NORTH WALES SCHOOLS MODEL POLICIES

Disciplinary Policy

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1.0 Disciplinary Policy and Procedure

1.1 Purpose

Disciplinary procedures are necessary for promoting orderly employment relations, achieving fairness and consistency in the treatment of individuals and minimising disagreement about disciplinary matters.

The aim of the procedure is to ensure consistent and fair treatment for all employees within the school. It is designed to help and encourage all employees to achieve and maintain appropriate standards of behaviour and conduct. This procedure provides a method of dealing with apparent shortcomings in conduct and the main purpose of the procedure is to encourage an employee whose conduct is unsatisfactory, to improve.

This model procedure requires that a delegation is in place (and minuted annually) allowing the headteacher to deal with allegations constituting misconduct. Please see section 4 below.

All timescales included in this employee disciplinary procedure have been agreed by the governing body and the school's local and regional employee trade unions. Depending on the circumstances of the case, there may need to be flexibility with these timescales, e.g., where there is a large amount of paperwork or unavailability of employees.

It is good practice for management to try and agree a mutually convenient date for the meetings with employees and their representative or work colleague under this procedure in order to ensure that meetings do not have to be delayed or rescheduled.

Where required throughout this procedure, the chair of governors will take appropriate action unless there is a conflict, 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 untainted governor and minute this decision.

1.2 Scope

This procedure applies to all employees who are managed and employed by the governing body. This includes full-time, part-time, permanent and temporary employees. Employees have been made aware of this procedure and copies will be given to any employee who is the subject of any allegation.

The governing body is responsible for the conduct and discipline of school employees and is required to have a procedure in place for dealing with employee disciplinary matters.

The following matters are outside the scope of this disciplinary procedure:

- The termination of:
    - *a fixed-term contract of employment where the term of that contract expires without being renewed*
    - *a temporary appointment where the reason for termination is that the need for the employee's service has expired, or is about to expire*
    - *an employee during or at the end of a probationary period of service, whether or not extended beyond its originally specified duration*
    - *termination during or at the end of the statutory induction for teachers or at the end of a probationary period for school support employees*
    - *employment by reason of redundancy (alternative procedures apply).*
- Where any deficiencies in performance on the part of the employee arise from a lack of aptitude or skill (in such cases the capability procedure will be used).
- 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 employees.

Failure to comply with clear advice and instruction or negligence, which involves inadequate performance where thought to be attributable to wilful disinclination by the employee to carry out their duties will be dealt with under this procedure (as opposed to the capability procedure).

Allegations made by a member of the public about an employee's conduct should be dealt with under this procedure rather than the school's complaints procedure. If a complaint raises issues about staff discipline, then action under this procedure should take precedence.

Employee grievances and grievances lodged as a result of disciplinary action. If, however, action under the employee grievance procedure results in the need for disciplinary action then this disciplinary and dismissal procedure will apply.

2.0 Policy Principles

headteachers/managers are responsible for managing the performance, attendance, conduct and behaviour of their employees and will therefore be responsible for making an initial assessment of any allegations of misconduct or unacceptable behaviour to determine the process for dealing with the allegation.

Where an allegation relates to the headteacher, the chair of governors should arrange for the investigation to be carried out by independent persons, as per the WG guidance (002/2020).

In all cases, the school and governing body will ensure that disciplinary cases are dealt with in an unbiased, open and fair way.

The principles in summary are as follows:

2.1 Where appropriate, every effort will be made to address concerns about behaviour or conduct without recourse to formal procedures.

2.2 No disciplinary action will be taken against an employee until the case has been fully investigated by a person who has no connection with the case in question.

2.3 An investigator will be impartial. Reasonable objections to an investigator relating to their inability to act impartially, or their competence for the role, will mean that the investigator will be changed.

2.4 Where it is decided to deal with a disciplinary matter through misconduct procedures, the employee 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.

2.5 An employee will not be dismissed for a first breach of discipline in cases of misconduct. However, should any misconduct be repeated, it may result in the employee being disciplined for gross misconduct, as they are not moderating or amending their behaviour, or making the improvements/changes expected.

2.6 Where it is decided to proceed to the formal stage, i.e., the allegations amount to misconduct or gross misconduct, the employee will be informed of the allegation, date, time and place of any hearing before the headteacher (misconduct) or governing body staff disciplinary and dismissal committee (gross misconduct) as well as the purpose of the hearing and the stage reached in the disciplinary procedure.

2.7 The employee 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 that reasonably calls into question their ability to act impartially in the circumstances of the case.

2.8 The employee 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.

2.9 The employee shall be entitled to be accompanied by a work-based colleague or a trade union representative at any formal disciplinary meeting and hearing.

2.10 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 employee. Dismissal under these circumstances will be without notice or payment in lieu of notice and effective from the date of the original decision to dismiss, or if the employee appeals the decision, effective from the date the appeal was unsuccessful.

