Together we care, Together we learn, Together we achieve.
Gyda'n gilydd rydym yn gofalu, dysgu a chyflawni.



Ysgol Gynradd
COEDPENMAEN
Primary School

Staff Discipline, Conduct,

Capability and Grievance Procedures Policy

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MANAGING STAFF IN SCHOOLS

STAFF DISCIPLINARY PROCEDURE

This policy is available in Welsh. Please see Rheoli Staff Mewn Ysgolion Gwiethdrefn Disgyblu Staff

Contents

	Page
Introduction	**4**
Purpose and scope	**4**
Matters outside the scope of the procedure	**5**
Legal Framework	**5**
Principles	**6**
Confidentiality	**8**
Informal discussion with the Headteacher – outside of the disciplinary procedure	**8**
FORMAL PROCEDURE FOR LESSER MISCONDUCT	**9**
The investigation	**9**
Fast Track	**10**

The hearing before the Headteacher or chair of governors	**11**
Informal action	**12**
Warnings	**12**
Appeals against formal warnings	**14**
Referral for consideration under procedures for gross misconduct	**14**
FORMAL PROCEDURE FOR GROSS MISCONDUCT **(Where the allegation does not relate to child protection issues)**	**15**
The investigation	**16**
The investigation report	**16**
FORMAL PROCEDURE FOR GROSS MISCONDUCT (Where the allegations involves issues of child protection**)**	**17**
Referral for an independent investigation	**18**
The independent investigation	**19**
The independent investigation report	**19**
Appointment of independent non-governor member on staff disciplinary and dismissal committees and staff disciplinary and dismissal appeals committees	**19**
FORMAL HEARING PROCEDURE FOR ALL GROSS MISCONDUCT AND CASES WHICH COULD RESULT IN DISMISSAL	**20**

The disciplinary hearing	**20**
Decision reached after the hearing has taken place	**21**
Appeals against disciplinary hearing outcomes	**21**
Suspension	**23**
Absence due to illness	**24**
Supply of information	**25**
Summary	**25**
The Annex below include templates for meetings and other documents that have been consulted at CSC regional level. They are guidance documents only to support the procedure and may be amended to reflect local authority process/circumstances.	
Annex 1 - Examples of lesser misconduct	**27**
Annex 2 - Examples of gross misconduct	**28**
Annex 3 - Fast track form	**29**
Annex 4 – Timescale – lesser misconduct	**32**
Annex 5 – Timescale – gross misconduct/possible dismissal	**33**
Annex 6 – Template for conducting lesser misconduct hearing	**34**

Annex 7 – Template for conducting dismissal hearing	**36**
Annex 8 – Template for conducting an appeal hearing	**39**
Annex 9 – Suspension checklist	**42**

Name of school: Coedpenmaen Primary School

Introduction

1This procedure is based on the model procedure contained within the Welsh Government circular 002/2013 and has been adopted by the governing body of Coedpenmaen Primary School.

2. This model procedure presupposes that a delegation is in place allowing the Headteacher to deal with allegations constituting lesser misconduct. Where this is not the case, suitable adjustments will need to be made.

Purpose and Scope

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

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

5. This disciplinary procedure is intended to help and encourage all employees to achieve and maintain acceptable standards of conduct and to make clear to all concerned the procedure to be followed by this school and governing body to address concerns about an individual's behaviour or conduct and any subsequent disciplinary action that may be taken.

6. The aim of the procedure is to ensure consistent and fair treatment for all employees within the school.

7. The procedure should not be viewed primarily as a means of imposing sanctions, but rather as a way of helping and encouraging improvement amongst staff whose conduct is unsatisfactory.

8. This staff disciplinary procedure applies to school staff (with the exception of school-based staff employed by the Local Authority (LA), e.g. cleaners, catering staff, supply staff provided by agencies and any self-employed supply staff). It is important that all employees are aware of and understand this policy and know what is expected of them.

9. It is equally important that employees understand what will happen if they do not comply with the policies and procedures of the School or with any professional Codes of Conduct applicable, for example the Code of Professional Conduct for registrants with the Education Workforce Council.

10. Where required throughout this procedure the chair of governors will take appropriate action unless they are compromised, in which case the vice chair of governors will take over the role and actions normally carried out by the chair. If the vice chair is also compromised the governing body will have to select another governor who is not compromised and minute this decision.

Matters outside the Scope of the Procedure

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

- where employment is terminated:
  - by reason of redundancy
  - by an employee reaching the end of a temporary or fixed-term contract

- where there are performance issues due to capability (in such cases the capability procedure will be used)

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

· termination during or at the end of a probationary period, whether or not extended beyond its originally specified duration. This applies to support staff only

· matters which ought to be dealt with through the governing body's general complaints procedure and which do not raise staff disciplinary issues for individual members of school staff.

The Legal Framework

12. This policy and procedure takes account of the following guidance, regulation and legislation:

Welsh Government Disciplinary and Dismissal Procedures for School Staff 002-2013
The Staffing of Maintained Schools (Wales) Regulations 2006
The Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007
The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2009
The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014
Government of Maintained Schools (Wales) Regulations 2005 (and amendments)
The Employment Rights Act 1996
The Employment Relations Act 1999
The Education Act 2002 (sections 35-37)
Trade Union and Labour Relations (Consolidation) Act 1992
ACAS code of Practice 1 - discipline and grievance procedures
Public Interest Disclosure Act 1998
Data Protection Act 2018
General Data Protection Regulations 2018

This list is subject to any amendments required as part of legislative process.

Principles

13. This procedure is a way of helping and encouraging improvement for employees whose conduct is unsatisfactory and is not to be viewed as simply a means of imposing sanctions or punishment.

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

15. All timescales in the policy refer to Monday – Friday in term time only, unless otherwise agreed by all parties. All timescales included in this staff disciplinary procedure have

been agreed by the governing body and consultation with the recognised trade unions. Depending on the circumstances of the case, there may be the need for flexibility with these timescales, e.g. where there is a large amount of paperwork or unavailability of staff.

16. The principles in summary are as follows:

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

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

iii. An investigator will be impartial and will produce reports based on fact. If there are reasonable objections by the employee to an investigator relating to their inability to act impartially, or their competence for the role, the investigator will be changed. The employee must clearly outline their reasons for objecting in writing to the chair of governors within 5 days of being notified. The decision as to whether objections are reasonable, will rest with the chair of governors who will confirm the decision, with reasons, in writing within 5 days. During this period, the investigation will be put on hold. The employees language choice need to be respected during this process. Employees are free to make representations/respond in Welsh if they wish to do so.

iv. Where it is decided to deal with a disciplinary matter through lesser misconduct procedures, examples of which are shown in Annex 1, the employee will be informed of the allegation against them, the date, time and place of any disciplinary hearing and will be given the opportunity to defend the allegation at the hearing before the headteacher, or the chair of governors for allegations against the headteacher. The employees language choice need to be respected during this process. If an employee wishes for the hearing to be conducted in Welsh they should give 5 days notice prior to the hearing. Absence of any notification will result in the hearing being conducted in English.

v. The employee will have the right to be accompanied by a work colleague or trade union representative during the investigation, the disciplinary hearing and the appeal hearing. Legal representation is not permitted at any stage of the procedure.

vi. Disciplinary action will not be taken against a recognised trade union official until the case has been discussed with a full time official of the

trade union providing the employee has consented to disclosing this information.

vii. Where there are reasonable grounds to suspect there has been misappropriation of school funds or other financial impropriety, the Section 151 Officer, must be informed. Under the Authority's Financial Procedure Rules, any matter that is considered to be evidence of a criminal act may be reported to the Police.

viii. Where there are reasonable grounds to suspect there has been misappropriation of Council funds or legal impropriety, the Monitoring Officer must be informed. Under the Authority's Procedure Rules, any matter that is considered to be evidence of a criminal act may be reported to the Police.

ix. An employee will not be dismissed for a first breach of discipline in cases of lesser misconduct (examples of lesser misconduct shown in Annex 1). However, should this lesser misconduct be repeated it may result in the employee being dismissed for misconduct as they are not moderating or amending their behaviour/conduct. This should be made clear to the employee when discussing behaviour and the improvements/changes expected.

x. In cases where the allegations could amount to gross misconduct, (examples shown in Annex 2) or possible dismissal following a final written warning, the employee will be informed of the allegation, date, time and place of any hearing before the governing body staff disciplinary and dismissal committee (subject to mutual agreement), the purpose of the hearing and the stage reached in the disciplinary procedure. The employees language choice need to be respected during this process. If an employee wishes for the hearing to be conducted in Welsh they should give 5 days notice prior to the hearing. Absence of any notification will result in the hearing being conducted in English.

xi. The employee will be provided with the composition of the staff disciplinary and dismissal committee prior to a hearing. If there is genuine evidence that calls into question the ability of any committee member to act impartially in the circumstances of the case, the employee has the right to object. The objection must be clearly outlined in writing. The chair of governors will be responsible for deciding if the objection is valid and decide appropriate course of action. The decision and rationale will be provided to the employee in writing. If the objection is accepted, the chair of governors may contact governors on

the reserve list previously agreed by the governing body in priority order. The employees language choice need to be respected during this process. Employees are free to make representations/respond in Welsh if they wish to do so.

xii. If a situation arises involving allegations of tainting against a substantial number of the members on the staff disciplinary and dismissal/appeals committee the governing body should consider reviewing the composition of the respective committees; alternatively, or in the event of insufficient number of governors the chair of governors can decide to include non-governor members on the committee, in a non-voting capacity to assist with a balanced consideration of matters.

xiii. The employee will be provided, prior to the hearing, with the name of the presenting officer, the names of persons who will be present at the hearing and in what capacity, full details of the allegations, an outline of the evidence to be presented with supporting evidence, the names of any witness to be called and copies of written statements.

xiv. Dismissal for gross misconduct will take place immediately following the decision of the staff disciplinary and dismissal committee or following the outcome of any appeal by the employee if appeal is lodged. Dismissal under these circumstances will be without notice or payment in lieu of notice.

