

Employee Disciplinary Procedure and Code of Conduct Policy

Date	Review Date	Endorsed by	Approved by	Link Governor
Dec 2016	Dec 2017	Resources Committee	Governing Body	Steven Lock

1. Purpose and Scope

- 1.1 This procedure is written to fulfil the Governing Body's obligation to establish procedures for the regulation of the conduct and discipline of staff which is set out within the School Staffing (England) Regulations 2009. It takes into account the provisions of the 2009 ACAS statutory code of practice on discipline and grievance.
- 1.2 It is applicable to all members of staff employed by the school, except support staff serving a probationary period for whom separate procedures apply.
- 1.3 In the case of disciplinary action against Headteacher's, the Governing Body may appoint an investigating officer or governor to investigate the allegations and present the case against the Headteacher. The Hearing and any appeal will be heard by a panel of governors.
- 1.4 The purpose of the procedure is to ensure that, where concerns about an individual's conduct arise, the circumstances are appropriately investigated and any subsequent sanctions applied as a result are proportionate and consistent. In taking disciplinary action against an employee, the overriding aim is to encourage staff to achieve and maintain acceptable standards of conduct.
- 1.5 Due regard should also be had to the management guidance on the application of this procedure
- 1.6 This procedure is not applicable to:
- Concerns about an individual's work performance which arise as a result of a lack of capability;
 - Concerns about periods of sickness absence.

In these circumstances the capability or absence management procedures will apply as appropriate.

- 1.7 The disciplinary procedure will be applied fairly and consistently to all staff employed at the school regardless of gender, race, colour, national or ethnic origin, nationality, marital/civil partnership status, disability, sexual orientation, gender reassignment, age, religion, pregnancy/maternity, trade union membership/non membership, duration of contract (permanent/temporary/fixed-term status) or number of hours worked.

2. Policy and Guiding Principles

- 2.1 The Governing Body is committed to ensuring that high standards of conduct are maintained within the school and recognises that the majority of staff members understand the requirements placed upon them and take responsibility for acting in a way which is consistent with these expectations. In addressing circumstances where a staff member falls short of the standard required, the Governing Body will seek to ensure that each case is considered on its own merits, in an objective, fair and non-discriminatory manner through the application of this procedure and the following principles:

- Every employee should have a clear understanding of the standards required of them as a member of school staff and have been provided with a copy of the school's code of conduct;
- Minor, non-recurring breaches relating to conduct or behaviour will be dealt with promptly without recourse to the formal procedure;
- Disciplinary issues will be handled without unreasonable delay to meetings or the communication of decisions and with due regard for confidentiality during the process;
- Allegations of misconduct will be investigated to a level appropriate to the circumstances in order to establish the relevant facts;
- Employees will be informed of the actions or behaviours which are causing concern and will be given an opportunity to put their case in response to any investigation before decisions are taken;
- Employees will be informed of their right to be accompanied at any formal meetings and of their right to appeal against any formal decision made;
- Employees will be made aware of the existence of this procedure and be informed where they can locate a copy;
- Reasonable adjustments to the procedure will be made when required to accommodate the needs of an employee with a disability.

3. Confidentiality

- 3.1 Any correspondence or investigation documents must be stored confidentially. The emphasis should be on protecting the interests of the school and the employee. Therefore, all parties, including representatives, involved in any disciplinary matter must be reminded of their obligation to maintain confidentiality.
- 3.2 Where an allegation is made by a pupil/student, it should be made clear to him/her that the matter will be investigated in confidence, but that this cannot always be assured if the matter goes to formal stages.

4. Preliminary Stage: Addressing Initial Concerns

- 4.1 The Governing Body recognises that, in many cases involving minor matters relating to conduct, the matter is best addressed and resolved discreetly through discussion between the nominated manager/the relevant Governor (in the case of there being concern with the Headteacher) and the employee concerned. Managers have the right and responsibility to bring such concerns to an employee's attention, allowing for the problem to be resolved as quickly as possible and reducing the likelihood of disruption to the wider team and the anxiety and demotivation that may arise from the disciplinary process.
- 4.2 The nominated manager should meet with the individual promptly to outline where the shortfall in conduct has occurred and to reiterate the expected standard. The employee should be given the opportunity to explain his/her actions. If, at any stage, the manager feels that disciplinary action may need to be taken, the meeting should be adjourned and reconvened in accordance with the timescales and entitlements of the disciplinary procedure.
- 4.3 If, having spoken to the employee, the manager still feels there is cause for concern but is satisfied that the matter can be dealt with outside of the disciplinary procedure, he/she should confirm to the employee how his/her behaviour has been unacceptable and what improvement is required (including details of any monitoring or support to be provided). A note of the meeting confirming this discussion will be retained and a copy provided to the employee.

