



Appraising Staff Performance Part B – Disciplinary, Grievance, Capability and Harassment Procedures

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Part B – Disciplinary, Capability, Harassment and Grievance Procedures

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GENERAL PROVISIONS OF THIS POLICY STATEMENT

1. This policy has been adopted by the Governing Body in the interests of fairness and to promote order in the relationship between the academy and all its employees. The Governing Body is committed to ensuring consistency of treatment and will abide by all relevant equality legislation.
2. The procedures have been written with reference to (a) the ACAS Code of Practice on Disciplinary and Grievance Procedures; (b) in relation to capability, Part B of the DfE Model Policy on Appraising Teacher Performance and Dealing with Capability Issues; (c) the Suffolk County Council Model Procedures that have hitherto applied to [insert name of school]; and (d) employees' conditions of service.
3. If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal disciplinary or capability procedure, the case will be referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. Sickness absence does not automatically mean that monitoring or formal procedures cannot continue.
4. In applying the Disciplinary, Capability, Harassment and Grievance Procedures, the Headteacher, Chair of Governors, Hearings and Appeals Committee are empowered to seek such legal advice and such assistance from HR specialists as they think necessary.
5. The Headteacher and the Hearings Committee will monitor the operation and effectiveness of these procedures.



6. The Principle of Confidentiality.

- (a) All proceedings will remain confidential to the parties concerned, with the exception of official bodies which have a right to require disclosure of information. The Governing Body will be notified of the existence of any formal proceedings and their outcome.
- (b) The details of proceedings of any investigatory interviews, hearings and appeals will not be reported other than to those who have a role in the proceedings. The contents of documentation such as witnesses' statements will be treated in confidence by all parties involved and will not be disclosed to others, with the exception of official bodies with cause to require disclosure.

7. Related Policies:

- Safeguarding Children.
- Learning Expectations Policy.
- Equality and Diversity Policy.
- Finance Policy (including the Whistleblowing Procedure).
- Performance Management Policies for Teaching and Support Staff.

DISCIPLINARY PROCEDURE

8. SCOPE

- 8.1 This procedure will be used in all cases where misconduct, omission or (in certain circumstances) failure in performance is such as to warrant disciplinary action.
- 8.2 The term "misconduct" in this procedure covers instances of misconduct, omissions or failures in performance which may be reasonably attributed to willful or negligent acts and omissions on the part of an employee. Examples of the types of acts and omissions which might be considered under this procedure are contained in Schedule 1 (see page 18).
- 8.3 Where any deficiencies in performance on the part of an employee arise from a lack of aptitude or skill rather than any willful or negligent failure to carry out their duties the Capability Procedure should normally be used.
- 8.4 Significant problems of misconduct arising from drunken behaviour may be dealt with under this procedure.



- 8.5 The procedure for dealing with allegations of abuse is detailed in Section 6 of the Behaviour Policy and must be followed in all relevant cases.

9. EXCLUSIONS

- 9.1 This procedure does not apply where employment is terminated by reason of redundancy or incapability arising from ill-health.
- 9.2 The normal management of employees and the associated processes such as performance review are outside the scope of this procedure. There will be occasions when it is appropriate for an employee's performance at work to be discussed with them as part of normal management arrangements and without recourse to the formal procedure. If there is any shortcoming identified, an employee will be assisted to understand the standard of behaviour or performance required. This may be notified by a written instruction. By the very nature of these situations, the employee will not normally be accompanied at any meetings or discussions, although they may seek the advice of a trade union representative and it could be helpful if the employee is represented.
- 9.3 Where discussions in the normal course of management do not bring about any required change or improvement, the employee will be left in no doubt that the next step could be referral to the formal disciplinary procedure. If further informal discussion is required at this point to establish or clarify issues, the employee may be accompanied by a trade union official or friend, and a memorandum acknowledging the steps to be taken may be issued.

10. INVESTIGATION

- 10.1 If the normal management processes do not bring about the required changes in behaviour or performance, the next step will normally be referral to the formal disciplinary procedure. If it is sufficiently serious, a single instance of misconduct may warrant immediate referral to the disciplinary procedure. The Headteacher or (where appropriate) the Chair of Governors may seek professional H R advice before instituting formal disciplinary action or suspending an employee.
- 10.2 Before deciding whether it is appropriate to use the formal disciplinary procedure, it will be necessary normally for the Chair of Governors or Headteacher to conduct (or commission) a formal investigation. If the employee concerned is a trade union official (as statutorily defined) the matter will be discussed with the branch secretary or full time official before such an investigation is undertaken. An employee under investigation may be accompanied at any



interview or similar investigatory meeting by a trade union representative or by a friend. The employee and any witnesses who make statements during the course of any investigation will normally be asked to check and sign any written statement of evidence.

- 10.3 In certain circumstances it may be necessary to suspend an employee while an investigation is carried out into the situation giving rise to concern. The Headteacher may suspend an employee and will immediately inform the Chair of Governors in each instance. If it is necessary to suspend the Headteacher, the Chair of Governors has the power to do so. If it is evident that the allegations under investigation are so serious that they would amount to gross misconduct if substantiated (see Schedule 1, Section 3 for examples), the employee will normally be suspended during any investigation. Such suspension does not constitute disciplinary action. If it is necessary to suspend an employee during investigations that will be at full pay. Suspension will not be unnecessarily protracted and support for an employee who is suspended may be made available (see section 15, *below*).

