisor in all such cases. Also refer to paragraph 2.4 (c) with regard to allegations involving child protection issues.

## Disciplinary Rules and Standards of Conduct For School Based Staff

### 1. General

1.1 Disciplinary rules set standards of conduct at work and it is important that employees know what standards of conduct are expected of them so as not to undermine supervisory control and / or impair the effective exercise of the school's duties and responsibilities.

1.2 It is unlikely that any set of disciplinary rules can cover all circumstances that may arise and the examples detailed are not intended to be either exhaustive or exclusive. Moreover, the rules required may vary according to particular circumstances. In drawing up the rules, the aim has been to specify, as clearly and concisely as possible, those necessary for the efficient and safe performance of work and for the maintenance of satisfactory relations between employees and the school.

1.3 The rules, which apply to employees within a school, give guidance on how various types of behaviour are to be treated, so that each individual is aware of the consequences of unsatisfactory conduct. Breaches of disciplinary rules will render employees liable to disciplinary action, but the form of disciplinary action taken will vary depending on:-

- a) the seriousness and nature of the offence;
- b) the employee's previous record;

- c) mitigating circumstances; and
- d) in some instances - the nature of the job, which can include the level of supervisory and management responsibility.

In considering individual offences, assessment of the question of degree is a key element in deciding upon the action to taken. It is important to the understanding of disciplinary matters to appreciate, for example, that many misdemeanours, which would normally result in a warning, could in extreme circumstances warrant summary dismissal.

## 2. EXAMPLES OF ACTION WHICH MAY MERIT INFORMAL OR FORMAL DISCIPLINARY ACTION

### 2.1 General Conduct

- Insubordination by word, act or demeanour.
- Failure to obey a lawful and reasonable instruction, including deliberate failure to observe any operational regulations and rules of the school.
- Abuse of authority in relation to a colleague or a member of the public.
- Rudeness towards, or conduct likely to cause harm or offence, to a parent, member of the public or a fellow employee.

- Refusal to comply with appropriate standards of appearance and / or personal hygiene acceptable to the management of the school.
- Failure to wear the appropriate uniform provided by the school.
- Behaviour at work likely to offend decency.
- Sleeping on duty.
- Dangerous or reckless behaviour involving risk of injury to other persons or oneself.
- Being under the influence of drugs, including alcohol, during working hours, so that performance of duties is detrimentally affected. Please also refer to the Model Procedures Relating to Sickness Absence for School Based Staff- Section IV.
- Acceptance of gifts or gratuities (where an employee is offered a gift or gratuity this must be reported to the Headteacher). In this particular area, there needs to be a good deal of common sense and reasonableness and it will be left to the Headteacher's discretion in each case, having regard to all the circumstances. However, as an example, it is not expected that inexpensive promotional tokens (e.g. pencils, calendars etc.) would come within this category.
- Failure to hand lost property to an appropriate member of staff.
- Conduct prejudicial to the school's interest whether:-
  - a) committed at work; or

b) committed outside working hours, having regard to the nature of the offence, the duties of the employee's post and any damage to the reputation and integrity of the school.

## 2.2 Absences and Time keeping

- Unauthorised absence from duty.
- Failure to notify line manager of absence from duty, and reason therefore, including non-attendance at an approved course of training.
- Failure to provide a medical certificate as required by the appropriate sick leave procedures.
- Persistent lateness and/or absenteeism.

## 2.3 Neglect of Duty

- Failure to discharge obligations in accordance with a statute or contract of employment.
- Negligent or inadequate standards of work.

## 2.4 Health and Safety

- Failure to wear the appropriate protective clothing provided by the school or Local Education Authority for particular duties.
- Failure to comply with the accident reporting procedure(s).

- Failure to follow safety instructions, codes of practice and safety policy statements issued from to time by the School/ Council.
- Failure to comply with hygiene requirements.

