

# PORTFIELD SCHOOL & SATELLITE CENTRES



## POLICY DOCUMENT FOR DISCIPLINARY PROCEDURES



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Portfield School adopts the LEA guidance on:-  
DISCIPLINARY PROCEDURES POLICY

This policy will be reviewed biennially.

Signed ..... (Chair of Governors)

Signed ..... (Headteacher)

Date.....

Reviewed.....

Reviewed.....

Reviewed.....

**Pembrokeshire County Council**

Cyngor Sir Penfro



# **DISCIPLINARY PROCEDURE FOR SCHOOL BASED STAFF**

**October 2013**

Name of school: **PORTFIELD SCHOOL**

## Portfield School Mission Statement

Working together    Learning together    Achieving together

At Portfield School we strive to

- Create a happy, safe, supportive and stimulating learning environment
- Value everyone
- Develop everyone's personal, social, emotional health and wellbeing
- Promote relevant academic and vocational skills
- Meet individual needs through an imaginative and flexible approach
- Enable all learners to achieve their full potential

### UNCRC United Nations Convention on the Rights of the Child

- Portfield School places the values and principles of the UNCRC at the heart of all policies and practices
- Portfield School is a Rights Respecting School

### **Introduction**

- Portfield School has adopted the Local Authority policy and procedures.

The following procedures are based on fact that a delegation is in place from the school's governing body allowing the Headteacher to deal with accusations constituting lesser misconduct. This would be usual and seen as good practice but where this is not the case, suitable adjustments will need to be made.

1. This staff disciplinary procedure applies to school staff (with the exception of some school-based staff employed by the LA). Members of staff have been made aware of this procedure and copies will be given to any member of staff who is the subject of any allegation. In the case of supply teachers engaged through the LA's authorised supply list, the LA must be informed immediately an allegation is made and in the case of child protection allegations the same referral process to Social Care should be followed.
2. All timescales included in this staff disciplinary procedure have been agreed by the governing body and the school's local staff unions. Depending on the circumstances of the case, there may need to be flexibility with these timescales.
3. Where required throughout this procedure the Chair of Governors will take appropriate action unless they are compromised, in which case the vice Chair of Governors will take over the role and actions normally carried out by the chair. If the vice chair is also compromised the governing body will have to select another governor who is not compromised and minute this decision.

## Purpose and Scope

4. The governing body is responsible for the conduct and discipline of school staff and is required to have a procedure in place for dealing with staff disciplinary matters.
5. Disciplinary procedures are necessary for promoting orderly employment relations, achieving fairness and consistency in the treatment of individuals and minimising disagreement about disciplinary matters.
6. This disciplinary procedure is intended to help and encourage all employees to achieve and maintain acceptable standards of conduct and to make clear to all concerned the procedure to be followed by this school and governing body to address concerns about an individual's behaviour or conduct and any subsequent disciplinary action that may be taken.
7. The aim of the procedure is to ensure consistent and fair treatment for all members of staff within the school.

## Matters outside the scope of the procedure

8. The following matters are outside the scope of this disciplinary procedure:
  - where employment is terminated:
    - by reason of redundancy
    - by an employee reaching the end of a temporary or fixed-term contract
    - by an employee leaving by other mutually agreed means, but not an arrangement deemed to be an avoidance of taking disciplinary action
  - where any deficiencies in performance on the part of the staff member arise from a lack of aptitude or skill (in such cases the capability procedure will be used)
  - staff grievances and grievances lodged as a result of disciplinary action. If, however, action under the staff grievance procedure results in the need for disciplinary action then this disciplinary and dismissal procedure will apply
  - termination during or at the end of a probationary period, whether or not extended beyond its originally specified duration
  - matters which ought to be dealt with through the governing body's general complaints procedure and which do not raise staff disciplinary issues for individual members of school staff

- **for Foundation and voluntary aided schools only** – the function of the staff disciplinary and dismissal committee of a foundation school, foundation special school or voluntary-aided school to decide that a person employed at the school should not have their contract of employment renewed.

## Principles

9. This procedure is a way of helping and encouraging improvement in members of staff whose conduct is unsatisfactory and is not to be viewed as simply a means of imposing sanctions or punishment.
10. In all cases, the school and governing body will ensure that disciplinary cases are dealt with in an unbiased, open and fair way.
11. The principles in summary are as follows.
  - Where appropriate, every effort will be made to address concerns about behaviour or conduct without recourse to formal procedures.
  - Disciplinary action will not normally be taken against a member of staff until the case has been fully investigated by a person who has no connection with the case in question. However for minor acts of misconduct or where an initial breach of discipline is alleged and where the Headteacher has reasonable evidence available which invalidates the need to appoint an Investigating Officer then the procedure may progress immediately to a disciplinary hearing. If the complaint is substantiated then a formal oral warning may be given at this stage.
  - An investigator will be impartial, suitably qualified and experienced. Reasonable objections to an investigator relating to their inability to act impartially, or their competence for the role, will need to be given due weight and consideration, and could mean that the investigator will be changed.
  - Where it is decided to deal with a disciplinary matter through lesser misconduct procedures [see Appendix 1 for examples of lesser misconduct], the member of staff will be informed of the allegation against them and will be given the opportunity to defend the allegation at the disciplinary hearing before the Headteacher, or the Chair of Governors for allegations against the Headteacher.
  - A member of staff will not be dismissed for a first breach of discipline in cases of lesser misconduct. However, should this lesser misconduct be repeated it may result in the member of staff being disciplined for gross misconduct as they are not moderating or amending their behaviour. This should be made

clear to the member of staff when discussing their behaviour and the improvements/changes expected.