11. DISCIPLINARY HEARING

- 11.1 If it appears, after investigation, that there is a case to consider, a disciplinary hearing will be convened. A hearing may be conducted by the Hearings Committee or by the Headteacher or by a senior member of staff authorised by the Headteacher. If dismissal is a possible outcome, the hearing must be conducted by the Hearings Committee.
- 11.2 Where it is proposed to hold such a hearing, the employee will be informed in writing of:
- (a) the nature of the alleged misconduct and, where possible, the warning stage which the employee has already reached;
 - (b) the date, time and place of the hearing;
 - (c) the name of the person presenting the case and witnesses;
 - (d) the right to produce written statements and invite witnesses to give evidence (any written statements will be circulated to the parties and to those hearing the case normally five days in advance of the meeting);



- (e) the statutory right to be accompanied by a trade union official or fellow employee of choice. If an employee chooses to attend unaccompanied, a signed statement to that effect will be requested and retained for the record.
- 11.3 A hearing will not normally be held in the absence of the employee except by mutual agreement, provided that the employee (a) does not fail to attend a hearing without reasonable cause or (b) is not otherwise constrained from attending (for example, by reason of being held in custody). The date of the hearing will be postponed by up to five working days if the employee's representative is unable to attend on the specified date.
- 11.4 The hearing will be conducted in as informal a manner as possible and in accordance with Schedule 2 (see page 24).
- 11.5 The person or committee hearing the case may make a determination which is within their delegated powers. That determination may be communicated orally to the employee after the hearing, but will in any case be confirmed in writing. The employee will be informed whether the allegations have been upheld. If the allegations are upheld, in full or in part, the findings and the decision will be confirmed in terms of:
- (a) the nature of the misconduct;
 - (b) the appropriate sanction, that is to say either a first or a final warning, or a determination that the employee shall be dismissed;
 - (c) how to appeal against the decision and/or sanction, the length of time in which any appeal must be lodged and the person to whom an appeal should be addressed.
- 11.6 If the determination is to issue a disciplinary warning, the employee will additionally be informed in writing of:
- (a) what improvement is expected for the future;
 - (b) the length of time for which the warning is active (normally this will be a period of between three and twelve months);
 - (c) any other information in respect of the improvement required, for example any review of arrangements or the name of a person who should be contacted to offer support and assistance;



(d) what might happen if the matter proceeds to the next stage, for example what the possible sanction might be.

- 11.7 Employees will be required to sign and return a copy of any such letter confirming receipt.
- 11.8 If disciplinary action against an employee is withdrawn, either before or during a hearing, no details will be recorded on the employee's personal file. The employee will be so informed.

12. WARNING STAGES AND DISCIPLINARY SANCTIONS

- 12.1 The Disciplinary Procedure provides for employees to be given every reasonable opportunity to improve their conduct or performance. Unless the circumstances are exceptional (for example, cases of gross misconduct) no employee should be dismissed without first having received at least one written warning and having had the opportunity to make improvement. Normally, an employee will have received both a first warning and a final warning before dismissal is considered. However, in exceptional circumstances (when an employee's actions have had or are liable to have a serious or harmful impact on the school) it may be appropriate to move directly to a final written warning without the 'first warning' stage (as outlined in the ACAS Code of Practice) and this would not in itself prevent a determination of dismissal in the event of the matter subsequently proceeding to that stage.
- 12.2 Written warnings will normally remain in force for a period of not more than twelve months. In exceptional circumstances, the person or committee hearing the case may make a determination that the warning will stay in force for a longer period. This may be appropriate where there is a history of repeated breaches of the same or similar disciplinary rules, or where the misconduct is serious enough that the committee hearing the case could consider dismissal as a possible sanction. The employee may appeal to the Appeals Committee against the imposition of an extended warning period.
- 12.3 In addition to the disciplinary sanction, the Governing Body may, in appropriate circumstances, take action to recover monies or property legitimately due to it. In the case of teachers, certain types of misconduct (including misconduct towards children or young people) may be reported to the Department of Education (or its successor) or to the specified government agency (if any).



First Warning

- 12.4 Where an employee's misconduct is such as to warrant a formal warning, and where there is no previous warning current, a first written warning will normally be the appropriate sanction.

Final Warning

- 12.5 Where a first written warning is current any further misconduct during the currency of that warning will normally lead to a final written warning being issued. A final written warning may also be issued in circumstances where an employee is shown to have committed serious misconduct, omission, or failure in performance short of gross misconduct or when an employee's actions have had or are liable to have a serious or harmful impact on the school. It may also be appropriate where dismissal would be a reasonable sanction, but the committee hearing the case has good reason to believe that a warning will prove to be effective. A final written warning will contain a clear indication that any further disciplinary offence during the currency of the warning will normally, if substantiated at a hearing, result in dismissal without further warning.

Dismissal

- 12.6 If further allegations of misconduct are brought while a final written warning is current, the Hearings Committee will hear the case and will normally determine (if the allegations are substantiated) that the employee be dismissed, unless there are strong mitigating circumstances. The Committee may alternatively in appropriate circumstances determine to extend the final warning for a period between three and twelve months.
- 12.7 If the allegations against the employee are so serious that they would constitute gross misconduct (see Schedule 1, paragraph 3), the Hearings Committee may determine that the employee be dismissed even when no disciplinary warning is current. In this case the employee will normally have been suspended during the process of investigation and, subject to the outcome of any appeal, the Chair of Governors will dismiss the employee without notice.
- 12.8 Where the employee's misconduct is not such as to constitute gross misconduct, but has, nevertheless, led to a fundamental breakdown of mutual trust and confidence such that it would be impossible or impractical to continue his or her employment, the Hearings Committee may determine that the employee shall cease to work at the school. In such a case,



subject to the outcome of any appeal, the Chair of Governors will dismiss the employee without notice. Such a case would be exceptional.

- 12.9 Only the Hearings Committee, subject to the hearing of any appeal by the Appeals Committee, may decide to dismiss an employee. The Chair of Governors will dismiss the employee on receiving the committee's final decision.