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

xvi. Investigations and hearings will be conducted (all or part) in English or Welsh, or with access to interpretation, at the request of the employee.

Confidentiality

17. All proceedings under this procedure shall be held in private and shall be confidential.

18. Records are confidential and must be held in a confidential and secure manner. The issues raised under this procedure are often particularly sensitive, and it is essential that information is kept in accordance with the Data Protection Act 2018 and General Data Protection Regulations.

19. Members of the governing body need at all times to treat any information that they received regarding disciplinary allegations against members of staff with the utmost confidentiality. Governors who have knowledge of evidence or potential evidence must not discuss this with any fellow governors or anyone else outside the disciplinary process.

20. The requirement for confidentiality applies to all parties involved in any disciplinary process.

Informal discussion with the headteacher/line manager – outside of disciplinary process

21. There will be occasions when it is appropriate for an employee's actions to be discussed with them, on a one to one basis, as part of normal line management arrangements and without recourse to the formal procedures. In these circumstances the employee will be given guidance and support from their line manager. This could take the form of advice, counselling, training instruction, coaching or other managerial strategies as is appropriate. Such activity may be delegated to a member of the senior management team. In respect of the headteacher however, this would be carried out by the chair of governors with advice and support from the LA Human Resources (HR) advisor.

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

- what they need to do in relation to their conduct
- how future conduct will be monitored and reviewed
- the period of time over which conduct will be monitored – this must not exceed 3 months
- that formal action might be taken if the conduct in questions recurs.

23. Where discussions and support structures which have been put in place to help the employee do not lead to the necessary improvement or the relevant changes in conduct, within the agreed timescale, the employee will normally be advised in writing of further action to be taken, which may be formal. Any such correspondence provided to the employee following these discussions needs to be issued in the language preference of the employee, welsh or English.

FORMAL PROCEDURE FOR LESSER MISCONDUCT (Examples of which are shown at Annex 1)

24. Responsibility for disciplinary matters where the allegation could constitute lesser misconduct is delegated by the governing body to the headteacher.

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

The investigation

26. As soon as the alleged breach of discipline has been brought to the attention of the headteacher or the chair of governors (in the case of the headteacher) a full investigation must be carried out. The investigation may be undertaken by a member of the senior management team (unless the investigation is about the headteacher) or an independent person, e.g. officer from the LA, diocesan authority, governor from another school or external source (the cost of the investigation will be met from the schools budget). In order to expedite the process, the investigation may continue during school closure subject to agreement/availability of all staff concerned. The investigating officer will advise the employee of the likely duration of the process and advice of any extensions.

27. The employee who is the subject of the alleged breach of discipline will be informed in writing of the allegations to be investigated.

28. The employee will be given the opportunity to respond to the allegation(s) and will have the right to be to be accompanied by a work colleague or a trade union representative at an investigation interview meeting and will be given 10 days' notice to attend, unless otherwise agreed. The employees language choice needs to be respected during this process and employees are free to make representations/respond in welsh if they wish to do so.

29. The employee and all witnesses will be interviewed and requested to sign a copy of their statement. Notes will be taken at all investigation meetings and a copy of relevant documents given to the parties involved. All notes of the meetings need to be issued in the language preference of the employee – welsh or english. If there are any factual inaccuracies in the notes, these should be noted in the documentation. No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected.

30. Once the investigation has been concluded, the investigating officer will present the findings to the headteacher or the chair of governors (in the case of a headteacher) in a written report. The report will be provided in the language choice of the Headteacher or Chair of Governors. This will be done as soon as practicable after the conclusion of the investigation. The investigation report will be based on matters of fact and not opinions and will not contain any conclusions or recommendations.

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

- there is no evidence to support the allegation and no further action will be necessary
- matters can be dealt with by informal discussion (refer to paragraphs 21-23 of this procedure)
- there appears to be sufficient evidence for a hearing before the headteacher or chair of governors (if the headteacher is to be disciplined) and the possible outcome may be sanctions short of dismissal
- there appears to be sufficient evidence that the allegation constitutes gross misconduct and requires full consideration by the staff disciplinary and dismissal committee.

32. Where dismissal could result because an employee is currently on a final written warning, the employee must be informed of this and the case must be referred to the staff disciplinary and dismissal committee.

Fast tracking process – lesser misconduct only

33. The fast track disciplinary procedure is applicable for incidents / misconduct which would normally result in no higher than a first written warning and must be agreed with the employee. It allows for matters to be dealt with in a timely manner.

34. It is applicable only where the employee has admitted in full all allegations made against them at either at an initial meeting with headteacher or with the investigating officer early in the investigation.

35. This process may not require an appointment of an investigating officer (depending when the fast track procedure is first instigated) and will not require a full investigation if the employee admits in full all allegations at an early stage in the process. A fast track decision meeting should be held as soon as possible after consent to proceed has been received from all parties. Any delay to the procedure should be for exceptional circumstances only. The fast track decision meeting is the opportunity for the employee and/ or companion to put forward comments and statements including mitigating circumstances. No witnesses will be called. The employee's language choice needs to be respected during this process. If the employee wishes for the hearing to be conducted in welsh they should give 5 days notice prior to the hearing. Absence of any notification will result in the hearing being conducted in english.

36. The employee will have a right of appeal against the sanction.

37. The fast track disciplinary procedure is not suitable for:

a) Circumstances where there is potential gross misconduct

b) Cases of repeat misconduct where the employee has already received a written warning

c) Any matters that include a safeguarding issue, a Police matter or fraud / financial impropriety.

38. Where it would appear that a fast track disciplinary procedure may be applicable, the headteacher, the employee and their trade union representative must consent to a fast track disciplinary process in writing by completing the fast track consent form (Annex 3). It is recommended that HR advice is sought when considering use of the fast track process.

39. It is **not acceptable** for a headteacher/chair of governors to actively seek new evidence with the sole intention of making a fast track procedure ineligible.

Lesser misconduct - the hearing before the headteacher or chair of governors

40. Conduct that is considered to fall within the scope of lesser misconduct has been delegated to the headteacher. The chair of governors will deal with lesser misconduct allegations against the headteacher. A hearing will take place with the headteacher or the chair of governors (in respect of the headteacher) supported by advice from the LA or diocesan authority (where appropriate). Should the chair of governors be compromised this role should be delegated to the vice chair (providing the vice chair is not compromised).

41. In many cases lesser misconduct can be dealt with in the first instance by informal action. However, there may be occasions when it will be appropriate to give an employee a first or second written warning. The sanctions used will depend on the conduct issues under consideration.

Wherever possible a mutual date for the hearing will be agreed with the employee, and their trade union representative or work colleague. The employee's language choice needs to be respected during this process. If the employee wishes for the hearing to be conducted in welsh they should give 5 days notice prior to the hearing. Absence of any notification will result in the hearing being conducted in english.

42. The employee will be sent a copy of these procedures and a copy of the investigation report, including all interview notes, and will be informed in writing of the following information giving a minimum of 10 days' notice of the hearing:

- the nature of the alleged misconduct
- the stage reached in the procedure
- the date, time and place for the hearing
- the possible outcome of the hearing
- their right to:
  - produce written statements which will be circulated to all parties in advance of the hearing (must be given within 5 days of receipt of letter)
  - ask questions relating to any written statements so produced
  - state their case in person and/or through a representative
  - produce witnesses
  - be accompanied by a trade union representative or work colleague.

All correspondence needs to be issued in the language preference of the employee – welsh or english.

