

# Disciplinary Policy for School Staff other than Headteachers

## Guidance for Headteachers

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## 1.0 Policy Statement

- 1.1 The morale of the School depends to a large extent on the ability to achieve and preserve high standards of co-operation and discipline. Most employees understand and accept that in any organisation there have to be rules on conduct if activities are to run smoothly and constructively for the safety and wellbeing of everyone.
- 1.2 The definition of a Disciplinary Process is: “a way of dealing with job-related behaviour and/or attitude that does not meet expected and communicated performance standards”. Disciplinary procedures are applied primarily to help and encourage employees to improve rather than just as a way of imposing a punishment.
- 1.3 The purpose of this policy is to set acceptable standards of conduct and will address all disciplinary matters appropriately. The level of the sanction will depend on the seriousness of the misconduct and take into consideration any mitigating or aggravating circumstances. The standards of conduct outlined in Appendix 1 is a list of examples of Misconduct and Gross Misconduct that would normally justify sanctions under the Disciplinary Policy and are intended to help employees understand acceptable standards of conduct required by the School.
- 1.4 The Disciplinary Policy will provide a fair, reasonable and consistent method of dealing with possible breaches of discipline that need to be brought to the employee’s attention. Where such steps prove unsuccessful, the employee may have their employment terminated on the grounds of misconduct.
- 1.5 This Policy has been developed in line with the ACAS code on Disciplinary Procedures.

## 2.0 Scope

This policy applies to all teachers and support staff including full time and part time staff, permanent and temporary staff, with the exception of Headteachers.

The policy does not apply:

- Where a teacher has been barred from teaching under statutory provision. The Head of Education will advise on the procedure to terminate employment in these cases
- On the termination of a contract of employment for which an employee has been specifically engaged.
- In the event of redundancy. The redundancy procedure is followed in these cases.
- In the event of incapability for poor performance or ill-health. The Managing Underperformance or Managing Attendance procedure is followed in these cases.
- To Supply Staff employed by an agency

A similar policy applies to employees of Milton Keynes City Council.

**Where there is an allegation of abuse (including inappropriate physical contact) by a member of staff against a child or young person, reference should be made to Appendix 2 – Guidance on Allegations of Child Abuse and the statutory guidance: Working together to Safeguard Children and the Keeping Children Safe in Education guidance.**

Advice on the application of this procedure is available from the School's HR provider. Headteachers who plan to initiate disciplinary action are advised to consult the HR provider before proceeding.

## **3.0 Introduction/Purpose**

3.1 This policy is designed to:

- Inform employees of the standard of conduct that is unacceptable
- Establish responsibilities of Headteachers, Governing Boards or Interim Executive Board (IEB), HR and Investigating Officers during the disciplinary process
- Establish the rights and responsibilities of employees
- Provide for possible disciplinary breaches to be dealt with as soon as possible using a fair, reasonable and consistent method that agrees with the principles of natural justice and the test of the balance of probabilities

3.2 The policy does not replace the normal interaction between Line Manager and employee and recognises that minor breaches of conduct should be dealt with promptly and informally without referring to formal disciplinary procedures.

3.3 Action under this policy relates both to conduct at work and instances where conduct outside work has a direct relationship to the employee's duties. This includes action or conduct that is likely to bring the school into disrepute or raises concerns about an employee's suitability to continue to work in a position of trust.

3.4 In certain circumstances, this document should be read in conjunction with other Schools policies such as those dealing with managing underperformance, harassment and bullying, managing attendance, Milton Keynes City Council Code of Conduct and other national guidelines for teachers.

## **4.0 Roles and Responsibilities**

4.1 **Headteacher**

- Own and take responsibility for the disciplinary process and ensure that it proceeds within the timescales of the Disciplinary Policy
- Maintain close contact with HR throughout the Disciplinary process
- Maintain a working environment where all employees are aware of accepted standards of conduct and promptly draw an employee's attention to any way in which their conduct falls below the required standard. This includes day to day supervision and monitoring of conduct. In the absence of the Headteacher, either a Deputy Headteacher or another

senior member of staff who has formally been nominated by the Headteacher will take on this responsibility.

- Examine the standards applied in similar situations to make sure the employee is not being unfairly singled out and to ensure consistency
- Make full notes of any discussions (informal or formal) relating to the disciplinary matter
- Maintain confidentiality
- In conjunction with the Chair of Governors, make the decision on whether or not suspension is appropriate
- Appoint an Investigating Officer and, if internal, arrange for them to have suitable release time from their day to day duties to facilitate a timely completion of the investigation
- The Headteacher, Governing Board or IEB, depending on the approach taken, will appoint a Clerk to keep a record of any hearing or appeal hearing relating to a disciplinary matter.
- Refer cases of alleged child protection to Children's Services and the Police prior to any internal investigation being carried out.