13. APPEALS

- 13.1 An employee is entitled to appeal against any disciplinary sanction imposed. If the sanction has been imposed by the Headteacher, the appeal will be to the Hearings Committee. Where the sanction has been imposed by the Hearings Committee, the appeal will be to the Appeals Committee.
- 13.2 Appeals against a disciplinary sanction will normally be lodged with the appropriate committee by the employee concerned within 14 days of the date of written notification of that sanction, as directed in the letter of notification.
- 13.3 A date for an appeal hearing will normally be arranged and notified to the parties within 14 days of the appeal being registered. All parties will normally be given at least 14 days' notice of the date of the appeal. Any written submissions, statements and other relevant material should normally be lodged with the clerk to the committee at least five working days before the hearing to enable it to be circulated to all parties in good time.
- 13.4 The main grounds for an appeal are likely to be:
- (a) if an employee wishes to contest the finding or the disciplinary sanction or both;
 - (b) if new relevant evidence not available to the original hearing becomes available;
 - (c) if there is an alleged lack of fairness in the original hearing.

If the appeal is against the finding and the sanction imposed by the original hearing, the appeal will normally constitute a complete re-hearing. If the appeal is against the disciplinary sanction only, the Appeal Committee may agree to hear evidence in mitigation of the sanction.

- 13.5 The procedure for the conduct of an appeal is set out in Schedule 2. The Appeals Committee may uphold the original finding and sanction; uphold the



original finding but modify the sanction (only in the most exceptional case will the severity of the original sanction be increased); not uphold the finding and thus remove the sanction.

- 13.6 If as a result of an appeal or any other review, a disciplinary complaint against an employee is withdrawn, or is found to have been mistakenly initiated, any record of that action will be withdrawn from the employee's personal file and destroyed.

14. THE HEADTEACHER

- 14.1 The responsibility for the conduct and discipline of employees rests with the Headteacher. Where there is concern or complaint about misconduct on the part of the Headteacher, it will normally be the responsibility of the Chair of Governors to initiate any action. The Chair of Governors is empowered to seek such legal advice and such assistance from HR specialists as he feels is necessary.
- 14.2 If there is sufficient cause for concern, the Chair of Governors may commission an independent person to carry out an investigation into all the material facts and circumstances of the complaint or concern. This investigation will be carried out in confidence. The Chair of Governors and one other governor (who shall not attend a committee that subsequently hears the case) will consider the report of the investigation and any recommendations of that report and will decide what action is to be taken.
- 14.3 If the Chair of Governors and the one other governor decide to take no action after due consideration of the report from the investigation they will report their decision (with reasons) without any details of the investigation to the Governing Body.
- 14.4 If they decide that the matter should be considered under the formal disciplinary procedure, the matter will be heard by the Hearings Committee. The procedure will be conducted as for all employees.

15. ADVICE AND SUPPORT TO EMPLOYEES

- 15.1 In most cases employees subject to allegations or complaints under this procedure will no doubt seek the advice and support of their trade union or professional association. However, employees may address questions about procedure, the conduct of investigations or hearings, or other related matters to the Headteacher or the Chair of Governors.



- 15.2 In cases where the investigation is prolonged, and especially where the employee is suspended from duty, or has been offered and accepted leave of absence, pending investigations, it will normally be appropriate to make arrangements to keep the employee informed of developments and to offer support. This should be arranged through a suitable senior member of staff who is not involved in the investigation or procedure in any other way. The name of a nominated individual will normally be notified to the employee.
- 15.3 If an employee wishes to raise a grievance about the conduct of a disciplinary case at any stage before a disciplinary hearing is convened, this should be addressed in writing to the Chair of Governors who will decide what action should be taken. The Chair's decision will be final. If action taken by the Chair of Governors is the subject of the grievance the Vice Chair will consider and decide what action to take. Any complaints made after a hearing has been convened or during the course of a hearing should be dealt with by the individual or committee hearing the case and/or as part of any appeal process.

CAPABILITY PROCEDURE

16. SCOPE

- 16.1 The Capability Procedure applies only to employees about whose performance there are serious concerns that the Performance Management process and the informal processes of management have been unable to address.

17. EXCLUSIONS

- 17.1 Disciplinary procedures exist to deal with misconduct, wilfully deficient performance, refusal to follow instructions, negligence and other similar situations, and should be used where such considerations form a significant part of any complaints.
- 17.2 The assessment and treatment of employees undergoing an induction or probationary period, or similar, should normally be dealt with according to the terms of their induction/probation, unless the employee's performance falls so far below professionally acceptable standards as to require immediate action.
- 17.3 This procedure may be used in dealing with problems arising from alcohol dependence where this has a significant effect on the employee's performance.



- 17.4 The Performance Management process is separate from this Procedure and meetings held under it, including any informal meetings in addition to the normal scheduled round of meetings, are not to be regarded as part of the Capability process.
- 17.5 There are also many occasions when an employee's performance at work may be discussed with them in the normal course of management, in addition to the Performance Management process. On such occasions improvements in performance may be sought. Although such meetings may reveal problems which are ultimately dealt with under this procedure, meetings of this nature do not form part of the procedure itself.
- 17.6 Informal meetings such as those referred to in sections 17.4 and 17.5 may well raise concerns with a teacher outside this Procedure, with the purpose of:
- giving clear feedback about the nature and seriousness of the concerns;
 - giving the employee an opportunity to comment and discuss the concerns;
 - agreeing any support (e.g. coaching, mentoring, structured observations), that will be provided to help address those specific concerns;
 - making clear how, and by whom, progress will be monitored and when it will be reviewed;
 - explaining the implications and process if insufficient improvement is made.
- 17.7 If no or little improvement has been made in the Performance Management system and after any such informal management processes, or if the improvement still needed is great, the employee will be notified in writing and invited to a formal capability meeting under this Procedure.

18. THE FORMAL CAPABILITY MEETING

- 18.1 Either as a result of a failure to improve after any informal meetings or, in the most severe cases, where the concerns raised over performance were such as to call into question an employee's overall satisfactory execution of their duties so that an initial informal approach was considered inappropriate, the School will move straight to a formal capability meeting.