5. Instigating Formal Procedures: Suspension, Investigation & Gross Misconduct

- 5.1 In cases where conduct is considered to be too serious or too persistent to be dealt with in the normal course of management guidance, advice and action, the disciplinary procedure will be invoked.

Suspension

5.2 There may be instances where suspension is necessary while investigations into alleged misconduct are carried out. Suspension is not an assumption of guilt and is not considered a disciplinary sanction. Circumstances where this may be appropriate are:

- In cases of potential gross misconduct;
- Where relationships have broken down;
- Where there are identifiable risks to other parties or property;
- Where there are reasonable grounds for concern that the investigation may be compromised by the individual's ongoing presence (e.g. through accessing evidence or influencing witnesses).

In all cases suspension will not be imposed without reasonable and proper cause.

5.3 Suspension, which will be without loss of contractual pay, should only be imposed after careful deliberation, including consideration of any alternatives to suspension, and should be reviewed regularly to ensure it is not unnecessarily protracted. Personnel advice will be sought as appropriate. The responsibility for imposing and lifting a suspension will be the Governing Body's, with appropriate delegation to the Headteacher (in respect of imposing suspension) in accordance with the School Staffing Regulations 2009. The Chair of Governors has responsibility for imposing a suspension on the Headteacher, in consultation with the Director of the Children and Young People's Service.

5.4 A decision to suspend, once taken, must be communicated at the earliest opportunity to the employee, wherever possible through a face-to-face meeting. The information to be communicated (and followed up in writing within 2 working days) should include:

- The fact of suspension without loss of contractual pay and the nature of the allegation (some information may be withheld on the advice of the police or LADO);
- The requirement for the employee to be available within normal working hours during the period of suspension to assist with the investigation;
- Any such conditions as the school may deem it necessary to impose (these may include returning essential school property, refraining from entering named premises or contacting certain parties except through nominated individuals);
- Information for the employee about when the suspension will be reviewed;
- Information about what support is available to the employee (such as access to counselling through EAP services) and the name of the employee's nominated contact at the school;
- Confirmation of any agreed statement to explain their absence to colleagues and parents

5.5 Where suspension lasts longer than 4 weeks it should be reviewed thereafter at regular intervals and the employee kept informed about progress. Equally, where an investigation can find no case to answer, the suspension must be lifted and the employee supported to reintegrate into work as soon as possible.

Investigation

5.6 The nature and extent of any investigation into alleged misconduct will depend on the seriousness and complexity of the matter under consideration. The individual's nominated manager (or the Headteacher, as appropriate) will carry out preliminary enquiries into what facts are known to establish whether or not there appears to be a case to answer. Based on the outcome, either no further action will be taken, or a disciplinary investigation will be initiated. Some allegations will require referral to one or more outside agencies for advice before an internal investigation can be authorised: for example, those involving child protection, financial irregularities or other potential criminal activities. The LADO's guidance will be sought at the earliest opportunity in any case involving allegations of a child protection nature against a member of staff, and the local authority's procedure for investigating and managing such allegations will be followed.

5.7 Consideration should be given to the most appropriate person to conduct the investigation. As a general rule, it will be carried out by a senior member of staff nominated by the Headteacher (or a person appointed by the governing body in the case of allegations against the Headteacher). Sometimes an outside investigator may be used. Guidelines on conducting investigations will be made available to school staff acting as the investigating officer and these should be referred to during this process. Generally, the investigation will include the following elements:

- Ascertaining the relevant information about what occurred and when, interviewing witnesses and obtaining written statements (signed and dated);
- Gathering any other documentary records which may be relevant to the case;
- Interviewing the employee, giving him/her advance warning, as much detail as possible about the allegations and time to prepare.

5.8 Except where the police or LADO have advised otherwise, the employee should be informed of the nature of the allegations against him/her and provided with full details of these, that an investigation is underway (and by whom), and provided with a copy of this procedure.

5.9 An investigatory interview with the employee will be held, giving reasonable advance notice. The employee should be advised that they may be accompanied by a trade union representative or work colleague provided that a lack of availability on the part of the representative does not hinder the progress of the investigation.