**Note:** for the purposes of implementing the disciplinary policy, 'Headteacher' means, in the absence of the Headteacher, a representative who is either a Deputy Headteacher or another senior member of staff who has formally been nominated by the Headteacher. In exceptional circumstances, where governors do not deem it appropriate for a member of staff to lead the process, it means the Chair of Governors or their representative

#### 4.2 **Governing Board or IEB (Comprehensive List of responsibilities is Available from HR)**

- Ensure that appropriate disciplinary rules and procedures are in place within the School and are followed in a fair and reasonable manner
- Appoint a Hearings Committee comprising of at least three governors who will be responsible for conducting a disciplinary hearing which **may** result in dismissal. The Governing Board or IEB will make their decision based on the options given below. These options must be formally minuted and reviewed annually:
  - a) To delegate responsibility for staff dismissals to the Headteacher
  - b) To appoint a separate Hearings Committee consisting of three governors (in exceptional circumstances this may be reduced to two)
  - c) To collaborate with another School's Governing Board or IEB
- Appoint an Appeal Committee comprising of at least three governors who have not previously been involved to hear any Appeals. A governor who has served on a Staff Disciplinary Committee or been involved in the case previously with the Headteacher ie taken decision to suspend/is a witness etc. must not serve on the Appeal Committee which hears a resultant appeal
- The Headteacher, the Governing Board or IEB will appoint a clerk to keep a record of any hearing or appeal hearing relating to a disciplinary matter

#### 4.3 **Human Resources (Comprehensive List of responsibilities is Available from HR)**

- Maintain close contact with the Headteacher and the Investigating Officer throughout the Disciplinary process
- Provide advice and guidance on meetings/hearings, investigation report, appeals and standard documentation
- Advise on the disciplinary procedure to ensure compliance with the law, fairness and consistency
- Attend disciplinary hearings and appeal hearings in an advisory capacity to the Chair of the committee, and advise on an appropriate disciplinary sanction in specific cases
- Ensure that records of investigations and hearings are placed on the appropriate file
- Maintain confidentiality

#### 4.4 **Employee**

- Take full responsibility for their conduct and maintain a standard of conduct acceptable to school.
- Co-operate in any investigation being carried out into their own or others' alleged misconduct
- Attend and take part in any disciplinary hearing and be prepared to put forward their version of events and/or explain their conduct fully, honestly and truthfully
- Maintain confidentiality
- Take required action to correct behaviour/conduct

#### 4.5 **Investigating Officer (Comprehensive List of responsibilities is Available from HR)**

- Liaise with the Headteacher and HR to gain a full understanding of the nature and scope of an investigation
- Provide a complete investigation report, within a recommended timeline and to an acceptable standard
- Be impartial and not have a conflict of interest that might prejudice a fair investigation
- Make a recommendation to the Headteacher and HR as to whether a disciplinary hearing should be arranged or whether the matter should be dropped
- Attend disciplinary hearings and present the investigation report
- Maintain confidentiality

## 5.0 **Principles**

5.1 The provisions of the Equality Act 2010 will be applied throughout the implementation of this Policy.

5.2 The stages of the disciplinary procedure will be conducted without unnecessary delay. At all stages, the employee will be advised of the nature of the complaint against them, and that the formal procedure has been instigated and is being followed

- 5.3 No formal disciplinary action will be taken against an employee until the allegation has been fully investigated. If it is deemed appropriate, the employee may be suspended whilst the investigation is being carried out
- 5.4 No formal disciplinary sanction will be imposed without a disciplinary hearing and any sanction will be confirmed in writing to the employee
- 5.5 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty could be dismissal without notice or pay in lieu of notice
- 5.6 An employee will be given the opportunity to state their case at a formal hearing and will have the right to be accompanied at the hearing by a Trade Union/Professional Association representative or work colleague of their choosing providing this person does not have a conflict of interest or their presence would prejudice the hearing
- 5.7 The disciplinary measures described in this Policy are not necessarily sequential and may be implemented at any level if the employee's alleged misconduct warrants such action
- 5.8 A decision on disciplinary action will be made in the light of what is believed, on the balance of probabilities, to have occurred and in reaching a decision about appropriate sanctions; the Chair will take account of any mitigating or aggravating circumstances. The nature of any disciplinary action taken will be proportionate to the seriousness of the case and its surrounding circumstances and will reflect a conclusion that any reasonable employer could have been expected to reach
- 5.9 An employee will be given a written explanation for any action to be taken as a result of a disciplinary hearing
- 5.10 An employee will have the right to appeal against any formal disciplinary sanction imposed under this Disciplinary Policy
- 5.11 Where the suspension of a local Trade Union/Professional Association representative is being considered, before such action is taken, the circumstances must be reported to your HR provider and, after obtaining the employee's agreement, they will inform the senior Trade Union/Professional Association officer.

If the suspension involves a local officer of the Trade Union/Professional Association, then, again, the circumstances must be reported to your HR provider and, after obtaining the employee's agreement, they will ensure that the Trade Union/Professional Association Regional Officer is notified. Where this is not possible, suspension will only be permitted where the situation requires an immediate response such as in cases of gross misconduct or where a risk to health and safety exists.



- 5.12 All employees working for or on behalf of the school have a duty to report any child or adult protection/welfare concerns. Failing to report a safeguarding matter (that could concern a child or adult) could result in an employee having disciplinary action taken against them.
- 5.13 Staff governors will have no involvement in any formal disciplinary proceedings against another member of staff within the school
- 5.14 It is essential that all informal and formal stages of the disciplinary process are carefully documented.