2.11 An employee will have the right to appeal against any formal disciplinary sanction imposed by the headteacher or chair of governors (in respect of misconduct matters), or the staff disciplinary and dismissal committee (in respect of gross misconduct matters).

2.12 Investigations and hearings will be conducted (all or part) in English or Welsh, or with access to translation. The clerk will ascertain this preference early in the process.

2.13 If an employee resigns immediately prior to or during the disciplinary process, this will not prevent the allegation(s) being investigated. It is important that every effort is made to reach a conclusion in all cases of allegations and reaching a judgement about whether the allegation(s) can be substantiated, based on all the information available. The process will continue even if the employee does not co-operate or leaves the authority's employment to reach a recorded outcome which may require a referral to the Education Workforce Council. The employer or agent must refer the case in line with the Education (Wales) (Act) 2014, as amended, and The Education Workforce Council (Main Functions) (Wales) Regulations 2015, as amended, where:

- *It ceased to use the services of a registered person in Wales or might have ceased to use the services of a registered person in Wales had he or she not stopped providing them (an **employer**).*
- *It terminated arrangements with a registered person or might have terminated arrangements with a registered person had he or she not terminated them or similar (an **agent**).*

2.14 The chair of the governing body should not sit on either disciplinary dismissal or appeals committee if they have been involved heavily in the initial consultation of an allegation alongside the headteacher.

3.0 Informal Arrangements – Management Advice

A headteacher/manager is entitled to speak privately to an employee at any time in order to receive an explanation, or to clarify the position, in respect of any work-related issue or matter of concern that can be dealt with immediately without such a discussion being considered under disciplinary procedures. It is envisaged that such meetings should resolve issues at the lowest level.

In these circumstances, the employee 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 authority's HR representative.

The aim of this action is to ensure that problems are discussed, to encourage and help the employee to improve and understand:

- *What they need to do in relation to their conduct.*
- *How future conduct will be monitored and reviewed.*
- *The period over which conduct will be monitored.*
- *That formal action might be taken if the conduct in question recurs.*
- *That an agreed record of the meeting is kept.*

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

4.0 Formal Procedure - Misconduct

Responsibility for disciplinary matters where the allegation could constitute misconduct can be delegated by the governing body to the headteacher. This should be minuted by the governing body on an annual basis.

If an allegation which could constitute misconduct is made against the headteacher, the chair of governors will be responsible for the disciplinary action.

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 will take no further action. The employee and their union representative will be informed immediately of this decision verbally and in writing.

The member of staff should be informed of the allegation and that misconduct procedures are being engaged before an investigation commences.

4.1 The Investigation

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), a full investigation must be carried out.

The employee 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.

With any learners being interviewed, the investigating officer will follow the procedure set out in paragraph 7.29 of the Welsh Government 002/2020 circular (Disciplinary and dismissal procedures for school staff).

Any investigation should be dealt with without unreasonable delay and concluded within 20 school days.

The employee will be given the opportunity to respond to the allegation and will have the right to be to be accompanied by trade union representative or work-based colleague at an investigation interview meeting.

Once the investigation has been concluded, the investigating officer will present a written report of the findings to the headteacher (in the case of misconduct) and the chair of governors (in the case of gross misconduct), or the chair of governors and another governor in respect of investigations into the conduct of the headteacher. This will be done as soon as practicable after the conclusion of the investigation. The investigation report will be based on matters of fact. Any references to or expressions of views, opinions or beliefs should not be included as part of the report. The headteacher/chair of governors should make a decision from the investigation report within 10 school days, unless there is a valid reason for a delay. Any reason for a delay will be clearly communicated to the employee.

The headteacher or chair of governors (in the case of a headteacher) may conclude that:

- No further action is necessary and write to the employee to advise of this.
- Matters will not proceed to a hearing and can be dealt with by management advice (refer to section 3.0 of this procedure).

- If, on completion of the investigation, it is considered that on the balance of probabilities, a complaint of misconduct is justified and requires more than management advice, a disciplinary hearing before the headteacher (or chair of governors in the case of a headteacher) will be arranged. The possible outcome may be sanctions short of dismissal.
- If there appears to be sufficient evidence that the allegation constitutes gross misconduct, a disciplinary hearing before the staff disciplinary and dismissal committee will be arranged.

If an employee is currently on a final written warning, and therefore the case could result in dismissal, the case MUST be referred to the staff disciplinary and dismissal committee.

4.2 The Disciplinary Hearing – in Cases of Misconduct – Headteacher or Chair of Governors

Conduct that is considered to fall within the scope of misconduct has been delegated to the headteacher to deal with. The chair of governors will deal with 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).