- Where it is decided (in consultation with the LA) that the allegations amount to gross misconduct [see Appendix 2 for examples of gross misconduct], the member of staff will be informed of the allegation, date, time and place of any hearing before the governing body staff disciplinary and dismissal committee (subject to mutual agreement), the purpose of the hearing and the stage reached in the disciplinary procedure.
- The member of staff will be provided with the membership of the staff disciplinary and dismissal committee prior to a hearing and advised of their right of objection to any committee member on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case.
- The member of staff will be provided, prior to the hearing, with the name of the presenting officer, the names of persons who will be present at the hearing and in what capacity, full details of the allegations, an outline of the evidence to be presented with supporting evidence, the names of any witness to be called and copies of written statements.
- The member of staff will have the right to be accompanied by a work colleague or a representative of their trade union during any interviews with the member of staff that forms part of the investigation, the disciplinary hearing and the appeal hearing.
- Dismissal for gross misconduct will take place immediately following the decision of the staff disciplinary and dismissal committee or following the outcome of any appeal by the member of staff. Dismissal under these circumstances will be without notice or payment in lieu of notice. However in the event of an appeal being lodged, the member of staff will continue to be paid until the outcome of the appeal.
- A member of staff will have the right to appeal against any disciplinary sanction imposed by the Headteacher or Chair of Governors (in respect of lesser misconduct matters), or the staff disciplinary and dismissal committee (in respect of gross misconduct matters).
- The process wherever possible will be supportive towards the needs of the member of staff.

- The LA is the employer of staff in community, special and voluntary controlled schools but governing bodies of these schools are also treated as the employer of staff in respect of certain employment functions in cases where the school has a delegated budget. If there is a claim for unfair dismissal the governing body will be the respondent and not the LA. A representative of the LA is entitled in law to attend staff disciplinary and dismissal committee meetings to ensure that the correct process has been followed and to give advice. The governing body should have regard to that advice and will not be supported by the LA in tribunal claims where such advice has not been duly considered.
- Whilst not a mandatory requirement, all governors should undertake timely and relevant training on staff disciplinary matters. Governors who are members of the staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee should also receive refresher training in more detail, when they have been made aware that they will have to deal with a disciplinary matter. Clerks to governing bodies and Headteachers should be included in this training.
- The Governor Support Services' Service Level Agreement states that the LA will provide a clerk for statutory committees. Therefore the Clerk, as defined in this procedure, will be a LA representative. The exception being Governing Bodies who have not purchased the GSS SLA.

### **Informal discussion with the Headteacher – outside of formal disciplinary process**

12. There will be occasions when it is appropriate for a member of staff's actions to be discussed with them as part of normal supervisory arrangements and without recourse to the formal procedures. In these circumstances the member of staff will be given guidance and support from their line manager. This could take the form of advice, counselling, training instruction, coaching or other managerial strategies as is appropriate. Such activity may be delegated to a member of the senior management team. In respect of the Headteacher however, this would be carried out by the Chair of Governors with advice and support from the LA HR Adviser.
13. The aim of this action is to ensure that problems are discussed so as to encourage and help the member of staff to improve and understand:
  - what they need to do in relation to their conduct
  - how future conduct will be monitored and reviewed
  - the period of time over which conduct will be monitored
  - that formal action might be taken if the conduct in question recurs.



An agreed record of the meeting should be kept and a copy sent to the HR Division for inclusion on the member of staff's HR file.

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

### **Formal procedure for lesser misconduct**

15. Responsibility for disciplinary matters where the allegation could constitute lesser misconduct is usually delegated by the governing body to the Headteacher. A record of this delegation should be minuted.
16. If an allegation which could constitute lesser misconduct is made against the Headteacher, the Chair of Governors will be responsible for disciplinary action. It is advisable to have a HR representative from the LA present with the Chair at any subsequent meetings.