- 18.2 At least five working days notice will be given. The notification will contain sufficient information about the concerns and their possible consequences to enable the member of staff to prepare to answer the case at a capability meeting. It will also contain copies of any written evidence, including any witness statements; the details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.
- 18.3 The procedures for a hearing outlined in Schedule 2 will apply to all formal meetings under this Procedure.
- 18.4 The capability meeting is intended to establish the facts. It allows the member of staff to respond to concerns about their performance or conduct and to make any representations they desire.
- 18.5 The capability meeting may be held either by the Headteacher or by the Hearings Committee. Either is empowered to seek such legal advice and such assistance from HR specialists as is necessary.
- 18.6 The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to address the remaining concerns through the Performance Management process. In such cases the Capability Procedure will come to an end.
- 18.7 The capability meeting may provide new information or a different context to the evidence collected. If it becomes clear that further investigation is needed, the meeting will be adjourned to allow this to happen.
- 18.8 During any capability meeting which could lead to a formal warning being issued, the head teacher or other senior manager will:
- identify the professional shortcomings, for example which of the standards expected of teachers or support staff are not being met;
 - give clear guidance on the improved standard of performance needed to ensure the member of staff can be removed from formal capability procedures;
 - explain any support that will be available to help the member of staff improve performance;



- set out the timetable for improvement (and the length of the monitoring and review stage under section 18.10) and explain how performance will be monitored; and
- make clearly understood the consequences of failure to improve within the set period – for example that it might lead to a final written warning or to dismissal.

18.9 Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the member of staff will be informed in writing of the matters covered in section 18.8 and given information about the handling of the review stage and the procedure and time limits for appealing against the warning.

18.10 A monitoring and review stage will follow the disciplinary meeting. The length of this stage will depend on the circumstances of the individual case but will last for a minimum of four weeks. Formal monitoring, evaluation, guidance and support will continue during this stage.

19. THE FORMAL REVIEW MEETING AND THE DECISION MEETING

19.1 At the end of the period described in paragraph 18.10, a formal review meeting will be held.

19.2 Both the formal review meeting and any subsequent decision meeting will in all cases be held by the Hearings Committee and will be conducted in accordance with paragraphs 18.2, 18.3 and 18.9 above.

19.3 If an acceptable standard of performance has been achieved during the monitoring and review period, the Capability Procedure will end and the Performance Management process resumes for the employee.

19.4 If acceptable progress has not been made, the Committee will either decide that (a) some progress has been made and that, in their judgment, more is likely, in which case it may be appropriate to extend the monitoring and review period; or (b) if no or insufficient improvement has been made, they will issue a final written warning.

19.5 The final written warning will make clear that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal. Where a final warning is issued, the member of staff will be informed in writing and given information about the handling and length of the further monitoring and review period and the



procedure and time limits for appealing against the final warning.

- 19.6 At the end of the further monitoring and review period a Decision Meeting will be held to which the teacher will be invited.
- 19.7 If an acceptable standard of performance has been achieved during the further monitoring and review period, the Capability Procedure will end and the Performance Management process will resume for the employee.
- 19.8 If performance remains unsatisfactory, a decision will be made that the teacher should be dismissed.

20. DISMISSAL

- 20.1 The power to dismiss staff in this school rests with the Chair of Governors acting for the whole Governing Body.
- 20.2 Once the decision to dismiss an employee under this Procedure has been taken by the Hearings Committee and confirmed by the Appeals Committee (should the employee choose to appeal), the Chair of Governors will dismiss the member of staff with notice.
- 20.3 The member of staff will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

21. APPEALS

- 21.1 If a member of staff feels that a decision to dismiss them – or to take any other form action against them under this procedure – is wrong or unjust, they may appeal in writing against the decision to the Appeals Committee normally within five days of the decision and setting out at the same time the grounds for appeal.
- 21.2 The appeal will be dealt with impartially and by governors who have not previously been involved in the case.
- 21.3 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place.



- 21.4 The same arrangements for notification and the opportunity to be accompanied by a colleague or union official or representative will apply as to the first and second formal capability meetings – that is to say, they will be conducted in accordance with paragraphs 18.2, 18.3 and 18.9 above.
- 21.5 The member of staff will be informed in writing of the results of the appeal hearing as soon as possible.

HARASSMENT PROCEDURE

22. SCOPE AND PURPOSE

- 22.1 It is the policy of the Governing Body that all employees are entitled to be treated with dignity and respect and should be allowed to carry out their work without being subjected to harassment or bullying from other employees.
- 22.2 Governors acknowledge that the School has always had excellent working relationships between staff, helping to create the right atmosphere for success and decent working conditions for all. This record is reflected in the low rates of staff absence and turnover and Governors hope and believe that it will be maintained. However, mindful of their responsibilities to employees under employment, equality and health and safety legislation in relation to harassment and bullying, they have adopted this procedure to provide protection if the need were to arise.
- 22.3 This procedure is for use in dealing with complaints from employees about the behaviour of other employees.
- 22.4 Any complaints of harassment or bullying from employees about governors, pupils, parents, members of the public or others are not covered by the procedure but should be addressed to the Headteacher who will consider the most appropriate response to them.
- 22.5 The purpose of this procedure is to stop any harassment or bullying which may occur and bring about prompt and effective solutions, which minimise any embarrassment and respect confidentiality for all parties concerned.
- 22.6 This procedure should be used to deal with complaints about behaviour which fall within the defined categories. It is not intended to replace the Grievance Procedure by which employees should seek to resolve any general complaints about their employment. A complainant may not use both procedures to pursue the same complaint.



- 22.7 This procedure is not intended to preclude the exercise of normal management functions, nor the issuing of reasonable and lawful instructions in an appropriate manner.
- 22.8 The procedure does not apply to authorised investigations into the conduct or capability of employees (including attendance and/or health), nor to the proper application of disciplinary, capability or similar procedures. Complaints about the conduct of such investigations and/or procedures should be raised through the appropriate appeals process or the Grievance Procedure.