5.10 Where possible, investigations should be completed within 4 working weeks. However, in more complex cases, particularly those involving outside agencies, this cannot always be achieved. In such circumstances, the employee will be kept informed about the progress of the investigation and the outcome including if there is no case to answer, will be communicated in writing, at the earliest opportunity.

Gross Misconduct

5.11 Gross misconduct is misconduct serious enough to negate the contract between the employer and the employee, and may, depending on the circumstances, justify summary dismissal (dismissal without notice). Acts which constitute gross misconduct must be very serious. For the purposes of this procedure, examples of gross misconduct include:

- Theft or fraud;
- Physical violence, assault or corporal punishment;
- Sexual offences, including improper relationships with a child or vulnerable adult;
- Deliberate and serious damage to property;
- Serious misuse of the school's property or name;
- Deliberately accessing internet sites containing pornographic, offensive or obscene material;
- Serious insubordination;
- Unlawful discrimination or harassment;
- Bringing the school into serious disrepute;
- Serious incapability at work brought on by alcohol or illegal drugs;
- Causing or risking loss, damage or injury through serious negligence;
- A serious breach of health and safety rules;
- A serious breach of trust and/or confidence;
- Behaviour that is seriously inappropriate and incompatible with the employee's role and position;
- Withholding information or providing false information, to gain and sustain employment or financial advantage;
- A relevant criminal conviction that undermines the school's and/or local authority's confidence in the employee and/or undermines the employee's ability to undertake their work.

This list is illustrative and is not intended to be exhaustive.

6. Disciplinary Action: Circumstances That May Lead to Warnings

6.1 Where the Headteacher (or other senior manager) reaches the conclusion, based on the fact finding or investigation undertaken, that formal disciplinary action may be warranted but that dismissal is not a potential outcome, he/she may convene a formal meeting to consider the case.

Preparing for the Meeting

6.2 The following information must be provided to the employee in writing at least 5 working days' in advance:

- Information about the alleged misconduct;
- The date, time and location of the meeting, and the names of those who will be present (including witnesses, if any);
- The possible consequences for the employee in terms of the procedure;
- Copies of any reports, written evidence or statements;
- Confirmation of the right to be accompanied by a trade union representative or work colleague and to call witnesses and present evidence (the employee may be asked to provide, in advance, copies of any written evidence and the names of his/her representative and any witnesses);
- A copy of the disciplinary procedure (where this has not already been given).

Conducting the Meeting

6.3 The meeting should be conducted in a quiet, uninterrupted location and a note-taker should be available. In order to establish whether or not disciplinary action is warranted, the Headteacher will use the meeting to:

- Reiterate the allegations made and provide the investigating officer an opportunity to present his/her case, and to call witnesses;
- Provide the employee and/or his/her representative with the opportunity to state their case and answer the allegations (including asking questions, presenting their own evidence and calling witnesses);
- Ask any additional questions of witnesses, and allow the employee and/or his/her representative to cross-question witnesses called on behalf of management;
- Establish any special circumstances which should be taken into account during decision-making.

6.4 The meeting should be adjourned if new facts come to light which require further investigation, or if questions need to be put to a witness who is not present.

After the Meeting

6.4 After the meeting, the Headteacher will weigh up all the evidence and decide on an appropriate course of action. Where a disciplinary sanction is deemed appropriate, the Headteacher will proceed to consider the level of warning, as follows:

First Written Warning: Where misconduct is confirmed, the usual response will be to give the employee a first written warning. The period the warning is 'live' should be specified (e.g. 6-12 months). A further act of misconduct during this period would usually result in a final written warning being issued.

Final Written Warning: Where an employee's first incidence of misconduct is of a serious nature, or where a 'live' first written warning is already on file, it may be appropriate to move directly to a final written warning. A final written warning will remain 'live' for a specified period (normally 12-24 months) after which time it will be disregarded for disciplinary purposes.

6.5 The employee should be notified of the decision as soon as possible, and in any event this should be confirmed in writing within 5 working days, including:

- What, if any, disciplinary action is being taken, including an explanation of the decision;
- What improvements in conduct are required and the consequences of a further incidence of misconduct;
- How long the warning (if any) will remain current;
- The right to appeal against any formal disciplinary sanction by confirming this in writing to the Clerk to the Governing Body within 5 working days of receipt of the letter and outlining the grounds for appeal.