## 2.5 Deliberate Misuse and Falsification of Information

- Failure to disclose a conviction for a criminal offence (unless under the terms of the Rehabilitation of Offenders Act 1974 the conviction is “spent”) and the post is not exempt.
- Falsification of any information used in support of or pursuant to an application for a post with the school, including failure to disclose any known relationship with a Governor or senior member of the school’s staff.
- Making false and / or deliberately misleading statements, whether verbally or in writing, in respect of official business.
- Failing within a reasonable period of time to report any matter which it is a duty to report.
- Deliberate destruction or damage to any documents required for the purposes of the school.
- Unauthorised disclosure of confidential information relating to the business of the school, its employees, or the public with whom it has dealings.

## 2.6 Private Work

Undertaking private work during hours when contracted to work for the school- this includes unpaid voluntary work, unless it has been approved. Engaging in employment, including self-

employment, during off-duty hours when such employment conflicts with, or is detrimental to the interest of the school or in any way weakens public confidence in the conduct of the school. Private work which might involve any dealings with the school must be disclosed and can only be undertaken with the Headteacher's approval.

### 3.0 EXAMPLES OF ACTION WHICH MAY BE CONSIDERED GROSS MISCONDUCT

Some offences may, if substantiated, be treated as gross misconduct, and in such cases dismissal without notice is the appropriate form of disciplinary action.

Gross misconduct is defined as misconduct of such a nature that the school is justified in no longer tolerating the continued presence at work of the employee who commits such an offence. Having regard to the nature of the offence, the duties of the employee's post, and any damage to the reputation and integrity of the school, gross misconduct can include acts committed outside working hours as well as those committed at work.

The following are types of offence which may be deemed gross misconduct and lead to summary dismissal without any previous written or verbal warnings having been given.

#### 3.1 Dishonesty & Theft

- Improper use of an employee's position for private gain or the private gain of some other person, including soliciting or accepting bribes.
- Misrepresentation as to status, qualification, experience and health.

- Deliberate falsification of time sheets, bonus sheets, claim forms, sickness self-certification forms, etc.
- Theft or misappropriation of, or malicious damage to, property of school, parents, pupils or other employees.
- Theft or misappropriation of school materials or equipment.

### 3.2 Misconduct

- Serious acts of insubordination and gross incompetence.
- Fighting with, or physical and/or verbal abuse of, fellow employees, supervisors or members of the public, including maltreatment of pupils of the school or educational establishment.
- Non compliance with a safety code such as to endanger life or cause injury.
- Any other criminal offences undertaken outside of work, which may affect suitability for continued employment at the school. Examples might be: housing benefit or unemployment benefit fraud; drug offences and violent disorder.
- Failure to follow the rules of suspension set out in section 7 of this procedure.
- Deliberate and unauthorised disclosure of highly confidential matters relating to the business of the school and/or Council.

### 3.3 Sexual Offences & Misconduct

- Sexual offences and /or sexual misconduct, including inappropriate relationships, sexual relationships, conduct or contact with pupils.

### 3.4 Absence

- Absence from work for more than ten days, which has not been authorised, and where the employee does not contact the school.
- Undertaking unauthorised paid employment during a period of sick leave, whether paid or unpaid by the School.
- Carrying out any activity whilst on sick leave, which is not consistent with the reasons for sickness absence or which may not be conducive to rapid recovery and the earliest return to work
- Being seriously incapable of work because of alcohol use or dependency or the abuse of drugs or drug addiction. Please refer also to: London Borough of Havering. Model Procedures Relating To Sickness Absence For School Based Staff. Section IV.

### 3.5 Discrimination

- Serious acts of discrimination, harassment, bullying, the making of remarks, or verbal abuse against employees, pupils, members of the public on the grounds of race, ethnic origin, religion, nationality, colour, sex, sexual orientation, marital status or disability.

### 3.6 Improper Use of Equipment etc.

- Unauthorised or inappropriate use of school vehicles, whether during or outside the working day.

- Unauthorised or inappropriate use of any school equipment and / or facilities for private purposes.
- Use of school labour for private purposes.
- Use of wasted school materials and/or equipment without express authority.
- Unauthorised or inappropriate use of school computers, email systems or internet access.
- Unauthorised interference with a computer (e.g. misuse of a password to gain entry to a computer for the purpose of extracting information to which the employee is not entitled and /or deliberate corruption of computer records).

