*Leigh Primary School*

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*'Caring, Sharing and Learning Together'*

# Staff Discipline Policy

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| File name:<br>Staff Discipline Policy 2026-2028 | Associated Docs:<br>Model procedure – HR Suite<br>HR Select – School Discipline and Conduct Policy Revised March 2019<br>https://cantium.solutions/hr-select-school-discipline-and-conduct-policy-revised-march-2019/.doc | Statutory | Review Period :<br>Annual |
| Policy Owner:<br>Resources | Last Revised :<br>22/06/26 | Next Revision Due:<br>22/06/28 | Page 1 of 23 |

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**Guidance Note:**
*This model policy and procedure has been developed by SPS for use in Kent Schools.*
*This document has been developed to comply with legal requirements and is in accordance with ACAS guidance.*
*The Local Authority expects that all KCC Community and Voluntary Controlled Schools will use this document as the basis for their Schoo Discipline and Conduct Policy. This document is also strongly recommended for consideration for adoption by Foundation and Aided Schools.*
*Consultation on this policy has taken place with KCC's recognised professional associations. However Schools are strongly advised to ensure tha there is meaningful consultation with all staff and their trade union / professional representatives at School level.*

# Part A - Policy

## 1 Policy Statement

The School expects that Employees will maintain appropriate standards of conduct and behaviour at all times. The School also requires all Employees to comply with relevant School rules, working practices and conditions of service.
The Disciplinary Policy and Procedure provides a means by which shortcomings in conduct can be addressed and Employees encouraged to rectify their behaviour.
Whilst concerns regarding misconduct may be addressed informally by managers, there are occasions when an individual's conduct may warrant formal action.
This policy recognises the principles of natural justice and fair process and is committed to ensuring that confidentiality is maintained for all parties.
No formal disciplinary action will be taken against an Employee until the matter has been fully investigated. Disciplinary investigations will be undertaken without undue delay. The School will undertake as thorough an investigation of the alleged misconduct as is reasonable and appropriate given the circumstances in order to establish the facts relating to the allegation(s).
An Employee will be advised of the allegation(s) against them and be given an opportunity to state their case and any mitigating circumstances.
Where a case to answer is found in relation to misconduct this may be addressed by a formal disciplinary hearing and, should on the balance of probabilities the case be proven, a formal sanction may be imposed.
The nature of the sanction will be determined by the circumstances of the case. A sanction at any level may be imposed should the alleged misconduct warrant.
An Employee will not usually be dismissed for the first incident of misconduct other than in the case of gross misconduct where an Employee may be dismissed without notice.
An Employee is entitled to appeal against any formal sanction.
This procedure has been developed to comply with legal requirements and is in accordance with ACAS guidance.

This procedure explains:

- How the Employer will address matters relating to conduct and behaviour in a fair, consistent and structured manner
- What is expected from Managers and Employees with regards to the management of such issues.

## 2 Scope

This Policy and Procedure applies to all Employees of Leigh Primary School School.
Reference to acts of 'misconduct' in this procedure relates to behaviour which may be reasonably defined as wilful or negligent acts or omissions on the part of the Employee.
Concerns relating to performance and capability should be addressed under a separate procedure.
This policy does not include misconduct related to allegations against staff for which a separate procedure applies.

## 3 Adoption Arrangements and Date

This procedure was adopted by the Governing Body of Leigh Primary School on 01.02.2022 and supersedes any previous discipline and conduct policy and procedure.
This policy will be reviewed by the Governing Body and Headteacher with advice from SPS personel service every year or earlier if there is a need.

## 4 Responsibilities of the School

- To make expectations clear regarding conduct and behaviour at work
- To ensure consistency and fairness in the way conduct issues are addressed
- To advise an Employee if their conduct or behaviour is unsatisfactory and give the Employee the opportunity to state their case.

## 5 Responsibilities of the Employee

- To ensure they maintain appropriate standards of conduct at all times and comply with any relevant School rules, working practices and conditions of service
- To cooperate with any action taken under this procedure
- To maintain confidentiality in respect of any action taken under this procedure in the interests of all parties involved in the dispute.

## 6 Delegated responsibility

The management of conduct and discipline issues may be delegated to staff other than the Headteacher including members of the governing body. Advice from SPS services will be sought in the event that a formal panel is being composed.

**Headteacher:** Jenna Halfhide – Jenna.halfhide@leigh.kent.sch.uk
**Chair of Governors:** David Dorrell – DDORRELL@leigh.kent.sch.uk

**Guidance Note:**
*Under the School Staffing Regulations 2009, dismissal decisions, may be delegated to either:*

- *The Headteacher*
- *One or more governors*
- *One or more governors acting together with the Headteacher*

*Governors should therefore determine delegation arrangements for formal hearings within their own School.*
*The composition of panels should be consistent with the Governing Body's Terms of Reference.*
*Schools are advised to seek guidance from their personnel provider on the appropriate composition of formal panels given the circumstances to ensure fair, impartial and objective process.*

### Informal Action

Informal action may be delegated to line managers, where appropriate.

### Formal Action

Formal hearings to consider matters short of dismissal may be delegated to another manager or the Headteacher.

Where matters are heard by a manager - appeals against any sanction imposed will be heard by the Headteacher. Where the Headteacher has considered the matter – appeals will be heard by a panel of one or more governors.

**Dismissal Decisions** *(please delete the option which does not apply)*

In this School responsibility for dismissal decisions has been delegated to the Headteacher, therefore formal hearings to consider dismissal will be heard by the Headteacher, accompanied by a member of the governing body; however, where this is not possible or appropriate the headteacher may consider the dismissal solely.
A panel of one or more governors may be convened to hear the matter in situations where it is not appropriate for the Headteacher to perform this function.
Appeals will be heard by a panel of one or more governors who have had no prior involvement in the matter under consideration.
Staff governors should not usually be a member of a governor panel and where they are must ensure that they can deal with the matter impartially and objectively.