The employee will be informed in writing of the following information, and provided with a copy of these procedures:

- The nature of the allegations made against them.
- The stage reached in the procedure.
- The date, time and place for the hearing (at least ten school days' written notice of the hearing will be given unless a different period is mutually agreed).
- Provided with documentary evidence.
- The possible outcome of the hearing.
- Informed of their right to:

- *Produce written statements/evidence which will be circulated to all parties in advance of the hearing (this information must be submitted at least **five** school days before 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 work colleague or trade union representative.*

There are six possible outcomes following on from such a hearing:

- No further action.
- Management advice.
- Verbal warning (usually 3 months).
- Written warning (usually 6 months).
- Final written warning (usually 12 months).
- Referral to a disciplinary hearing before the governing body's staff disciplinary and dismissal committee.

In many cases, misconduct can be dealt with in the first instance by management advice. However, there may be occasions when it will be appropriate to give an employee a verbal warning or a written warning. The sanctions used will depend on the circumstances of the employee's behaviour.

Further advice on each of these sanctions is set out below. The sanctions an employee could receive will be in line with the nature and severity of the allegation. However, there may be occasions where an employee has had repeated misconduct allegations against them and has not altered or improved their behaviour. This may result in a more severe sanction being given, e.g., a final written warning. Alternatively, the misconduct behaviour may be serious enough to warrant an immediate final written warning instead of any other sanction.

4.3 Outcome – No Further Action

Written notification will be provided to the employee within 5 school days of the date of the hearing. All allegations will be removed from the employee's file and employment record.

4.4 Outcome – Management Advice

As a result of the hearing, the headteacher or the chair of governors (in respect of the headteacher), with support from the authority's HR representative, 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 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 authority's HR representative.

The aim of this action is to ensure that problems are discussed to encourage and help the employee to improve. The employee 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.*

Where discussions and support structures which have been put in place to help the employee do not lead to improvement/relevant changes in conduct in the agreed timescale, the employee will normally be advised in writing of further action to be taken.

4.5 Outcome – Formal Warnings

With any warning the employee should be told clearly the reason for the warning and of any action they will be expected to undertake/refrain from in future, along with any relevant deadlines or timeframes for review and their right of appeal. A record of the warning will be placed on the employee's file and held in accordance with data protection and employment legislation.

Any level of warning may be given for a first case of misconduct. It is not automatic that a first case of misconduct will result in a 'first warning'. A first case of misconduct, if sufficiently serious, may result in a 'final warning'.

Disciplinary action outcomes may be:

- **Verbal Warning** – a verbal warning may be appropriate in cases of misconduct. A verbal warning issued to an employee will be recorded in the employee's file and will remain 'live' for a period of three months.
- **Written Warning** - a written warning may be appropriate in cases of more serious misconduct or misconduct where a verbal warning has already been issued and is still 'live'. A written warning issued to an employee will be recorded on the employee's personal file and will be 'live' for a period of six months.
- **Final Written Warning** - a final written warning may be appropriate in cases of very serious misconduct or other misconduct where a previous warning has already been issued and is still 'live'. A final written warning issued to an employee will be recorded on the employee's file and will be 'live' for a period of twelve months.

There is discretion to alter the timescales of the warnings set out depending on the severity of the misconduct and circumstances surrounding the case. For example, a final written warning may be issued for a period of two years for very serious cases.

4.5.1 Verbal Warning

If, at the conclusion of the hearing, it is decided to proceed with disciplinary action by way of a verbal warning, the headteacher or the chair of governors (in respect of the headteacher) will recall the individual and issue the verbal warning to the employee in the presence of their trade union representative or work colleague.

The headteacher or chair of governors will confirm the decision in writing within 5 school days of the date of the hearing.

4.5.2 Written Warning

If at the conclusion of the hearing, it is decided to proceed with disciplinary action by way of a written warning, the headteacher or the chair of governors (in respect of the headteacher), will issue the warning to the employee in the presence of their trade union representative or work colleague, and followed up in writing within 5 school days of the date of the hearing.

There may be instances where an outcome may not be delivered by the headteacher or chair in the meeting due to further time or advice being required. In this scenario, the outcome will be advised in writing within 5 school days of the date of the hearing.

4.5.3 Final Written Warning

A final written warning may be issued where misconduct recurs despite attempts by senior managers to support the employee 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.

Final warnings may be given following a hearing before the headteacher or the chair of governors (in respect of the headteacher) who will issue the final warning to the employee in the presence of their trade union official or work colleague, and followed up in writing within 5 school days of the date of the hearing.

There may be instances where an outcome may not be delivered by the headteacher or chair in the meeting due to further time or advice being required. In this scenario, the outcome will be advised in writing within 5 school days of the date of the hearing.

As explained in 4.5, a record of the warning will be placed on the employee's file in accordance with data protection and employment legislation. If during the period that the warning is live, there is further evidence of, or a recurrence of the misconduct of a similar nature, the matter can be referred to the staff disciplinary and dismissal committee for a formal hearing which could result in dismissal. The employee must be informed of this at the time the final written warning is issued.

4.6 Appeals

There is a right of appeal against any formal disciplinary action (refer to section 5.4 of this procedure for information on appeals).