### 3.7 Neglect of Duty

- Gross negligence and / or dereliction of duty.
- Any action which brings the school and/or Council and its reputation into disrepute.

#### Note

In case of fraud or financial irregularities Headteachers should consult the Education Finance Manager.

Appendix 2  
Model Letter

### Notice of Suspension from Duty

Personal and Confidential

(Name and Address)

Dear

RE: Suspension From Duty

Following our meeting on ..... (*date*), I write to confirm that a decision was made to suspend you on full pay from your post of ..... (*job title*) at ..... (*name of school*). This is in accordance with the Model Disciplinary Procedure for School-Based staff. A copy is attached.

This is pending an internal investigation into a complaint (s)/allegation(s) that you (*detail the nature of complaint(s)/allegation(s)*) (Name of Investigating Officer if known) will conduct the investigation into this matter.

*Or*

An Investigating Officer will be appointed to investigate this matter and I will notify you of the name of this person as soon as possible.

You will be given the opportunity to be interviewed as part of the process and you are entitled to be accompanied by a trade union representative or work colleague.

It was emphasised to you during the meeting that suspension is not considered to be punitive in nature or in any way implies guilt. The suspension was considered appropriate due to the seriousness of the issue and to ensure the investigation can proceed unimpeded.

During your suspension you are not specifically excluded from having social contact with staff within the school, however, very careful consideration must be given to this and it must not in any way impede the investigation.

At this stage your suspension will be reviewed on ..... (*date*) when it is hoped the investigation will be complete. You will be contacted on this day to advise you of any decisions which have been made. This will include whether or not it is necessary to continue your suspension.

You should not undertake any other paid employment during the hours you would have been at work had you not been suspended, nor should you visit the school premises without prior permission from me. Please note that any breach of this obligation may result in your dismissal on grounds of misconduct.

During the suspension period you may contact myself or, if you prefer, your trade union representative.

Yours sincerely

Headteacher

cc Education HR Advisor  
Trade union representative/work colleague

Appendix 3

Model Letter

Notice of Continuing Suspension

Personal and Confidential

(Name and Address)

Dear

Re: Continued Suspension from Duty

With reference to my letter of .....(*date*) concerning your suspension from duty, I write to advise you that the investigation has not yet been completed. Therefore, it has been agreed by the Chair of Governors that your period of suspension be extended for a further period of..... (*number of working days*). The conditions outlined in my previous letter will continue to apply during this extended period.

Yours sincerely

Headteacher

cc Education HR Advisor  
Trade union representative/work colleague

Appendix 4

Model Letter

Notice of a Disciplinary Hearing

Personal and Confidential

(Name and Address)

Dear

Re: Disciplinary Hearing

I am writing to confirm that you are required to attend a disciplinary hearing which will be held on..... *(date)* at..... *(time)* and in .....*(venue)*. The hearing will be held in accordance with the Model Disciplinary Procedure for School-Based staff. A copy is attached.

The purpose of the meeting is to further discuss the complaint(s)/allegation(s) that you ....

*please provide the specific details of these complaint(s)/allegation(s)*

I shall chair the hearing and I shall be advised by (name of HR Advisor).

I intend to call ....*(name of Investigating Officer)* to present the findings of the investigation that has been undertaken as well as the following witness/witnesses.....*( names of witnesses)*.

*Or*

Members of the disciplinary committee will be..... *(include the names of the three governors and who will be acting as Chair)* and they will be advised by .....*(name of HR Advisor)*.

I shall also be present and I intend to call ....*(name of Investigating Officer)* to present the findings of the investigation that has been undertaken as well as the following witness/witnesses.....*( names of witnesses)*.

I shall be accompanied by.... *(name of HR Advisor – if appropriate)*.

You have the right to be accompanied by a trade union representative or a work colleague.

I need to advise you that the outcome of the hearing may result in formal disciplinary action\*.

\* If the allegation constitutes gross misconduct or a live final warning has already been issued

I need to advise you that, as the allegation may constitute gross misconduct, ....or... .... I need to advise you that, as you already have a live final warning, ....the outcome of the hearing may result in formal disciplinary action, including your dismissal/summary dismissal (*if potential gross misconduct*).