The following table sets out the provisions which would normally apply.

| Informal Action taken by | Formal hearing heard by | Appeal heard by |
|---|---|---|
| Line Manager | Another more senior Manager or Headteacher - for matters short of dismissal<br>Headteacher – where dismissal is a possible outcome | Headteacher or 1 or more governors |
| Headteacher | 1 or more governors | 1 or more governors |

**Matters relating to the Headteacher**

Informal action is the responsibility of the Chair of Governors.
Formal hearings will be heard by a panel of one or more governors who have had no prior involvement in the matter under consideration.
Appeals will be heard by a further panel of one or more governors who have had no prior involvement in the matter under consideration.
Staff governors should not usually be a member of a governor panel and where they are must ensure that they can deal with the matter impartially and objectively.

| Informal Action taken by | Formal hearing heard by | Appeal heard by |
|---|---|---|
| Chair of Governors | 1 or more governors | 1 or more governors |

**Guidance Note:**
*Schools should take care to ensure that there is the appropriate separation of roles and responsibilities when managing conduct issues. To safeguard fairness and impartiality the functions of the Commissioning Officer, Investigating Officer and Hearing and Appeal Panels should usually sit with different individuals.*

***Additional Considerations for Community and Voluntary Controlled Schools.***

*In accordance with the 2009 School Staffing Regulations where a decision is made by a Community or Voluntary controlled School to dismiss an employee the Local Authority (via the Schools' Personnel Service) must also be informed of the decision and reasons for this by the School. The Local Authority should then confirm the dismissal decision and any appropriate notice in writing to the employee within 14 working days of the date the Individual was notified of the decision.*

## 7 Timescales

Concerns regarding conduct will be addressed promptly and without undue delay in achieving an outcome.
Timescales stated are for guidance and may vary depending on the circumstances of the case.

| | |
|---|---|
| Employee notified of investigation outcome | Within 5 working days of a decision being made regarding the appropriate course of action following completion of the investigation |
| Hearing | At least 10 working days notice given of hearing date |
| Written outcome of hearing given | Within 5 working days of the date of the hearing |
| Appeal to be made | Within 5 working days of receipt of the written outcome of the hearing |
| Appeal to be heard | Within 10 working days from receipt of written appeal |
| Written outcome of appeal given | Within 5 working days of the date of the appeal |

For the purpose of this procedure 'working days' will normally refer to the 195 school days. At the School's discretion, working days may include school closure periods where an Employee works outside of term time. Appropriate timescales will be discussed with the Employee.

## 8 Right to Representation

An Employee has the right to be accompanied to a formal hearing or appeal meeting by either a workplace colleague or trade union representative.
A workplace colleague or trade union representative may also attend a disciplinary investigation meeting.
Due and careful consideration will also be given to any request from an Employee to be accompanied by a workplace colleague or trade union representative at informal meetings. However it should be noted that the presence of a representative does not make the meeting formal.

# Part B – Procedure

## 9 Informal Management Action

Where an allegation of misconduct is made, consideration will be given as to whether it is appropriate to address the matter informally by means of 'management action'.

In determining whether an informal approach should be taken, the Headteacher will take into account the seriousness of the alleged misconduct and whether previous informal action to address the issue has been unsuccessful.

Where an informal approach is taken the Headteacher will usually meet with the Employee to establish the facts, events and / or actions, discuss the concerns, and give the Employee the opportunity to state their case. The Headteacher may agree future expectations with the Employee – including measures to support an improvement in conduct – and, if appropriate, agree a review period and arrangements for monitoring conduct.

There is no requirement for a workplace colleague or trade union representative to be present at such a meeting although it may be advisable. The Headteacher may consider inviting the Employee to be accompanied when discussing concerns informally, however the presence of a trade union representative / workplace colleague does not in itself make the meeting formal.

It should be noted that if during the discussion it becomes apparent that the matter may be more serious – the meeting may be adjourned and the matter investigated under the formal disciplinary procedure.

The outcome of the discussion will be confirmed in writing and a record placed on the Employee's file. This may be termed an 'informal warning'. However it should be made clear to the Employee that such informal action will not form part of the Employee's disciplinary record.

There is no right of appeal against informal action.

It is expected that informal action will resolve most minor concerns however an Employee should be advised that if there is a repetition of such misconduct formal disciplinary action may be taken.

## 10 Notifying an Employee of an allegation(s) against them

An Employee will be notified of all allegation(s) or complaint(s) made against them at the earliest practical opportunity and advised of the procedure that will be followed.

Prior to investigating an allegation it may not be possible or appropriate to be specific about the precise nature of the allegation at the outset – however the Employee will be given a broad indication of the nature of the complaint.

Should the matter be addressed through a formal investigation or formal disciplinary action – then the Employee will be advised of the nature of the allegation in writing. They will also be advised that, should the allegation be upheld, formal disciplinary action may be taken. Should further allegations come to light during the course of the investigation which are also to be investigated – the Employee will be advised of these in writing.

## 11 Suspension

**Guidance Note:**
*Schools are advised to carefully consider if suspension is appropriate given the nature of the allegations and whether all other alternative options have been explored. It is recommended that the School assesses carefully whether suspension or any other action may be appropriate pending the outcome of a disciplinary investigation.*
***Please seek further guidance from your HR Advisor.***

There may be occasions when it is appropriate to suspend an Employee with normal* pay pending the outcome of an investigation and / or conclusion of any disciplinary action.

Suspension is not a sanction in itself and does not represent any prejudgement of the outcome of the process.

Suspension should only be initiated after careful consideration and where all other alternatives have been explored – such as arranging a period of authorised absence or temporary change in duties or place of work.

As a guide suspension may be instigated where:

- Children are considered to be at risk
- The Employee is considered to be at risk
- Where the allegation warrants investigation by the police, social services or other external agency
- Where there is evidence to suggest that the Employer's or Employee's reputation may be at risk
- Where the presence of the Employee may impede the investigation or be a disruptive influence in the workplace
- Where the allegations against the Employee may amount to gross misconduct or gross incompetence
- Where it is necessary to exclude the Employee from the School for the protection of students, staff, property or the ordely conduct of the School

This list is not exhaustive.

Where practicable a meeting will be arranged with the Employee and their workplace colleague or trade union representative to explain the reason for the suspension and the conditions that will apply. The details of the suspension will be confirmed in writing with the Employee, usually within 5 working days.

In some instances where it is not practicable or possible for the Employee's representative to be present, the meeting may still proceed in their absence. In exceptional circumstances where it is not possible or appropriate for the Employee to attend a meeting in School – suspension may be made in writing.

In certain instances it may be necessary for the suspension to be made in writing or without the presence of the Employee's representative.