43. The suggested timescales will follow that set out in the flowchart for lesser misconduct in Annex 4.

44. The process for conducting the hearing is shown in Annex 6.

45. There are six possible outcomes/sanctions following on from such a hearing which must be confirmed in writing:

- there is no evidence to support the allegation so no further action necessary
- informal action
- first written warning
- second written warning
- final written warning
- referral to a disciplinary hearing before the governing body's staff disciplinary and dismissal committee.

All correspondence needs to be issued in the language preference of the employee – welsh or english.

46. Further advice on each of these sanctions is set out in paragraphs 48-60. The sanctions an employee could receive will be in line with the nature and severity of the allegation. However, there may be occasions where an employee has had repeated lesser misconduct allegations against them and has not altered or improved their behaviour. This may result in a more severe sanction being given, e.g. a final written warning. Alternatively, the lesser misconduct behaviour may be serious enough to warrant an immediate final written warning instead of any other sanction.

Informal action

47. As a result of the hearing, the headteacher or the chair of governors (in respect of the headteacher), with support from the LA HR advisor, may deal with matters by giving advice, counselling, training instruction, coaching or other managerial strategies as is appropriate. Such activity may be delegated to a member of the senior management team. In respect of the headteacher however this will be carried out by the chair of governors with advice and support from the LA HR advisor. The aim of this action is to ensure that problems are discussed so as to encourage and help the employee to improve. The employee needs to understand:

- what they need to do in relation to their conduct
- how future conduct will be monitored and reviewed
- the period of time over which conduct will be monitored – this must not exceed 3 months
- that formal action might be taken if the conduct in question recurs.

It may be beneficial to develop an action plan outlining agreed action.

Warnings

48. Where the employee's conduct is satisfactory for the specified period of a warning such warnings will be expunged from the employee's file after a specified period. Suitable periods would be:

- first written warning – 3 months
- second written warning – 6 months
- final written warning –12 months.

First written warning

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

50. A first written warning will be confirmed in writing within 3 days of the hearing, and will state:

- the nature of the misconduct
- the stage reached in the procedure
- what is expected for the future
- the time limit required for improvement
- the right to appeal, the time limit within which the appeal should be made, and how the appeal should be made.

The warning letter needs to be issued in the language preference of the employee – welsh or english.

The decision to share copies of any documentation associated with the hearing with their trade union representative or work colleague, will rest with the employee.

51. The employee will be required to indicate receipt of the written confirmation of the first written warning. A record of the warning will be placed on the employee's file. Where the employee's conduct is satisfactory for the specified period following a first written warning, such warnings shall be expunged from their record and therefore cannot be referred to again once spent.

Second written warning

52. If at the conclusion of the hearing it is decided to proceed with disciplinary sanction by way of a second warning, the headteacher or the chair of governors (in respect of the headteacher) will issue the warning to the employee in the presence of their trade union representative or work colleague if accompanied.

53. The warning will be confirmed in writing to the employee within 3 days of the hearing and will state:

- the nature of the misconduct
- the stage reached in the procedure
- what is expected for the future
- the time limit required for the improvement

· the right to appeal, the time limit within which the appeal should be made, and how the appeal should be made.

The warning letter needs to be issued in the language preference of the employee – welsh or english.

The decision to share copies of any documentation associated with the hearing with their trade union representative or work colleague, will rest with the employee.

54. A record of the warning will be placed on the employee's file. Where the employee's conduct is satisfactory for the specified period following a second warning the warning will be expunged from their record and can therefore not be referred to again once spent.

Final written warning

55. A final written warning may be issued where lesser misconduct recurs despite attempts by senior managers to support the employee and improve their behaviour or conduct. A final written warning may also be issued where a single instance of proven misconduct is considered to be of a serious nature but not warranting gross misconduct.

56. Final warnings may be given following a hearing before the headteacher or the chair of governors (in respect of the headteacher) who will issue a final written warning to the employee in the presence of their trade union official or work colleague.

57. The employee will be issued with a final written warning within 3 days of the hearing which will state

· the nature of the misconduct
· the stage reached in the procedure
· what is expected for the future
· the time limit required for the improvement
· that the next stage will be dismissal
· the right to appeal, the time limit within which the appeal should be made, and how the appeal should be made.

The warning letter needs to be issued in the language preference of the employee – welsh or english.

58. A record of the warning will be placed on the employee's file. Where an employee's conduct is satisfactory for the specified period 12 months following a final warning, such warning will be expunged from their record and cannot be referred to again once spent.

59. At the end of the period of the final written warning, if the employee's conduct has not improved, the matter can be referred to the staff disciplinary and dismissal committee for a formal hearing which could result in dismissal. However if there is a further breach of conduct at any time during the review period, following any necessary investigation, the matter can be referred to the staff disciplinary and dismissal committee for a formal hearing which could result in dismissal. The employee must be informed of this at the time the final written warning is issued.

Appeals against formal warnings

60. There is a right of appeal against any disciplinary sanction (refer to paragraphs 103-110 of this procedure for information on appeals). The deadline for lodging the appeal is 5 days from receipt of the outcome letter as set out in the flowchart at Annex 4. The employee is welcome to make representations/respond in welsh if they wish to do so.

Referral for consideration under procedures for gross misconduct (Examples of which are shown at Annex 2)

61. There may be rare occasions where, at the end of an investigation into lesser misconduct matters, the evidence in the investigation report indicates that the behaviour constitutes gross misconduct. If the headteacher (or chair of governors in respect of the headteacher) with support from the LA or diocesan officer or another agreed appropriate person, concludes that this is the case, a referral for formal disciplinary action for gross misconduct may be justified. In these circumstances the employee will be informed of the decision made, provided with a copy of the investigation report, including all interview notes, and that the matter is being referred to the staff disciplinary and dismissal committee for their consideration. The most appropriate way for an employee or headteacher to be informed of this decision will be through a meeting with the headteacher or chair of governors (in respect of the headteacher). As this is likely to be a rare occurrence this meeting does not form part of the lesser misconduct process. All correspondence needs to be issued to the employee in their language preference – welsh or english.

FORMAL PROCEDURE FOR GROSS MISCONDUCT (where the allegation does not relate to child protection issues) Examples in Annex 2

62. The term gross misconduct is used to mean an act, or omission, or a series of actions or omissions by an employee that fundamentally repudiates the contract of employment. All gross misconduct allegations will be subject to a formal disciplinary hearing before the governing body's staff disciplinary and dismissal committee following appropriate investigation process. The staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee shall each have a minimum of three governors. The staff disciplinary and dismissal appeals committee must have at least the same number of governors as the staff disciplinary and dismissal committee. No governor will be a member of both committees. Each committee will be supported by a different HR advisor.

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

64. Gross misconduct allegations are usually sent to the headteacher or chair of governors (if the allegation is about the headteacher). On receipt of an allegation the headteacher or chair of the governors will make an initial assessment of the situation (but not investigate) to determine the nature and circumstances of the allegation, i.e. witnesses, when it occurred, etc. If the conclusion is that the allegation may be true, the employee will be informed that the formal disciplinary process is being engaged.

65. The employee should be advised to contact their trade union.

66. The headteacher or chair of governors will arrange for the allegation to be thoroughly and fairly investigated. At this point, the employee may be suspended by the headteacher or chair of governors, on full pay and in line with the governing body's agreed procedure and subject to conditions outlined in paragraphs 111-125. It is important that alternatives to suspension are carefully considered and must not be an automatic option (See Section on Suspension at paragraphs 111-125). Either the headteacher and chair of governors can suspend staff but only the governing body can end a suspension. Suspensions will be reviewed by the headteacher or chair of governors at intervals set out in this disciplinary procedure, every 25 days and the outcome will be confirmed to the employee. Any confirmation in writing of this needs to be issued to the employee in their language preference – welsh or english.

67. However, if after making the initial assessment of the allegation the conclusion of the headteacher or chair of governors (in respect of an allegation against the headteacher) is that beyond any doubt it is impossible for the allegation to be true, the headteacher or chair of governors may take no further action. The employee will be informed immediately of this decision and advised to contact their trade union representative. Any

confirmation in writing of this needs to be issued to the employee in their language preference – welsh or english.

The investigation

68. As a possible outcome for gross misconduct hearings is dismissal, it is important that investigations into gross misconduct allegations are unbiased and thorough. Consequently, and wherever possible, all investigations will be carried out externally by an appropriate person who has no connection or involvement with the case and has the relevant skills.

69. The governing body may engage, for example, LA or diocesan officers, ex-headteachers or ex-LA officers or a governor from another school who are impartial and have no connection with the case. Only in exceptional circumstances would the chair of governors, employees or governors be asked to investigate gross misconduct cases.

70. The chair of governors is responsible for controlling and managing all aspects of the disciplinary process including the engagement of an appropriate investigator.

The employee has the right to object to an investigator if they have reasonable doubts as to their ability to act impartially. The chair of governors will determine the validity of the objection (refer to section 16 iii).

