DISCIPLINARY PROCEDURE FOR TEACHING AND SUPPORT STAFF IN VOLUNTARY AIDED SCHOOLS

This model procedure will apply to both teaching and support staff working in Wiltshire Schools and has been agreed with the following recognised unions: NEU, NAHT, NASUWT, ASCL, Unison, Unite and GMB

There are further supporting toolkits available for schools who purchase HR Advisory via Right Choice and these should be read in conjunction with this policy.

Duties, Responsibilities and Powers of the Governing Bodies of Voluntary Aided Schools and Local Authority Advisory Rights

i. The governing bodies of Voluntary Aided Schools are the employers of the school's teaching and support staff. The Governing Body of a Voluntary Aided School therefore has the power to dismiss a member of staff at the school.

ii. The Local Authority does not have an automatic statutory right of attendance at dismissal proceedings, but the governing body may accord the Local Authority rights to attend and give advice. Where the Local Authority is accorded such advisory rights, any advice given must be considered by those concerned before making a decision. Such an agreement must be given in writing and may only be withdrawn by notice in writing to the Local Authority.

iii. Where such rights are accorded the Local Authority through a representative (usually an HR Advisor), has an entitlement to attend (which it may decide not to exercise), for the purposes of giving advice at all proceedings relating to any decision that someone working at the school should be dismissed. Any advice given by the HR Advisor must be considered by those concerned before a decision is made.

iv. Where advisory rights are accorded to the Local Authority and the Local Authority decides that a Voluntary Aided school has acted unreasonably and/or unfairly in relation to an employee dismissal it reserves the right to pass on the related costs, including litigation, to the Governing Body concerned. This could include failing to take appropriate professional advice or failing to adhere to Wiltshire Council's minimum HR procedures.

v. Similar advisory rights may be accorded to the relevant Diocesan Authorities.

vi. In addition to the above advisory rights where a Voluntary Aided school buys its HR Advisory services from the Local Authority under the *'Right choice for schools'* arrangement it is essential that the HR Advisory service is informed of all formal disciplinary proceedings and is invited to attend these for the purposes of giving advice.

What is it?

Good standards of conduct are expected of all employees. This policy and procedure sets out the approach to be taken where employee conduct and behaviour does not meet the expectations required. It provides a consistent framework for dealing with breaches so that they are managed in a timely, fair and reasonable way. It conforms to the ACAS Code and Guidance, relevant legislation, and good practice.

Scope and General Principles

The Governing Body has the overall responsibility for dismissing staff, with powers to delegate to the Headteacher responsibilities up to and including initial staff dismissal decisions. The Headteacher should be given the delegated responsibility to make decisions up to the initial dismissal decision, following which there is an opportunity to appeal to a panel of Governors.

Headteachers may lead the process of making the initial dismissal decision unless the following circumstances apply:

- the Headteacher is unwilling to perform these functions and their previous history at the school did not include any such responsibilities.
- the Headteacher has been directly involved in disciplinary procedures leading to dismissal, has instigated a proposal to dismiss or is a witness of particular conduct giving grounds for the dismissal in question.

The policy applies to both teaching and support staff.

In cases of minor misconduct, it is expected in the first instance that the Headteacher (or their nominee) will attempt to resolve the matter informally, where appropriate

Examples of misconduct, including Gross Misconduct are shown at Appendix 1

Employees will be informed of the nature of the alleged misconduct and have an opportunity to put forward their case in response, appropriate investigations will be undertaken before any decision on disciplinary action is made.

Step 1 - Informal Preliminary Fact Finding process (this step may be skipped depending on the nature or severity of the alleged incident)

Where an incident occurs that may be construed as a potential disciplinary matter the Headteacher (or their nominee) may meet with the employee after the incident occurs or is brought to their attention to discuss and further understand what has happened. This should be undertaken without unreasonable delay.

This is an opportunity to establish the facts and for the employee to provide further information in relation to the potential allegation and is not, at this stage, a formal disciplinary investigation or hearing. There is no automatic right to be accompanied.