### **The investigation**

17. As soon as the alleged breach of discipline has been brought to the attention of the Headteacher or the Chair of Governors (in the case of the Headteacher) normally a full investigation must be carried out (refer to paragraph 11 for exceptions). Wherever possible, and in order to avoid an investigation being carried out by a person who may be involved in any subsequent action, the Headteacher or Chair of Governors will arrange for the investigation to be carried out by an independent person. This may be a member of the School's Senior management Team, the Local Authority or Diocesan Authority (where appropriate) or some other suitably qualified and experienced person with no connection to the school or case in question. Every care should be taken to validate the credentials of external persons prior to engaging them,
18. The member of staff who is the subject of the alleged breach of discipline, and all witnesses, will be interviewed and requested to provide a signed statement. Notes will be taken at all investigation meetings and a copy given to the party involved. No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected. Witnesses who are school or local authority employees have a duty to co-operate in the investigation.
19. The member of staff will be given the opportunity to respond to the allegation and will have the right to be accompanied by a work colleague or a representative of their trade union at an investigation interview meeting.
20. Once the investigation has been concluded, the investigating officer will present the findings to the Headteacher or the Chair of Governors (in the case of a Headteacher) in a written report. This will be done as soon as practicable after the conclusion of the investigation. The investigation report will be based on matters of fact and not opinions; references to or expressions of views on the personalities of individuals will not form a part of the report.

21. The Headteacher or Chair of Governors (in the case of a Headteacher) may conclude that:
- no further action will be taken
  - matters can be dealt with by informal discussion (refer to paragraphs 12–14 of this procedure)
  - there appears to be sufficient evidence for a hearing before the Headteacher or Chair of Governors (if the Headteacher is to be disciplined) and the possible outcome may be sanctions short of dismissal
  - there appears to be sufficient evidence that the allegation constitutes gross misconduct to trigger a formal disciplinary hearing before the staff disciplinary and dismissal committee.
22. Where dismissal could result because a member of staff is currently on a final written warning, the case must be referred to the staff disciplinary and dismissal committee.

### **The hearing before the Headteacher or Chair of Governors**

23. This section assumes that conduct that is considered to fall within the scope of lesser misconduct has been delegated to the Headteacher to deal with. The Chair of Governors will deal with lesser misconduct allegations against the Headteacher. A hearing will take place with the Headteacher or the Chair of Governors (in respect of the Headteacher) supported by advice from the LA or diocesan authority (where appropriate). Should the Chair of Governors be compromised this role should be delegated to the Vice Chair (providing the Vice Chair is not compromised).
24. The member of staff will be sent a copy of the School's Disciplinary Procedure and will be informed in writing of the following information:
- the nature of the alleged misconduct
  - the stage reached in the procedure
  - the date, time and place for the hearing
  - the possible outcome of the hearing
  - who will be present and their capacity
  - their right to:
    - produce written statements which will be circulated to all parties in advance of the hearing
    - ask questions relating to any written statements so produced
    - state their case in person and/or through a representative

- produce witnesses
- be accompanied by a trade union representative or work colleague of their choice.

- 25.** There are five possible outcomes following on from such a hearing:
- informal action
  - oral warning
  - first written warning
  - final written warning
  - referral to a disciplinary hearing before the governing body's staff disciplinary and dismissal committee.
- 26.** In many cases lesser misconduct can be dealt with in the first instance by informal action. However, there may be occasions when it will be appropriate to give a member of staff an oral warning or a written warning. The sanctions used will depend on the circumstances of the member of staff's behaviour.
- 27.** Further advice on each of these sanctions is set out below. The sanctions a member of staff could receive will be in line with the nature and severity of the allegation. However, there may be occasions where a member of staff has had repeated lesser misconduct allegations against them and has not altered or improved their behaviour or already has a sanction where it has not yet been expunged. This may result in a more severe sanction being given, e.g. a final written warning. Alternatively, the lesser misconduct behaviour may be serious enough to warrant an immediate final written warning instead of any other sanction.

### **Informal action**

- 28.** As a result of the hearing, the Headteacher or the Chair of Governors (in respect of the Headteacher), with support from the LA HR Adviser, may deal with matters by giving advice, counselling, training instruction, coaching or other managerial strategies as is appropriate. Such activity may be delegated to a member of the school's senior management team. In respect of the Headteacher however this will be carried out by the Chair of Governors with advice and support from the LA HR Adviser.
- 29.** The aim of this action is to ensure that problems are discussed so as to encourage and help the member of staff to improve. The member of staff needs to understand:
- what they need to do in relation to their conduct
  - how future conduct will be monitored and reviewed
  - the period of time over which conduct will be monitored
  - that formal action might be taken if the conduct in question recurs

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

## Warnings

- 31.** Where the member of staff's conduct is satisfactory for the specified period of a warning such warnings will be expunged from the staff member's file after a specified period and should not be referred to again once spent. Suitable periods would be:
- oral warning – 6 calendar months
  - first written warning – 12 calendar months
  - final written warning – 12 calendar months – exceptionally there may be circumstances where the misconduct is so serious that it cannot realistically be disregarded for future disciplinary purposes, or there may be circumstances where the warning will remain valid in excess of one year and this will be a matter for settlement between the employee and accredited union representative (if applicable) and the Headteacher or Chair of Governors (in the case of action against a Headteacher) at the time a Final Written Warning is given. It is advised that a Final Written Warning should not be issued for a period in excess of 2 years. Employees will be clearly informed, at the date of issue, as to the time limit for the warning.

