



KALEIDOSCOPE
Multi Academy Trust

**Disciplinary Policy and Procedures
– Guidance for Managers**

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Note: for Appendices, see separate documents via www.supportservicesforeducation.co.uk

DISCIPLINARY POLICY AND PROCEDURE – GUIDANCE FOR MANAGERS

1. INTRODUCTION

- 1.1 These notes are intended to complement the model Disciplinary Policy and Procedure and to assist schools in the implementation of the procedure. The notes are intended for general guidance only and are not intended to restrict or prescribe management initiative and/ or flexibility. They do not provide a blue print for action to be taken in every situation however they will answer many of the more frequently asked questions which arise when using the procedure. They do not form part of the policy/procedure itself. Advice should be sought from the HR Advisory Service on Conducting Workplace Investigations.
- 1.2 The HR Advisory Service will ensure that the guidance provided within this document is regularly reviewed to ensure that it follows best practice and is compliant with relevant employment legislation.

2. MODEL LETTERS

- 2.1 Model letters for use within the procedure are provided by the HR Advisory Service within the *Toolkit of Letters for Managing a Disciplinary Process* (see **Appendix1**) and are recommended for use when writing to employees who are subject to disciplinary proceedings. These are as follows:-

- Letter convening Initial Meeting to discuss alleged misconduct issues
- Letter convening Management Meeting
- Letter confirming verbal warning
- Letter confirming to employee that their conduct is to be investigated under the Disciplinary procedure
- Letter confirming suspension from duty
- Letter convening Investigation Meeting with employee
- Letter convening Disciplinary Hearing
- Letter confirming first written warning
- Letter confirming final written warning
- Letter confirming dismissal with previous warnings
- Letter confirming dismissal without previous warnings
- Letter convening Disciplinary Appeals Hearing
- Letter confirming outcome of Disciplinary Appeals Hearing

- 2.2 A model Appeal Notification Form has also been provided.

3. USE OF THE DISCIPLINARY PROCEDURE

- 3.1 The aim of the Disciplinary Procedure is to help employees achieve and maintain a high level of conduct in relation to their employment and to provide a framework to ensure that if a problem does arise that it is handled fairly and consistently.

- 3.2 The procedure only forms one aspect of a school's approach towards maintaining high standards of conduct and in a sense is, in most instances, the last resort when all other informal management measures have failed to effectively address the conduct issue. In many cases the right word at the right time may be all that is needed, and will often be a more satisfactory way of dealing with a breach of rules than a formal meeting. If day to day management is effective it is likely that unacceptable conduct will be identified and improved before it reaches the stage of more formal action being required.
- 3.3 It is therefore essential that before managers consider taking action through the Disciplinary Procedure they review their management of the conduct problem and in doing so ensure that the following aspects of effective management have been addressed:-
- standards of conduct are established and agreed and clearly communicated;
 - regular supervision is in place;
 - minor conduct issues are dealt with promptly and the employee encouraged to improve their conduct; and
 - consistency in approach – apply the same rules and considerations in each case.
- 3.4 Any failure to ensure that these measures are in place has the potential to provide an employee with reasonable mitigation should the formal Disciplinary Procedure be invoked and may lead to increased timescales in unacceptable conduct being managed.
- 3.5 Note: The Disciplinary Procedure is only concerned with individual conduct. It is **not** intended to deal with capability issues related to poor performance or ill health. These issues are dealt with under separate HR procedures.

4. RECOGNISE GOOD CONDUCT

- 4.1 It is often the case that employers focus on those who have not yet met the standard and ignore those employees who are achieving or exceeding those standards. It is essential for staff morale and motivation that good conduct is recognised. In doing so it may be that good practice can be shared across the school.

5. BENEFITS OF AN EFFECTIVE DISCIPLINARY PROCEDURE

- 5.1 The Disciplinary Procedure provides a framework to:-
- ensure the encouragement of employees to achieve and maintain standards of conduct;
 - ensure a fair and consistent method for dealing with alleged failures;
 - remind managers and supervisors how disciplinary matters should be handled;
 - minimise disagreements about disciplinary matters; and
 - reduce the need for dismissals.
- 5.2 The lack of a procedure can be expensive leading to:-
- low morale and resistance to change;

- lowered efficiency;
- successful claims for unfair dismissal;
- complaints about breach of contract; and
- claims under anti-discrimination legislation.

6. LEGAL CONTEXT

- 6.1 Conduct is one of the five potentially fair reasons for dismissal under the Employment Rights Act (1996).
- 6.2 Employment Tribunals expect employers to act fairly and reasonably in dismissing an employee. In order to ensure consistency and fair treatment of employees and to protect the school in the event of a claim proceeding to an Employment Tribunal, it is essential for the school to state the reason for dismissal and to follow a procedure compliant with the statutory minimum requirements.