7. Disciplinary Action: Circumstances That May Lead to Dismissal

Delegated powers: References within this section to the Governors' Disciplinary Panel may be read as references to the Headteacher in schools where the governing body has formally delegated certain powers to dismiss.

7.1 Where the conduct concerned is sufficiently serious that dismissal could be the outcome of a disciplinary hearing (either because the alleged actions or behaviour may constitute gross misconduct in their own right, or because the individual already has one or more warnings on file in respect of his/her conduct) then a disciplinary hearing should be convened in accordance with the following procedures.

Preparing for the Meeting

7.2 The following information should be provided to the employee in writing at least 10 working days' in advance:

- Full information about the alleged misconduct or gross misconduct;
- The date, time and location of the meeting, and the names of those who will be present (including witnesses, if any);
- The possible consequences for the employee in terms of the procedure, including the fact that dismissal could be an outcome;
- Copies of any reports, written evidence or statements;
- Confirmation of the right to be accompanied by a trade union representative or work colleague and to call witnesses and present evidence (the employee will be required to provide copies of any written evidence and the names of his/her representative and any witnesses at least 2 working days before the hearing);
- A copy of the disciplinary procedure (where this has not already been given).

7.3 An officer of the authority will attend any proceedings in community or voluntary controlled schools where a possible outcome could be dismissal (and, if accorded advisory rights, in foundation and voluntary aided schools). Personnel advice will be called upon in all cases.

Conducting the Meeting

7.4 The meeting should be conducted in a quiet, uninterrupted location and a note-taker should be available. The order of proceedings which will be followed at the hearing can be found at Appendix A/B.

7.5 The meeting may be adjourned if, in the view of the Chair of the Panel, the meeting cannot continue until either new evidence is investigated or a witness, who is absent or whose presence was not envisaged, is required.

After the Meeting

7.6 After the meeting, the Governors' Disciplinary Panel will consider all the evidence presented to them and, on the balance of probabilities, whether or not the allegations are proven. Possible outcomes of the meeting are:

- That the allegations are not proven, or that there is insufficient evidence to support them, and no further action will be taken;
- That the allegations are, on balance of probabilities, proven, and that a disciplinary sanction will be applied.

7.7 In reaching the decision on an appropriate disciplinary penalty, consideration should be given to:

- Any rules provided by the school within its policies and procedures which indicate what the likely penalty will be as a result of that particular form and level of misconduct;
- The penalty imposed in similar cases in the past (personnel input should be sought);
- Whether standards of conduct of other employees are acceptable, and that this employee is not being unfairly singled out;
- The employee's disciplinary record (including current warnings);
- Any special circumstances which might make it appropriate to adjust the severity of the penalty;
- Whether the proposed penalty is reasonable in view of all the circumstances;
- Whether any training or additional support is necessary;
- Whether any adjustments to the work should be considered.

7.8 Where grounds for dismissal have been established, the panel should first discount sanctions which could be put forward as an alternative to dismissal, such as demotion, transfer or a final written warning of extended duration.

7.9 The employee should be notified of the decision as soon as possible, and in any event this should be confirmed in writing within 5 working days, including:

- What, if any, disciplinary action is being taken, including an explanation of the decision;
- Where the outcome does not result in a decision to dismiss, what improvements in conduct are required and the consequences of a further incidence of misconduct;
- How long the warning (if any) will remain current;
- The right to appeal against any formal disciplinary sanction, by confirming this in writing to the Clerk to the Governing Body within 5 working days of receipt of the letter and outlining the grounds for appeal.

7.10A decision to dismiss must be with notice unless the dismissal is for gross misconduct. In community schools and voluntary controlled schools, any decision to dismiss must be in consultation with the LA Schools Personnel Team representative as the LA must ensure that any notice of termination of contract is issued within 14 days.

8. Disciplinary Action: Appeals

8.1 There shall be a right of appeal against any decision to impose a formal disciplinary penalty as a result of disciplinary action taken by the Headteacher or by governors. In exercising this right, an employee must confirm the grounds on which he/she is making the appeal within 5 working days of receipt of the letter which confirms the decision.

Preparing for the Meeting

8.2 The appeal shall be heard by a panel of governors who have had no previous involvement in the case. It should be arranged to take place as soon as practicable, allowing the employee 10 working days' notice of the date. The principles for the postponement and rearrangement of disciplinary hearings as outlined previously in this document will similarly apply to appeals.

8.3 Any additional documents to be used at the hearing (e.g. new statements or evidence) or details of any witnesses to be called should be exchanged by the parties no later than 2 working days before the hearing to allow for preparation time.