## Oral warning

- 32.** If at the conclusion of the hearing it is decided to proceed with disciplinary action by way of an oral warning, the Headteacher or the Chair of Governors (in respect of the Headteacher) will issue the oral warning to the member of staff in the presence of their trade union representative or work colleague if required.
- 33.** An oral warning will be confirmed in writing within 5 school days of the decision of the outcome and with the agreement of the member of staff a copy to any person who accompanies the member of staff in accordance with these procedures and will state:
- the nature of the misconduct
  - the stage reached in the procedure
  - what is expected for the future
  - the right to appeal, the time limit within which the appeal should be made, how and to whom the appeal should be made.

34. A record of the warning will be placed on the member of staff's file held by HR.

### First written warning

35. If at the conclusion of the hearing, it is decided to proceed with disciplinary action by way of a first written warning, the Headteacher or the Chair of Governors (in respect of the Headteacher), will issue the first written warning to the member of staff in the presence of their trade union representative or work colleague wherever possible.
36. A written warning will be confirmed in writing within 5 school days of the decision of the outcome and with the agreement of the member of staff a copy will be forwarded to any person who accompanies the member of staff in accordance with these procedures and will state:
- the nature of the misconduct
  - the stage reached in the procedure
  - what is expected for the future
  - the right to appeal, the time limit within which the appeal should be made, how and to whom the appeal should be made.
37. A copy of the warning will be placed on the member of staff's file.

### Final written warning

38. A final written warning may be issued where lesser misconduct recurs despite attempts by senior managers to support the member of staff and improve their behaviour or conduct. A final written warning may also be issued where a single instance of proven misconduct is considered to be of a serious nature.
39. Final warnings may be given following a hearing before the Headteacher or the Chair of Governors (in respect of the Headteacher). If at the conclusion of the hearing, it is decided to proceed with disciplinary action by way of a final written warning, the Headteacher or the Chair of Governors (in respect of the Headteacher), will wherever possible, issue the final written warning to the member of staff in the presence of their trade union representative or work colleague.
40. The final written warning will be confirmed in writing within 5 school days of the hearing and with the agreement of the member of staff a copy will be forwarded to any person who accompanies the member of staff in accordance with these procedures, and will state:
- the nature of the misconduct
  - the stage reached in the procedure
  - what is expected for the future
  - that the next stage will be dismissal

- the right to appeal, the time limit within which the appeal should be made, how and to whom the appeal should be made.

41. A record of the warning will be placed on the member of staff's file. At the end of the period of the final written warning, if the member of staff's behaviour has not improved, the matter can be referred to the staff disciplinary and dismissal committee for a formal hearing which could result in dismissal. **The member of staff must be informed of this at the time the final written warning is issued.**

### Appeals against formal warnings

42. There is a right of appeal against any disciplinary action (refer to paragraphs 79–85 of this procedure for information on appeals). The disciplinary and dismissal appeals committee can uphold the decision of the disciplinary and dismissal committee, impose a lesser penalty or conclude that no action should be taken against the staff member.

### Referral for consideration under procedures for gross misconduct

43. There may be occasions where, at the end of an investigation into lesser misconduct matters, the evidence in the investigation report indicates that the behaviour constitutes gross misconduct. If the Headteacher (or Chair of Governors in respect of the Headteacher) with support from the LA or diocesan officer or another agreed appropriate person, concludes that this is the case, a referral for formal disciplinary action for gross misconduct may be justified. In these circumstances the member of staff will be informed immediately of the decision made and that the matter is being referred to the staff disciplinary and dismissal committee for their consideration. The most appropriate way for a member of staff or Headteacher and their respective trade union representatives to be informed of this decision will be through a meeting with the Headteacher or Chair of Governors (in respect of the Headteacher) as this is likely to be a rare occurrence this meeting does not form part of the lesser misconduct process.

Any employee should not be automatically dismissed or otherwise disciplined merely because he or she has been charged with or convicted of a criminal offence. The question to be asked in such cases is whether the employee's conduct warrants action because of its employment implications. The misconduct does not have to be connected with work if in some way it (a) affects the employee or (b) could be though likely to affect the employee when working. In whatever circumstances, this is a difficult area of judgement and in all cases HR should be contacted for advice. It would be best practice for the employee concerned to have the opportunity to explain and asked his/her views on whether the offence is likely to adversely affect work or working relationships. Careful consideration will need to be given as to whether a breach of trust has occurred, and a reasonable view taken. In any event each case has to be considered on its merit.