Suspension will not continue for longer than is necessary and will be kept under review. Where possible the Employee will be given an indication of how long the suspension is likely to last and will be advised should these timescales change.

An Employee should be contactable by telephone or other agreed means during their normal working hours while suspended.

An Employee who is suspended must not discuss the details of the allegation(s) with other members of staff (except their workplace colleague or trade union representative), governors, pupils or parents in such a way which could compromise their position or integrity of the investigation without the prior permission of the Headteacher or Chair of

Governors. This does not prevent an Employee discussing matters with their representative. Clarification should be sought from the Headteacher or Chair of Governors if required.

A suspended Employee will be provided with a named contact in School to keep them informed of matters arising during their absence. This individual will not be able to discuss any aspects of the disciplinary investigation.

In addition a suspended Employee may be allocated a named contact from the School's personnel provider who will be able to provide advice about procedural aspects of the process.

Care will be given to ensuring a suspended employee receives information from staff meetings during their absence and consideration will be given to alternative arrangements for events such as inset training and CPD.

Suspensions may be made by the Headteacher or Governing Body. An Employee may be suspended at any point during the investigation should the circumstances warrant.

Suspension may be lifted at any point should the situation change. Suspension may only be ended formally by the governing body. However the Headteacher may provisionally lift the suspension, pending approval of the governing body, so as not to delay a return to work.

*It should be noted that 'normal pay' is the pay the employee would be entitled to if they were not suspended. For example where an Employee falls sick either before or during a period of suspension they will receive their usual contractual / statutory sick pay entitlement. This may decease in accordance with their sick pay entitlement.

## 12 Investigating the allegation

Before any formal disciplinary action is taken, allegations of misconduct will be thoroughly and objectively investigated. Investigations will be undertaken without undue delay. The nature and extent of the investigation will be determined by what is reasonable given the circumstances.

The purpose of the investigation is to establish the facts, events and / or actions to determine whether there is a case to answer and not to make any decision about the outcome.

The Commissioning Officer (Headteacher, other appropriate manager / governor) will appoint an independent investigating officer. The investigating officer will not have had any prior involvement in the case. On occasion it may be appropriate to identify more than one investigating officer. If, during the course of an investigation, it becomes apparent that the Commissioning Officer is a witness to the allegation it may be appropriate for a new Commissioning Officer to be identified.

The Employee will be invited to a formal investigation meeting with reasonable notice during working hours. At this meeting the Employee will be given a full and fair opportunity to respond to the allegation(s), explain his / her conduct and, where the concern is admitted, any mitigating circumstances. Depending on the circumstances it may be necessary to conduct more than one investigation meeting. A workplace colleague or trade union representative may accompany an Employee to an investigation meeting.

In addition to attending an investigation meeting, the Employee may also make a written statement or present any other relevant written documents that they may wish to be considered as part of the investigation.

The investigating officer may also conduct a formal investigation meeting with other relevant witnesses as soon as possible. The Employee will be given the opportunity to identify witnesses they wish to be interviewed as part of the process.

Witnesses providing evidence to an investigation will be advised that their statement may be shared with the Employee and they may be called to present this and may be questioned regarding their evidence at a disciplinary hearing.

All witnesses should be aware of the confidential nature of investigations and should not discuss any aspect of the meeting or matters under consideration with anyone outside of the investigation meeting.

Interviews with pupils will only be conducted with the parent or guardian's consent and they should be given the opportunity to accompany the pupil to the meeting.

The investigating officer may also review documents and other evidence relevant to the allegation.

A written, signed and dated record will be made of all interviews conducted as part of the investigation. The Employee will have the opportunity to check the accuracy of the minutes / notes taken of their evidence. Where there are discrepancies between the Employer and Employee that cannot be resolved both versions of the minutes will be held on record.

An audio record may also be made with the prior consent of the Employee and an audio copy or summary transcript shared with the Employee. Covert recordings of investigation meetings are expressly prohibited.

## 13 Investigation Outcome

A written report will be produced of the investigation findings and shared with the Commissioning Officer.

Based on the findings of the investigation, the Headteacher will determine which course of action is most appropriate:

- That there is no case to answer and no further action is taken
- That a minor concern is identified which is to be addressed through informal action
- That there is a case to answer on a matter of misconduct which warrants consideration of formal disciplinary action.

The investigation outcome will be communicated to the Employee in writing without undue delay and usually within 5 working days of the decision being made regarding the appropriate course of action.

Where informal action is proposed a follow up meeting will be arranged without undue delay to discuss any appropriate management action. The outcome of this discussion may be confirmed in writing and a record placed on the Employee's file – although such a discussion and letter does not constitute a formal disciplinary record.

The investigation report will only be shared with the Employee should formal action be instigated.

## 14 Notification of a Disciplinary Hearing

Where the matter is to be considered by a formal disciplinary hearing, arrangements for this will be communicated in writing.

This notification should specify:

- The allegation(s) to be considered at the hearing
- The time, date and venue of the hearing
- The possible consequences should the case be upheld and, if appropriate, that dismissal may be an outcome
- The procedure to be followed
- That the Employee may be accompanied by their workplace colleague or trade union representative.

The Employee will be given reasonable notification of the date of the hearing to allow them sufficient time to prepare their case. This will usually be not less than 10 working days, however this may be varied by mutual agreement or should the circumstances dictate.

Wherever possible the School will provide the Employee with copies of all relevant documents which will be referred to during the hearing with the notification of the disciplinary hearing. This will include a copy of the investigation report and any statement of case where appropriate. Should this not be possible the School will provide the employee with this information no later than 10 working days before the hearing.

The Employee is required to provide no later than 5 working days before the hearing:

- The name of their trade union representative or workplace colleague
- The name(s) of any witnesses they are calling
- Any relevant documentation they wish to be considered.

If a late submission is received, the panel has discretion as to whether to accept this and make provision for an adjournment during the hearing to consider this. However the panel reserves the right to disregard this information.

## 15 Disciplinary Hearings

The purpose of the disciplinary hearing is for the School to present the case against the Employee and for the Employee to be given the opportunity to respond.

The role of the manager hearing the case / panel is to consider the evidence presented and decide whether, on the balance of probabilities:

- The case against the Employee has been established and
- Whether it is appropriate and reasonable to issue a formal sanction against the Employee.