4.7 Referral for Consideration under Procedures for Gross Misconduct

There may be rare occasions where, at the end of an investigation into 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 employee 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 an employee 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).

5.0 Formal Procedure – Gross Misconduct

5.1 Gross Misconduct (where the allegation does not relate to child protection issues)

The term gross misconduct is used to mean an act, or omission, or a series of actions or omissions by an employee that fundamentally repudiates the contract of employment (see

appendices 1 and 2). 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. Any governor who was involved in any earlier process of the case is ineligible to be a member of either committee.

Where alleged gross misconduct is to be considered responsibility for the arrangements to set up a disciplinary investigation rests with the headteacher/chair of governors through the clerk to the governing body.

Gross misconduct allegations are usually reported to the headteacher or chair of governors (if the allegation is about the headteacher). Alternatively, the headteacher (or chair of governors in respect of the headteacher) may become aware of behaviour which could constitute gross misconduct. On receipt of an allegation, or becoming aware of an incidence of potential gross misconduct, the headteacher or chair of 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. They may wish to seek advice from Human Resources. If the conclusion is that there may be substance to the allegation, the employee will be informed in person where possible and followed up in writing of the allegations and that the formal disciplinary process is being engaged.

The headteacher or chair of governors will arrange for the allegation to be thoroughly and fairly investigated. At this point the employee may be suspended by the headteacher or chair of governors, on full pay (see section 6). Both the headteacher and chair of governors can suspend employees but only the governing body can end a suspension. The governing body can delegate the decision to end a suspension to the chair of governors/the chair of the staff disciplinary and dismissal committee, however the decision must be minuted. Suspensions will be reviewed by the chair of governors at regular intervals and the outcome will be reported to the employee. Please refer to the Suspension Risk Assessment in Appendix 3.

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 will take no further action. The employee will be informed immediately of this decision verbally and followed up in writing.

5.1.1 The Investigation

As a possible outcome for gross misconduct hearings is dismissal, it is important that investigations into gross misconduct allegations are unbiased and thorough. Where possible, the headteacher or chair of governors will set up arrangements for any investigation to be carried out, e.g., by a representative of the LA, diocesan authority (where appropriate) or a person who is unbiased. The headteacher and/or chair of governors will agree the terms of reference under which the investigation is to be carried out.

Any investigation should be dealt with without unreasonable delay. Prior to the investigation, the employee will be informed in writing of the allegation and their rights under the school's disciplinary procedure, including the right to be accompanied by a work colleague or a trade union representative, at all meetings.

The investigation will include gathering evidence and interviewing witnesses, including those identified by the employee. Any learners being interviewed the investigating officer will follow the procedure set out in paragraph 7.29 of the Welsh Government 002/2020 circular.

A record will be taken of the meeting and a copy given to the member of staff and 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.

5.1.2 The Investigation Report

The report, once completed, will be given to the headteacher (in cases of misconduct) and the chair of governors (in cases of gross misconduct), 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 evidence suggests that the conduct may not amount to gross misconduct but to misconduct which can be dealt with by the appropriate person.
- Based on evidence, there is a case to answer, and the conduct may amount to gross misconduct and is required to be referred to a staff disciplinary and dismissal hearing.

The record and outcome of the decision will be minuted by the clerk, who will be present at the meeting. The employee 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.

A copy of the investigation report, including all interview notes and accompanying evidence, will automatically be provided to the employee against whom the allegation has been made,

within the timescales set out in this disciplinary procedure, if the case is to proceed as outlined above.

5.2 Allegations that Involve Issues of Child Protection – Receipt of an Allegation

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 referred to the statutory authorities, e.g., the police and social services, in line with Wales Safeguarding Procedures 2019.

The headteacher or chair of 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 employee and no referral to the statutory authorities is required.

All parties will be notified in writing of the outcome. All allegations and documentation will be removed from the employee's file.

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. **If there is any doubt and agreement between these parties cannot be reached, the matter will be referred to the statutory authorities.**

The employee and their union representative will normally be informed of the decision that a referral is being made, as agreed by the statutory authorities. However, there may be some circumstances where this will not be appropriate.

Employers have a duty of care towards their employees and support will be provided to the employee during this period in terms of ongoing communication, access to counselling, providing a welfare point of contact if applicable, etc.

At this point, the headteacher or chair of governors (if the allegation is about the headteacher) may consider suspending the employee, on full pay, in line with the governing body's agreed procedures (see Suspension, section 6.0). The decision to suspend can be taken by the headteacher or chair of governors, but only the governing body can end a suspension. However, the governing body may through their procedures have delegated the task of ending a suspension to their chair of governors or the vice chair of governors. The decision must be minuted. Suspensions will be reviewed at regular intervals and the outcome reported to the employee.

After the statutory authorities (e.g., the police and social services) have completed their consideration of the allegation, it will be referred back to the governing body to complete the employee disciplinary process. This will happen even if the statutory authorities take the decision not to pursue a criminal investigation.