71. Prior to the investigation, the employee will be informed in writing of their rights under the school's disciplinary procedure, including the right to be accompanied by a trade union representative or a work colleague, at all meetings held in connection with the disciplinary matter. This confirmation in writing needs to be issued to the employee in their language choice – welsh or english.

72. Notes will be taken of the meeting and a copy given to the employee and their trade union representative following the meeting. All notes of meetings need to be issued to the employee in their language choice – welsh or english. No undertaking of confidentiality can be given to witnesses; however the overall confidentiality of the disciplinary process will be respected.

The investigation report

73. The report, once completed, will be given to the headteacher and the chair of governors (or chair of governors and another governor in respect of investigations into the conduct of the headteacher). . The report will be provided in the language choice of the Headteacher or Chair of Governors, [who will consider the findings and decide whether, based on the findings of the report:

- there is no evidence to support the allegations and the matter is closed
- the conduct does not amount to gross misconduct but to lesser misconduct which can be dealt with by the headteacher/chair of governors in line with this procedure
- based on evidence, the conduct does amount to gross misconduct and is required to be referred to a staff disciplinary and dismissal committee hearing.

74. This discussion and decision will be minuted by the clerk. The employee will be advised of the outcome of the investigation as soon as possible in writing by the clerk to the staff disciplinary and dismissal committee. This confirmation in writing needs to be issued to the employee in their language choice – welsh or english.

75. A copy of the investigation report, including all interview notes, will be given to the employee against whom the allegation has been made, within 5 days of the decision, if the case is to proceed as outlined above. All correspondence will be issued to the employee in their language choice – welsh or english.

FORMAL PROCEDURE WHERE THE ALLEGATION RELATES TO CHILD PROTECTION ISSUES – RECEIPT OF AN ALLEGATION

76. Allegations involving issues of child protection will be brought immediately to the attention of the headteacher or the chair of governors (if the allegation is in respect of the headteacher) and the designated child protection officer in the school.

77. The headteacher or chair of the governors (in respect of the headteacher) will make an initial assessment (but not investigate) to determine the nature and circumstances of the allegation, i.e. witnesses, when it occurred, etc. If the conclusion is that beyond any doubt it is impossible for the allegation to be true the matter will be discussed by the chair of governors, headteacher and the lead child protection officer in the LA, to determine whether a referral to social services and/or the police is required. If the allegation is about the headteacher the chair of governors will have the same discussion without the headteacher being present. If the conclusion of all parties is that it is impossible for the allegation to be true the headteacher or chair of governors may not take any further action against the employee and no referral to the statutory authorities is required. If there is any doubt and agreement between these parties cannot be reached, the matter will be referred to the statutory authorities.

78. If however, the initial assessment by the headteacher and/or chair of governors (if the allegation is about the headteacher), in discussion with the LA lead child protection officer, indicates that an allegation might be true, there will be an immediate referral to the statutory authorities (social services and/or the police), in accordance with local child protection procedures.

79. The employee will normally be informed of the decision, as agreed by the statutory authorities that a referral is being made.

However, there may be some circumstances where this will not be appropriate, for example to avoid evidence being tampered with or if there is concern about the employee's wellbeing. If the employee is advised of the referral and it is deemed appropriate, the headteacher or chair of governors (if the allegation is about the headteacher) may suspend the employee, on full pay, in line with the governing body's agreed procedures and subject to conditions outlined in paragraph 111-127. Either the headteacher or chair of governors can suspend an employee but only the governing body can end a suspension. Suspensions will be reviewed every 25 days and the outcome reported to the employee and the governing body under 'confidential matters'.

80. After the statutory authorities (e.g. the police and social services) have completed their consideration of the allegation, it will be referred back to the headteacher and chair of governors or chair of governors and another governor (if allegation is about the headteacher) to consider if the matter needs to be dealt with under the staff disciplinary process. This will happen even if the statutory authorities take the decision not to pursue a criminal investigation.

81. The headteacher and chair of governors or the chair of governors and another governor (if the headteacher is the subject of the allegation), with advice from the school's designated child protection officer and LA lead child protection officer as appropriate, will discuss:

- whether the allegation is of a child protection nature and the behaviour constitutes gross misconduct which requires it to be independently investigated prior to any disciplinary hearing
- whether there is evidence of misconduct which should be treated as lesser misconduct
- whether no further action is required.

82. If there is any doubt at all, or agreement cannot be reached as to whether the matter is a child protection issue, the allegation will be independently investigated.

Referral for an independent investigation

83. The requirement in education law is that the governing body must refer child protection allegations for independent investigation. In order to make the process easier this task has been delegated to the chair of governors and the governing body's decision to this effect has been minuted. This must be done prior to the hearing of any disciplinary proceedings. The independent investigator's contact in relation to the running of the investigation will be with the governing body (e.g. the chair of governors) and not the LA or headteacher. The purpose of an independent investigation is to enable the governing body to comply with the law and to provide members of the staff disciplinary and dismissal committee with a thorough and unbiased investigation report, produced by persons with appropriate skills and training, to enable them to reach fair and balanced decisions.

84. A referral for independent investigation should be made in the following circumstances:

- Where the pupil has suffered or is likely to suffer significant harm
- Where the pupil has not suffered or is not likely to suffer significant harm but the allegation relates to inappropriate behaviour or poor safeguarding practice which may constitute gross misconduct
- Where a child protection case had gone to court whether or not a criminal conviction has been secured
- Where a child protection case has been referred to the Crown Prosecution Service but not resulted in a prosecution
- Where the police and social services have concluded that there is insufficient evidence to take the issue forward through the criminal justice system but, it is maintained that the pupil has suffered or is likely to suffer significant harm.

85. The independent investigator will be appointed as soon as the chair of governors makes a referral; however, the independent investigator will not commence the investigation until after the statutory authorities have completed their investigation. Once the statutory authorities have completed their investigation the independent investigator will then be able to conduct their investigation.

The independent investigation

86. The independent investigator will set the parameters of the investigation and interview all witnesses in order to ensure a completely impartial and unbiased investigation is carried out. The report will not contain any conclusions and recommendations as these are matters for the committee to determine.

The independent investigation report

87. The report, once completed, will be given to the headteacher and chair of governors, or chair of governors and another governor in respect of investigations into the conduct of the headteacher. . The report will be provided in the language choice of the Headteacher or Chair of Governors. They will consider these findings and decide whether, based on the findings of the report:

- there is evidence to support a decision that the child protection allegations are well-founded, that they constitute gross misconduct behaviour and that they will require a disciplinary hearing before the staff disciplinary and dismissal committee
- there is evidence to support a decision that the allegation constitutes lesser misconduct behaviour which can be dealt with by the headteacher or chair of governors (if the allegation is against the headteacher)
- there is no evidence to support the child protection allegation and no further action needs to be taken against the employee.

88. If there is any doubt at all, or agreement cannot be reached by the headteacher or the chair of governors, or the chair of governors and another governor in respect of the headteacher, the matter will be referred for a full hearing before the staff disciplinary and dismissal committee.

89. The employee will be informed of the decision as soon as reasonably practicable. The employee will be advised to seek advice from their trade union representative. Confirmation of this decision needs to be issued in the language preference of the employee – welsh or english.

90. If progressing to a hearing, the chair of governors will ensure that all relevant papers, including the full investigation report, are sent to the employee, the person presenting the case against the employee, and members of the staff disciplinary and dismissal committee within the timescale in Annex 5. All correspondence needs to be issued to in the language preference of the employee – welsh or english.

91. No evidence will be removed by any party from the investigation report.

Appointment of independent non-governor member on staff disciplinary and dismissal committees and staff disciplinary and dismissal appeals committees dealing with child protection allegations

92. As required in law the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee will have at least two governors plus an independent non-governor with voting rights. The appeal committee will have the same number of governors as the first committee. The governors, including the independent

non-governor on the appeal committee will be different from those on the first committee.

FORMAL HEARING PROCEDURE FOR ALL GROSS MISCONDUCT AND CASES WHICH COULD RESULT IN DISMISSAL

The disciplinary hearing

93. A disciplinary hearing will be held as soon as it can be arranged in line with timescale in this procedure and those set out in the disciplinary timescales flowchart at Annex 5 by the clerk to the staff disciplinary and dismissal committee even if the employee has subsequently resigned or is on sick leave.