Enclosed are copies of the relevant written evidence, including witness statements, relating to the allegation/incident.

You need to provide the following to me by (*date - three working days in advance of the hearing*).

- confirmation of your attendance at the hearing
- any additional written evidence that you feel is appropriate to your case
- the names of any witnesses you may be calling
- the name of the trade union representative or work colleague whom you will be bringing with you so copies of the relevant documentation can be sent to them.

Yours sincerely

Headteacher/Chair of the Disciplinary Committee

cc Education HR Advisor

Trade union representative/work colleague

Headteacher (if Chair of the Disciplinary Committee writing)

## Disciplinary Hearing Procedure

### Introductions

- 1) The Hearing Officer (Headteacher/Chair of the disciplinary committee) will:
  - a) introduce all those present at the hearing
  - b) explain the purpose of the hearing
  - c) read the allegations or nature of the complaint against the employee
  - d) check both parties have all the documentary evidence and have had sufficient time to read this
  - e) ask both parties to confirm the details of any witnesses they may wish to call
  - f) explain the procedure for the hearing

### Presentation of School (Management) Case

- 2) The evidence in support of the allegation will then be presented by the school (management) representative.
- 3) At the conclusion of the presentation of the school's (management's) case, the other parties may ask questions in the following order:-
  - a) the employee and/or their representative
  - b) the Hearing Officer (Headteacher or members of the disciplinary committee)
  - c) the HR Advisors / representatives of the Executive Director of Education present

- 4) The school (management) representative presenting the case may then call their witnesses who can be questioned in the same way. Witnesses other than the employee will remain outside of the hearing until called and will withdraw once they have given evidence. They should only be recalled if the Hearing Officer requires clarification on any point.

#### Presentation of Employee's Case

- 5) The employee or the employee's representative may then state their case. The employee should be asked to put forward any relevant mitigating circumstances which they believe to exist.
- 6) At the conclusion of the presentation of the employee's case, the other parties may ask questions in the following order:-
  - a) the school (management) representative
  - b) the Hearing Officer (Headteacher or members of the disciplinary committee)
  - c) the HR Advisors/ representatives of the Executive Director of Education present
- 7) The employee and/or their representative may then call their witnesses who can be questioned in the same way.
- 8) Once each party has completed their questioning, witnesses should not be recalled. However the Hearing Officer retains the right to recall witnesses during the deliberation process if further clarification is required. If this does happen, both sides should be recalled to the disciplinary hearing.

#### Adjournments

- 9) Both parties can ask for a short adjournment at any stage in the proceedings. The Hearing Officer will consider such requests and decide on the length of any adjournment.

- 10) If any further facts emerge, the Hearing Officer will decide whether any additional investigation is required. If it is, then the disciplinary hearing will be adjourned and reconvened when the new investigation is completed.

#### Summing Up

- 11) The school (management) representative will have the opportunity to sum up their case first. The summing up may take into account statements made during the proceedings, but no new evidence can be introduced at this stage.
- 12) Likewise the employee and their representative will have the opportunity to sum up their case.

#### Deliberation of the Hearing Officer/Disciplinary Committee

- 13) The Hearing Officer will then ask both parties to withdraw. The Hearing Officer/Disciplinary Committee will come to a clear view about the facts and reach a decision on the basis of the evidence presented in the course of the hearing. If the facts are disputed, then as part of the decision making process, the Hearing Officer/disciplinary committee members will decide on the balance of probability which version of the facts is true. If the employee agrees s/he has done something wrong the Hearing Officer/ disciplinary committee members will decide on the level of sanction to apply. Before deciding on the penalty, clarification and advice should be sought from the HR Advisor on any procedural aspects as well as:-
  - a) the gravity and nature of the offence and whether the procedure gives guidance;
  - b) the penalty applied in similar cases in the past;
  - c) the employee's disciplinary record and length of service;
  - d) any mitigating circumstances;
  - e) whether the proposed penalty is reasonable in the circumstances;

f) (in some instances) the nature of the employee's job.