23. DEFINITIONS

- 23.1 **Harassment** is defined by the effect of the behaviour on the recipient . For the purposes of these procedures, harassment means behaviour or conduct by an employee (or employees) towards another employee (or employees) which is uninvited, unwanted and unwelcome, which the receiver finds objectionable, and which causes humiliation, offence or distress. As normally understood, harassment consists of repeated behaviour of this nature, but the definition does not preclude single incidents being treated as harassment, particularly where the single incident is serious.
- 23.2 It is not possible to provide a comprehensive catalogue of behaviour which may constitute harassment. Words (written or spoken), gestures and physical contact are recognisable forms but harassment may also be conducted through more subtle forms of behaviour which have the effect of patronising, demeaning or pressurising other employees. Telephone conversations or other means of communication such as e-mail may also be the means of harassing another employee.
- 23.3 The examples given in paragraph 23.2 exclude genuine friendly banter, repartee or physical contact which is acceptable to all the employees participating. However, employees are expected to be sensitive to the effect of their behaviour on others who may be present and witness such encounters, and who may interpret such behaviour as being directed against them, or may otherwise find it unacceptable.
- 23.4 The definition of harassment is not restricted to deliberate acts which are calculated to have a detrimental effect on the recipient. Where behaviour gives offence unintentionally, it may still come within the definition and scope of this procedure in as much as the recipient perceives it as harassment. If it appears that the behaviour which causes offence is not intended to do so, it may be more appropriate and productive to use the informal procedure,



unless the behaviour is repeated after advice, counselling or warning.

- 23.5 Harassment of employees based on the 'protected characteristics' of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sex and sexual orientation is unlawful under the Equality Act 2010 and will never be tolerated.
- 23.6 In extreme cases, employees who harass their colleagues may be committing a criminal offence under the Protection from Harassment Act 1997.
- 23.7 The use or threat of force to intimidate or coerce other employees constitutes **bullying**. Many of the types of behaviour which characterise harassment also characterise bullying. Behaviour such as shouting or swearing at an employee, public humiliation or ridicule and persistent unjustified criticism are examples of bullying behaviour. Deliberately withholding information or resources which an employee needs to carry out their work, setting impossible targets, or otherwise making working life unpleasant are also characteristic of bullying.

24. MAKING A COMPLAINT UNDER THIS PROCEDURE

- 24.1 Employees who experience harassment or bullying may:
- do nothing (this course of action is not recommended);
 - confide in someone but take no action;
 - seek a solution informally (Section 25); or
 - make a formal complaint (Section 26).

The decision as to what action to take rests with the employee, and this choice will normally be respected. Employees may wish to consult their own professional association or trade union before deciding.

- 24.2 Although the wishes of the complainant will normally be respected, in exceptional circumstances, the Headteacher or Chair of Governors may take action on their own initiative where allegations are received of the following nature:
- assault or threat of assault;
 - deliberate, inappropriate physical contact (e.g. of a sexual nature);
 - "stalking" whether at work or elsewhere;
 - those described in paragraph 23.5, above;
 - other behaviour contrary to the school's disciplinary code.



In these and similar cases, where it appears that the behaviour complained of is likely to constitute a significant breach of the schools' disciplinary code, the Headteacher or Chair of Governors may determine that the matter may be more appropriately treated under the school's Disciplinary Procedure. This determination may also be made where it appears that unacceptable behaviour has been repeated despite previous instructions or warnings.

- 24.3 Any complaint of harassment or bullying made under this Procedure will be received and treated seriously. No action will be taken against an employee making such a complaint, unless it can be demonstrated that the complaint was without foundation and raised maliciously, mischievously or vexatiously. That would constitute a disciplinary offence.
- 24.4 It is a disciplinary offence to victimise an employee who has made a complaint of harassment or bullying, or an employee who gives evidence in good faith about a matter under investigation.

25. SEEKING A RESOLUTION INFORMALLY

- 25.1 An employee who believes that they have grounds for complaint under this procedure (the "complainant") may take reasonable steps to resolve the matter informally. It is anticipated that most complaints will be dealt with informally, particularly where it appears that the behaviour which is the subject of the complaint was not intended to cause offence.
- 25.2 At all stages of informal resolution, the complainant may seek assistance from their trade union representative or a suitable friend in representing the complaint. The complainant may ask the representative or friend either to accompany him/her, or to act on his/her behalf.
- 25.3 At all stages of informal resolution, all those involved will treat any complaint and its resolution in complete confidence.
- 25.4 The complainant may present the complaint directly to the employee who has caused offence, in person, by telephone or by letter. The aim of this direct approach should be to meet with the employee whose behaviour has caused offence and seek a resolution which is mutually acceptable. If an acceptable solution is agreed and implemented, the complaint may end at this stage.
- 25.5 Unless circumstances render this impractical, any such approach should be made on school premises and in, immediately before, or immediately after normal working time. Any written communication should normally be sent to the school's address and not to a home address.



- 25.6 If the employee who has caused offence is unwilling to respond to a direct approach, or, having responded, will not agree to a resolution acceptable to the complainant, or does not subsequently implement an agreed solution, the complainant may present the complaint to the Headteacher or one of his senior colleagues acting on his behalf. Once again, the complainant may seek assistance or support from a trade union representative or friend, if required. Alternatively, a complainant may take this step, from the outset, without making the direct approach set out at paragraph 25.4.
- 25.7 On presentation of a complaint under paragraph 25.6, the Headteacher (or person acting on his behalf) will meet with both the complainant and the employee whose behaviour is the subject of the complaint (either together or separately). The Headteacher will use his best endeavours to resolve the matter and implement a solution acceptable to the parties. If it is agreed that the behaviour which is the subject of complaint took place, but it was not intended to cause offence, an apology and/or an assurance that it will not be repeated will normally be the outcome.