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

44. The term gross misconduct is used to mean an act, or omission, or a series of actions or omissions by a member of staff that fundamentally repudiates the contract of employment. All gross misconduct allegations will be subject to a formal disciplinary hearing before the governing body's staff disciplinary and dismissal committee. The staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee shall each have a minimum of three governors. The staff disciplinary and dismissal appeals committee must have at least the same number of governors as the staff disciplinary and dismissal committee. No governor will be a member of both committees and both committees will also have separate Advisers. The Headteacher cannot be a member of either committee but can attend meetings or hearings to give advice, present the case against the member of staff or give evidence. It is best practice for governing bodies to review the membership of their committees at least annually. They must ensure that these committees are agreed and minuted at a governing body meeting and not constructed by any other means, and take steps to fill any vacancies as these arise.
45. Where alleged gross misconduct is to be considered the arrangements to set up a disciplinary investigation rests with the Chair of Governors through the clerk to the governing body. This will be following discussion with the LA and taking into consideration LA advice and guidance.
46. Gross misconduct allegations are usually sent to the Headteacher or Chair of Governors (if the allegation is about the Headteacher). On receipt of an allegation the Headteacher or chair of the governors will make an initial assessment of the situation (but not investigate) to determine the nature and circumstances of the allegation, i.e. witnesses, when it occurred, etc. If it is concluded that the allegation may be true the member of staff will be informed of the allegation immediately and that the formal disciplinary process is being engaged.
47. The Headteacher or Chair of Governors will arrange for the allegation to be thoroughly and fairly investigated. At this point the member of staff may be suspended by the Headteacher or Chair of Governors, on full pay and in line with the governing body's agreed procedure. Where possible, the member of staff will be accompanied by an accredited trade union representative or work colleague.

Both the Headteacher and/or Chair of Governors can suspend staff but only the governing body can end a suspension. The governing body may delegate the task of ending a suspension to the Chair of Governors/the chair of the staff disciplinary and dismissal committee. This delegation must be minuted. Suspensions will be reviewed by the Chair of Governors (with advice from the LA) at intervals of no less than 4 weeks and no greater than 12 weeks. This will be determined on a case by case basis.

48. However, if after making the initial assessment of the allegation the conclusion of the Headteacher or Chair of Governors (in respect of an allegation against the Headteacher) is that beyond any doubt it is impossible for the allegation to be true, the Headteacher or Chair of Governors may take no further action. The member of staff and their union representative will be informed immediately of this decision. The decision will be confirmed in writing.

## The investigation

49. A possible outcome for gross misconduct hearings is dismissal and it is therefore essential that investigations into gross misconduct allegations are unbiased and thorough. Consequently, wherever possible, all investigations will be carried out externally by an appropriate person who has no connection or involvement with the case and has the relevant skills. The governing body may engage, for example, LA or diocesan officers (where relevant). Ex-Headteachers or ex-LA officers or others with relevant experience and knowledge, who are impartial and have no connections with the case, may be engaged. Only in exceptional circumstances would the Chair of Governors, members of staff or governors be asked to investigate gross misconduct cases. The Chair of Governors is responsible for controlling and managing all aspects of the disciplinary process including the engagement of an appropriate investigator after having sought advice and guidance of the LA. The member of staff can make a written request to change the appointed investigator if they have reasonable doubts as to his/her ability to act impartially. The Chair of the Governing Body, following due consideration, will respond to the request in writing.
50. Prior to the investigation, the member of staff will be informed in writing of their rights under the school's disciplinary procedure, including the right to be accompanied by a colleague or a representative of their trade union, at all meetings held in connection with the disciplinary matter.
51. Notes will be taken of the meeting and a copy given to the member of staff and their trade union representative following the meeting. No undertaking of confidentiality can be given to witnesses however the overall confidentiality of the disciplinary process will be respected.

## The investigation report

52. The report, once completed, will be given to the Headteacher and the Chair of Governors (or Chair of Governors and another governor in respect of investigations into the conduct of the Headteacher) who will consider the findings and decide whether, based on the findings of the report:
  - there is no evidence to support the allegations and the matter is closed
  - the conduct does not amount to gross misconduct but to lesser misconduct which can be dealt with by the appropriate person
  - based on evidence, the conduct does amount to gross misconduct and is required to be referred to a staff disciplinary and dismissal hearing. In the event of a disagreement, the Chair of Governor's decision prevails.
53. This discussion and decision will be minuted by the clerk. The member of staff will be advised of the outcome of the investigation as soon as possible in writing by the clerk to the staff disciplinary and dismissal committee.