#### The Decision

- 14) The Hearing Officer can if s/he chooses, reconvene the disciplinary hearing to:
  - a) inform the employee of the decision, and, if appropriate, the penalty to be applied;
  - b) explain any right of appeal and how to exercise such a right;
  - c) in the case of a written warning, explain what improvement is expected, how long the warning will last, and what the consequences of a failure to improve will be.
  
- 15) It may not be possible to make a decision on the day of the hearing. In such cases the hearing can be reconvened at a date and time agreed by all parties for the decision to be delivered. Alternatively it may be agreed by all parties that the decision be put directly in writing within the agreed timescale.
  
- 16) In all cases the decision will be confirmed in writing within five working days to the employee, their representative, and to the school representative presenting the case. This timescale may be extended in exceptional circumstances. The letter will outline the Hearing Officer's/disciplinary committee's decision, give the reasons for that decision and, where appropriate, tell the employee that s/he has the right to appeal against the outcome of the hearing. A model letter is attached as Appendix 6.

Appendix 6

#### Model Letter Outcome of Disciplinary Hearing - Warnings

Personal and Confidential

(Name and Address)

Dear

Re: Outcome of Disciplinary Hearing

I write to confirm the outcome of the disciplinary hearing held on *(date)*.  
The purpose of this hearing was to consider the allegation of .....

*please provide details of allegation(s)/complaint(s).*

Members of the disciplinary committee present at the hearing were  
(names of the three governors). The committee were advised by .....  
*(name of HR Advisor)*.

*Or* I chaired the hearing and was advised by ..... *(name of HR Advisor)*.

*(Name of Investigating Officer)* .....was also in attendance to  
present the findings of his/her investigation. Also in attendance  
was/were ..... *(include if appropriate)*. *(Name and job title of trade  
union representative or work colleague)* ..... was also present.

The committee/I considered all the evidence presented by both parties  
in relation to the allegation, including the following mitigating  
circumstances;

- *(please provide details if appropriate)*

As a result the committee/I came to the conclusion that the  
allegation (s)/complaint(s) was substantiated on the basis that.....

- *(please provide appropriate details)*

Therefore it was further decided that you should receive a ..... (*first or second or final*) written warning. This warning will remain on your file for (*include appropriate length of time*) after which it will be disregarded unless exceptional circumstances prevent this. Any repeat of such behaviour may lead to further formal disciplinary action being taken against you, *including your dismissal (insert for a final warning)*.

You have the right of appeal. If you wish to do so, you should write to the Chair of Governors at the school address. You have 10 working days from the date of this letter to put your appeal in writing and this should clearly state the grounds on which you base your appeal. (for all warnings except a first written warning.)

Yours sincerely

Headteacher/Chair of Disciplinary Committee

cc Education HR Advisor

Trade union representative/work colleague

Headteacher (if Chair of the Disciplinary Committee writing)

Model Letter  
Outcome of Disciplinary Hearing- Dismissal

Personal and Confidential

(Name and Address)

Dear

Re: Outcome of Disciplinary Hearing

I write to confirm the outcome of the disciplinary hearing held on .....  
(*date*). The purpose of this hearing was to consider the allegation of .....

(*please provide details of allegation(s)/complaint(s)*).

This allegation(s)/complaint(s) was/were considered to constitute gross misconduct. (If relevant)

Members of the disciplinary committee present at the hearing were.....  
(*names of the three governors*). The committee were advised by .....  
(*name of HR Advisor*).

Or

I chaired the hearing and was advised by ..... (*name of HR Advisor*).

(*Name of Investigating Officer*) .....was also in attendance to present the findings of his/her investigation. Also in attendance was/were .....

*(include if appropriate). ..... (Name and job title of trade union representative or work colleague)..... was also present.*

The committee/I considered all the evidence presented by both parities in relation to the allegation, including the following mitigating circumstances;

- *(please detail if appropriate)*

As a result the committee/I came to the conclusion that the allegation (s)/complaint(s) was/were substantiated on the basis that.....