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 school's designated child protection officer and LA lead child protection officer as appropriate, will discuss:

- Whether the allegation is of a child protection nature and the behaviour constitutes gross misconduct which requires it to be independently investigated prior to any disciplinary hearing.
- Whether the behaviour constitutes gross misconduct but is not of a child protection nature.
- Whether there is evidence of misconduct which should be treated as misconduct (as opposed to gross misconduct).
- Whether no further action is required.

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.

There is no requirement to appoint an independent investigator where the member of staff has admitted the allegation or been convicted of a criminal offence in relation to it. In these cases, the disciplinary and dismissal committee would still be required to meet to determine whether to terminate the contract or take other action. However, there should be sufficient

evidence from the initial meeting between the headteacher and the local authority designated lead officer for safeguarding in education, the deliberation of the statutory authorities and the courts, etc., to enable the governing body to proceed to the staff disciplinary and dismissal process without the need for an independent investigation. It is recommended that at this stage advice should be sought from the local authority HR representative.

5.2.1 Referral for an Independent Investigation

The requirement from the Welsh Government 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. HR should be contacted for advice/guidance with this. 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). HR are available to advise on disciplinary procedures and ensure that these are applied fairly. 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.

The independent investigator will not commence any investigation until after the statutory authorities have completed their investigation. The conclusion may be there is no further action on the employer side but if there is, once the statutory authorities have completed their investigation the independent investigator will then be able to conduct their investigation.

5.2.2 The Independent Investigation

The headteacher and/or chair of governors will agree the terms of reference for the independent investigation. The independent investigator will then set the parameters of the investigation 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 investigator will liaise with HR to ensure that the written requirements of the policy are adhered to.

With any learners being interviewed, the investigating officer will follow the procedure set out in paragraph 7.29 of the Welsh Government 002/2020 circular.

5.2.3 The Independent Investigation Report

The completed report 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 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 there is a case to answer which may constitute gross misconduct 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 misconduct 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 employee.

This meeting should be minuted by an appropriate person.

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.

The employee and trade union representative will be informed of the decision (to hold a hearing) as soon as reasonably practicable.

The chair of governors will ensure that all relevant papers, including the allegations and the full investigation report, are sent to the employee and/or their union representative, the person presenting the case against the employee, and members of the staff disciplinary and dismissal committee, within the 15 school days of the date of the decision.

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.

5.2.4 Appointment of Independent Non-governor Member on Staff Disciplinary and Dismissal Committees and Staff Disciplinary and Dismissal Appeals Committees Dealing with Child Protection Allegations

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 if the allegation concerns a registered pupil in the school. If the

allegation concerns a child that is not a registered pupil, then an independent person will not be required. The appeals committee will have the same number of governors as the first committee and will always have an independent non-governor with voting rights. The governors, including the independent non-governor on the appeal committee will be different from those on the first committee.

5.3 The Disciplinary Hearing in respect of all Gross Misconduct Cases

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 employee has subsequently resigned or is on sick leave.

The employee 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 employee, any witnesses appearing in person and the LA and diocesan authority (if appropriate) (at least **ten** school days' notice will be given unless a different period is mutually agreed).
- The purpose of the hearing and the range of possible outcomes.
- Their right to be accompanied by a work colleague or a trade union representative.
- The membership of the staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee.
- The name of the person presenting the case against them.
- 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.
- The date by which all relevant documentation should be received by the clerk prior to the hearing (this information must be submitted at least **five** school days before the hearing).

The clerk will arrange for the documentation from both parties to be distributed to the employee and their representative prior to the hearing, including up-to-date procedures, in accordance with the timescales set out in this procedure.

The employee will be afforded the right to object to any member of the committee or the investigator on the basis of evidence that reasonably calls into question their ability to act impartially in the circumstances of the case.

5.3.1 At the Hearing

The hearing will be conducted in a fair manner with all parties having the opportunity to present evidence and call and question witnesses. There will also be an opportunity for the presenting officer and the employee and/or their trade union representative to summarise their case. The clerk to the governing body will be present to record the hearing in detail.

Once this part of the hearing is completed, all parties shall withdraw with the exception of the members of the committee, the clerk and the HR representative, to enable the committee to discuss the evidence and make their decision. The HR representative will be present to advise on policy/procedure. Where possible, the decision will be given verbally at the end of the hearing. If for some reason this is not possible, the committee's decision will be given in writing to the employee as soon as possible after the hearing. At this point, the employee will also be informed of their right to appeal and the timescale within which this must be made.

5.3.2 Decision Reached after the Hearing has Taken Place

Having considered all the evidence and taken into account advice provided, the staff disciplinary and dismissal committee may conclude that:

- No misconduct has taken place, and no further action is necessary. All allegations and documentation will be removed from the employee's file and record.