Conducting the Meeting

8.4 The purpose of the meeting is for the Governors' Appeals Panel to consider the grounds for appeal and to review the fairness of the outcome of the original meeting. New evidence may be considered at the appeals stage, but no additional allegations may be introduced. The usual format for conducting appeal hearings is included as Appendix C.

After the Meeting

8.5 Within 5 working days of the appeal hearing taking place, the employee should be notified of the outcome and any actions which have been determined. There is no further right of appeal.

8.6 In community and voluntary controlled schools, the local authority is responsible for confirming with the employee the termination of contract and any notice terms which apply, which will be put into effect immediately following dismissal. The local authority must, therefore, be kept informed about the outcomes of appeals against dismissal.

8.7 If a dismissed employee is reinstated on appeal his/her salary will be back-paid to the date of the original termination, minus any monies already paid in respect of notice.

9. Considerations & Specific Circumstances

Scheduling Disciplinary Meetings

9.1 Meetings should be held during the employee's usual working day. Other arrangements can be made, by mutual agreement. School closure periods will generally result in a suspension of the procedure.

9.2 The employee is expected to make every effort to attend at the required time. If this presents serious difficulties, or the employee's representative is unable to attend, an alternative date may be suggested by the employee. This will not be unreasonably declined, provided it does not result in an unacceptable delay (usually a delay of no more than 5 working days will be acceptable). Any subsequent postponement, or a failure of the employee to turn up to the scheduled meeting, is likely to result in the formal disciplinary meeting proceeding and being decided on the basis of written evidence.

Disciplinary Action against Trade Union Representatives

9.3 Where a formal investigation or disciplinary meeting is being arranged in relation to a trade union representative employed by the school, the case must first be discussed with a full-time official from the appropriate union (after obtaining the employee's agreement).

Criminal Charges or Convictions

9.4 An employee will not be dismissed or otherwise disciplined solely because he/she has been charged with (or convicted of) a criminal offence. The case will be considered based on the implications for employment, following an investigation.

Ill-health Absence

9.5 The ill-health absence of an employee during the disciplinary procedure will not result in any delay to formal meetings or appeal hearings, beyond what is reasonable. One attempt to reschedule the hearing will be made where ill-health absence intervenes and it should be explained to the

employee that if he/she is still unable to attend on the rescheduled date that the meeting will proceed in his/her absence. The employee will be offered the alternative options of making a written submission and/or asking their representative to attend the rescheduled meeting to make oral submissions and to question witnesses on their behalf before a final decision is reached.

- 9.6 Absence which appears to have been triggered by the instigation of the disciplinary procedure, particularly if it is likely to be long-term, will usually be referred immediately to Occupational Health to obtain advice on whether the employee is fit to attend a meeting or, if not, when he/she is likely to be fit to attend, in order to inform the decision about how to proceed.

Procedure to be used where there is No Delegation to a Governing Body

- 9.7 In circumstances where there is no Governing Body or where delegation has been removed, the following variations to the procedure shall apply.
- Where there is no Headteacher, the role of the Headteacher or Governors Panel in the procedure will be taken by the Director of the Children and Young People's Service or an officer nominated by him/her.
 - Appeals will be heard by the Director of the Children and Young People's Service or an officer nominated by him/her. The officer will have no previous involvement in the case and will, where practicable, be senior to the officer who first heard the matter.