## **6.0 Cases of Alleged Financial Irregularity**

- 6.1 Financial regulations require Headteachers to notify a Director from Milton Keynes City Council, who, in turn, will notify the Chief Internal Auditor - Audit and Risk Management, Milton Keynes City Council or their representative, of any actual or suspected financial irregularity at the earliest opportunity. It is then the responsibility of the Chief Internal Auditor - Audit and Risk Management to decide if the matter warrants further action by the Audit Section and whether the matter should be referred to the police for further investigation. The Director will be informed if such action is taken.
- 6.2 Please refer to Milton Keynes City Council's Anti Fraud Strategy for details of the council's zero tolerance towards fraud.

## **7.0 Cases of Alleged Criminal Activity**

- 7.1 If the case involves suspected criminal offences that may lead to police proceedings, there is no obligation to await the outcome of any criminal case before taking disciplinary action providing the allegations have been properly investigated and the Investigating Officer believes on the balance of probabilities that the employee committed the misconduct. In these cases it may be appropriate to seek advice from Police before undertaking an internal disciplinary process. However, in child protection cases, an internal investigation cannot commence until the police matter has been closed.
- 7.2 For suspected criminal offences other than financial irregularity, the Headteacher will notify the Chair of Governors and the School's HR provider for advice on appropriate action.
- 7.3 A criminal offence outside employment will not be treated as an automatic reason for disciplinary action. The main considerations should be whether the offence is one that makes the employee unsuitable for their type of work or to remain in the School's employment or where the actions of the employee could bring the School into disrepute and if an employee fails to declare a criminal offence outside employment, this could be viewed as a breach of honesty and trustworthiness.
- 7.4 Where it is felt necessary to investigate the allegations, this must be carried out in line with the Disciplinary Policy and consideration will be given as to whether or not the employee can

remain in post or whether suspension is appropriate.

## **8.0 Misconduct Falling under Part 1 and Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 – Referrals to the Disclosure and Barring Service**

- 8.1 Under the Safeguarding Vulnerable Groups 2006 Act and the Protection of Freedoms Act 2012, the School has a legal duty to refer information to the Disclosure and Barring Service (DBS) where they have removed an individual from working or volunteering or have concerns in respect of contact with children or vulnerable adults. If the safeguarding issue relates to misconduct by a Teacher a referral should also be made to the Teaching Regulation Agency.
- 8.2 Any breach of the Council's Corporate Safeguarding Policy will be managed using this Disciplinary Policy.

## **9.0 Raising a Grievance or a Bullying and Harassment Complaint Related to an Ongoing Disciplinary Process**

- 9.1.1 A grievance or a bullying and harassment complaint which is raised regarding an on-going disciplinary process will not necessarily postpone the disciplinary process.
- 9.1.2 The claim may be dealt with in the course of the disciplinary process, by the employee raising the matter either in the disciplinary hearing or during a disciplinary appeal, unless there are indications that the Headteacher has acted in a vexatious or discriminatory manner.
- 9.1.3 The Chair of Governors will determine whether the employee may have a credible complaint, whether or not the relevant policy should be invoked and whether it is appropriate to temporarily suspend the disciplinary process in order to deal with the complaint. In these circumstances advice should be sought from the HR provider.

## **10.0 Grievances or Bullying and Harassment Complaint Relating to the Lead-Up to a Disciplinary Process**

- 10.1 A grievance or a bullying and harassment complaint which is raised, regarding the circumstances that led to the disciplinary process being initiated, rather than the disciplinary process itself, will only postpone the disciplinary process if the allegations are so serious and credible that it would be unreasonable to proceed with the disciplinary process.

## **11.0 Informal Process**

- 11.1 In the course of day-to-day activities, there will be occasions when line managers will need to advise employees informally of minor breaches of discipline.
- 11.2 Most cases of minor misconduct are best dealt with through informal processes rather than through the formal disciplinary procedure. The line manager should discuss any problem

with the employee at the earliest possible opportunity with the objective of encouraging and helping the employee to improve and stopping the matter from escalating.

- 11.3 The line manager is required to keep notes of the date and content of the informal discussion.
- 11.4 In the event that a staff related complaint is made directly to the Governing Board or IEB, it will immediately be referred to the Headteacher.
- 11.5 Having taken advice from HR, the Headteacher is responsible for determining whether action should be taken under this procedure.

## **12.0 Establishing the Circumstances**

- 12.1 When an allegation is made regarding an employee's conduct, the line manager, following advice from an HR Representative, will establish the circumstances that led to the allegation, by arranging a meeting with the employee as soon as possible.
- 12.2 Having established the circumstances, a view will be taken to determine whether:
  - To suspend the employee pending investigation
  - To commission an investigation into the issue
  - To deal with the matter informally
  - To take no further action
- 12.3 The manager is required to keep notes of the date and content of the discussion.

## **13.0 Formal Process**

The formal process may be invoked if the misconduct issues cannot be resolve informally.

## **14.0 Suspension**

- 14.1 Where any alleged misconduct is potentially so serious that it is unacceptable for the employee to remain at work during the investigation or if their presence at work would prevent a fair investigation being carried out, the employee may be suspended pending the holding of a formal disciplinary hearing
  - To prevent further acts of misconduct
  - To allow an investigation to take place
  - To safeguard/protect the employee from other allegation
- 14.2 Suspension will be on full pay, is precautionary and is not disciplinary action or a punishment.
- 14.3 The Headteacher and the Governing Board or IEB have authority to suspend. Advice will be

sought from an HR representative.