- On the balance of probabilities, the misconduct has taken place (in disciplinary proceedings, the standard of proof is "on the balance of probabilities" and not the standard of proof applied in criminal proceedings, i.e., "beyond reasonable doubt").

- If the committee finds that evidence indicates that the allegations relate to a lower level of misconduct than the allegation put, then they can make a decision to vary the allegations to a lesser charge and subsequent sanction.

The committee must ensure that any disciplinary action/sanction proposed reflects:

- The seriousness of the offence and is reasonable in view of all the circumstances.
- The employee's previous disciplinary record.
- The employee's mitigation presented during the hearing.

Where dismissal is being considered, the advice of the Human Resources representative present at the hearing must be obtained before a decision to dismiss is taken.

Possible sanctions may be:

- Specified training and development.
- Issue of a formal warning (where the alleged behaviour constitutes misconduct) – warnings are detailed in point 3.4.
- Dismissal of the employee.
    - Grounds for dismissal are:
        - *Proven gross misconduct.*
        - *Proven failure to comply with the terms of a final warning.*

Dismissal can also arise from conduct that could reasonably lead to dismissal but is not gross misconduct, for example, a series of incidents of misconduct which, when taken together are serious enough to justify dismissal.

In all cases of gross misconduct (i.e., when a single act of misconduct is so serious that it fundamentally repudiates the employee's contract of employment and justifies summary dismissal) dismissal will be without either notice or payment in lieu of notice. In all other cases of dismissal, the statutory notice period will be given, or appropriate payment made in lieu of notice.

Outcomes from the panel on matters that are considered to be misconduct will be dealt with by means of formal action set out in sections 4.0 to 4.5.

5.3.3 Communicating the Decision

The decision letter will be sent from the chair of the Disciplinary and Dismissal Committee, following consultation with the Human Resources representative and will include:

- Grounds for the decision.
- Disciplinary action being taken, or that no misconduct has taken place.
- Date dismissal will take effect (date contract of employment is terminated if applicable).
- Period of notice (if any) that is being provided or whether payment in lieu of notice will be made.
- Details on the right of appeal

5.4 Disciplinary Hearing – Appeal

If an employee wishes to appeal against the disciplinary/capability action taken against them, they must do so in writing, including the grounds upon which it is made. This must be submitted to the chair of governors within **ten** school days of the receipt of the decision(s). Such notification should also include any witness statements the employee wishes to include in the appeal case file. If no appeal is lodged within **ten** school days of receipt of the decision letter, the employee will lose the right of appeal.

The grounds for appealing against a disciplinary sanction could include:

- That the employee feels that the sanctions are unduly severe or inconsistent.
- That there has been procedural flaw in the first hearing.
- That the investigation or disciplinary procedure was in some way unfair or biased.
- That new evidence has come to light that was not available at the original hearing.

The appeal will be heard by the disciplinary and dismissal appeals committee as soon as practicable and normally this will be within **ten** school days of receipt of the notice of appeal. The purpose of an appeal is to enable an independent review of the 'reasonableness' of the outcome of the disciplinary hearing. The appeal hearings will focus on the issues set out in the appeal notification; therefore, the appeal process is not a re-hearing. However, under certain circumstances, e.g., where new evidence comes to light or the first hearing process was flawed or biased, it may be appropriate to rehear part, if not all, of the case.

The employee will be:

- given adequate notice of the time and date of the hearing (appeal heard within 10 school days of receiving appeal notification and employee given 5 school days' notice of the meeting).
- informed of his/her right to be accompanied or represented by a work colleague or a trade union representative.

The "disciplinary case file" of documents (to which reference may be made at the hearing) will be sent to each side at least **five** school days before the appeal is to be heard.

The employee will be given notice of the date and time of the appeal hearing.

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

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:

The appeal outcome will be one of the following:

- Confirm original decision.
- Confirm original decision but substitute with a lesser sanction.
- Decide misconduct not proven and that no sanction should be applied.

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 misconduct cases) or the staff disciplinary and dismissal committee (in gross misconduct cases).

The decision of the staff disciplinary and dismissal appeals committee will be final, and the employee will be informed in writing within 5 school days.

The employee will be given a copy of the minutes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions.

If, as the result of an appeal, disciplinary action is withdrawn, all details thereof will be expunged from the employee's personal file, and they will be informed accordingly. The employee will be given a copy of the minutes of the appeal hearing, which includes the disciplinary and dismissal appeals committee's conclusions.

6.0 Suspension

Suspension pending disciplinary proceedings will normally only be considered where allegations relate to gross misconduct behaviour and where:

- It appears to be necessary to exclude the employee from the school, for the protection of pupils, other employees or property or the orderly conduct of the school.
- The continued presence at work of the employee would be an obstacle to a proper investigation of the allegations made against that employee.
- There is cause to suspect a child or other children at the school is/are at risk of significant harm.
- The allegation warrants a criminal investigation by the police.
- The case is so serious that it might be grounds for dismissal.