The manager hearing the case / panel should also consider whetheran appropriate and sufficient investigation has been undertaken and a fair and reasonable procedure followed.

The case for the School will usually be presented by the manager who commissioned the investigation, or their nominee. The Employee will have an opportunity to present their case. Witnesses may be presented by either party.

A workplace colleague or trade union representative may accompany an Employee to the hearing.

***The arrangements for hearings are set out in Appendix B***

## 16 The Outcome of the Hearing and Disciplinary Sanctions

Based on the evidence presented, the panel may determine the following outcomes:

- There is insufficient evidence against the Employee and the matter should be concluded with no further action
- The case against the Employee is proven on the balance of probabilities and a decision made to give the Employee a formal warning
- The case against the Employee is proven on the balance of probabilities and a decision made to dismiss the Employee with or without notice
- The case is proven on the balance of probabilities and some other formal action is appropriate.

If proven and depending on the circumstances of the case, the panel may impose a range of sanctions, including dismissal, as follows:

| Level of Sanction | Normal Expiry Period |
|---|---|
| First Level Written Warning | After 6 months |
| Second Level Written Warning | After 12 months |
| Final Written Warning | After 18 months |
| Dismissal with contractual notice | |
| Summary Dismissal without notice | |

An Employee will not usually be dismissed for the first incident of misconduct other than in the case of gross misconduct. Where an Employee's first incident of misconduct is sufficiently serious – it may be appropriate to issue a final written warning. The duration of other sanctions will be determined by the circumstances of the case.

Should gross misconduct be found, and dismissal is determined, this is usually without notice (Summary Dismissal). In cases of dismissal arising from misconduct, notice would normally be given. Where notice is given this is the greater of the Employee's statutory or contractual notice entitlement.

***A list of actions which may constitute Gross Misconduct and Misconduct is at Appendix A.***

In determining the nature of the sanction consideration will be given to:

- Whether the proposed penalty is reasonable in view of all the circumstances – with reference to the examples of behaviours which constitute gross misconduct and misconduct within this procedure
- The nature, severity and impact of the misconduct
- The circumstances in which the misconduct occurred and any mitigating factors or the explanations given by the Employee
- The Employee's previous conduct, position, seniority, and length of service and their attitude towards the misconduct
- Any relevant Employer rules and procedures and whether the Employee was aware that their conduct contravened these.
- The penalty imposed for similar offences in the past
- Whether any other action could be taken to encourage the Employee to improve their conduct such as training or additional support.

In certain instances, and where appropriate to the concerns, the panel may recommend to the Headteacher that other action be considered such as:

- Downgrading
- Transferring the Employee to another role
- Requiring the Employee to undertake certain specified training
- Refer the matter for consideration under another procedure, if appropriate.

Alternative action such as this would only be taken where it is judged reasonable and viable for the School to implement.

## 17 Communicating the Decision

Where possible the Employee will be advised verbally of the outcome following the conclusion of the process and the Panel's deliberations. On occasion it may not be possible to determine an outcome on the day of the hearing, in which case the panel will reconvene at the earliest possible opportunity to make a decision. Where the panel reconvenes, the outcome will be communicated in writing to the Employee.

In all circumstances the Employee will be advised in writing of the outcome of the hearing usually within 5 working days of the decision being made.

The notification should specify:

- The outcome
- The reasons for the outcome and the nature of any misconduct that has been found
- The nature of any sanction and how long it will last
- If dismissed – the reason for the dismissal, whether notice will be given and the termination date
- Any period of time given for improvement, a review date if appropriate, and the required improvement expected
- Any support that the Employer will provide to assist the Employee, if relevant
- The likely consequences of any further misconduct.

Should a sanction be imposed Employees should be advised of the timescales and procedure for making an appeal.
It will be deemed sufficient for the School to issue the written confirmation of the decision to the Employee's last known address.

## 18 Appeal

**Guidance Note:**
*It should be noted that in most instances an appeal panel should consider only the points raised by the Employee as part of their grounds for appeal.*

*However where significant procedural irregularities are identified with the conduct of the original hearing, the appeal panel may, at their discretion, determine that a re-hearing would be appropriate. In cases of a re-hearing the decision of the appeal panel is final and there is no further right of appeal.*

The Employee may register an appeal in writing to the Clerk to the Governing Body or nominated person, within 5 working days of written receipt of the outcome of the hearing.

The appeal should be on one or more of the following grounds :

- Unfairness of decision
- That the sanction imposed was unreasonable
- That new evidence has come to light
- Significant procedural irregularities

The letter of appeal should include full details of the reasons for the appeal.

In instances where the grounds for appeal are not stated the School will ask the Employee to confirm these to enable all parties to give due consideration to the issues prior to the appeal meeting.

The Employee should ideally also include any supporting information they wish to rely on at the appeal hearing with their letter of appeal . In all cases any supporting information must be submitted by the Employee no later than the deadline for receipt of an appeal.

If a late submission is received the panel has discretion as to whether to accept this and make provision for an adjournment during the hearing to consider this. However the panel reserves the right to disregard this information.

The School will provide the Employee with copies of any documents which will be referred to during the appeal, including the notes of the disciplinary hearing and witness statements, in advance and usually no later than 5 working days before the appeal meeting.

A workplace colleague or trade union representative may accompany an Employee to an appeal .

The Appeal panel has discretion to consider allowing new evidence and witnesses but only if this is strictly relevant to the grounds of appeal.

The panel will identify a chair who will have responsibility for facilitating the hearing.

***The arrangements for hearings are set out in further detail in Appendix B***

**19 The Outcome of the Appeal**

In the case of appeals the role of the panel is to review the original decision on the basis of the grounds presented for appeal by the Employee. The outcome may be:

- To uphold the previous decision in full
- To uphold the previous decision in part – but to reduce the level of the sanction or amend other elements of the decision
- To uphold the Employee's appeal in full and withdraw the sanction in its entirety.

The panel may not impose a higher level of sanction than reached previously.

The appeal panel decision is final.

**20 Communicating the Appeal Decision**

Where possible the appeal hearing will be reconvened and the Employee advised verbally of the outcome following the conclusion of the process and the Panel's deliberations. On occasion it may not be possible to determine an outcome on the day of the appeal hearing, in which case the panel will reconvene at the earliest possible opportunity to make a decision. Where the panel reconvenes, the outcome will be communicated in writing to the Employee.