- 14.4 Only the Governing Board or IEB has the authority to lift a suspension and will immediately inform the Headteacher and Local Authority. A suspension will be deemed to have been lifted by the Governing Board or IEB if a Staff Disciplinary Committee or Appeal Committee hearing has taken place and the employee is not dismissed. The date of the employee's return to work will be negotiated with the Headteacher.
- 14.5 Notes will be made by the suspending manager of the date and time of the suspension, the reason for the suspension and any comments made by the employee.
- 14.6 The employee has the right to be accompanied at the suspension meeting by a work colleague or a Trade Union or Professional Association Representative. However, the unavailability of a representative cannot delay the meeting if the seriousness of the allegations means that the meeting is required to take place without delay.
- 14.7 The employee will be informed verbally of the reasons for suspension at the time this occurs. The suspension will be confirmed in writing within 5 working days and a copy of the Disciplinary Policy will be provided.
- 14.8 The School has a legal duty to refer an employee to the Disclosure and Barring Service if the suspension is related to misconduct falling under Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

## 15.0 Strategy Meeting

Details of the format and conduct of a Strategy Meeting can be found within the **Working together to Safeguard Children and the Keeping Children Safe in Education guidance**.

## 16.0 Investigation

- 16.1 Where an allegation warrants action under this Policy, an investigation will be initiated immediately. It will be the responsibility of the Headteacher to appoint an Investigating Officer who may be a senior member of school staff, a representative of the Milton Keynes City Council Internal Audit team, a colleague from another school or an external independent investigator may be appointed. Further advice can be sought from HR.
- 16.2 On appointing the Investigating Officer, the Headteacher will ensure that they have suitable release time from their day to day duties to carry out the investigation. This will facilitate a foundation for a thorough and prompt investigation. The appointment of the Investigating Officer and the terms of the investigation will be confirmed to the Investigating Officer in writing (email will suffice) within 5 working days of the appointment.

16.3 Investigations involving cases of suspected fraud or financial irregularity will be conducted by a designated Internal Audit investigator or include input from a member of the Internal Audit Team due to specialist knowledge required.

16.4 If the issues to be investigated relate to a local Trade Union/Professional Association representative, before any action is taken, your HR provider must be informed and after obtaining the employee's agreement, they will inform the senior Trade Union/Professional Association Officer.

If the investigation involves a local officer of the Trade Union/Professional Association, then, again the circumstances must be reported to your HR provider and, after obtaining the employee's agreement, they will ensure that the Trade Union/Professional Association Regional Officer is notified. Where this is not possible, the investigation will only be permitted where the situation requires an immediate response, for example, potential gross misconduct or where a risk to health and safe exists.

16.5 The purpose of the investigation is to establish whether there is a potential disciplinary case to answer. The investigation will aim to:

- Establish the exact nature of the complaint(s) or allegation(s) and any information that substantiates or refutes it/them
- Give full details of the nature of the allegation(s) or complaint(s)
- Offer the employee the opportunity to give their explanation and to provide information that is critical to the investigation

16.6 The investigatory interview(s) of the employee whose actions are being investigated may take place in the presence of a work colleague or a Trade Union/Professional Association representative. The investigation may take place over more than one investigatory interview session.

16.7 Employees who witness an incident or who have information relevant to an investigation may be required to attend an investigatory interview and/or a disciplinary hearing. They may be accompanied at the investigatory interview or hearing by a work colleague or a Trade Union/Professional Association representative.

16.8 At the conclusion of the investigation, the Investigating Officer, having taken advice from HR, will produce a written report. On completion, the report will be passed to the Headteacher who will make a decision on whether or not the facts and circumstances indicate that there is a need for a disciplinary hearing.

16.9 Where it is decided that there is a disciplinary case to answer, the Headteacher will convene a formal disciplinary hearing.

16.10 Where the case is one that has child protection implications, the matter should be referred by the Headteacher to the Children's Services/Police for investigation. Where Children's

Services/Police are not conducting an investigation and a child is alleged to be a victim of an offence or witness to an alleged offence, permission must be obtained from the parents or guardian for the child to be interviewed. The parents or guardian may also attend the interview.

## **17.0 Hearing a Disciplinary Case or Appeal**

17.1 A disciplinary or appeal hearing will be heard by one of the following:

- One member of IEB
- Committee of three appropriate Governors (two in exceptional circumstances)
- Headteacher (only if they have had no prior involvement in the case, eg they must not have suspended or must not have initiated an investigation)

## **18.0 Preparation for Disciplinary Hearing**

18.1 Where the recommendation is, that a hearing is necessary which may result in dismissal, the Headteacher will notify the Hearings Committee of the Governing Board or IEB to advise that a hearing will take place.

18.2 Where the recommendation is, that a hearing is necessary which will not result in dismissal, the Headteacher, depending on their previous involvement in the case, may hear the case.

18.4 The employee will have the right to be accompanied at the hearing by a Trade Union/Professional Association representative or work colleague of their choosing providing this person does not have a conflict of interest or their presence would prejudice the hearing

18.5 The employee should be notified in writing that there is a disciplinary case to answer. Notification should contain sufficient information about the alleged misconduct and its possible consequences to enable employee to prepare to answer the case at disciplinary hearing.