Notes of the meeting will be taken and shared with the employee.

Following the meeting the Headteacher (or their nominee) will confirm to the employee whether:

- they are satisfied with the employee's response and no further action will be taken; they may issue some informal guidance or action required of the employee; or
- a formal investigation will be undertaken that may lead to a formal disciplinary hearing; or
- the alleged incident is serious enough to warrant a period of paid suspension whilst formal investigations are undertaken.

Managing Safeguarding Allegations

Derry Hill School is committed to safeguarding and promoting the welfare of children, young people, and vulnerable adults. Where it is alleged that an employee behaved in a way that:

- has harmed a child, may have harmed a child, or might lead to a child being harmed
- possibly committed or is planning to commit a criminal offence against a child or related to a child
- Behaved towards a child, children or adult at risk in a way that indicates they are or would be unsuitable to work with children

- Behaved in a way that has harmed, or may have harmed, an adult at risk
- This applies if the allegation is about a current incident or has occurred historically

then a referral will need to made directly to the Local Authorities Designated Officer for Allegations (DOFA) via the Headteacher (or their nominee) . Where appropriate, a strategy meeting attended by appropriate representatives from the school, the Police, Social Care and representatives from the relevant service will be convened.

School investigations can proceed at the same time as a criminal investigation unless the school is instructed not to do so by the police.

The relevant safeguarding procedures would be followed and HR advice sought regarding how to proceed with the matter in relation to the disciplinary procedure

Suspension

There may be instances where suspension, on normal pay, is necessary while appropriate investigations are carried out. It will only be undertaken after careful consideration and where there are reasonable grounds to do so. These include concerns regarding tampering or destruction of evidence, pressurising witnesses or other potential risk to the business or individuals in allowing the employee concerned to continue to work. Any suspension should be kept in place for the shortest possible time period and reviewed regularly.

Either the Headteacher or a member of the Governing Body (normally the Chair of Governors) can suspend an employee at the school, but only the Governing Body can lift the suspension. Advice should always be sought from an HR Advisor (Schools) before taking such action.

Suspension is not, in itself, a form of disciplinary sanction or prejudging an outcome. The suspension will be confirmed in writing.

Step 2 - Formal investigation

If it is considered the matter is not able or suitable to be resolved informally, the misconduct matter will be formally investigated to establish the facts of the case. Investigations will be undertaken promptly, without unreasonable delay. The nature and extent of these will depend on the matters under investigation.

The Headteacher (or their nominee), will take the role of investigating officer and carry out investigations and collect information and evidence that may be presented at a disciplinary hearing. This will have due regard to any other process which may also be undertaken by other agencies, for example, in cases of safeguarding allegations.

This may require the employee concerned, and others identified, to attend formal investigation meetings. Where employees are invited to take part in an investigation they will be expected to co-operate fully and promptly with the investigation process. The employee can be accompanied at these meetings. See Toolkit 8 “Guidance on the Right to be Accompanied”.

Following the formal investigation, the investigating officer will produce a report summarising their findings together with their decision of whether there is a disciplinary case to answer or not. If there is no case to answer this will be confirmed in writing to the employee.

Step 3 - Disciplinary hearing

Where it is decided that there is a disciplinary case to answer the employee will be invited to a disciplinary hearing. The hearing will either be conducted by the Headteacher or before a governors' staffing panel.

The employee has the right to be accompanied by a work colleague or Trade Union representative. Refer to the school's Toolkit 8 Guidance on the Right to be accompanied.

5 working days' notice will be given, in writing, of the hearing date. This will include a copy of any investigation report and supporting paperwork (subject to any rights of confidentiality, in which case documents will be redacted, as appropriate).

At the hearing the employee will be given a full explanation of the case against them and provided with an opportunity to respond to the allegations.

If the employee intends to present any other supporting documentation at the hearing these must be provided to the Headteacher / governors panel hearing the case at least 2 working days in advance.