- *(please provide appropriate details)*

#### Dismissal Following a Final Warning

Therefore it was further decided that as you are already in receipt of a live final warning you be dismissed from your post as..... *(job title)*. You are entitled to ..... *(number of weeks/months)* notice and therefore your last day of service with this school and the London Borough of Havering\*) will be ..... *(date)*.

I shall be writing to the LEA to request that your dismissal be confirmed\*.

#### Summary Dismissal For Gross Misconduct

Therefore it was further decided that you be summarily dismissed from your post as..... *(job title)* for gross misconduct. This means that you are dismissed without notice and therefore your dismissal from this school (and the London Borough of Havering\*) is effective from today.

I shall be writing to the LEA to request that your dismissal be confirmed\*.

*\* Insert for Community and Voluntary Controlled schools*

You have the right of appeal. If you wish to do so, you should write to the Chair of Governors at the school address. You have 10 working days

from the date of this letter to put your appeal in writing and this should clearly state the grounds on which you base your appeal.

Yours sincerely

Headteacher/Chair of Disciplinary Committee

cc Education HR Advisor

Trade union representative/work colleague

Headteacher (if Chair of the Disciplinary Committee writing) Appendix  
8

Model Letter  
Notice of Appeal Hearing

Personal and Confidential

(Name and Address)

Dear

Re: Appeal Hearing

I am writing to confirm that the appeal against your ..... (*second or final*) written warning/dismissal given/decided at the disciplinary hearing of..... (*insert date*), will be held on ..... (*idate*) at..... (*time*) at ..... (*venue*).

The purpose of the appeal hearing is to investigate your stated grounds of appeal, which are:

□ *(please list grounds of appeal).*

Members of the appeal committee will be..... *(names of the three governors)*. The committee will be advised by..... *(name of HR Advisor)*.

I shall also be present and shall be accompanied by..... *(name of HR Advisor- if appropriate)*.

I understand that you will be accompanied by..... *(name of trade union representative or work colleague)* or see below\*.

Can you please provide a statement of case to..... *(name of HR Advisor)* in Education Human Resources, Mercury House, Mercury Gardens, Romford, Essex, RM1 3SL three working days prior to the date of the appeal hearing which is .....*(date)*.

You will also need to provide me with the following information by the same date.

- confirmation of your attendance at the hearing;
- the names of any witnesses you may be calling;
- the name of the trade union representative or work colleague, if you have not already done so\*.

You have already been provided with a copy of the Model Disciplinary Procedure for School Based Staff, however if you need a further copy please let me know.

Yours sincerely

Chair of the Appeal Committee/Headteacher

cc Education HR Advisor

Trade union representative/work colleague  
Headteacher (If Chair of the Appeal Committee writing) Appendix 9

## Appeal Hearing Procedure

### Introductions

- 1) The Chair of the appeal committee will:
  - a) introduce all those present at the hearing;
  - b) explain the purpose of the hearing ;
  - c) read the or nature of the complaint against the employee and the employees grounds of appeal ;
  - d) check both parties have all the documentary evidence and have had sufficient time to read this;
  - e) ask both parties to confirm the details of any witnesses they may wish to call;
  - f) explain the procedure for the hearing.

### Presentation of the Appellant's Case

- 2) The appellant or their representative will present the grounds of appeal in the presence of the \*school (management) representative.
- 3) At the conclusion of the presentation of the appellant's case, the other parties may ask questions in the following order:-
  - a) the \*school (management) representative;
  - b) the members of the appeal committee;
  - c) the HR Advisors/ representatives of the Executive Director of Education present.

- 4) The employee and/or their representative may then call their witnesses who can be questioned in the same way. Witnesses will remain outside of the hearing until called and will withdraw once they have given evidence. They should only be recalled if the Chair requires clarification on any point.

#### Presentation of the School (Management) Response

- 5) The evidence in response to the Appeal will then be presented by the \*school (management) representative.
- 6) At the conclusion of the presentation of the school's (management's) case, the other parties may ask questions in the following order:-
  - a) the appellant and/or their representative;
  - b) the members of the appeal committee;
  - c) the HR Advisors / representatives of the Executive Director of Education present.
- 7) The \*school (management) representative presenting the case may then call their witnesses who can be questioned in the same way. Witnesses will remain outside of the hearing until called and will withdraw once they have given evidence. They should only be recalled if the Chair requires clarification on any point.