7. RESPONSIBILITY FOR DISCIPLINE

7.1 Governors and Senior Leadership Team

- To be involved in setting standards of conduct and disciplinary rules for the school;
- To manage and oversee the implementation of the Disciplinary Policy and Procedure within the school with a view to ensuring consistency and fair treatment of individuals;
- To be exemplars of good management practice;
- To ensure that all relevant schools' personnel are appropriately trained in the use of the Disciplinary Procedure; and
- To help promote a culture of encouragement when dealing with issues of unacceptable conduct and promote positive outcomes.

7.2 Line Managers/Supervisors

- To ensure that they provide a 'good' role model in respect of conduct;
- To attend relevant training provision on disciplinary handling;
- To ensure that clear standards of conduct are established in relation to the particular work area for which they have responsibility;
- To ensure that these standards are clearly communicated to their staff;
- To regularly review these standards to ensure that they continue to be relevant and/or appropriate;
- To seek advice and guidance where required, from the HR Advisory Service;
- To deal with minor issues of misconduct promptly through day to day management practice, formal supervision and appraisal;
- To keep written records of discussions held with employees to address conduct issues; and
- To ensure that where appropriate concerns regarding the conduct of an employee are referred up through the line management structure.

7.3 HR Advisory Service

- To regularly review the model schools Disciplinary Policy and Procedure to ensure it is compliant with employment legislation and good practice;
- To record and monitor the outcome of Disciplinary Hearings;
- To ensure that any changes to the model procedure or policy are clearly communicated to schools so that schools can inform all staff within the school;
- To assist in the training of Head teachers and Governors in the use of the Disciplinary Procedure;
- To provide advice and practical guidance to Head teachers and Governors on the application of the Disciplinary Procedure.
- To provide advice and guidance to Headteachers and Governors in conducting disciplinary investigations; and
- To advise at Disciplinary Hearing and appeal panels to ensure that proceedings are conducted in accordance with procedure.

7.4 Employees and their Representatives

- To ensure that the highest standards of conduct are maintained at all times;
- To ensure that they raise with their line manager where they are unclear as to the standards of conduct required;
- To ensure all reasonable steps to improve their standards of conduct are taken where it is identified that improvement is required; and
- To ensure attendance at disciplinary meetings.

8. RESOLUTION OF MINOR MISCONDUCT ISSUES

- 8.1 Where it is considered that the issues of concern are relatively minor in nature often an informal discussion with the employee can resolve matters. The objective of these discussions will be to effectively manage any minor breaches in discipline at an informal level through two way dialogue between manager and employee. The manager will therefore need to be clear with the employee as to the nature of his/her concerns regarding the employee's conduct, the information on which these concerns are based and the standards required. The employee should be given the opportunity to respond to the concerns being raised and to challenge the information upon which the manager has based those concerns. The manager should ensure that they discuss with the employee any support needs he/she may require to assist him/her in meeting the standards required. It is important that any support agreed is followed up by the manager. Where this informal approach does not achieve sustained satisfactory level of conduct the continuing concerns should be addressed through the Disciplinary Procedure.

DISCIPLINARY PROCEDURE

9. THE INITIAL MEETING AND MANAGEMENT MEETING DISCUSSIONS

9.1 Practicalities

9.2 Whilst these meetings are not a 'Disciplinary Hearing' it is important that the employee is able to distinguish them from a routine supervision and therefore should be a more formally constituted meeting than any previous informal arrangements put in place to discuss any conduct issue with the employee.

9.2 Since a verbal warning may be issued as a result of the Management Meeting reasonable notice should be given of the Management Meeting and the employee must also be informed of his/her right to be accompanied for support at the meeting by a trade union representative, an official employed by a trade union or a fellow worker. If the employee and/or his/her representative is unable to attend on the date which has been arranged one other alternative date should be provided that is not more than five working days after the date originally proposed (consultation with the employee and representative should ensure that the alternative date is suitable).

9.3 In the case of the Management Meeting and where possible in the case of the Initial Meeting, the employee should be given an indication of the nature of the concerns to be discussed so that he/she can prepare for the meeting. This approach:

- helps generate a less inhibited and more positive discussion;
- increases the potential for the employee to be more actively involved in the meeting; and
- is likely to reduce defensive behaviour.

9.4 Adequate time should be set aside for the meeting which should be kept free from interruptions.

10. INITIAL MEETING: ESTABLISH WHY THERE IS A PROBLEM

10.1 You should start the discussion with a clear explanation as to where the employee is failing to achieve the required standards of conduct.