- There is no other suitable option available, e.g., restricting the duties of the employee or providing alternative duties.

The headteacher and chair of governors should use the suspension risk assessment (appendix 3) to assist with the decision-making process with regards to suspension.

Suspension will be on full contractual pay and all contractual entitlements will be preserved.

Where certified sickness absence coincides with suspension, sick pay entitlement, as per an employee's terms and conditions will apply and take precedent, whilst still maintaining the terms of their suspension.

The decision to suspend can be taken by the headteacher or chair of governors, but only the governing body can end a suspension. However, the governing body may through their procedures have delegated the task of ending a suspension to the chair of governors or their vice chair.

Written notice will be given to all relevant parties following a decision to suspend. The suspension will be regularly reviewed in light of the latest information at hand, as well at key stages of the process.

It is recognised that suspension can be a difficult and stressful time for the employee and can lead to them feeling isolated. The employee should be made aware of any support provided during this time, e.g., the allocation of a welfare support person, signpost to employee assistant programme and support services, referral to OH, etc.

7.0 Meeting Arrangements

If the employee is absent due to sickness, the staff disciplinary and dismissal committee will usually postpone the hearing. However, where the employee may be absent for an indeterminate period, the staff disciplinary and dismissal committee may decide to hold the hearing provided that it has informed the employee and their representative and has offered the employee the opportunity to send a representative or submit written evidence to present their case. The representative will have the same opportunity as the employee to present evidence, call witnesses and sum up the employee member's case.

A postponement of up to 5 school days will also be provided if the trade union representative is unavailable on the date specified.

Reasonable adjustments will be made if an employee has a protected characteristic as defined by the Equality Act in order to allow the meeting to take place.

8.0 Special Cases

8.1 Disciplinary Action against Trade Union Representatives

Normal disciplinary standards apply to trade union representatives in their conduct as employees of the school. However, it is not normally expected that disciplinary action will be instigated against any trade union representative that is as a result of carrying out their trade union role within the rules, policies, procedures and expectations of their trade union.

No disciplinary action beyond a verbal warning will be taken against a recognised trade union representatives (*see below) until the circumstances have been discussed with a senior regional trade union paid official and a HR representative.

A recognised trade union official may be suspended on full pay, following discussion with the senior regional trade union paid official.

8.2 Reporting Cases to the Education Workforce Council

Under the terms of the Education (Wales) Act 2014, the employer has a duty, to make a report to the Education Workforce Council (EWC) when a person is dismissed from relevant employment on grounds of misconduct or resigns in circumstances which might have led to their dismissal, or consideration of their dismissal had they not resigned.

The Education Workforce Council has responsibility for investigating and hearing cases against a registered individual where it is alleged that the individual is guilty of unacceptable professional conduct, serious professional incompetence or where a registered individual has been convicted (at any time) of a relevant offence.

All such cases are referred to the Education Workforce Council via different routes depending on the nature of a particular case.

The Authority will carry out this referral on behalf of the governors in the event of these circumstances applying.

Interim Suspension Orders (ISO)

Interim suspension order can be used as a measure which temporarily removes a registered person from the register pending an investigation and disciplinary hearing. Employers should refer cases to the EWC as appropriate and in accordance with the relevant guidance

https://www.legislation.gov.uk/wsi/2021/350/made#:~:text=%E2%80%9Cinterim%20suspension%20order%E2%80%9D%20

8.3 Referring cases to the Disclosure & Barring Service (DBS)

There is a legal requirement for employers, including governing bodies, to make a referral to the DBS where they think that an individual has engaged in conduct that harmed or is likely to harm, a child or if a person otherwise poses a risk of harm to child. The duty to refer remains where the individual has been removed from relevant work with children, or the person has chosen to cease relevant work in circumstances where they would have been removed had they not done so. This applies even when a referral has also been made to a local authority safeguarding team or the Education Workforce Council.

A referral must be made when both of the following conditions have been met:

Condition 1
The school withdraws permission for a person to engage in regulated activity with children and/or vulnerable adults, or you move the person to another area of work that isn't regulated activity.

Condition 2
The employee has allegedly carried out one of the following:

- Engaged in relevant conduct in relation to children and/or adults. An action or inaction has harmed a child or vulnerable adult or put them at risk of harm, or
- Satisfied the harm test in relation to children and/or vulnerable adults, e.g., there has been no relevant conduct but a risk of harm to a child or vulnerable adult still exists, or
- Been cautioned or convicted of a relevant offence (automatic barring either with or without the right to make representations).

Further information on relevant conduct and the harm test available at
https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs#who-has-a-legal-duty-to-refer

The Authority can assist the school with the referral in the event of these circumstances applying.

9.0 Monitoring and Review

This policy will be reviewed to ensure compliance with changes in employment legislation or recommended best practice.