#### Adjournments

- 8) Both parties can ask for a short adjournment at any stage in the proceedings. The Chair will consider such requests and decide on the length of any adjournment.
- 9) If any further facts emerge, the Chair will decide whether any additional investigation is required. If it is, then the

appeal hearing will be adjourned and reconvened when the new investigation is completed.

#### Summing Up

- 10) The appellant or their representative will have the opportunity to sum up their case. The summing up may take into account statements made during the proceedings, but no new evidence can be introduced at this stage.
- 11) Likewise the \*school (management) representative will have the opportunity to sum up their case.

#### Deliberation of the Committee

- 12) Both parties will be asked to withdraw. The Appeal committee may recall the appellant or the school representative to clear up any points of uncertainty. Both parties will be present during any recall.

#### The Decision

- 13) The decision is made by the Appeal committee in private. The Chair of the Appeal committee can, if they choose, give the decision on the day. Both parties will be recalled to hear the decision on whether the appeal is to be upheld or not.
- 14) It may not be possible to make a decision on the day of the hearing. In such cases the hearing can be reconvened at a date and time agreed by all parties for the decision to be delivered. Alternatively it may be

agreed by all parties that the decision be put directly in writing within the agreed timescale.

- 15) In all cases the decision will be confirmed in writing within five working days to the employee, their representative, and to the school representative presenting the case. This timescale may be extended in exceptional circumstances. The letter will outline the appeal committee's decision, give the reasons for that decision, and tell the employee that there is no further right to appeal against the outcome of the hearing. A model letter is attached as Appendix 10.

\* Headteacher or Chair of the original disciplinary committee Appendix 10

#### Model Letter

#### Outcome of Appeal Hearing

Personal and Confidential

(Name and Address)

Dear

Re: Outcome of Disciplinary Appeal Hearing

I write to confirm the outcome of the disciplinary appeal hearing held on ..... (*date*). The hearing was held in relation to your appeal against the..... (*second or final*) written warning that you received.

*or....* the decision that was taken to dismiss you/summarily dismiss you for gross misconduct... at the disciplinary hearing of (*date*).

Members of the appeal committee were ..... (*names of the three governors*). The committee were advised by ..... (*name of HR Advisor*).

..... (*name of Headteacher*) was also present and was advised by ..... (*name of HR Advisor – if appropriate*).

Also in attendance was/were ..... (*include if appropriate*). ..... (*Name and job title of trade union representative or work colleague*) was also present.

The appeal committee considered your grounds of appeal and all the evidence that was presented by both parties in relation to these.

#### Where an Appeal Is Not Upheld

As a result, the appeal committee came to the conclusion that the decision made at the disciplinary hearing on..... (*insert date*) be upheld on the basis that....

- (*please provide appropriate details*)

Therefore the ..... (*second or final*) warning that you received will remain on your personal file for .... (*appropriate length of time*).

*or*

Therefore the decision to dismiss you/summarily dismiss you for gross misconduct stands.

*Or*

#### Where an Appeal is Upheld

As a result, the appeal committee came to the conclusion that your appeal be upheld on the basis that....

- (*provide appropriate details*)

Therefore the..... (*second or final*) written warning that you received will be quashed /changed to a ..... (*first/second*) written warning (*as appropriate*).

.

*Or* If the Appeal was against a Dismissal

Therefore the decision to dismiss you/ summarily dismiss you for gross misconduct has been quashed / changed to a ..... (*first/second/final*) written warning (*as appropriate*).

In the event a dismissal decision is overturned  
Arrangements will be made to enable your reinstatement to the position of ( *insert name of job title*) as soon as practicable.  
*Please discuss actions required and wording with an HR Advisor in this event.*

There is no further right of appeal.

Yours sincerely

Chair of the Appeal Committee

cc Education HR Advisor  
Trade union representative/work colleague  
Headteacher