If the employee wishes to call any relevant witnesses this should be in line with Toolkit 9 "Guidance for Witnesses"

Every effort should be made to attend the hearing. If the employee is unable to attend the hearing date set they should inform the Headteacher / governors panel hearing the case as soon as possible. If they are unable to attend with good reason, the hearing will be re-arranged. Failure to attend this hearing without prior agreement may lead to the hearing taking place and a decision being taken in the employee's absence, on the basis of the available evidence. If the employee's companion is unable to attend, the employee should offer an alternative date, ideally within 5 working days of the original date.

If failure to attend the hearing is due to sickness absence an occupational health appointment will be arranged, where appropriate, to obtain advice on the employee's fitness to attend

At the conclusion of the hearing, the Headteacher/ governors panel hearing the case will adjourn to make a decision

The decision will be made as soon as possible, and the employee will usually be notified verbally. Written confirmation of the decision will be sent, along with a copy of the notes, usually no later than 5 working days after the hearing taking place.

Step 4 - Outcome of the disciplinary hearing

One of the following decisions must be taken;

<u>The allegation is not upheld</u>

Where there is no evidence to support the allegation or an adequate explanation has been provided and it is determined by the Headteacher / governors panel that no action is warranted. The Chair of the governors panel /Headteacher may, however, include informal advice or management guidance, for example, guidance about future behaviour and expected standards.

Where it's decided that a disciplinary offence has been committed, one of the following sanctions will apply.

All warnings/dismissal will be confirmed in writing and include the nature of the offence and reasons for the decision, any required actions such as change in behaviour/improvements required, with timescales, where appropriate, and the right of appeal.

Warnings are not necessarily sequential, any level can be implemented if the misconduct and circumstances warrant it.

If the employee has been suspended and the decision is not to dismiss then any decision notification will include when the suspension will end, if still in place.

Written warning

Issued where the offence is considered to be serious, or there is repetition of minor offences or evidence of failure to heed previous informal action or management guidance.

The written warning remains live and on file for disciplinary purposes for 12 months. Any further act(s) of misconduct within this time may result in a final written warning or dismissal.

Final written warning

Issued where there is further misconduct/failure to improve following a written warning already being issued and which is still live; **OR**

- where the misconduct is sufficiently serious (for example, if the employee's actions have had, or are liable to have, a serious or harmful impact on another employee, service user, customer or the school) it may be appropriate to move straight to a final written warning.

- for a very serious offence which would normally justify summary dismissal but there are some exceptional circumstances which warrant a lesser penalty.

The final written warning remains live and on file for disciplinary purposes for 18 months. A further act of misconduct within this time may result in dismissal.

Dismissal

Issued where there is further misconduct/failure to improve following the issue of a previous warning which is still live. Or where there is a finding of gross misconduct.

Only a Headteacher or governor staffing panel, can dismiss.

There are two types of dismissal:

- Dismissal with notice or pay in lieu of notice, for serious misconduct which falls short of gross misconduct or for continued misconduct or failure to improve following the issue of a previous warning/s.

- Where gross misconduct is substantiated, this is likely to result in summary dismissal, without issuing any prior warning. Summary dismissal is dismissal without notice, or payment in lieu of notice.

Step 5 – Right of Appeal

If an employee is dissatisfied with the outcome of the disciplinary decision the may lodge an appeal using the appeal notification form. The appeal must be lodged within 5 working days of receipt of the written outcome. The right of appeal with be exercised in line with the school's Appeal Policy.

Other points to note

Action against Trade Union representatives

Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure will be followed.

Depending on the circumstances it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

Criminal offences

If an employee is charged with or convicted of a criminal offence this is not in itself reason for disciplinary action.

Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and customers.

Grievances

Where an employee raises a grievance during the disciplinary process a decision will be made whether to deal with both cases concurrently or, if appropriate there may be a temporary suspension of the disciplinary process in order to deal with the grievance.

Transfer to another procedure

This procedure, including the investigation, may be suspended at any point where it becomes apparent that the matter might be best dealt with in line with a different policy and procedure. The employee will be advised of this and next steps.