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

### **Allegations that involve issues of child protection – receipt of an allegation**

55. Throughout this Section, following agreed processes and appropriate and timely involvement of the local authority and other key agencies in accordance with those is vital.
56. Allegations involving issues of child protection will be brought immediately to the attention of the Headteacher or the Chair of Governors (if the allegation is in respect of the Headteacher) and the designated child protection officer in the school and, with advice from the Authority's Lead Child Protection Officer, referred to the statutory authorities, e.g. the police and social services. The Headteacher or Chair of Governors shall adhere to the Child Protection Policy and Procedure for Schools. The PSCB procedure "Handling Allegations of Abuse made against Adults who Work with Children and Young People" provides the detailed local procedures for the management of such investigations. Further guidance is contained within Annex 1 to this Procedure
57. The Headteacher or chair of the governors (in respect of the Headteacher) will make an initial assessment (but not investigate) to determine the nature and circumstances of the allegation, i.e. witnesses, when it occurred, etc. If the conclusion is that beyond any doubt it is impossible for the allegation to be true the matter will be discussed by the Chair of Governors, Headteacher and the lead child protection officer in the LA, to determine whether a referral to social services and/or the police is required. If the allegation is about the Headteacher the Chair of Governors will have the same discussion without the Headteacher being present. If the conclusion of all parties is that it is impossible for the allegation to be true the Headteacher or Chair of Governors may not take any further action against the member of staff and no referral to the statutory authorities is required. If there is any doubt, and agreement between these parties cannot be reached, the matter will be referred to the statutory authorities.
58. If however, the initial assessment by the Headteacher or Chair of Governors (if the allegation is about the Headteacher), in discussion with the LA lead child protection officer, indicates that an allegation might be true, there will be an immediate referral to the statutory authorities (social services and/or the police), in accordance with local child protection procedures. The Headteacher or Chair of Governors should adhere to the Child Protection Policy and Procedures for Schools.
59. The member of staff and their union representative will normally be informed of the decision, as agreed by the statutory authorities, that a referral is being made. However, there may be some circumstances where this will not be appropriate. At this point the Headteacher or Chair of Governors (if the allegation is about the Headteacher) may suspend the member of staff, on full pay, in line with the governing body's agreed procedures. The Headteacher or Chair of Governors should adhere to the Guidance on the use of risk

management assessments relating to allegations of professional abuse. Both the Headteacher and Chair of Governors can suspend a member of staff but only the governing body can end a suspension. The governing body may delegate the task of ending a suspension to the Chair of Governors/the chair of the staff disciplinary and dismissal committee. This delegation must be minuted. Suspensions will be reviewed regularly and suspension review will be an Agenda Item at the Strategy meeting.

60. Once the statutory authorities (e.g. the police and social services) have completed their consideration of the allegation, the governing body will start/resume the staff disciplinary process if applicable. This will happen even if the statutory authorities take the decision not to pursue a criminal investigation.
61. The Headteacher and Chair of Governors or the Chair of Governors and another governor (if the Headteacher is the subject of the allegation), with advice from the LA Lead Child Protection Officer and/or HR Officer (as appropriate), will discuss:
  - whether the allegation is of a child protection nature and requires a referral to be made to the social services and the behaviour constitutes gross misconduct which requires it to be independently investigated prior to any disciplinary hearing
  - whether there is evidence of misconduct which should be treated as lesser misconduct
  - whether no further action is required.
62. If there is any doubt at all, or agreement cannot be reached as to whether the matter is a child protection issue, the allegation will be independently investigated.

### Referral for an independent investigation

63. **The requirement in education law is that the governing body must refer child protection allegations for independent investigation.** In order to make the process easier this task has been delegated to the Chair of Governors and the governing body's decision to this effect has been minuted. This must be done prior to the hearing of any disciplinary proceedings. The independent investigator's contact in relation to the running of the investigation will be with the governing body (e.g. the Chair of Governors) Headteacher. However the chair will seek advice and guidance from the LA throughout the process. The purpose of an independent investigation is to enable the governing body to comply with the law and to provide members of the staff disciplinary and dismissal committee with a thorough and unbiased investigation report, produced by persons with appropriate skills and training, to enable them to reach fair and balanced decisions.
64. The independent investigator will not commence the investigation until after the statutory authorities have completed their investigation. Once the statutory authorities have completed their investigation the independent investigator will then be able to conduct their investigation.

## The independent investigation

65. The independent investigator will set the parameters of the investigation based on discussion and advice from the LA and interview all witnesses in order to ensure a completely impartial and unbiased investigation is carried out. The report will not contain any conclusions and recommendations as these are matters for the committee to determine.

## The independent investigation report

66. The report, once completed, will be given to the Headteacher and Chair of Governors, or Chair of Governors and another governor in respect of investigations into the conduct of the Headteacher. They will consider these findings with advice from the LA and decide whether, based on the findings of the report:
- there is evidence to support a decision that the child protection allegations are well-founded, that they constitute gross misconduct behaviour and that they will require a disciplinary hearing before the staff disciplinary and dismissal committee
  - there is evidence to support a decision that the allegation constitutes lesser misconduct behaviour which can be dealt with by the Headteacher or Chair of Governors (if the allegation is against the Headteacher)
  - there is no evidence to support the child protection allegation and no further action needs to be taken against the member of staff.
67. If there is any doubt at all, or agreement cannot be reached by the Headteacher or the Chair of Governors, or the Chair of Governors and another governor in respect of the Headteacher, the matter will be referred for a full hearing before the staff disciplinary and dismissal committee.
68. The member of staff and trade union representative will be informed of the decision as soon as reasonably practicable.
69. The Chair of Governors, or (where agreed) the LA, on behalf of the Chair of Governors, will ensure that all relevant papers, including the full investigation report, are sent to the member of staff and/or their union representative, the person presenting the case against the member of staff, and members of the staff disciplinary and dismissal committee prior to the hearing.
70. No evidence will be removed by any party from the investigation report before it is sent to the governing body staff disciplinary and dismissal committee. The full report and the evidence on which it is based must be made available to the committee.