18.6 The Headteacher or the appointed Clerk to the hearing will give the employee at least ten working days written notice of the date of the hearing. Where possible, the letter will be handed to the employee in person. Checklist on timescales is available from HR.

18.7 The Headteacher or the appointed Clerk to the hearing will arrange for the employee to receive the investigation report, relevant documentation and a list of any witnesses to be called in support of the management case ten working days before the hearing. Checklist on timescales is available from HR.

18.8 The employee, if relevant, will arrange for the appointed Clerk to the Hearing to receive any documentation in support of their case, together with the names of any witnesses they intend to call, five working days before the hearing.

- 18.9 The Clerk will arrange for the Chair of governors to receive any documentation received from the employee at least 3 days before the hearing.
- 18.9 All documentation will be stored securely and all individuals involved in this exchange must be bound by confidentiality.

## 19.0 Conduct of the Disciplinary Hearing

- 19.1 The purpose of the disciplinary hearing is to establish the facts as far as possible and to reach a decision based on the balance of probabilities.
- 19.2 The Hearings Committee will be advised by an HR representative and the Headteacher the Governing Board or IEB will arrange for a clerk to attend specifically to take notes.
- 19.3 The Headteacher will lead the presentation of the Management case and the Investigating Officer will present the investigation report and call any witnesses, if required. The employee will be given the opportunity to respond and to call witnesses.
- 19.4 The Headteacher, Investigating Officer and witnesses may be questioned by the Hearings Committee or the employee and their representative.
- 19.5 The employee and their representative will present their case and may call witnesses and will take questions from the Hearings Committee and Headteacher.
- 19.6 Witnesses may be called to give direct evidence to a disciplinary hearing on issues of factual dispute or where that person's statement is considered to be crucial to the matter being considered. The final decision as to whether or not it is appropriate for a witness to be called before a disciplinary hearing to give evidence in person lies with the Chair of the hearing.
- 19.7 The Hearings Committee will consider the evidence from both sides, take advice from HR, and make a decision on whether, on the balance of probabilities, the allegations are upheld; and, if so, what level of sanction is appropriate.

## 20.0 Disciplinary Sanctions

- 20.1 No disciplinary sanction will be given until the disciplinary procedure, i.e. full investigation and disciplinary hearing has been completed.
- 20.2 The following sanctions may be applied:
- **First Formal Written Warning - Duration 12 months**  
A first formal written warning may be issued where the employee does not have a live disciplinary sanction and a minor offence of misconduct has occurred. This will remain live for 12 months. After this period, the warning will, subject to satisfactory conduct, be regarded as spent for future disciplinary purposes.

- **Final Written Warning - Duration 24 months**

A final written warning may be issued where:

- The employee has a live written warning for a smaller offence and there is further misconduct, or
- The misconduct is so serious that it cannot be tolerated a second time, or
- Dismissal would have been the proper sanction but for the mitigation which was taken into account.

This will remain live for 24 months. After this period the warning will, subject to satisfactory conduct, be regarded as spent for future disciplinary purposes

- **Dismissal**

The sanction of dismissal will be applied where:

- The employee has a live final written warning and there is further misconduct. In this case, dismissal would usually be with pay in lieu of notice
- The employee commits gross misconduct and is dismissed without notice or pay in lieu of notice.

20.3 The School has a legal duty to refer an employee to the Independent Safeguarding Authority if their dismissal is related to misconduct falling under Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

## 21.0 Duration of Warnings

Warnings will be disregarded for future disciplinary action only after the periods of time specified above. However, a warning should still remain on record and retained on the personal file, to be referred to when necessary. Where a pattern emerges in lapses of conduct soon after the expiry of warnings and there is evidence of abuse of the policy, the employee's disciplinary record should be borne in mind when deciding how long any subsequent warning should remain live.

21.2 Exceptionally, there may be circumstances where the misconduct is so serious, verging on gross misconduct, that it cannot be disregarded for future disciplinary purposes. In such cases, the final written warning may never be removed, and any recurrence will lead to dismissal.

## 22.0 Other Sanctions

22.1 Other sanctions may also be used in conjunction with formal warnings. However, in all cases advice must be taken from HR. The following may be considered:

- Transfer to another post
- Demotion with or without protection of salary
- Other management action i.e. training



22.2 When deciding on a sanction, the record of the employee and any mitigating circumstances will be taken into account. This is a separate process from the Hearings Committee's decision about whether or not the allegation is upheld, so information about the employee's record must not be made available to the Committee until after that decision has been taken. Where the employment record is relevant in reaching the decision of the disciplinary sanction, this must be clearly noted for any appeal hearings, but again this must not be disclosed to the Appeal Committee until after a decision has been made about the allegation.

## 23.0 Outcome of the hearing

23.1 The employee may be informed orally of the outcome of the hearing together with any subsequent action required by them, by the Chair of the hearing. In all cases the outcome will be confirmed by the Clerk in writing within 5 working days of the disciplinary hearing. A copy of the written notification will be retained on the employee's personal file.

## 24.0 Appeal

24.1 If the employee wishes to appeal the decision at any stage of the Formal Process they must do so within five working days of notification of the decision, in writing, to the Clerk of the original hearing stating the grounds for appeal.