94. Wherever possible a mutual date for the hearing will be agreed with the employee, and their union representative or work colleague,

95. The employee will be given minimum 15 days' notice and be informed in writing in the language preference of their choice – welsh or english; of:

- the date, time and place for the disciplinary hearing, seeking agreement to dates from members of the committee, the employee, any witnesses appearing in person and the LA and diocesan authority (if appropriate)
- the purpose of the hearing and the range of possible outcomes
- the right of the employee to be accompanied by a trade union representative or work colleague
- the membership of the staff disciplinary and dismissal committee and dismissal appeal committee
- the name of the person presenting the case against the employee
- the full details of the allegation, the evidence to be presented and the names of any witnesses to be called, etc
- who is to be the advisor to the staff disciplinary and dismissal committee
- the date by which all relevant documentation should be received by the clerk - within 10 days of receipt of the hearing invitation

96. The clerk will arrange for the documentation from both parties (timescales for submission in Annex 5) to be distributed to the employee prior to the hearing, including up-to-date procedures. All documentation must be issued in the language preference of the employee – welsh or english.

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

circumstances of the case. The chair of governors will determine the validity of the objection (refer section 16 xi).

At the hearing

98. The hearing will be conducted in a fair manner with all parties having the opportunity to present evidence and call and question witnesses. There will also be an opportunity for the presenting officer and the employee and/or their trade union representative to summarise their case. The clerk to the governing body will be present to record the hearing in detail. The suggested procedure to be followed at the hearing is set out in Annex 7. If an employee wishes for the hearing to be conducted in welsh they should give 5 days notice prior to the hearing, absence of any notification will result in the hearing being conducted in english.

99. Once this part of the hearing is completed there will be an opportunity for the staff disciplinary and dismissal committee to receive advice from LA officer and/or dioceses representative (if applicable). Once this is received members of the committee will be left alone to discuss the evidence and make their decision. The Clerk will be present at this time to record discussions. Where possible the decision and reason for it should be given verbally at the end of the hearing. If for some reason this is not possible the committee's decision will be given in writing to the employee within 5 days. At this point the employee will also be informed of their right to appeal and the timescale within which this must be made. The confirmation in writing of the outcome of the hearing must be issued in the language of preference of the employee – welsh or english.

Decision reached after the hearing has taken place

100. Each case will be dealt with on its merits, and the following factors will be taken into account:

- the employee's current disciplinary record
- any mitigating circumstances
- the proposed penalty is reasonable in the circumstances.

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

- there is insufficient evidence to support the allegation and there is no action to be taken
- there is evidence that the alleged behaviour constitutes lesser misconduct
- there is evidence to support the allegation of continued/repeated misconduct following a final written warning

- the allegation of gross misconduct is proven and, depending on the severity of the misconduct, an appropriate sanction shall be imposed

Possible sanctions may be:

- relegation to a lower-graded position (if practical and appropriate) and loss of salary specified training and development
- issue of a formal warning up to final written warning (where the alleged behaviour constitutes lesser misconduct)
- dismissal in cases where a final warning has been issued
- dismissal of the employee with notice
- dismissal of the employee without notice.

Appeals against disciplinary hearing outcomes (lesser, gross misconduct and dismissal)

102. An employee is entitled to appeal against any disciplinary sanction and are entitled to do this in welsh if they wish to do so. The notice of the intention to appeal needs to be lodged with the clerk to the staff disciplinary and dismissal appeals committee within 5 days of receipt of letter confirming outcome of disciplinary hearing. The appeal letter will need to include the grounds for the appeal which should be on one of the following reasons:

- that there has been procedural flaw in the first disciplinary hearing
- that the findings are inconsistent with the evidence produced
- that the employee feels that the sanctions are inappropriate
- that the investigation or disciplinary procedure was in some way unfair or biased
- that new evidence has come to light that was not considered at the original hearing.

This list is not exhaustive.

103. The appeal will be heard by the disciplinary and dismissal appeals committee ideally within 25 days of the notice of appeal. Appeal hearings will focus on the issues set out in the appeal letter, therefore the appeal process may not always take the form of a complete hearing. However, under certain circumstances, e.g. where new evidence comes to light or the first hearing process was flawed or biased, it may be appropriate to rehear part, if not all, of the case. The procedure for either process is shown in Annex 8.

104. A mutually agreed date for the appeal hearing will be set and a letter confirming the date sent by the clerk of the governors to the employee, giving a minimum of 15 days notices taking account of the suggested timescales in Annex 4 and 5. The notification will include the following:

- The date and time of the appeal hearing
- The purpose of the hearing and range of possible outcomes
- The right to be accompanied by a trade union representative or work colleague
- The membership of the staff disciplinary and dismissals appeal committee
- Details of other persons to be present and in what capacity
- The full details of the allegation, an outline of the evidence to be presented and the names of any witnesses to be called

The notification to the employee needs to be issued in the language preference of the employee – welsh or english.

The employee may submit additional evidence as per suggested timescales in Annex 4 and 5.

105. The staff disciplinary and dismissal appeals committee may, after considering all the facts presented to it, including any new evidence, come to one of three conclusions:

- uphold the decision of the headteacher, chair of governors or staff disciplinary and dismissal committee
- impose a lesser penalty
- conclude that no disciplinary action should be taken against the employee

106. The staff disciplinary and dismissal appeals committee cannot impose a more severe penalty than that imposed by the headteacher, or chair of governors in respect of the headteacher, (in lesser misconduct cases) or the staff disciplinary and dismissal committee (in gross misconduct cases).

107. The decision of the staff disciplinary and dismissal appeals committee will be final and the employee will be informed in writing within 5 days, respecting the language preference of the employee – welsh or english.

108. The employee will be given a copy of the notes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions, in their language preference – welsh or english.

109. If, as the result of an appeal, disciplinary action is withdrawn, all details thereof will be removed from the employee's personal file and they will be informed accordingly. The employee will be given a copy of the minutes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions, in their language preference – welsh or english.

Suspension

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

- it appears to be necessary to exclude the employee from the school, for the protection of pupils, other staff or property or the orderly conduct of the school
- the continued presence at work of the employee would be an obstacle to proper investigation of the allegations made against that employee.

111. The decision to suspend will be discussed with the headteacher, chair of governors (or vice chair if the chair is not available) in consultation with the chief education officer representative of the maintaining LA and, where applicable, the diocesan authority, prior to implementing any suspension or redeployment.

112. Before taking the decision to suspend an employee the headteacher and/or the chair of governors should consider if other realistic and reasonable options are available, such as undertaking work that does not involve contact with pupils, or working from home (refer Annex 9).

113. Suspension is a serious step and will not be used in a punitive way. If possible alternatives to suspension should be considered but this must be considered taking account the safeguarding of pupils, protection of employee from further allegations, etc. To ensure thorough consideration is undertaken before suspension, the suspension checklist provided at Annex 9 should be completed.

114. Suspension will be on full pay subject to paragraphs 126-127. The employee is expected to be available for any meetings arranged during term time. The continued effect of the suspension will be kept under review and the outcome of the review reported to the employee and the governing body. The review period will normally be 25 days.

115. The decision to suspend can be taken by the headteacher or the chair of governors but only the governing body can end a suspension. However the governing body has delegated the task of ending a suspension to the chair of governors/the chair of the staff disciplinary and dismissal committee.

Suspension Interview

116. Where suspension is being considered an interview should be arranged between the headteacher/chair of governors and the employee. This meeting can be held off site if necessary.

117. Where the employee is a trade union representative the case should be discussed with a senior trade union representative before the interview is arranged, with employee's consent.

118. The employee should be advised to seek the advice of their trade union representative at the earliest opportunity.

119. The employee should be informed at the start of the interview that an allegation has been made and that suspension may occur.

120. The employee should be given as much information as possible concerning the allegation (taking account of any advice from statutory authorities), including the reasons for any proposed suspension.

121. The employee should be given the opportunity to respond.

122. If, at the end of the interview the headteacher/chair of governors considers that suspension is necessary the employee should be advised:

- whether they are suspended from duty or not
- if not, whether they are subject to restricted duties, etc.

123. Written confirmation of suspension, detailing the reasons must be sent to the employee as soon as possible following the meeting and no later than 5 days after taking into account the employee's preferred language choice – english or welsh. The employee should be offered appropriate support during the period of suspension such as access to occupational health and counselling services and will be offered the name of a person not involved in the investigation with whom they can discuss employment matters and any support needs.

124. The headteacher/chair of governors shall give written notice of the suspension to the chair or governors, the local authority and, where applicable, to the diocesan authority.

Absence due to Illness

125. During a period of paid suspension, an employee is expected to attend any meetings arranged during term time. Failure to attend may lead to suspension of pay and/or disciplinary action. If an employee submits a fit note indicating they are unable to attend

work/meetings during the period of suspension, they will no longer be entitled to full pay but will be eligible for sick pay under their conditions of service and in accordance with the Schools policies and procedures.