26. MAKING AND RESOLVING A FORMAL COMPLAINT

- 26.1 The formal procedure will normally be appropriate for all cases where the informal procedure has been used but has proved ineffective in stopping the behaviour complained of, or in cases where there has been no previous complaint, but where it is evident to the Headteacher (or the person acting on their behalf) that a serious incident (or incidents) may have occurred. However, an employee who believes that they have been subjected to harassment or bullying may choose to pursue their complaint through the formal procedure from the outset.
- 26.2 A formal complaint must be raised with the Headteacher. The Headteacher will require the complainant to make a full statement of their complaint and may require that statement to be made in writing.
- 26.3 At all stages of a formal complaint, the complainant may seek assistance from their trade union representative or a suitable friend in representing the complaint.
- 26.4 The Headteacher will arrange an investigation of the complaint. He may undertake an investigation in person or through a suitable colleague.
- 26.5 The employee whose behaviour is the subject of a complaint will be informed of the general nature of the complaint and that an investigation will be undertaken. If, at any stage of the investigation, it appears



to the Headteacher that, if substantiated, the behaviour complained of is likely to constitute a significant breach of the school's disciplinary code, he may, at his discretion, pursue the investigation and any subsequent action under the school's disciplinary procedure.

- 26.6 All those who become involved in a formal process to resolve a complaint under this Procedure will maintain the complete confidentiality of the process.
- 26.7 Where it appears appropriate and practicable, the Headteacher may arrange for counselling or similar support to the complainant, with their consent. The Headteacher may take any reasonable and appropriate measures to separate the complainant and the employee whose behaviour is complained of during the course of the investigation.
- 26.8 The Headteacher will consider the finding of the investigation and determine what action is appropriate. In the event that the complaint is upheld, this determination may take into account, among other relevant factors, the seriousness of the complaint, the attitude of the employee under investigation and his/her willingness to accept the standards of behaviour which the school requires. Less serious situations may be dealt with by issuing instructions about future conduct. A more serious situation or one involving behaviour repeated in breach of previous instructions will normally be treated as a disciplinary offence.

27. RIGHT OF APPEAL

- 27.1 A complainant who is dissatisfied with the Headteacher's determination may lodge a grievance in accordance with the school's Grievance Procedure, normally within fourteen days of being informed of the outcome, if they feel that the complaint has not been taken seriously or investigated properly.
- 27.2 If the complaint has been dealt with under the school's Disciplinary Procedure, the complainant may not appeal against the findings of any ensuing disciplinary hearing nor against any disciplinary sanction imposed on another employee.
- 27.3 An employee who is subject to disciplinary proceedings will have the normal appeal rights set out in the school's Disciplinary Procedure.



28. COMPLAINTS AGAINST THE HEADTEACHER

- 28.1 An employee who believes that they have grounds for complaint against the Headteacher under this procedure may make a direct approach to him using the informal procedure. If a formal complaint is made, it should be addressed to the Chair of Governors.
- 28.2 The same principles and basic procedures will apply in any case involving the Headteacher as those described above for other employees.

GRIEVANCE PROCEDURE

29. SCOPE AND EXCLUSIONS

- 29.1 Employees' grievances can arise from a variety of sources. They may be about terms and conditions of employment, relationships at work or the behaviour of others at the school towards them, working practices, health and safety, organisational change or equal opportunities. Some grievances may be minor or straightforward. Others may be complicated to resolve or concern fundamental issues related to statutory or contractual rights. The principle adopted in this procedure is that a grievance should be dealt with as close to its source and as informally as circumstances will permit, and that the formality used in resolving the grievance should reflect the importance of the issue.
- 29.2 The procedure contains both informal and formal stages. Employees and their representatives are urged to make every reasonable attempt to resolve a grievance informally before using the formal part of the procedure. Where the grievance is directed against a more senior employee who would normally hear the case, the matter may proceed to the next appropriate stage.
- 29.3 Employees may be accompanied and supported at any stage by a trade union representative or friend. (The employee's right to be accompanied is statutory in any case involving the employer's duties towards a worker.)
- 29.4 Appeal rights under the Disciplinary and Capability Procedures are excluded from the Grievance Procedure.
- 29.5 Appeals related to any pension scheme and Income Tax, National Insurance and similar matters are also excluded.



- 29.6 The Harassment Procedure may be more appropriate for dealing with harassment and bullying issues, although employees retain the right to use the Grievance Procedure if they prefer. However, employees may not initiate the same complaint through both the Harassment and the Grievance Procedure. Harassment complaints may also be referred to the Grievance Procedure where employees believe that complaints of harassment have not been taken seriously or investigated properly.
- 29.7 The Governing Body has also approved a separate Whistleblowing Procedure giving guidance to employees on the correct way to make a disclosure of malpractice. This is may be more appropriate in some circumstances.

30. THE GRIEVANCE PROCEDURE – INFORMAL STAGES

- 30.1 Where an employee, either individually or collectively in conjunction with other employees, has a grievance against the Headteacher or the Governing Body which does not involve any other employee, they should make a direct approach to the Headteacher or Chair of Governors as appropriate. An employee should advise the Headteacher when making a direct approach to the Chair of Governors. Where an employee, either individually or collectively in conjunction with other colleagues has a grievance which involves other employees at the school, s/he should first of all endeavour to resolve the matter by a direct approach to the employee(s) concerned, or through the Head of Department or other appropriate senior colleague. If it is necessary to resolve the issue, those concerned should also discuss it with the Headteacher.
- 30.2 Where the employee requests a personal interview with the Head of Department, or other senior colleague, it should normally take place within a week of the request being made.
- 30.3 The Head of Department, or other senior colleague, or the Headteacher, as appropriate, should seek to resolve the issue either personally or in consultation with the other employees concerned. The Headteacher may also, by agreement with the employee making the grievance, consult the Governing Body.
- 30.4 If appropriate, and by agreement of the parties involved, the Headteacher or Chair of Governors as appropriate may arrange for mediation (with or without the use of an outside agency). In certain circumstances where the parties are members of the same trade union, a trade union may be able to assist with conciliation or mediation.