24.2 The employee may appeal on the following grounds only:

- That the disciplinary procedure has been applied defectively or unfairly
- That new evidence has come to light that was not available at the previous hearing and that it is likely to make a difference to the original decision.

And, as a result, the outcome or level of sanction imposed was inappropriate.

24.3 The employee must ensure that the Disciplinary Appeal Form (please refer to Appendix 3) is completed in full and clearly demonstrates that they have information/evidence available to them that substantiates their grounds for appeal. An employee cannot appeal simply because they do not agree with or like the outcome.

24.4 Arrangements will normally be made for the appeal to be heard within 10 working days of receipt of the appeal by the Headteacher.

24.5 The employee will be given notice in writing at least 7 working days in advance of the time and place of the appeal hearing.

24.6 The Chair of the disciplinary Hearings Committee and employee should provide the Clerk with any written material to be presented at the hearing at least 5 working days prior to the appeal. Any extension on the timescales must be agreed in advance by both parties.

- 24.7 The Clerk will arrange for a copy of the other party's written material to be provided to the Chair of the disciplinary Hearings Committee and the employee at least 3 working days prior to the hearing.
- 24.7 In cases where the Chair of the original hearing was the Headteacher, then a Governing Board or IEB Appeal Committee will be arranged to hear the appeal and in cases where the original hearing was considered by a committee of Governors, then the appeal hearing will be considered by an alternative committee of Governors. In all cases the Appeal Committee will be advised by a representative from HR.
- 24.8 At the appeal hearing both parties (i.e. the employee who is appealing against the action taken against them and the Chair of the Disciplinary Hearing who is presenting the management's case) will have the opportunity to state their case and to ask questions of each other and any witnesses.
- 24.9 The employee may be accompanied at the appeal hearing by a work colleague, or a Trade Union/Professional Association representative.
- 24.10 There will be full consideration of any new evidence before any decision is taken.
- 24.11 In the case of an appeal against action that includes dismissal, the Appeal Hearings Committee can decide that:
- The appeal is upheld, and that the sanction will be removed or a lesser sanction applied; or
  - The appeal is not upheld, and that the sanction remains the same.
- 24.12 The decision of the Appeal Hearings Committee should be communicated in writing within 5 working days of the hearing.
- 24.13 The decision of the Appeal Hearings Committee is final and there is no further internal right of appeal.

## **25.0 Representation**

- 25.1 As confirmed throughout the policy, employees may be represented at formal hearings and appeals by a Trade Union/Professional Association representative or a workplace colleague. The accompanying person can address the hearing but cannot answer questions on behalf of the employee unless as agreed by the Chair of the hearing.

## **26.0 Data Protection**

- 26.1 The organisation processes personal data collected during investigation meetings, any subsequent stages of the disciplinary process and in recording any sanctions or actions taken, in accordance with its Data Protection Policy. This will include data about suspension. A

written record of meetings conducted under this procedure may also be made, either by the person holding the meeting or by an additional person arranged by the organisation to take notes.

- 26.2 Data collected and processed as part of the investigation and any subsequent stages of disciplinary process is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. A summary and the outcome of a disciplinary issue is held as a record on the employee's personnel record and retained and destroyed in accordance with the organisation's Retention Schedule.
- 26.3 Inappropriate access or disclosure of employee data constitutes a data breach and should be reported immediately in accordance with the organisation's Data Protection Policy. It may also constitute a disciplinary offence, which may be dealt with under this Disciplinary Procedure.

## **27.0 Interpretation**

- 27.1 Any questions as to the interpretation of this policy should be referred to HR.

## Appendix 1 - What is a Disciplinary Matter?

A Disciplinary matter may arise when an employee breaches School rules or fails to meet the required standards with regard to conduct which appears to warrant informal or formal disciplinary action.

The following is a list of examples of Misconduct and Gross Misconduct that would normally justify sanctions under the Disciplinary Policy and are intended to help employees appreciate the acceptable standards of conduct required by the School.

No set of rules can cover all disciplinary matters and this list is, therefore, illustrative and not exhaustive.

### Misconduct

The following examples of misconduct would normally justify warnings including, in some cases, final written warnings. Some may in certain circumstances constitute gross misconduct. The level of the sanction will depend on the seriousness of the offence and the degree of any mitigation.

- **Disobedience of instructions** - when an employee without sufficient reason fails to follow a reasonable instruction whether in writing or not, this will include failure to observe the operational requirements of the employing department
- **Insubordination** - when an employee is insubordinate by word, act or demeanour
- **Conduct likely to injure or damage the standing of the School**
- **Absence from work** - when an employee:
  - without sufficient reason, is absent from work or is late for work
  - without permission or sufficient reason, leaves their place of work, this could include taking excessive refreshment breaks
  - is confined in HM Prison or other similar institution

**Please note:** where an employee's work attendance record is unsatisfactory and is mainly or partially due to ill health, i.e. certificated or self-certificated sickness, the School's Managing Attendance Policy/Managing Underperformance Policy will be utilised, where appropriate