126. If the employee is absent due to sickness, the staff disciplinary and dismissal committee will usually rearrange the hearing once. However, if employee is still unable to attend, advice should be sought from the occupational health unit as to the employee's ability to attend a meeting. Where the employee may be absent for an indeterminate period, the staff disciplinary and dismissal committee may decide to hold the hearing provided that it has informed the employee and their representative and has offered the employee the opportunity to send a representative or submit written evidence to present their case. The representative will have the same opportunity as the employee to present evidence, call witnesses and sum up the employee's case. If the employee were to decline the opportunity to submit written representations or use a representative to present their case and their own state of health would cause an extended delay in the proceedings, the disciplinary and dismissal committee should still go ahead on the basis that the employee has been afforded reasonable opportunity to make their case and that the hearing has to be arranged to conclude the case.

Supply of Information

127. The governing body will comply with their legal duty to report cases under the Safeguarding Vulnerable Groups Act 2006 and the Education (Supply of Information) Wales Regulations 2009.

128. Employees will be informed of this duty in cases which could result in dismissal from employment.

129. If an employee resigns while disciplinary procedures are pending or are incomplete and where the allegations could:-

- amount to gross misconduct ; and/or
- be defined as a reportable incident; and/or
- otherwise lead to the termination of the individual's employment

the Disciplinary Procedure will continue to its completion. The staff disciplinary and dismissal committee will have to determine whether the evidence available would have led to a dismissal. Where this is the case the investigation papers will be forwarded to the **Education Workforce Council and/or the Disclosure and Barring Service.**

Review

130. It is recommended that following a review of a disciplinary procedure the headteacher/governing body committee provide the LA HR department with feedback that might necessitate an amendment to this model procedure. The headteacher will provide the governing body and LA with a written report on the operation of the school's staff disciplinary procedure annually. The report will not identify any individual by name. The report will include an assessment of the impact of this procedure on employees with protected characteristic.

Summary

131. In adopting this procedure the governing body has taken due regard of advice and guidance from the LA and the Disciplinary and dismissal procedures for school staff Welsh Government circular no: 002/2013 (2013). Consultation has also taken place with trade union representatives.

Further detailed guidance on the stages of this policy can be found in the revised *Disciplinary and dismissal procedures for school staff* Welsh Government circular no: 002/2013

Signed by chair of governors on behalf of the governing body:

……

Date approved: ……

Date sent to LA ……

Annex 1

Examples of lesser misconduct

The list below is offered only by way of example to indicate how behaviour may be regarded. This is not an exhaustive list and is provided for illustrative purposes only. Judging the level of misconduct and how it must be handled has to be undertaken on the facts of each case.

Lesser misconduct

Breaches of discipline under this heading will not normally result in dismissal for a first offence, but may result in dismissal if repeated.

- Lesser misconduct might include specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's staff handbook, code of conduct, prospectus, website, school staff terms and conditions of employment etc
- Persistent poor timekeeping and/or unauthorised absence (e.g. absence from the workplace during school sessions without permission or in line with the school's policy)
- Wilful refusal to carry out a reasonable instruction
- Causing damage to property/equipment through negligence/not having due regard to school property
- Causing unintentional superficial injury to an employee/pupil
- Using inappropriate language
- Petty theft, e.g. making unauthorised private telephone calls or sending personal mail at the schools expense
- Breach of dignity at work policies
- Inappropriate use of mobile phone/text messaging/social networking sites during lesson time
- Inappropriate texting
- Misuse of school facilities such as internet and email
- Deliberately falsifying work records
- Non-compliance with Data Protection principles
- Smoking on premises

Annex 2

Examples of gross misconduct

Gross misconduct can be defined as an act, or series of actions, that fundamentally repudiates the contract of employment so that the governing body would be justified in no longer tolerating the continued presence at work of the employee. These acts may justify summary dismissal without notice or payment in lieu of notice. The list below is offered only by way of example to indicate how behaviour may be regarded. This is not an exhaustive list and is provided for illustrative purposes only. Judging the level of misconduct and how it must be handled has to be undertaken on the facts of each case.

Gross misconduct might include:

- Specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's staff handbook, code of conduct, prospectus, website, school staff terms and conditions of employment etc
- Fraudulent acts or theft of property belonging to the LA, the school, fellow employees or pupils
- Deliberate and serious damage to property belonging to the LA, the school, fellow employees or pupils
- Violent behaviour including physical assault
- Continuous bullying
- Harassment or unlawful discrimination on any grounds
- Physical, sexual or emotional abuse of pupils
- Sexual misconduct at work
- Physical violence
- Gross negligence
- Causing loss, damage or injury through serious negligence
- Serious incapability at work brought on by alcohol or other illegal substances on school premises
- Serious insubordination
- Deliberately accessing offensive or obscene material via internet sites, social networking sites or by messaging
- Theft or fraud out of the workplace that brings about a breach of trust and confidence
- Dishonesty (e.g. tampering with exam papers, revealing exam papers prior to examinations or altering exam results)
- Serious violation of the LA or the school's health and safety rules and standards
- Criminal misconduct outside the workplace which reflects adversely upon the school or the employee's suitability to continue to be employed at the school

- Knowingly providing false information on any matter relating to the employee's employment
- Disclosure of confidential personal information
- Serious beaches of health and safety
- Serious breach of dignity at work policies
- Breach of child protection policies and procedures
- Corrupt or improper practice for private gain
- Relevant criminal offences
- Engaging in other employment during working hours without permission

Annex 3

DISCIPLINARY POLICY

FAST TRACK DECISION FORM: RECORD OF MEETING

FAST TRACK DECISION FORM: RECORD OF MEETING	
Date of meeting:	
Time and venue for meeting:	
Name of employee(s) subject to the fast track decision	
Name and job title of all parties attending the meeting:	**1.** **2.** **3.** **4.**

Allegation(s):	

PART A. <u>CONSENT TO PROCEED WITH A FAST TRACK PROCEDURE</u>

I consent to matters being dealt with using a fast track procedure.

Signed: 1. …….. 2. ……..

3. …….. 4. ……..

I do not consent to matters being dealt with using a fast track procedure.

REASONS FOR REFUSAL:

Signed:

NOTES OF MEETING:

(Continue on a separate sheet if required)

OUTCOME:

SIGNED: (DISCIPLINING OFFICER)

Annex 4

Disciplinary policy timescales flowchart
lesser misconduct

(These timescales are indicative only and must be read in conjunction with the staff disciplinary procedure. They may be shortened or extended by mutual agreement by all parties)

Employees language choice needs to be respected during this process. This includes any written correspondence and where it is deemed necessary to conduct a hearing it will be done in the language choice of the employee (welsh or english)

ANNEX 5

Governing body hearing timescales flowchart

These timescales are indicative only and must be read in conjunction with the staff disciplinary Procedure. They may be shortened or extended by mutual agreement of all parties

Employees language choice needs to be respected during this process. This includes any written correspondence and where it is deemed necessary to conduct a hearing it will be done in the language choice of the employee (welsh or english)

ANNEX 6

TEMPLATE FORMAT FOR DISCIPLINARY HEARING – LESSER MISCONDUCT

Model format for holding a disciplinary meeting for lesser misconduct cases conducted by determining office who will normally be the headteacher or chair of governors (for cases against the headteacher). To be amended as appropriate following advice from HR.

The employees language choice needs to be respected during this process. This includes any written correspondence and the hearing where it can be held in the language choice of the employee (welsh or english)

INTRODUCTION

Introduce everyone present at the interview.
Confirm employee has received all related paperwork.
Check they have received a copy of the disciplinary procedure and understand its contents (adjourn if necessary to allow time for this to happen.)

REPRESENTATION

If employee has brought a representative (either trade union representative or work colleague) with them, ask for the record if they are happy to be represented by this person.

The representative can present the employee's case and give a summary, but should not answer questions directed to the staff member although discussion between them is acceptable – a reasoned approach is required to allow the member of staff the opportunity of having a fair hearing.

If they are alone, ask them to confirm they have elected not to be represented.

PROCEDURE TO BE FOLLOWED DURING MEETING

1. State the following:

“This interview will be conducted in accordance with the schools staff disciplinary procedure to establish the disciplinary sanction, if any, to be taken as a result of the concerns expressed about your conduct as detailed in correspondence submitted to you previously.
[At this point read out details of reasons for disciplinary letter as outlined in the letter)

The disciplinary sanction, if any, that may be taken, will be decided when the statement you make has been very carefully considered and all relevant factors taken into account. This should include any special or mitigating circumstances you wish to advise me of, including any personal or outside issues affecting this matter which should be considered.”

2. Explain the structure of the meeting as follows:
    - the investigating officer will outline the allegation and the findings of the investigation. For less complex cases, the determining officer will outline the allegations
    - employee will then be given opportunity to respond and present any relevant information supporting their case or advising if there are any special circumstances to be taken into account
    - questions may be asked by all parties in order to clarify issues
    - if necessary, parties may sum up their cases
    - meeting will then adjourn to consider the facts and make a decision.