31. THE GRIEVANCE PROCEDURE – FORMAL STAGES

- 31.1 Where the matter has not been resolved at the informal stage of the procedure the employee concerned should submit a formal written notice of grievance to the Headteacher and to the other employee(s) concerned, if other than the Headteacher. The grievance should be clearly defined, include any supporting documents and set out what steps have been taken so far and what resolution is sought. If the grievance is against the Headteacher, the written notice should be sent to the Chair of Governors, with a copy to the Headteacher.
- 31.2 The Headteacher will convene a meeting to consider the complaint within two weeks of receiving the notice of grievance. This meeting will take place within a further two weeks or as soon as practicable thereafter. Where the complaint lies against the Headteacher, the Chair of Governors will convene a meeting of the Hearings Committee within the same time scale.
- 31.3 All relevant documents should be submitted to the Headteacher or the Committee and the parties concerned at least a week in advance of the meeting. Any employee against whom a grievance is lodged, or who is implicated in a complaint, will be given the right to have sight of relevant parts of the grievance and any relevant supporting documentation, and to submit a written response.
- 31.4 An employee will have the opportunity to state the grievance in person, accompanied by a friend or trade union representative to the Headteacher or Committee hearing the grievance.
- 31.5 In seeking to resolve the grievance, the Headteacher, or Committee may adjourn the meeting or defer its decision if this is considered appropriate to promote conciliation or to obtain further relevant information. In this case the employee raising the grievance will be notified of the date by which the meeting will be reconvened or a decision reached.
- 31.6 The Headteacher or Committee will seek to resolve the grievance, if necessary in consultation with a person acting on their behalf. Subject to any adjournment (as set out at 31.5), a decision will be confirmed in writing to the parties concerned within two weeks of the date of the meeting.

32. APPEALS

- 32.1 If the employee is dissatisfied with the determination of the Headteacher or Hearings Committee, they may appeal to the Appeals Committee within two weeks of the date of the



determination by the Headteacher or Committee. Any appeal will follow the procedure set out in Schedule 2. The appeal will normally be a complete re-hearing of the grievance. New evidence may be submitted provided that it is submitted to all parties at least a week in advance of the hearing.

32.2 The decision of the Appeals Committee will be final.

33. GRIEVANCES OF THE HEADTEACHER

- 33.1 Should the Headteacher have a grievance he may endeavour to resolve the matter informally by a direct approach to the person concerned or by approaching the Chair of Governors in line with the informal stage of the procedure set out in section 30.
- 33.2 If the matter cannot be resolved by informal means, the Headteacher may present his grievance in writing to the Chair of Governors, who will arrange for the Hearings Committee to hear the grievance in line with the formal stage of the procedure set out at section 31 above.
- 33.3 If dissatisfied with that Committee's decision, the Headteacher may appeal to the Appeals Committee, as set out at section 32 above.

SCHEDULE 1

RESPONSIBILITIES AND OBLIGATIONS GENERAL RULES OF BEHAVIOUR AND CONDUCT

1. GENERAL

The ACAS Code of Practice recommends that employees be left in no doubt as to the type of behaviour and conduct that may result in disciplinary action being taken against them. It is not possible to specify all forms of behaviour that will result in disciplinary action. Each case must be judged in the light of the circumstances and context surrounding it. Varying circumstances may well allow different disciplinary actions or no disciplinary action at all to be taken for what are similar offences.

The following examples give an indication of the Governing Body's position as to the types of behaviour which constitute misconduct. The examples are not exhaustive and omissions from the list are not in themselves grounds for appeal. In addition, employees should, so far as is reasonably practicable, be familiar with the working rules and procedures relating to their particular area of work. These rules may be in the form of codes of practice, manuals, posters, notices and periodic memoranda.



2. SOME REASONS WHICH MAY JUSTIFY DISCIPLINARY ACTION

- Professional or similar negligence, misconduct or omission or, in certain circumstances, failure in performance to a reasonable and acceptable standard.
- Failure to obey a reasonable and lawful instruction or direction.
- Failure to exercise reasonable care for the safety of oneself, other employees, pupils, governors, members of the public or others on school premises or in the course of work.
- Deliberate failure to disclose any personal incapacity which may be incompatible with the satisfactory discharge of the duties and responsibilities of the job.
- Negligence in the care or custody of cash, stores or other property of the school or belonging to people in the care of or receiving a service from the school.
- Use of paid time for purposes unrelated to the job.
- Misuse of equipment, materials and information, including wrongful use of the internet, inappropriate use of electronic mail, breaches of copyright and other intellectual property rights.
- Unauthorised or inappropriate disclosure of confidential information, or the use of such information or official contacts for personal gain.
- Failure to disclose an interest in a School contract.
- Harassment or bullying of other employees.
- General misconduct e.g. rudeness, insolence, drunken or aggressive behaviour, use of foul and abusive language, sexist, racist and other offensive behaviour.
- Discrimination and/or victimisation contrary to the law and/or the school's policies on equal opportunities, including race, sex, disability, sexual orientation and other 'protected characteristics' including giving instructions or bringing pressure to bear on others to do so.
- Malicious complaints or victimisation of employees as found under the school's harassment, disclosure of malpractice and similar procedures.
- Failure to co-operate with the school on health and safety matters and procedures.
- Misuse of safety equipment provided.
- Persistent lateness or absence, and/or wilful failure to comply with the school's procedures covering the notification of sickness absence.
- Administering corporal punishment to pupils.
- Promoting partisan political views in the teaching of any subject at the school.
- Wilful or negligent failure to report evidence of abuse of children within the employee's care.