10.2 The first aim of the discussion should be for you as the line manager to ascertain from the employee the facts that have contributed to the conduct problem. When you are seeking reasons for shortfalls try not to attach blame. This will only serve to create a negative atmosphere which will not be conducive to ensuring that the employee feels 'safe' to discuss the reasons why their conduct is not satisfactory.

10.3 Through discussion it may be established that:-

- The standards of conduct have not been effectively communicated to the employee and the employee did not fully understand/know what was expected.

Where this is the case action should be taken by the manager to ensure that the employee is aware of and understands what is expected;

- The conduct problem relates to the employee's personal life. Where this is the case the manager should seek to identify with the employee what action is required and by whom in order to enable the employee to reach an acceptable standard of conduct. In addition the provision of counselling may be appropriate and should be discussed with the employee; or
- The conduct problem is caused by factor(s) related to capability such as health problems, lack of training etc. In these circumstances advice should be sought from the HR Advisory Service on the correct procedure to be applied.
- The conduct problems appear to be related to negligence or an attitudinal problem. In these circumstances it may be appropriate to convene a Management Meeting to consider whether to issue a verbal warning or alternatively to initiate a full investigation into the employee's alleged misconduct. In these circumstances advice should be sought from the HR Advisory Service.

11. ESTABLISH THE ACTION REQUIRED

11.1 Having established the facts at the Initial Meeting you will need to decide whether any further action is required. If it is decided that no action is justified following either the Initial Meeting (or subsequently at the Management Meeting) this should be confirmed to the employee in writing.

11.2 If it is established that the employee's conduct does fall short of the standards required you will need to decide what action is required. Please see the Disciplinary Policy for the possible actions following the Initial meeting and following the Management Meeting.

11.3 Action may be aimed at one of the following:-

- Changing behaviour – this may be fairly straightforward providing that the employee accepts and recognises that the need for some change in his/her behaviour. The challenge arises when this is not the case. In these circumstances the employee will need to be presented with examples of his/her behaviour which you as the manager consider to be unacceptable. You should seek to demonstrate why the behaviour is unacceptable, for example, the behaviour or conduct may be in breach of the school's Disciplinary Code/Standards, or may adversely be affecting work colleagues;
- Changing attitudes – this may be more difficult than changing behaviour as attitudes tend to be deeply rooted. It is often more effective to change behaviour first and encourage attitudes to change thereafter; or
- Clarifying expectations – it may be that the employee was not aware of the standards of conduct expected. In these circumstances it is important that action is taken to address this. This may either take the form of verbal communication of the appropriate standards or confirmation of standards in writing or both. It may also require wider communication than just the employee where it is identified that the lack of knowledge is shared by the employee's work colleagues.

12. RECORDING THE DISCUSSION

12.2 Whatever action you decide is appropriate it is important that this is communicated to the employee in writing. The discussions held at the Initial meeting and / or the Management Meeting may need to be relied upon within the Disciplinary Procedure in the event of the employee not meeting the required standards. It is important therefore to keep a record of those matters discussed and the outcomes reached. Any such records should be stored securely by the manager along with the employee's supervision/appraisal record. To ensure that there is no confusion the manager should write to the employee confirming his/her decision following consideration of those matters discussed.

13. IS THE DISCIPLINARY PROCEDURE THE APPROPRIATE PROCEDURE?

13.1 In many instances it will be clear that the conduct issue to be addressed is such that the Disciplinary Procedure is the correct procedure to use. However, in some instances it may be that through discussion with the employee, you consider that action is not appropriate under the Disciplinary Procedure. For example, it may transpire that an employee who is regularly late for work (conduct issue) has problems at home which are affecting his/her ability to get to work on time and consequently is affecting his/her ability to do their job to the required standard.

13.2 Clearly some management action is required to address this problem, however in these circumstances it may not be appropriate to follow a disciplinary route in the first instance because the problem is not one of 'won't do'; rather it is one of 'can't do' for reasons which may be beyond the control of the employee. Appropriate action in these circumstances would include discussion between the manager and employee as to what the employer is able to agree in order to assist the employee in eventually being able to return to an acceptable level of timekeeping within acceptable timescales. Follow up action under the disciplinary procedure may be required should the employee fail to achieve the required improvement in his/her timekeeping within the agreed timescales.

13.3 If at any time you are of the view that the Disciplinary Procedure is not the correct procedure and you wish to check this view out further, the HR Advisory Service can provide objective advice in these circumstances.

13.4 Where it is determined that the Disciplinary Procedure is not the correct procedure action should be taken without delay to ensure that all relevant parties, i.e. the employee and his/her representative, are informed and arrangements made to progress the matter under the correct procedure.

14 SUSPENSION

14.1 The suspension of an employee should only be considered in specific circumstances which are outlined within the school's Disciplinary Policy and Procedure.