3. The following points should be covered:

    - ensure the member of staff understands what has been said
    - check if they have any questions about the meeting/disciplinary process
    - explain that notes will be taken throughout the meeting and they might be asked to clarify things from time to time
    - explain that anyone present is free to ask questions at any time to clarify matters
    - the meeting will be conducted in a formal and polite manner and the employee encouraged to speak freely so that all facts can be taken into consideration
    - either party may ask for an adjournment at any time of the hearing.

4. The determining officer should then ask the investigating officer to outline the case and/or present findings of the investigation. Explain that the member of staff will be expected to respond to this after presentation.

5. Investigating officer/determining officer reads out the summary of the findings.

6. Employee is invited to respond.

7. All parties should be allowed to ask questions during the meeting.

8. Determining officer, on conclusion of discussions will sum up and ensure that no party has anything further to add.

9. Adjourn to consider the facts and consider if the allegation is upheld and if so what level of sanction is appropriate (refer to schools disciplinary policy 48 - 60). This decision rests with the determining officer. The HR Advisor must not be involved in decision making process but can offer the determining officer advice. The investigating officer must not be involved in the decision making process.

10. If possible, call back employee to convey decision. If the decision cannot be reached within a reasonable time scale on the day, either:

- Agree to re-convene the meeting on a future mutually convenient date

or

- **Agree** decision will be confirmed in writing.

11. If decision is reached on the day, advice of right of appeal and that outcome will be confirmed in writing

12. The decision must be confirmed in writing within 3 days.

ANNEX 7

STAFF DISCIPLINARY AND DISMISSAL COMMITTEE – Procedure for disciplinary hearing for gross misconduct/possible dismissal

The employees language choice needs to be respected during this process. This includes any written correspondence and the hearing where it can be held in the language choice of the employee (welsh or english)

GENERAL PRINCIPLES: -

The chair of the staff disciplinary and dismissal committee will ensure that: -

- all parties keep to a sensible time framework
- all parties have the opportunity to state their case, ask questions, present evidence and call witnesses
- sufficient time is devoted to questioning and discussion, using an adjournment if necessary, to ensure so far as is practicable, all the facts are established
- all persons present at the hearing are treated with respect
- the main points are summarised to ensure that nothing has been missed
- the decision is based upon an assessment of all matters raised and can be regarded as the action of a "reasonable employer" having regard to all the circumstances
- that matters of fact that have been relied on are clearly recorded in order that they can be made available to an appeal hearing.

THE ROLE OF THE PERSON(S) (HR ADVISOR) ADVISING THE STAFF DISCIPLINARY AND DISMISSALS COMMITTEE

The person(s) advising the staff disciplinary and dismissal committee will provide advice in private (to be agreed at outset of hearing) or in front of all parties and this should be fully recorded in writing by the clerk to the staff disciplinary and dismissal committee. The role of the person(s) advising the staff disciplinary and dismissal committee should be to:

- provide advice on legal or procedural issues but not express opinions on the merits of the case, the people involved or the evidence
- seek, through their advice, to ensure that deliberations of the governing body are sound to avoid the case ending in an employment tribunal.

THE ROLE OF THE REPRESENTATIVE (trade union representative or work colleague)

The representative can present the employee's case and give a summary but should not answer questions directed to the employee although discussion between them is acceptable – a reasonable approach is required to allow the employee the opportunity of having a fair hearing.

PROCEDURE FOR DISCIPLINARY HEARING

- The chair of the committee will make introductions of those present:
    - the panel members
    - the presenting officer
    - the employee, and their representative, if present
    - HR support
    - Note taker – clerk to the governing body

- Where witnesses are called, including the investigator, they are only present for the period of questioning.

- The chair of the staff disciplinary and dismissal committee will set out the allegations of misconduct. The following may be said:

    This interview will be conducted in accordance with the schools staff disciplinary procedure to establish the disciplinary sanction, if any, to be taken as a result of the concerns expressed about your conduct (as outlined in the disciplinary letter).

    The disciplinary sanction that may be taken, if any, will be decided when all the information from all parties and other relevant factors have been taken into account. This should include any special or mitigating circumstances you wish to advise us of, including any personal or outside issues affection this matter which you believe need to be considered.

    As you have been previously advised, this matter may potentially result in dismissal from employment (either as a result of gross misconduct or following a final written warning). However no decision will be made until you have had the opportunity to present your case and all evidence has been carefully considered.

- The presenting officer to put their case in the presence of the employee and to call such witnesses as they wish.

- The employee (or their representative) to have the opportunity to ask questions of the presenting officer and their witnesses.
- The committee may ask questions of the presenting officer and their witnesses.
- The presenting officer to have the opportunity to re-examine their witnesses.
- Where there has been an allegation of child abuse and the employee concerned is being charged with gross misconduct the independent investigator will be invited to attend the disciplinary hearing as a witness for the employer's side.
- Both parties and the governing body panel will have the opportunity to ask questions of the independent investigator to clarify matters raised in the report.
- The employee (or their representative) shall reply to the issue(s) raised, in the presence of the presenting officer and may call witnesses.
- The presenting officer to have the opportunity to ask questions of the employee and their witnesses.
- The committee may ask questions of the employee (or their representative) and their witnesses.
- The employee (or their representative) to have the opportunity to re-examine their witnesses.
- The presenting officer to have the opportunity to sum up their case.
- The employee (or their representative) to have the opportunity to sum up their case.
- The person(s) advising the committee to do so in front of all parties, unless otherwise agreed to be done in private.
- The presenting officer and the employee (or their representative), and the person(s) advising the committee to withdraw.
- The staff disciplinary and dismissal committee to deliberate in private to determine whether misconduct has taken place. The clerk to note their discussion.
- If necessary, the staff disciplinary and dismissal committee may recall the presenting officer, the employee and the person(s) advising the committee to clear

points of uncertainty on evidence already given. If recall is necessary, all parties are to return notwithstanding only one is concerned with the point giving rise to doubt.

- The hearing may also be adjourned at the deliberation stage in order to allow for further investigation if the staff disciplinary and dismissal committee feels that there are points that require clarification.

- The presenting officer, the employee and the person(s) advising the committee to be recalled and advised verbally as to the determination of the panel on whether misconduct has occurred. Unless further deliberation is necessary, the committee will also advise what sanction will be applied.

- If further deliberation is necessary before confirming the sanction, the staff disciplinary and dismissal committee will then provide the employee with an opportunity to present any mitigation.

- The hearing will then be adjourned again for the committee to consider any mitigation provided and to determine what (if any) disciplinary sanction to apply.

- The presenting officer, the employee and the person(s) advising the committee to be recalled and wherever possible, for the determination of the Committee to be conveyed verbally. This will be confirmed in writing, outlining reasons for decision within 5 working days of the date of the hearing and the employee informed of their right to appeal. Notes of the meeting will either be sent with this letter or as soon as possible after.

ANNEX 8

STAFF DISCIPLINARY AND DISMISSAL APPEAL COMMITTEE PROCEDURE FOR DISCIPLINARY APPEAL HEARING

THIS APPEAL PROCESS MAY TAKE THE FORM OF EITHER A REVIEW OR FULL REHEARING DEPENDING ON THE REASONS STATED IN LETTER OF APPEAL. A FULL REHEARING WOULD BE APPROPRIATE IF NEW EVIDENCE COMES TO LIGHT OR THE FIRST HEARING PROCESS WAS FLAWED OR BIASED.

The employees language choice needs to be respected during this process. This includes any written correspondence and the hearing where it can be held in the language choice of the employee (welsh or english)

GENERAL PRINCIPLES: -

The chair of the staff disciplinary and appeal committee will ensure that: -

- the allegations of misconduct are clearly outlined
- all parties keep to a sensible time framework
- all parties have the opportunity to state their case, ask questions, present evidence and call witnesses
- sufficient time is devoted to questioning and discussion, using an adjournment if necessary, to ensure so far as is practicable, all the facts are established
- all persons present at the hearing are treated with respect
- the main points are summarised to ensure that nothing has been missed
- the decision is based upon an assessment of all matters raised and can be regarded as the action of a “reasonable employer” having regard to all the circumstances.

THE ROLE OF THE PERSON(S) ADVISING THE STAFF DISCIPLINARY & DISMISSAL APPEAL COMMITTEE (HR ADVISOR)

The person(s) advising the staff disciplinary and dismissal appeal committee will provide advice in private or in front of all parties (as agreed) and this should be fully recorded in writing by the clerk to the staff disciplinary and dismissal appeal committee. The role of the person(s) advising the staff disciplinary and dismissal appeal committee should be to:

- provide advice on legal or procedural issues but not express opinions on the merits of the case, the people involved or the evidence
- seek, through their advice, to ensure that deliberations of the governing body are sound to avoid the case ending in an employment tribunal.