3. SOME REASONS WHICH MAY JUSTIFY DISMISSAL WITHOUT NOTICE

- Serious professional negligence, misconduct, omission or, in certain situations failure in performance to a reasonable and acceptable standard.



- Theft or misappropriation of cash or property belonging to the school, fellow employees, pupils and others at school or in the course of employment.
- Serious cases of harassment or bullying contrary to the school's policies.
- Serious racist behaviour.
- Serious sexual misconduct.
- Serious cases of discrimination and/or victimisation contrary to the law and/or the school's equal opportunities policies, including race, sex, disability, sexual orientation and other 'protected characteristics' including giving instructions or bringing pressure to bear on others to do so.
- Serious malicious complaints against or victimisation of employees using school procedures e.g. harassment, disclosure of malpractice etc.
- Serious offences involving the misuse or illegal possession of drugs, and/or serious cases of being under the influence of alcohol or drugs at work.
- Threatened or actual physical assault on employees, pupils, governors, or others on school premises or in the course of work.
- Malicious damage to the school's property or that belonging to others while in the course of work.
- Serious misuse of equipment materials and information, including wrongful use of the internet, inappropriate use of electronic mail, breaches of copyright and other intellectual property rights.
- Serious unauthorised or inappropriate disclosure of confidential information, or the use of such information or official contacts for personal gain.
- Deliberate and wrongful disclosure of security passwords in connection with building security and computer systems.
- Serious failure to disclose an interest in school contracts.
- Falsification of work records, timesheets, travelling and subsistence and similar claims and other documents connected with the workplace or with claiming pay and expenses from or making payments to the school.
- False statements or failure to disclose relevant information in applications for employment with the school, with particular reference to health, or qualifications or which result in financial gain.
- Deliberate failure to disclose unspent criminal convictions or, in respect of employment exempt from the terms of the Rehabilitation of Offenders Act (i.e. employment with children or young people) failure to disclose any conviction or caution both before and during relevant employment.

4. SOME REASONS WHICH MIGHT JUSTIFY DISMISSAL WITH NOTICE

As distinct from gross misconduct, for which the normal sanction is dismissal without notice, dismissal will normally only take place after due warning through the disciplinary procedure. However, there are a limited number of circumstances which fall short of gross misconduct where the governing body may



determine that an employee shall cease to work at the school without prior warning being issued. These are circumstances where the action of the employee has broken the mutual trust and confidence necessary to sustain the employment relationship. In particular there are two sets of circumstances which may give rise to such a determination:

- Behaviour of a serious or criminal nature outside employment the nature of which makes continued employment impossible.
- Committal to prison for an offence which is of such a kind, or entails a sentence of such length, as to make continued employment impossible.

SCHEDULE 2

PROCEDURE FOR A HEARING OR FORMAL MEETING UNDER THIS POLICY

Hearings will be held in as informal a manner as possible and the employee will be afforded every reasonable assistance to put their case. The conduct of the hearing is at the discretion of the Headteacher or Chair of the Committee, but they will allow the parties every reasonable opportunity to present their case.

In the case of an appeal or grievance the order of presentation set out below would normally be reversed. The employee as appellant would present his/her case first. However, by prior agreement and where the appeal constitutes a re-hearing of the full case, the case against the employee may be presented first as at the initial hearing. The Chair of the Appeal Committee should ensure that all parties have a common understanding and agreement on the order of presentation.

1. INTRODUCTION

The Headteacher or Chair of the Committee will ensure that those present are introduced to each other and that they are aware of the procedure to be followed.

2. PRESENTATION OF THE COMPLAINT/ALLEGATIONS

- The person presenting the case against the employee may make an opening statement outlining the case.
- Any witnesses supporting the case will then be called and asked to give their evidence. The employee or their representative may then ask questions of each witness. The Headteacher, Chair and committee members may also ask questions of any witness. The person presenting the case may then re-examine the witness.
- Where evidence is presented in the form of documents, the person presenting the case or an appropriate witness will explain



the nature and significance of the documents.

3. THE EMPLOYEE'S CASE

- The employee or their representative may make an opening statement.
- They may call any further witnesses and invite them to give their evidence. The person presenting the case against the employee may ask questions of each witness after their evidence has been given. The Headteacher, Chair or any committee member may then ask questions. The employee or their representative may re-examine the witness.
- Where there is any documentary evidence, the employee or any witness on their behalf will explain its significance.

4. RE-EXAMINATION

Both parties will be asked if they wish to re-examine any evidence. The committee may also do so at its discretion.

5. FINAL STATEMENTS

The person presenting the case against the employee may make a final statement. The employee or their representative may then also make a final statement.

6. ADJOURNMENT

Either party may ask for an adjournment at any stage. The decision to adjourn is at the discretion of the Chair, who will consider a request in the light of the reason given for it.

7. CONSIDERATION OF THE CASE

- All parties will withdraw. The Headteacher or the committee will deliberate. A legal adviser or HR specialist may be present at these deliberations to advise on legal and procedural matters.
- If it is necessary to recall either party or any witnesses, to resolve a point of uncertainty, both parties will be invited to be present, whether or not the point of doubt concerns one party or both.

8. DECISION

If possible the decision will be communicated orally to the employee after the hearing. The decision will be confirmed in writing to the parties involved as soon as possible after the hearing.

General Principles Underlying This policy

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and governing body to quality-assure the operation and effectiveness of the appraisal system. For example, the Headteacher or appropriate colleague might review all staff's objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers.

Consistency of Treatment and Fairness

The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

Delegation

Normal rules apply in respect of the delegation of functions by governing bodies and head members of staff.

Monitoring and Evaluation

The governing body and Headteacher will monitor the operation and effectiveness of the school's appraisal arrangements.

Retention

The governing body and Headteacher will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.