In all circumstances the Employee will be advised in writing of the outcome of the appeal hearing usually within 5 working days of the decision being made.

The notification should specify:

- The outcome
- The reasons for the outcome reached
- Where the level or nature of the sanction is reduced – the nature of any revised sanction and how long it will last
- That the panel's decision is final and there is no further right of appeal.

It will be deemed sufficient for the Employer to issue the written confirmation of the decision to the Employee's last known address.

## 21 Further misconduct

Where an Employee already has a live warning and there is further proven misconduct within that period, a further panel may extend the period of the warning or issue a higher sanction which may include dismissal.
The length of any extension may not be greater than the length of the original sanction.

## 22 Non Attendance at Meetings

Where an Employee or their representative is unavailable to attend a meeting held under this procedure, they should inform the Headteacher / Panel at the earliest opportunity.

A hearing / appeal may be deferred by up to 5 working days from the date of the original meeting where an Employee's representative is unavailable.

Other than in exceptional circumstances only one postponement will be granted.

The Headteacher / Panel reserves the right to hold a hearing / appeal in the Employee's absence where all reasonable efforts to secure attendance have been unsuccessful. In this event the Employee will be given the opportunity to make written representations to the meeting or for their representative or workplace colleague to make representations either to the meeting or in writing on their behalf.

If no submissions are received the panel may make a decision based on the available information.

The Headteacher will give due consideration to any request to postpone any other meeting held as part of this procedure taking into account the individual circumstances and the reason for non attendance.

Where an Employee refuses or fails to attend an investigation meeting without good reason or make written submissions to the investigation – the investigating officer may at their discretion deem it appropriate to conclude the investigation based on the information available.

## 23 Minuting Hearing and Appeal Meetings

Minutes should be produced of all submissions to the hearing / appeal – including Employer, Employee and witness statements, any questioning of the parties and the panel's decision statement. The panel's deliberations should not be minuted.

Minutes may be taken by a clerk who is present at the meeting or transcribed from an audio recording. An audio recording will only be made with the prior consent of the Employee.

Minutes will be shared with the Employee as soon as practicable. The Employee will have the opportunity to check the accuracy of the minutes / notes taken of their evidence and submissions. Where there are discrepancies between the Employer and Employee that cannot be resolved both versions of the minutes will be held on record. Where an audio recording is made this will be shared with the Employee if requested.

Covert recordings of meetings or hearings are expressly prohibited.

## 24 Resignations during the process

Where an Employee resigns during the course of a disciplinary investigation or pending a disciplinary hearing, the School reserves the right to continue the investigation / disciplinary process. In such circumstances the Employee will still be given opportunity to participate in the investigation.

## 25 Disclosure of formal sanctions in employment references

Should an Employee have an unexpired formal disciplinary sanction on file – this will be disclosed, upon request, in any reference provided by the Employer to a prospective Employer.

Expired sanctions will not be disclosed – unless these relate to matters which the Employer is required to share in accordance with Child Protection / Safeguarding Procedures.

## 26 Malicious and Vexatious Allegations

Where an allegation of misconduct against an Employee is found to be vexatious or of malicious intent, this may be examined in accordance with the School's disciplinary procedures.

## 27 Advice and support to Employees during the process

Employees are advised to seek support from their Trade Union or Professional Association in the first instance. Employees may address questions about the procedure to the Headteacher or other delegated staff member.

In instances where the investigation is prolonged or the Employee is suspended, the School will, as far as is practicable, make arrangements to keep the Employee informed with the progress of the investigation and timescales for conclusion.

## 28 Ill health and sickness absence during the process

The ill health of an Employee will not usually be grounds for ceasing any ongoing investigation or disciplinary process.

Where the absence is likely to be short, the School may pause the process until the Employee recovers. Where the absence is ongoing, the School may seek guidance from an occupational health advisor to determine whether or not the Employee is sufficiently fit to take part in the process. It is expected that Employees will consent to a referral being made to an occupational health advisor in such circumstances.

Upon receipt of occupational health advice consideration may be given to any measures that can be put in place to enable the process to proceed. This may include giving the Employee the opportunity to make written representations to an investigation or hearing or for their trade union representative or workplace colleague to make representations on their behalf.

## 29 Concurrent investigations by other agencies

Certain allegations of misconduct may initially be investigated under a different procedure or as a part of criminal investigation.

In these circumstances an investigation under the Employer's Disciplinary Procedure may take place concurrently, unless the School is otherwise instructed by other agencies.

Any disciplinary hearing held in relation to acts of misconduct will be independent of the timing or outcome of other procedures.

## 30 Allegations relating to financial irregularities

In instances where an allegation of theft, fraud or other financial irregularity is made – the issue may be referred to the School's auditors / Head of KCC Internal Audit to ensure that any subsequent investigation is undertaken by appropriate qualified staff.

## 31 Allegations against Trade Union Representatives

No formal disciplinary action or formal disciplinary investigation will be taken against a trade union representative until the circumstances of the case have been discussed with a full time official of their union.

## 32 Criminal Proceedings

A criminal charge or conviction for actions outside of the workplace may result in disciplinary proceedings being taken where it is judged that the Employee's action:

- Affects or is likely to affect the suitability of the Employee to undertake their job role, work with children / young people or work in a School setting
- Impacts on the operation or reputation of the School
- Seriously undermines the trust and confidence that the School has in the Employee.

Each case will be considered on its own merits with regards to the circumstances of the case and following such investigation as is appropriate.

## 33 Other concurrent processes

In the event that an Employee raises a grievance or a complaint of harassment or bullying in the course of a disciplinary process, both processes may continue concurrently.

However each case will be considered on its own merits to ensure that the School is acting reasonably.

## 34 Referral to other agencies

Where a teacher is dismissed for gross / serious misconduct (or may have been dismissed for serious misconduct had they not resigned) the School will consider whether to make a referral to the Teaching Regulation Agency (formerly the NCTL) in accordance with Education Act 2011 and The Teachers' Disciplinary (England) Regulations 2012.

Under the Safeguarding Vulnerable Groups Act (2007) a referral may also be made to the Disclosure and Barring Service where an Employee is dismissed (or would have been dismissed had they not resigned) because they have been cautioned or convicted of a relevant offence or behaved in a manner that has put a child at risk of harm / harmed a child.