PROCEDURE FOR DISCIPLINARY APPEAL HEARING

The chair of the committee will make introductions of those present:

- the panel members
- the presenting officer – this will be dependent on reason for appeal:
    - If full rehearing, will be the original presenting officer at the disciplinary/dismissal meeting (e.g. headteacher). The investigation officer and previous witnesses may also need to be in attendance.
    - If a rehearing on particular point/s of appeal, it will be the determining officer of the original hearing (e.g. headteacher (lesser misconduct) or chair of staff disciplinary and dismissal committee (dismissal/gross misconduct.)
  - the employee, and their representative, if present
  - HR support
  - note taker – clerk to the governing body

- where witnesses are called, including the investigator, they are only present for the period of questioning

- the chair of the staff disciplinary and dismissal appeal committee will set out the allegations of misconduct and the reasons for appeal.

Rehearing

- The presenting officer to put their case in the presence of the employee and to call such witnesses as they wishes

- The employee (or their representative) to have the opportunity to ask questions of the presenting officer) and their witnesses

- The presenting officer to have the opportunity to re-examine their witnesses

- The committee may ask questions of the presenting officer and their witnesses

- The employee (or their representative) shall reply to the issue(s) raised, in the presence of the presenting officer and may call witnesses

- The presenting officer to have the opportunity to ask questions of the employee and their witnesses

- The employee (or their representative) to have the opportunity to re-examine their witnesses
- The committee may ask questions of the employee (or their representative) and their witnesses
- The presenting officer to have the opportunity to sum up their case
- The employee (or their representative) to have the opportunity to sum up their case.

Appeal on specific points as outlined in appeal letter

- The employee (or their representative) to put their case in the presence of the presenting officer and to call such witnesses as s/he wishes
- The presenting officer to have the opportunity to ask questions of the employee (or their representative) and their witnesses
- The presenting officer shall reply to the issue(s) raised, in the presence of the employee (or their representative) and may call witnesses
- The employee to have the opportunity to ask questions of the presenting officer and any witnesses
- The committee may ask questions of the employee (or their representative) and presenting officer
- The employee (and/or representative) to have the opportunity to sum up their case
- The presenting officer to have the opportunity to sum up their case.

ALL HEARINGS

- The person(s) advising the committee to do so in front of all parties (unless otherwise agreed).
- The presenting officer and the employee (or their representative), any witnesses and the person(s) advising the Committee to withdraw.
- The staff disciplinary and dismissal appeal committee, to deliberate in private only recalling the presenting officer, the employee and the person(s) advising the committee to clear points of uncertainty on evidence already given. If recall is

necessary, all parties are to return notwithstanding only one is concerned with the point giving rise to doubt. The clerk to the committee to note discussions.

- The staff disciplinary and dismissal appeal committee to announce the decision to the parties personally or in writing as may be determined, but in any case, written confirmation is to be sent within five working days of the hearing.

- The staff disciplinary and dismissal appeal committee must not impose a more severe penalty than that given by the staff disciplinary and dismissal committee but it can: -

    - confirm the decision of the original determining officer or staff disciplinary and dismissal committee
    - impose a lesser penalty
    - conclude that no action should be taken against the employee.

- The outcome will be confirmed in writing, outlining reasons for decision within 5 working days of the date of the hearing. Notes of the meeting will either be sent with this letter or as soon as possible after.

ANNEX 9

Consideration of suspension checklist

Suspension is a serious step and will not be used in a punitive way. If possible alternatives to suspension should be considered but this must be considered taking account the safeguarding of pupils, protection of employee from further allegations, etc.

Suspension should only be considered if one or more of the following apply:

- It appears to be necessary to exclude the member of staff from work for the protection of children and/or vulnerable adults, other staff or property or the orderly conduct of the workplace; **OR**

- The continued presence at work of the member of staff would be an obstacle to proper investigation of the allegations made against that member of staff; **AND**
- There is no other suitable option available – e.g. restricting the duties of the member of staff.

Please ensure you have discussed this matter with your Safeguarding Officer and HR Advisor BEFORE determining if Suspension is necessary.

It is recommended that you meet with the employee to inform him/her that an allegation has been made and that suspension is an option.

It is recommended that a decision to suspend should only be taken after an adjournment to this meeting and following completion of this form.

The assessment may need to be reviewed at various stages:-

- **Receipt of initial allegation**
- **Following strategy discussions**
- **Following strategy meetings**

Details		
Date:		
Name of employee:		
Post title (if the employee has more than one job, please include details of all posts held)		
Service/School		
Name of manager/headteacher completing assessment		
Nature of incident		
Has there been a critical incident and/or serious allegation(s) made?	Yes/No	Details:
Does the employee have the required work permit/Visa?	Yes/No	Details:
Does the employee have a current registration to practice from the required regulatory or professional registration body, which is mandatory to the post?	Yes/No	Details:

Has the employee been remanded in police custody?	Yes/No	Details:
If there is a serious allegation does it involve an allegation of abuse (e.g. child protection)?	Yes/No	Details
Is there clear evidence that the child/adult has suffered harm?	Yes/No	Details:
Could the allegation potentially be considered as gross misconduct and/ or serious dereliction of duty that would (if substantiated) fundamentally repudiate the contract of employment.	Yes/No	Details:
Describe the event(s) or circumstances that have occurred:		
Procedures		
If child protection, has the case been discussed with the schools safeguarding lead and LA safeguarding lead?	Yes/No	Details:
Has a social services referral been made?	Yes/No	Details:
Has a strategy discussion been convened?	Yes/No	Details:
Has the potential to suspend been discussed with chair of governors (or vice chair if the chair is not available) in consultation with the chief education	Yes/No	Details:

officer representative and, where applicable, the diocesan authority?		
Risks		
Has an initial fact finding exercise been undertaken? If so does this confirm that the allegation is not demonstrably false?	Yes/No	Details:
From initial enquiries, is there any other evidence to support the allegation e.g. CCTV?	Yes/No	Details:
Are pupils, other employees and/ or the employee concerned considered to be at risk of physical, verbal, sexual, psychological and/ or racial abuse/ assault/ intimidation/ bullying or harassment?	Yes/No	Details:
Is the presence of the employee likely to hinder /or attempt to interfere with the disciplinary investigation?	Yes/No	Details:
Is there a risk that the employee will (or will attempt to) tamper with, remove, or destroy any incriminating evidence?	Yes/No	Details:
Is there a risk that the employee will (or will attempt to) damage goods, property or data (hard copy and/ or electronic data) belonging to the School which would damage the School's business?	Yes/No	Details:
Is the employee under investigation considered to be at risk of physical, verbal, sexual and/ or racial abuse/ assault/ intimidation/ bullying or harassment from colleagues?	Yes/No	Details:
Does the employee's continued presence at work create a health and safety risk to themselves or others, e.g. under the influence of alcohol or non-prescription drugs?	Yes/No	Details:

Is there a substantial risk that the employee will repeat the alleged misconduct?	Yes/No	Details:
Has there been a breakdown in relationships between the employee and pupils or other work colleague(s)?	Yes/No	Details:
Alternatives to suspension		
Is there a workable alternative to suspension (deployment to another work area, restriction of work duties)?	Yes/No	Details:
Is it possible for the employee to work (with regular supervision) with different pupils/clients?	Yes/No	Details:
Is it possible for the employee to undertake different or restricted duties within the same workplace?	Yes/No	Details:
Is it possible to relocate the employee to an alternative workplace by agreement?	Yes/No	Details:
Can the employee work from home?	Yes/No	Details:
What would be the risks associated with this approach?		Details:
How can this risk be managed/mitigated?		Details:
If there is no alternative why is this?		Details:
I confirm that all potential alternatives to suspension have been considered Decision/Reason: Signed:		

Suspension meeting		
Has consideration for appropriate timing/notice of meeting been given	Yes/No	Details:
Is the employee an accredited Trade Union representative and the case discussed with the relevant Full Time Officer before the interview is arranged (if agreed by employee)	Yes/No	Details:
Is it possible to allow employee time to have a representative with them at the meeting? If not, advise employee to seek advice at earliest opportunity.	Yes/No	Details:
Has the employee been informed that an allegation has been made and that suspension may occur?	Yes/No	Details:
Has the employee been given as much information as possible concerning the allegation, including the reasons for any proposed suspension?	Yes/No	Details:
Has the member of staff been given the opportunity to respond?	Yes/No	Details:
Has employee had opportunity to contact their union prior to confirming decision to suspend? (if this is not possible, decision to suspend should not be delayed)		
Follow up actions		
Have you allocated an impartial contact officer to support the employee?	Yes/No	Details:
Has the correspondence address, telephone numbers, email address and preferred method of contact been confirmed?	Yes/No	Details:
Has details of the authority's counselling services been provided?	Yes/No	Details:

Has a referral to occupational health been made, if necessary	Yes/No	Details:
Has the next review date been agreed?	Yes/No	Details:
Signed:		**Date:**