Equality

Derry Hill School is committed to equality. the principles of which are set out in the Equality and Diversity Policy, together with information on the Equality Act and on our public sector equality duty (PSED).

Where an employee feels that there are adjustments that would help them to deal effectively with a formal process, they should make the Headteacher (or their nominee) who is dealing with the case aware, at the earliest opportunity.

Data Protection and GDPR (General Data Protection Regulations)

Derry Hill School processes personal data in regard to this policy in accordance with the General Data Protection Regulations (GDPR). Further details on how employee's data is used and the basis for processing it is provided in the school's privacy notice.

Data collected is held securely and only disclosed to individuals for the purpose of completing the policy. Inappropriate access or disclosure of employee data may constitute a data breach and must be reported in accordance with Derry Hill Schools Data Protection policy. Any such Transfer breaches may result in an investigation and could lead to disciplinary action.

Equalities Impact Assessment

This policy has had an equality impact assessment conducted by a joint equality impact assessment panel and the results of these assessments are published on the Wiltshire Council website.

Related Toolkits

Toolkit 1 – Process flow-chart
Toolkit 2 – Guidance notes for managers
Toolkit 3 – Guidance notes for note takers
Toolkit 4 - Guidance notes for employees on suspension
Toolkit 5 – Model Disciplinary hearing report
Toolkit 6 – Model agenda and proceedings advice for disciplinary meetings
Toolkit 7 – Model letters
Toolkit 8 – Right to be accompanied
Toolkit 9 – Guidance notes for witnesses

APPENDIX 1

Examples of conduct which may lead to disciplinary action (This list is not exhaustive):

- Unauthorised acceptance of gifts, presentations and awards;
- Undisclosed pecuniary interest in the school's contracts;
- Unauthorised action on behalf of the school ;
- Public criticism of the school's decisions and/or activities connected with the employee's own work;
- Unreasonable refusal to follow an instruction or insubordination including failure to observe operational regulations and policies;
- Persistent bad timekeeping;
- Abuse of authority and/or where an employee's conduct towards a fellow employee or a member of the public is oppressive, abusive or disrespectful;
- Unauthorised employment;
- Improper disclosure of information, including breach of the data protection act;
- Sleeping on duty;
- Unauthorised use of the school's equipment;
- Smoking within designated no smoking areas, including school property or on school owned premises, or vehicles;
- Abuse of the sickness absence scheme.

Gross misconduct is defined as an act of such a serious nature that it fundamentally breaches the contractual relationship between the employee and employer. A finding of gross misconduct will usually result in summary dismissal

Examples of gross misconduct (This list is not exhaustive) :

- Serious breaches of school's rules, codes or policies, including but not restricted to health and safety rules, including the use of a mobile telephone whilst driving for the purposes of work ;
- Conviction of a criminal offence related to, or liable to have a serious adverse affect on the work of the employee or other employees or the credibility of the school;
- Dishonesty , including theft and/or fraud, falsification of records or information, non declaration of information ;
- Unauthorised absence;
- Breach of the Dignity at Work policy, including Threatening behaviour, assault, fighting or bullying ;
- Deliberate and/or serious misuse of and/or damage/destruction to school property and/or records;
- Incapability or being under the influence at work brought on by alcohol or illegal drugs;
- Gross Negligence which causes unacceptable loss, damage or injury;
- Serious insubordination;
- Unlawful discrimination or harassment, including against members of the school community, parents , partnership worker, contractor;.
- Deliberate abuse of the school's IT systems, including equipment and software, including using the internet and/or email to access and/or distribute material of a pornographic, offensive, obscene or inappropriate nature;
- Bringing the school into serious disrepute through actions either inside or outside of work;
- Serious Data protection breaches, unauthorised disclosure of school documents or confidential information to others inside or outside the school ;

- Misuse of a school's position for personal gain;
- Breach of any professional code of conduct applicable to a role, which could bring the school into disrepute;
- Safeguarding concerns relating to conduct or behaviours which have a bearing on the safety or welfare of children or vulnerable adults.