Appendix 1 - Gross Misconduct

The following are regarded as examples of gross misconduct under the governing body's disciplinary procedure. 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 employee. Any employee found to have committed a case of misconduct of this nature can expect to be summarily dismissed (i.e., following investigation and a hearing but without either notice or payment on lieu of notice):

1. Unauthorised disclosure or use of confidential information (subject to provisions of the council/school 'Whistleblowing Procedure' and the Public Interest Disclosure Act 1988).

2. Fraudulent acts or theft of property belonging to the council, the school, fellow employees or pupils.

3. Deliberate damage to property belonging to the council, the school, fellow employees or pupils.

4. Serious breach/breaches of health and safety rules and regulations.

5. Unlawful discrimination or harassment.

6. Physical, sexual or emotional abuse of pupils.

7. Sexual or indecent misconduct at work.

8. Bringing the council into serious disrepute or conduct which has the potential to bring the council into serious disrepute, e.g., behaviour considered seriously prejudicial to the good name of the school/council.

9. Physical violence or threatening physical violence.

10. Serious misuse of the council/school's property or name, e.g., unauthorised removal of council property/use of council vehicles.

11. Bullying or harassment.

12. Any act constituting a criminal offence directly associated with the individual's employment.

13. Serious insubordination, e.g.,

    a. *Disobedient or rebellious behaviour*
    b. *Insulting and/or abusive comments to supervisor/manager/headteacher*
    c. *Inappropriate conduct which undermines management authority*
    d. *Deliberate refusal to carry out a reasonable instruction whilst at work*

14. A serious breach of trust and confidence.

15. Incapacity for work due to being under the influence of alcohol or illegal drugs (see Alcohol and Substance Misuse Policy).

16. Deliberate falsification of records including fraud, e.g., timesheets.

17. Dishonesty, i.e., tampering with examination papers, revealing examination papers prior to examinations or altering examination results.

18. Deliberate failure to follow the council/school's documented procedures and regulations.

19. Knowingly providing false information on any matter relating to the employee's employment.

20. Causing loss, damage or injury through serious negligence or conduct that could have caused negligence, or negligence which could have caused unacceptable and/or significant loss, danger or injury to the council, its employees or customers.

21. Acts of incitement to or acts of unlawful discrimination on grounds of any of the following protected characteristics: Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex (Gender), Sexual Orientation.

22. Without prior management agreement, taking other paid employment whilst receiving pay or other benefits from the Council during a period of sick leave or absence.

23. Serious breach of rules on the use of the council/school computer facilities, e.g., deliberately accessing internet sites containing pornographic, offensive or obscene material and/or distributing inappropriate material on the council's email system, inappropriate use of social networking sites that damages the council's reputation.

24. Failure to report actual or perceived physical, sexual or emotional abuse of a child or vulnerable adult by an employee (or any other person having contact with pupils/clients.).

OTHER CAUSES LEADING TO DISMISSAL - The following, although not necessarily gross misconduct, can lead to dismissal:

1. Withholding information which has a serious bearing on the offer or continuation of employment (e.g., failure to disclose a past conviction).

2. Conviction for a criminal offence (committed in or out of work) which renders the employee unsuitable or unavailable for continued employment.

3. Continuing in a post, resulting in either the employee or the governing body/council contravening a duty or restriction imposed by law (e.g., after being disqualified from driving and driving is a requirement of the job).

4. Any incidence of similar misconduct following a final written warning which has already been issued for misconduct.

Appendix 2 - Misconduct

The following are regarded as examples of misconduct which would lead to written warnings under this disciplinary procedure:

1. Inadequate performance (where thought to be attributable to wilful disinclination by the employee to carry out his/her duties effectively).

2. Bad timekeeping.

3. Absenteeism and leaving the workplace without permission.

4. Failure to comply with the conditions of the council's sick pay scheme.

5. Insubordination (i.e., when an employee is insubordinate by word, act or demeanour).

6. Abuse of authority (i.e., when an employee's conduct towards a fellow employee or a member of the public is oppressive or abusive).

7. Misuse of school's computer facilities in breach of school's policy and guidelines including use of computer software on school's equipment not purchased or authorised for school/council use.

8. Failure to observe agreed working procedures / safety regulations / codes of practice.

9. Refusal to carry out a reasonable instruction.

10. Failure to take proper care of tools, plant, equipment and vehicles and any other property of the school or council, under the employee's control: failure to report damage or loss of same to headteacher/supervisor.

11. Failure, by deliberate neglect, to undertake the duties of the job.

12. Being an accessory to a disciplinary offence by another employee.

13. Smoking or vaping at work in prohibited areas.

14. Posting or distributing unauthorised literature at work or on the council's premises.

NB: Subject to circumstances and dependent upon the extent/seriousness, some of the examples of 'misconduct' above may constitute serious or gross misconduct.

Appendix 3 – Suspension Risk Assessment

See separate document

Appendix 4 – EWC Code of Practice

Code of Professional Conduct and Practice (ewc.wales)