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

71. As required in law the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee will have at least two governors plus an independent non-governor with voting rights<sup>1</sup>. The appeal committee will have the same number of governors as the first committee. The governors, including the independent non-governor on the appeal committee will be different from those on the first committee. The independent non-governor must be formally appointed by the governing body and by no other party (however the governing body may be provided with information regarding suitable persons by the local authority).

## **The disciplinary hearing in respect of all gross misconduct cases and Appeals**

72. A disciplinary hearing will be held as soon as it can be arranged by the clerk to the staff disciplinary and dismissal committee even if the member of staff has subsequently resigned or is on sick leave. At least 5 school days' notice will be given of the date and time of the hearing.
73. The member of staff will be informed in writing of:
- the date, time and place for the disciplinary hearing, seeking agreement to dates from members of the committee, the member of staff, any witnesses appearing in person and the LA and diocesan authority (if appropriate)
  - the purpose of the hearing and the range of possible outcomes
  - the right of the member of staff to be accompanied by a work colleague or representative of the member of staff's trade union
  - the membership of the staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee (as appropriate)
  - the name of the person presenting the case against the member of staff
  - the full details of the allegation, the evidence to be presented and the names of any witnesses to be called, etc.
  - who is to be the Adviser to the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee (as appropriate)
  - the date by which all relevant documentation should be received by the clerk prior to the hearing.
74. The clerk will arrange for the documentation from both parties to be distributed to the member of staff and their representative prior to the hearing, including

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<sup>1</sup> Definition of an independent person can be found in The Staffing of Maintained Schools Regulations 2006, s8 (4a)

up-to-date procedures. The member of staff will be required to notify the school of any additional witnesses he/she will be calling and provide copies of evidence to be presented at least 2 working days' before the hearing.

75. The staff member will be afforded the right to object to any member of the committee or the investigator on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case. This objection must be submitted in writing to the Clerk of the Governing Body. The Chair of Governors will consider the request and respond in writing.

### **At the hearing**

76. The hearing will be conducted in a fair manner with all parties having the opportunity to present all relevant evidence and call and question witnesses. There will also be an opportunity for the presenting officer and the member of staff and their trade union representative to summarise their case. The clerk to the governing body will be present to record the hearing in detail. At this point the member of staff and representative will withdraw.
77. Once this part of the hearing is completed there will be an opportunity for the staff disciplinary and dismissal committee to receive advice. All parties will then withdraw to allow the committee to make their decision. The Clerk will remain to record the decision. Where possible the decision will be given verbally at the end of the hearing. The committee's decision will be given in writing to the member of staff within 5 school days after the hearing. At this point the member of staff will also be informed of their right to appeal and the timescale within which this must be made.

### **Decision reached after the hearing has taken place**

78. Having considered all the evidence and taken into account advice provided the staff disciplinary and dismissal committee may conclude that:
- the allegation is unproven and there is no action to be taken
  - the alleged behaviour constitutes lesser misconduct and a formal oral written warning or final written warning should be issued
  - the allegation of gross misconduct is proven and, depending on the severity of the misconduct, an appropriate sanction shall be imposed.

### **Possible sanctions may be:**

- relegation to a lower-graded position (if practical and appropriate) and loss of salary
- specified training and development
- issue of a formal warning (where the alleged behaviour constitutes lesser misconduct)
- dismissal of the member of staff without notice. Where this is the decision, the committee must inform the Chief Education Officer once the period

allowed for the member of staff to appeal has expired and they have not appealed. The LA is required to dismiss the member of staff and should do so within 10 school days of the notification of the decision.

79. Matters that are considered lesser misconduct will be dealt with by means of formal action set out in paragraphs 28–41.

### Disciplinary hearing – appeal

80. A member of staff is entitled to appeal against a decision of the staff disciplinary and dismissal committee. The notice of the intention to appeal needs to be lodged with the clerk to the staff disciplinary and dismissal appeals committee within **5 school days** of receipt of the Committee's written decision. The appeal notice will need to include the grounds for the appeal.

81. The appeal will be heard by the disciplinary and dismissal appeals committee within a specified time set out in this procedure. Appeal hearings will focus on the issues set out in the appeal notification, therefore the appeal process may not always take the form of a complete hearing. However, under certain circumstances, e.g. where new evidence comes to light that was not available at the first hearing or the first hearing process was flawed or biased, it may be appropriate to rehear part, if not all, of the case. The member of staff will be given notice of the date and time of the appeal hearing **within 5 school days** of receipt of the appeal letter.

Agreeable times and dates will be arranged for all parties concerned where possible.

82. The staff disciplinary and dismissal appeals committee may, after considering all the facts presented to it, including any new evidence, come to one of three conclusions:

- uphold the decision of the staff disciplinary and dismissal committee
- impose a lesser penalty
- conclude that no disciplinary action should be taken against the member of staff.