- **Neglect of duty** - when an employee
  - without sufficient reason, fails to carry out the work for which they are employed
  - without sufficient reason, fails to discharge duties under the Health and Safety at Work Act 1974 in accordance with the School's safety policies and procedures
  - by carelessness or neglect, suffers or causes any loss, damage or injury to occur to any person or property
  - fails to report any matter which it is their duty to report
  - fails to make an entry which it is their duty to make, in any book or document
  - fails, properly to account for, or to make a prompt and true return of, any money or property, which comes into their possession in the course of their work
  - fails to follow or adopt proper professional standards appropriate to their post

- **Unauthorised Employment**
  - engaging in unauthorised employment during hours when contracted to work for the School
  - engaging in employment during off-duty hours which is detrimental to the interests of the School
  - unauthorised secondary employment (where applicable)
  
- **Falsification of Information** - when an employee:
  - knowingly or through neglect, makes any false, misleading, or inaccurate oral or written statement or entry in any record or document made, kept or required for the purposes of the School
  - Has knowingly or through neglect, falsified any information used in support of an application for any post in the employment of the School
  
- **Damage to the School's Property** - when an employee:
  - wilfully or without appropriate care, causes any waste, loss or damage to any property of the School
  - fails to report any loss of, or damage, to any such property issued to, or used by, them or entrusted to their care
  
- **Indecency** and behaviour including the display of obscene or offensive materials
  
- **Alleged Criminal Conduct**, the School may decide to hold a disciplinary hearing prior to any Court proceedings and reach a decision on the facts available. In these cases, advice should be sought from the Policy before undertaking an internal disciplinary process. When an employee has been found guilty of a criminal offence by a Court of Law, the nature of the offence may require the School to take disciplinary action.
  
- **Breach of the Schools IT User Policy**
  
- **Breach of Guidelines on Social Networking Sites and Personal Internet Usage**
  
- **Being an Accessory to a Disciplinary Offence** - i.e. when an employee conspires or is knowingly an accessory to any disciplinary offence
  
- **Neglect of health** – i.e. when an employee fails to comply with medical instructions or, whilst absent from duty on account of sickness, wilfully commits any act or wilfully adopts any conduct intended to hinder their return to work

- **Unauthorised disclosure, destruction or alteration** of any record or document kept or required by the School

### **Gross Misconduct**

The School will generally consider Gross Misconduct to be misconduct of such a nature that the School is justified in no longer tolerating the continued presence at the place of work of the employee concerned.

Examples of offences which may amount to gross misconduct include:

- **Conduct likely to injure or damage the standing of the School**
- **Alleged Criminal Conduct**, the School may decide to hold a disciplinary hearing prior to any Court proceedings and reach a decision on the facts available. In these cases, advice should be sought from the Police before undertaking an internal disciplinary process. When an employee has been found guilty of a criminal offence by a Court of Law, the nature of the offence may require the School to take disciplinary action.
- **Neglect of duty** - when an employee
  - without sufficient cause, fails to carry out the work for which they are employed
  - without sufficient cause, fails to discharge duties under the Health and Safety at Work Act 1974 in accordance with the School's safety policies and procedures
  - by carelessness or neglect, suffers or causes any loss, damage or injury to occur to any person or property
  - fails to report any matter which it is their duty to report
  - fails to make an entry which it is their duty to make, in any book or document
  - fails, properly to account for, or to make a prompt and true return of, any money or property, which comes into their possession in the course of their work
  - fails to follow or adopt proper professional standards appropriate to trade or profession
- **Indecency** and behaviour including the display of obscene or offensive materials
- **Unauthorised removal of the School's or other employees' property**
- **Offences of dishonesty, theft or fraud** including benefit fraud, bribery and other corruption
- **Acts of incitement or actual acts of discrimination** on the grounds of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity

- **Being under the influence of drink, or drugs** (other than those which have been medically prescribed) i.e. when an employee is rendered unfit, through drink or drugs, for duties which they are or will be required to perform or which they may reasonably foresee as having to perform
- **Falsification of Information** - when an employee:
  - knowingly or through neglect, makes any false, misleading, or inaccurate oral or written statement or entry in any record or document made, kept or required for the purposes of the School
  - Has knowingly or through neglect, falsified any information used in support of an application for any post in the employment of the School
- **Falsification of work records**, for example, time sheets, expense claims
- **Falsification of qualifications** which are a stated requirement of employment or other critical information at the time of appointment
- **Failure to divulge relevant medical information (advice should be sought from the School's HR provider on relevance of the Equality Act).**
- **Damage to the School's Property** - when an employee:
  - wilfully or without appropriate care, causes any waste, loss or damage to any property of the School
  - fails to report any loss of, or damage, to any such property issued to, or used by, them or entrusted to their care
- **Serious breaches of safety regulations**, including deliberate damage to, neglect of, or misappropriation of safety equipment
- **Serious driving offences**
- **Breach of the School's Code of Conduct**
- **Breach of the School's IT User Policy**
- **Gross negligence**
- **Claiming sick pay when fit to attend work**
- **Working for gain while on sick leave**
- **Sexual offences**
- **Breach of Guidelines on Social Networking Sites and Personal Internet Usage**