## 35 Retention of Records

In the event that the matter under consideration is dropped due to insufficient or inconclusive evidence, all documentation should be confidentially destroyed immediately. It may be appropriate to keep a basic confidential record of the concern raised, date and the fact the matter was dropped due to insufficient or inconclusive evidence.

If formal disciplinary action is taken, the details of the allegation, investigation findings, hearing and appeal minutes plus a copy of the outcome letter and the details of any sanction, should be retained confidentially on the Employee's personnel file.

At the expiry of any sanction, all documentation should be removed from the Employee's personnel file. A minimal confidential record may be retained. This will only be referred to in future cases of a similar nature for the purpose of evidencing a pattern of misconduct or countering an Employee's subsequent assertion that there have been no previous misconduct issues.

When the matter relates to a child protection issue a factual written record of the details of the allegations and outcome will be retained in all instances.

In certain limited instances it may be appropriate to retain records for longer than the retention period for example in cases related to child protection concerns or where the case is awaiting decision from an employment tribunal.

## 36 Confidentiality

All parties are required to respect the confidentiality of all information relating to the disciplinary process.

The School recognises its obligations under the General Data Protection Regulation and associated legislation and the rights of Employees with regards to the personal data held on them.

All records relating to the management of Discipline and Conduct will be gathered, processed, held and shared in accordance with the requirements of the General Data Protection Regulation and Data Protection Act.

Please refer to the School's Data Protection Policy and Privacy Notice for further details
All records and information, including those relating to any sanction imposed, are a matter of confidence between the School and the Employee. In certain limited circumstances this information may be shared by the School - for example in accordance with Child Protection / Safeguarding Procedures.

# Appendix A: Disciplinary Rules

The following examples give an indication of the School's position as to the types of behaviour which constitute misconduct. It is not possible to specify all forms of behaviour that will result in disciplinary action.

Each case will be judged in the light of the circumstances and context surrounding it. Varying circumstances may well allow different disciplinary actions or no disciplinary action at all to be taken for what are similar offences.

The examples are not exhaustive and omissions from the list are not in themselves grounds for appeal.

In addition, Employees should, so far as is reasonably practicable, be familiar with the School rules, working practices and conditions of service procedures relating to their own School and their particular area of work. Teachers should be familiar with Part Two of the Teachers' Standards which set out the expectations with regards to personal and professional conduct. Employees should be familiar with any 'Code of Conduct' in place for all School staff.

**Gross Misconduct**

Gross misconduct is an act which may render it inappropriate for the Employee to be allowed to remain in their job. If, on the balance of probabilities gross misconduct is found, this may lead to dismissal without notice for a first offence.

Examples of actions that are likely to be treated as gross misconduct include – but are not limited to:

**Dishonesty**

- Theft of School / pupil / employee's property
- Falsification of documents, records, claims – whether for personal gain or not, to include, but not restricted to deliberately destroying or mutilating records, altering/erasing or adding to entries without legitimate reason
- Fraud or Corrupt Practices
- Failure to disclose, if asked, criminal convictions not exempt under the terms of the Rehabilitation of Offenders Act 1975 and Amendment 2013
- Withholding significant and relevant information, if asked, that the School could have reasonably required the employee to have disclosed including information which may bring into question the Employee's suitability to work with children and/or young people and/or in a School setting and/or which may bring the School into disrepute
- Breaking statutory provisions that would render the Governing Body or Kent County Council liable to prosecution.

**Conduct giving rise to a child protection issue**

- Inappropriate or sexual relationship with a pupil
- Contact / communication with a pupil in person or via phone / text / online of an inappropriate nature and / or content
- Act of sexual misconduct by an employee where that misconduct could have a detrimental impact on students or on the employee's position within the School
- Misuse of the ICT to view or distribute obscene, pornographic, defamatory or otherwise unacceptable material
- Inappropriate physical contact or restraint of a pupil
- Persistent and significant failure to exercise proper control or supervision of pupils.
- Inappropriate conduct towards children including serious and persistent acts of harassment, bullying and victimisation of pupils
- Where a prohibition order has been issued by the Disclosure and Barring Service or Teaching Regulation Agency or the employee has been disqualified in accordance with The Childcare (Disqualification) Regulations 2009
- Any referral, made to, or any, investigation or proceedings undertaken by the DBS, Teaching Regulation Agency or other agencies regarding child protection / safeguarding concerns relating to the Employee
- Persistent and / or substantial failure to follow the school's safeguarding policies and procedures.

**Conduct placing others at risk**

- Acts of violence.
- Malicious or willful damage to School, personal or private property
- Wilfully or negligently ignoring responsibilities/instructions thus placing other members of staff/pupils at risk
- Serious breach of health and safety rules
- Attending work or undertaking duties whilst under the influence of alcohol, drugs or other substances which may inhibit the ability to keep self or others safe.

**Conduct in the Workplace**

- Deliberate and significant refusal to carry out a reasonable, lawful and safe instruction or the normal agreed defined duties of the post
- Significant gross negligence in failing to attend or carry out the agreed duties of the post
- Persistent and / or substantial failure to follow procedures, regulations and policies either by deliberate act or omission
- Serious and / or persistent acts of harassment, bullying or victimisation of other employees
- Acts which amount to wilful discrimination or incitement to discriminate
- Serious and / or unlawful breach of confidentiality or data protection obligations
- Serious breach of the School's Code of Conduct , Part 2 of the Teachers' Standards or any other relevant professional standard or guidance
- Making a false or vexatious allegation against another member(s) of the School community
- Serious instances of abusive / offensive language or behaviour towards a member of the School community
- Acts which are incompatible with the ethos of the School, or in the case of Church Schools, its religious character
- Serious insubordination – undermining the authority of senior staff
- Serious misuse of the internet or inappropriate use of email and social media, including deliberately accessing or sharing pornographic, offensive or obscene material or malicious, defamatory or abusive communication via social media / emails
- Persistent unauthorised absence.