Grievances

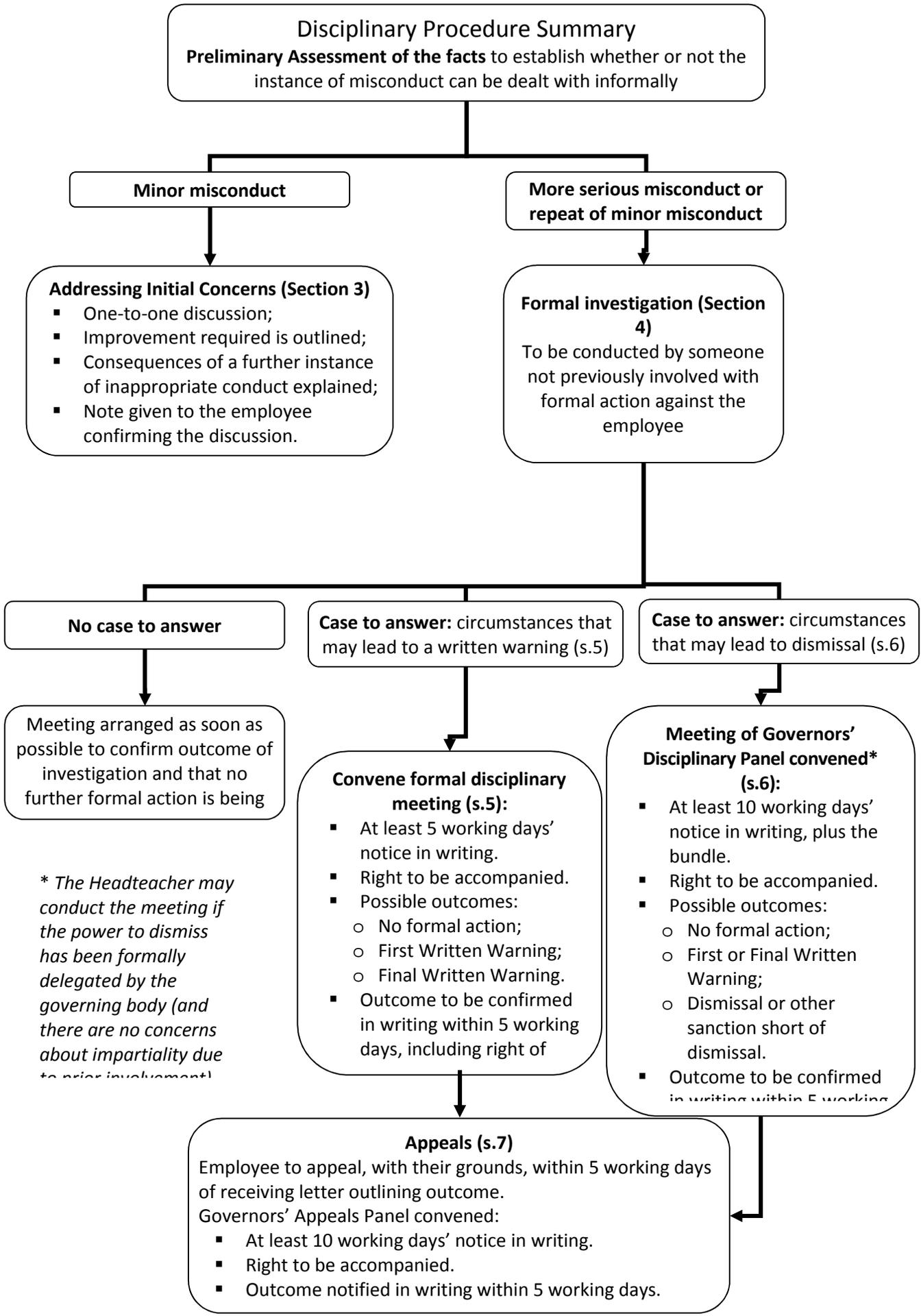
- 9.8 Grievances can run concurrently with any formal procedure which includes an appeals mechanism, but with regard to process matters rather than the substantive matters which can have addressed by rights of appeal. This should not cause delay to the formal procedure.

Record Keeping

- 9.9 A record of documentation relating to disciplinary hearings and appeals will be retained on file, although live warnings will be disregarded after the appropriate period.
- 9.10 Records will be treated as confidential and kept in accordance with the principles of the Data Protection Act 1998.

Referrals to ISA Barred Lists and Professional Bodies

- 9.11 The school adheres to all procedures in relation to misconduct referrals to the relevant barred lists held by the Independent Safeguarding Authority and, where relevant, to other relevant professional bodies.



Equality Impact Assessment

Under the Equality Act 2010 we have a duty not to discriminate against people on the basis of their age, disability, gender, gender identity, pregnancy or maternity, race, religion or belief and sexual orientation.

This policy has been equality impact assessed and we believe that it is in line with the Equality Act 2010 as it is fair, it does not prioritise or disadvantage any pupil and it helps to promote equality at this school.

Monitoring the Effectiveness of the Policy

The practical application of this policy will be reviewed annually or when the need arises by the coordinator, the Headteacher and the nominated governor.

A statement of the policy's effectiveness and the necessary recommendations for improvement will be presented to the Governing Body for further discussion and endorsement. (See Policy Evaluation).

This policy was reviewed and endorsed by the Full Governing Body of The Devonshire Hill Nursery and Primary School on Tuesday 20th December 2016.