- **Sexual misconduct at work**
- **Harassment and/or bullying at work** including abuse of authority, i.e. when an employee's conduct towards fellow employees or members of the public is oppressive or abusive
- **Fighting, physical assault or threatened violence**
- **Unauthorised disclosure, destruction or alteration** of any record or document kept or required by the School
- **Improper disclosure of information or making false, inaccurate or misleading statements**
- **Improper use of an employee's official position** for private advantage (or for the private advantage of another person) including accepting or soliciting gratuities, gifts or hospitality without approval
- **Deliberate and unreasonable refusal to co-operate with School policies**
- **Committing an act outside working hours** which is incompatible or inconsistent with the employee's job or which is likely to bring discredit to or lead to lack of confidence in the School
- **Mistreatment of Children/Pupils** in the care of the School either through intent or neglect
- **Verbal, physical, emotional and/or sexual abuse of pupils**
- **Sleeping on duty**
- **Fraudulently obtaining public funds from a Local Authority or other Government Agency**
- **Entitlement to Work in the UK** – failure to provide satisfactory evidence required by the School of an employee's entitlement to enter or remain in the UK.
- **Breach of the Leave of Absence Policy** – e.g. if leave is requested and declined, but taken anyway
- **Deliberate insubordination** – not following reasonable management instructions where consequences have previously been outlined.



## Appendix 2 - Guidance on Allegations of Child Abuse

Concerns and allegations against colleagues can be distressing and sometimes difficult to believe. However, children may be subjected to abuse by those who work with them in any setting.

Therefore, all allegations of abuse (including inappropriate physical contact) by a staff member within the school must be taken seriously and examined objectively.

1. The Headteacher should immediately consult the Human Resources provider and, in the case of Aided schools, the Diocesan Director of Education (or their representative).
2. The Headteacher should contact and consult with the council's Local Authority Designated Officer for Safeguarding Children in education so that an initial consideration can be made as to whether an offence may have been committed that constitutes child abuse. It is important to ensure that all interested parties are kept appropriately informed.
3. The Headteacher should record information about times, dates, locations and details of any witnesses but should not conduct an investigation.
4. All allegations of child abuse must be managed in accordance with Milton Keynes' Child Protection Policy and the statutory guidance Working Together to Safeguard Children which includes the Keeping Children Safe in Education guidance. Current statutory guidance is available on [Department for Education](#) website.
5. There will be three possible outcomes of the initial consideration:
  - an immediate referral to Children's Services or the Police.
  - the allegation was prompted by inappropriate behaviour but is not a child protection issue. The Headteacher must then decide whether or not to appoint an investigating officer under the school's disciplinary procedure, in order to determine whether formal disciplinary action should be taken.
  - the allegation is apparently without foundation
6. If, following initial consideration, the allegation of child abuse is referred to Children's Services and/or the Police then the Headteacher should follow the correct procedure to consider suspending the employee from work pending further investigation. The employee should be given a copy of the Managing Allegations Against Staff in Education Policy
7. The Headteacher should immediately inform the Chair of Governors that this action has been taken. Care should be taken to provide limited information only at this stage so as to avoid compromising governors' impartiality in any subsequent disciplinary hearing or appeal.

## Appendix 3 – Disciplinary Appeal Form

This form is to be completed by the employee and then forwarded to the Clerk of the original hearing. It must be completed in full and provide sufficient detail. Failure to provide clear substantiated reasons for appeal will mean that your request for an appeal hearing will not be progressed.

<b>SECTION 1: Personal details</b>
Name:
School
Job Title:
<b>SECTION 2: Appeal details</b>
Please provide details of why you wish to appeal against the decision. Please make sure that you explain clearly what information/evidence you have that will support your grounds for appeal as detailed below. <b>N.B:</b> You may only appeal on one or more of the following grounds: <ul style="list-style-type: none"><li>• That the disciplinary procedure has been applied defectively or unfairly</li><li>• That new evidence has come to light that was not available at the disciplinary hearing and that is likely to make a difference to the original decision.</li></ul> and, as a result, the level of sanction imposed was inappropriate.
<b>Against the level of sanction imposed</b>  <b>Please explain fully why you believe the level of sanction was too severe and explain what facts/information/evidence you have in your possession that justifies your view. Simply appealing because you do not 'like' the penalty imposed, without any corroborating evidence, is not sufficient grounds for an appeal.</b>  <ul style="list-style-type: none"><li>○ Why I believe the level of sanction was too severe:</li><li>○ The evidence I have that supports this view is as follows:</li></ul>

**And/or**

**That the disciplinary procedure has been applied defectively or unfairly.**

**Please explain fully why you believe this to be the case and state what evidence you have to substantiate that view.**

- Why I believe the procedure has been applied defectively or unfairly:
- The evidence I have that supports this view is as follows:

**And/or**

**That new evidence has come to light that was not available at the disciplinary hearing and that is likely to make a difference to the original decision.**

**Please explain fully what this new evidence is, how it came to light and why it is likely to affect the original decision.**

The new evidence that has come to light is as follows:

I believe it is likely to affect the original decision because:

Signature of employee:

Date:

## Version Control

<b>Version</b>	<b>Date</b>	<b>Updated by</b>	<b>Comments</b>
FV5.0	07/12/2022	Declan Leith	Transferred on to new MKCC template to ensure accessibility requirements are met.  Changes to various paragraphs to replace Governing Body with Governing Board and introduction of gender-neutral wording.  Paragraph 6.0 replaced Assistant Director with Chief Internal Auditor  Paragraph 8.0 replaced NCTL with Teaching Regulation Agency

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