**Actions outside of the workplace**

- Being subject to any police investigation / enquiry, arrest, ban, charge, caution, reprimand, warning, fine, or pending prosecution, or criminal conviction which may affect or is likely to affect the suitability of the Employee to undertake their job role or work with children/young people or within a School setting. This includes any actions committed overseas which would be subject to a police investigation or formal action if such actions had been committed in any part of the United Kingdom
- Actions outside of the workplace that could be so serious as to fundamentally breach the trust and confidence placed in the Employee
- Bringing the School or profession or the Employee's own reputation into disrepute, including failure to observe reasonable standards of ethics and behaviour (or appropriate professional standards) within and outside work, or failure to have proper and professional regard for the ethos, policies and practices of the School
- Breach of confidentiality including sharing personal / sensitive information or disclosing operational / employment / pupil matters to members of the public
- Inappropriate comments made on any social networking site such as Twitter, Facebook or YouTube or in the public domain
- Please also refer additionally to *Conduct giving rise to a child protection issue.*

**Disclosure of Information**

- Failure to disclose any information or change in circumstance which may affect or is likely to affect the suitability of the Employee to undertake their job role or work with children/young people or in a School setting
- Failure to disclose any police investigation / enquiry, arrest, ban, charge, caution, reprimand, warning, fine, or pending prosecution, or criminal conviction, this includes any actions committed overseas which may affect or is likely to affect the suitability of the Employee to undertake their job role or work with children/young people or within a School setting
    - Failure to disclose matters arising from a previous or current secondary employment, or voluntary work, which may impact on the Employee's suitability to undertake their role or work with children/young people or in a School setting
    - Failure to disclose inclusion on the Disclosure and Barring Service Children's Barred list and any change in DBS status or any referral, made to, or any investigation or proceedings undertaken by the DBS
    - Failure to disclose any referral made to, or any investigation or proceedings being undertaken by the Teaching Regulation Agency, General Teaching Council for Scotland, or the Education Workforce Council in Wales
    - Where the Employee is subject to the Childcare (Disqualification) Regulations 2009 under section 75 of the Childcare Act 2006 ("the Regulations"), failure to disclose a disqualification in accordance with the Regulations, including where any application for an Ofsted waiver from disqualification has been made, regardless of whether such an application was successful
    - Failure to disclose close personal relationships outside of the workplace which present a 'risk by association' to the safeguarding of children / young people or are fundamentally incompatible with an Employee's job role or their suitability to work with children / young people or in a School setting
    - Failure to report any significant current or historical information in the public domain or which is likely to come into the public domain, which may be of relevance to the Employee's job role or suitability to work with children/young people or in a School setting or matters which may be subject to adverse media attention
    - Failure to disclose to an appropriate person the conduct / actions of a colleague which may present a risk to the safeguarding / wellbeing of children / young people.

**Misconduct**

Misconduct is an act of a degree less serious than that which would warrant immediate dismissal for a first offence but which could nevertheless lead to dismissal if persistent.

Acts listed under the heading of gross misconduct where the impact and implications are less serious may also be considered as misconduct.

Occasionally an act of misconduct might be so serious as to justify dismissal. Normally, however, only when it can be shown that the warnings have not been heeded or there is a pattern of misconduct for a variety of reasons will misconduct lead to dismissal.

Dismissal for misconduct will be with notice.

Examples of actions that are likely to be treated as misconduct include – but are not limited to:

- Unauthorised absence from work
- Failure to follow absence notification and / or certification requirements
- Poor time keeping
- Refusal / failure to follow reasonable management instruction
- Breach of one or more School policies or procedures either by deliberate act or omission
- Failure to adopt safe working practices either by a deliberate act, negligence or omission
- Serious neglect of duty
- Negligent use of School property
- Acts of dishonesty such as making unauthorised private phone calls / sending personal mail at the School's expense or unauthorised use of the internet
- Misuse of internet or inappropriate use of email
- Insubordination.
- Abusive / offensive language or behaviour towards a member of the School community
- Inappropriate conduct towards pupils
- Failure to have due regard to the confidentiality of information and School data protection practices

# Appendix B: Guidance for Hearings and Appeals

**General**

Hearings and Appeals should take place at a reasonable time and place usually during the Employee's normal working hours, unless otherwise agreed with the Employee and, in the case of Employees who work term time only, during the School term. Hearings and Appeals should not be heard beyond 5pm to protect the welfare of all parties. These arrangements may be varied by mutual agreement.

Consideration should be given to the venue for the hearing. There should be adequate rooms for the parties and arrangements to ensure that the hearing is conducted with discretion and confidentiality maintained. A venue away from the School site may be appropriate in certain circumstances.

The precise procedure to be followed will vary depending on the particular circumstances of each case, but in general the following will apply:

**Role of the Panel / Manager Hearing the Case**

It is the role of the panel / manager hearing a case to consider the evidence presented and decide whether on the balance of probabilities:

- The case against the Employee has been established.
- Whether it is appropriate and reasonable to issue a formal warning or dismiss the employee.

Should an Employee appeal the outcome of the hearing it is the role of the panel / manager considering the appeal to review the original decision on the basis of the grounds for appeal presented by the Employee and consider whether the original outcome was within a range of reasonable responses given the circumstances.

If the case is to be heard by a panel, a chair will be identified who will have responsibility for facilitating the hearing.

**The Role of the Representative**

The Employee has the right to be accompanied to a hearing or appeal meeting by either a workplace colleague or recognised trade union representative.

The representative may address the hearing to put and sum up the Employee's case, respond on behalf of the Employee at the hearing and confer with the Employee during the hearing. The representative does not have the right to answer questions on the Employee's behalf, address the hearing if the Employee does not wish it or prevent the Employer from explaining their case.

**The Role of the HR Advisor**

The School may request that a HR Advisor attends a hearing or appeal meeting whose role is to advise the panel on the procedure and any points of employment law.

A further HR Advisor may also be in attendance to support the School in the presentation of their case.

The HR Advisor may be allowed to ask questions and clarify issues on behalf of the party they are supporting.

**Witnesses**

Witnesses may be called by either party. Details of the proposed witnesses should be communicated in advance no later than 5 working days before the date of the hearing / appeal. The role of the witness is limited to giving evidence and responding to questions.

The Employee is responsible for ensuring that any witnesses they call can attend on the relevant date. In the event that a witness cannot attend they may make a written statement which should be provided to the School no later than 5 working days in advance of the hearing / appeal.

All witnesses should be aware of the confidential nature of hearings and should not discuss any aspect of the meeting or matters under consideration with anyone outside of the hearing.