83. The staff disciplinary and dismissal appeals committee cannot impose a more severe penalty than that imposed by the Headteacher or Chair of Governors in respect of the Headteacher (in lesser misconduct cases) or the staff disciplinary and dismissal committee (in gross misconduct cases).

84. The decision of the staff disciplinary and dismissal appeals committee will be final and the staff member will be informed in writing.

85. The member of staff will be given a copy of the minutes of the appeal hearing with the above notification of outcome letter.

86. If, as the result of an appeal, disciplinary action is withdrawn, all details thereof will be expunged from the member of staff's personal file and they will be informed accordingly. The member of staff will be given a notification of outcome letter and a copy of the appeal hearing minutes.

## Suspension

87. Suspension pending disciplinary proceedings will normally only be considered where allegations relate to gross misconduct behaviour or in cases where:
- it appears to be necessary to exclude the member of staff from the school, for the protection of pupils, other staff or property or the orderly conduct of the school
  - the continued presence at work of the member of staff would be an obstacle to proper investigation of the allegations made against that member of staff.
88. Suspension is a serious step and will not be used in a punitive way. Suspension will be on full pay and without loss of emoluments. The continued effect of the suspension will be kept under review.
89. The decision to suspend can be taken by the Headteacher or the Chair of Governors but only the governing body can end a suspension. However the governing body may delegate the task of ending a suspension to the Chair of Governors/the chair of the staff disciplinary and dismissal committee. This decision must be minuted.
90. The decision to suspend will be discussed with the Headteacher, Chair of Governors (or vice chair if the chair is not available) in consultation with the chief education officer of the maintaining LA (or appointed representative) and, where applicable, the diocesan authority, prior to implementing any suspension or redeployment. Written notice will be given to all relevant parties following a decision to suspend. In the case of allegations of a child protection nature, the Chair of Governors shall follow the Guidance of the use of risk management assessments relating to allegations of professional abuse.
91. If the staff member is absent due to sickness, the staff disciplinary and dismissal committee will consider postponing the hearing. Where the staff member may be absent for a period in excess of 28 calendar days, the staff disciplinary and dismissal committee may decide to hold the hearing provided that it has informed the member of staff and their representative and has offered the member of staff the opportunity to send a representative or submit written evidence to present their case. The representative will have the same opportunity as the staff member to present evidence, call witnesses and sum up the staff member's case.

## Summary

- 92.** In adopting this procedure the governing body has taken due regard of advice and guidance from the LA and the *Disciplinary and dismissal procedures for school staff* Welsh Government circular no: 002/2013 (2013). It has also consulted the local trade union representatives. This is the definitive procedure for dealing with disciplinary matters.
- 93.** The governing body will also consult further before any amendments are made to this disciplinary procedure.



## **APPENDIX 1**

### **EXAMPLES OF LESSER MISCONDUCT**

This is not an exhaustive list. Judging the level of misconduct and how it must be handled has to be undertaken on the facts of each case.

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

Lesser misconduct might include:

- specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment, etc.
- poor timekeeping and/or unauthorised absence (e.g. absence from the workplace during school sessions without permission or in line with school policy)
- refusal to carry out a reasonable instruction
- causing damage to property/equipment through negligence/not having due regard to school property
- causing unintentional superficial injury to a member of staff/pupil
- using inappropriate language
- petty theft e.g. making unauthorised private telephone calls or sending personal mail at the school's expense
- breach of dignity at work policies
- unauthorised use of mobile phones/text messaging/social networking sites during lesson time

## **APPENDIX 2**

### **EXAMPLES OF GROSS MISCONDUCT**

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

Gross misconduct might include:

- specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment, etc.
- failure to follow organisation policies and procedures
- fraudulent acts or theft of property belonging to the LA, the school, fellow members of staff or pupils
- deliberate and serious damage to property belonging to the LA, the school, fellow member of staff or pupils
- violent behaviour including physical assault
- continuous bullying
- harassment or unlawful discrimination on any grounds
- physical, sexual or emotional abuse of pupils
- sexual misconduct at work
- physical violence
- gross negligence
- causing loss, damage or injury through serious negligence
- serious incapability at work brought on by alcohol or other illegal substances on school premises
- serious insubordination
- deliberately accessing offensive or obscene material via internet sites, social networking sites or by messaging
- inappropriate texting
- theft or fraud in and out of the workplace

- dishonesty (e.g. tampering with examination papers, revealing examination papers prior examination or altering examination results)
- serious violation of the LA or school's health and safety rules and standards
- misconduct outside the workplace which reflects adversely upon the school or member of staff's suitability to continue to be employed at the school. This does not only refer to criminal misconduct; it could be misconduct where the police have taken no criminal action but serious doubt is cast over the member of staff's suitability to work with children
- knowingly providing false information on any matter relating to the member of staff's employment
- disclosure of confidential personal information
- serious breaches of health and safety
- humiliation of staff, victimisation of colleagues, parents/carers or pupils