**Procedure for Hearings**

- The manager hearing the case / chair of the panel will introduce those present and their roles, explain the case to be considered, the procedure to be followed and the format of the hearing
- The School's representative presents their case including calling any witnesses and referring to written submissions / evidence. The Employee and their representative and panel may ask questions of the School's representative or any witnesses
- The Employee or their representative presents their case including calling any witnesses, referring to written submissions and presenting any mitigating circumstances. The School's representative and panel may ask questions of the Employee and their representative or any witnesses.
- Adjournments may be requested by both parties or by the manager / panel during the hearing
- Both parties have the opportunity to sum up their cases, with the Employee or their representative having the final word.
- The hearing will then be adjourned whilst the manager / panel deliberates over the evidence. If further clarity is required both parties or witnesses may be recalled and the hearing reconvened so that all parties may hear any additional evidence
- Where possible the hearing will be reconvened and the Employee advised verbally of the outcome following the conclusion of the process and the Panel's deliberations. On occasion it may not be possible to determine an outcome on the day of the hearing, in which case the panel will reconvene at the earliest possible opportunity to make a decision. Where the panel reconvenes, the outcome will be communicated in writing to the Employee.
- In all circumstances the Employee will be advised in writing of the outcome of the hearing usually within 5 working days of the decision being made.

**Procedure for Appeals**

- The chair of the panel will introduce those present and their roles, explain the case to be considered, the procedure to be followed and the format of the meeting
- The Employee or their representative shall put the case in support of the grounds for appeal, including any mitigating circumstances. This may include referring to written submissions and evidence. Witnesses may be recalled only where this is strictly relevant to the grounds of the appeal. The School's representative and panel may ask questions of the Employee and their representative.
- The School's representative presents the case for upholding the previous committee's decision and refers to written documentation. Witnesses may be called only where this is strictly relevant to the grounds of appeal. The Employee and their representative and panel may ask questions of the School's representative.
- The panel will invite both parties to sum up their cases, with the Employee or his/her representative having the final word. The hearing will then be adjourned whilst the panel deliberates over the evidence
- Adjournments may be requested by both parties or by the panel during the appeal hearing. If new evidence is presented the appeal may need to be adjourned while this is investigated
- The appeal hearing will then be adjourned whilst the panel deliberates over the evidence. If further clarity is required both parties or witnesses may be recalled and the hearing reconvened so that all parties may hear any additional evidence
- Where possible the appeal hearing will be reconvened and the Employee advised verbally of the outcome following the conclusion of the process and the Panel's deliberations. On occasion it may not be possible to determine an outcome on the day of the appeal hearing, in which case the panel will reconvene at the earliest possible opportunity to make a decision. Where the panel reconvenes, the outcome will be communicated in writing to the Employee.
- In all circumstances the Employee will be advised in writing of the outcome of the hearing usually within 5 working days of the decision being made.

# Appendix C: Dismissal for Some Other Substantial Reason

This appendix should be referred to when the School wishes to consider a case for potential dismissal for some other substantial reason ("SOSR") which does not relate to an Employee's conduct, capability, redundancy or fall under the School's Discipline & Conduct Policy or one of its other Employment Policies.

Under the Employment Rights Act 1996 dismissals which do not fall into other specific categories are referred to as SOSR dismissals and may constitute a fair reason for terminating employment.

It may not always be possible to ascertain at the outset whether an issue should be addressed as a SOSR, or disciplinary matter. In such instances the findings of an investigation or fact finding exercise may inform which course of action to take. Any investigation will take place in accordance with the provisions as outlined in the disciplinary policy.

Matters which may be considered under this SOSR procedure include, but are not limited to:

- Where there is a restructure which does not give rise to a redundancy situation within the meaning of section 139 of Employment Rights Act 1996
- Where an Employee has confirmed that they are not prepared to accept a change in working practices and/or a change to the terms and conditions of employment
- Where the Employee has been engaged in activities and/or through their association with another person could place the School into disrepute and/or result in a breakdown in trust and confidence in the employment relationship
- Where close personal relationships outside of the workplace present a 'risk by association' to the safeguarding of children / young people or are fundamentally incompatible with an Employee's job role or their suitability to work with children / young people or in a school setting
- Where there is a fundamental breakdown in relationships (unrelated to matters of conduct or performance) which causes a breach of trust and confidence between the employee and the School
- Where there is a personality clash or an irreconcilable difference in the working relationship between parties which makes it impossible for the parties to work together
- Where the Employee acts in a way which creates a potential conflict with the School's interests
- Where a third party requires an Employee's dismissal
- Expiry of a fixed-term or temporary contract
- Where an overseas trained unqualified teacher has failed to secure qualified teacher status within the prescribed time limits
- Where a prohibition order has been issued by the Disclosure and Barring Service or Teaching Regulation Agency
- Where an Employee no longer meets the UKBA requirements for residency or employment within the UK
- Detrimental impact on the School arising from an external investigation (police, social services, other agency) into the employee's conduct which means the employee is unable to attend work for a prolonged period.

A potential dismissal under SOSR will follow the principles and process outlined in Part A and B of the Discipline and Conduct Policy and Procedure.

Suspension may be considered where it is not deemed appropriate for the employee to attend work pending the outcome of the process.

Consideration will be given to ensuring there is as much investigation as is reasonable and appropriate given the circumstances.

There may be instances in which, due to specific circumstances, an Employee may not be able to attend investigation or hearing / appeal meetings. In this event the Employee will be given reasonable opportunity to make written representations to the meeting or for their representative or workplace colleague to make representations either to the meeting or in writing on their behalf.

Any hearing / appeal will be managed in accordance with the guidance at Appendix B.

Should the outcome result in dismissal this would be with the appropriate notice according to the terms and conditions of employment.

**Breach of Statutory Restriction**
On occasion an Employee may no longer be able to continue in their job role because to do so would contravene a statutory restriction. In these circumstances termination of employment may be considered.

Matters which may be considered in this manner may include, but are not limited to:

- Where an individual is banned from driving where this is an essential part of their post
- The loss of a relevant registration or licence where this is a statutory requirement

| | **Signed** | **Date** |
|---|---|---|
| **Approved by Governing Body** | Governing Body | 22.06.26 |
| **Chairman of Governors** | Dave Dorrell | 22.06.26 |
| **Co-Headteachers** | Jenna Halfhide and Joanne Shobbrook | 22.06.26 |