14.2 Suspension should only be used responsibly and with regard to the impact on the employee and the service within which the employee works. Redeployment to another area of work or restrictive duties until the investigation has been completed may be considered as an alternative to suspension.

14.3 Where suspension is used the employee must be informed that his/her suspension is not a disciplinary sanction nor is it in any way an indication that the allegations(s) of misconduct are proven.

15. CARRYING OUT A SUSPENSION

15.1 Consideration should be given at the earliest opportunity by the employee's line management as to whether it is appropriate for the employee to remain at work whilst the disciplinary investigation is taking place. Prior to suspending an employee, the HR Advisory Service / school's HR service provider will, by agreement of the Governing Body / Trust, be consulted to ensure that suspension is an appropriate course of action.

15.2 A suspension will normally be carried out by the Headteacher. Support in carrying out a suspension may be requested from the HR Advisory Service.

15.3 At the time of being suspended the employee will be informed of the allegation(s) of misconduct against him/her and the conditions of the suspension. This will be confirmed in writing to the employee by the Headteacher and either hand delivered to the employee at the time of the suspension or sent recorded delivery within one working day following the suspension. The person should be informed at that point who their named contact is within the organisation and provided with their contact details.

15.4 It is not good practice to allow a suspension to continue for any longer than is absolutely necessary to enable the completion of the investigation and to make arrangements, where applicable, for a Disciplinary Hearing. The length of the suspension period may be the subject of a challenge both within internal proceedings and at an Employment Tribunal hearing, and therefore it is important to ensure that the length of suspension is reasonable based on the facts of the case. **See Paragraphs 6.2 to 6.8 in the Disciplinary Policy** Where a suspension is paid for centrally the school must provide HR Advisory Service and the Commissioning, Contracts and Funding team with an approximate length of time that they expect the suspension to last. **See Paragraph 6.4 in the Disciplinary Policy**

15.5 A suspended employee will be required to co-operate with the investigation and is expected to be available throughout the suspension period to attend any interviews. Should a suspended employee subsequently go on sick leave, a referral to Occupational Health may be made in order to establish whether there are any underlying medical reasons which should be taken into consideration when requiring the attendance of the employee at an investigatory meeting.

16. DISCIPLINARY INVESTIGATION

16.1 General

16.2 In cases involving more serious concerns regarding an employee's conduct it may be necessary to carry out a full investigation to establish facts and therefore inform what management action is appropriate to address the misconduct. The employer should not act against an employee on the grounds of mere suspicion; he must have **genuine belief** that the employee has fallen short of the standards of conduct required. This belief must

be based on **reasonable grounds**. Insufficient investigation can lead to a finding of unfair dismissal by an Employment Tribunal. Advice should be sought from the HR Advisory Service on Conducting Workplace Investigations.

17. DISCIPLINARY HEARING

17.1 Guidance to Headteacher/Governors Chairing a Disciplinary Hearing

17.2 Composition of Disciplinary Panel

The panel will normally be made up of between three and five Governors. The Chairperson will be responsible for the proper conduct of the hearing and for ensuring that sufficient information is available for the panel to reach a decision. The panel members will not have previously investigated the allegation/complaint or have any direct interest in the outcome of the proceedings. The seriousness of the allegation(s) and the grade of the employee who is the subject of the allegation(s) will determine the panel composition.

17.3 Disciplinary Hearings are difficult and stressful for all concerned and it is the responsibility of the officer chairing a hearing to ensure that it is managed expediently and as smoothly as possible.

17.4 In some cases, particularly harassment cases, monitoring and controlling proceedings is essential to protect against further harassment, intimidation and the unnecessary heightening of emotions.

18. PREPARATION BEFORE THE HEARING

18.1 Before the hearing it is necessary to ensure that the following facilities have been arranged:-

- suitable venue for the meeting (ensure that any special requirements of those persons who will be required to attend the hearing are catered for where it is reasonably practical to do so);
- arrange separate waiting rooms , wherever possible, for the separate parties i.e. the employee and his/her representative and witnesses and the presenting officer and witnesses;
- organise refreshments/tissues;
- ensure adequate and sensitive seating arrangements e.g. separating witnesses from the employee who is the subject of the hearing – not sitting them directly facing;
- ensure that the hearing is kept free from interruptions, noise and that the usual requirements for confidentiality are catered for; and
- ensure that a note taker has been identified to attend the hearing. The note taker will take no part in the hearing and must leave when the panel is making its deliberations concerning the outcome of the hearing. The note taker should be asked to return to record the panel's decision once it has been made.

18.2 Protocol for Disciplinary Hearing

Details of the protocol are attached to the model Disciplinary Policy and Procedure. A summary of the protocol is as follows:

- Introduction by Chairperson
- Presentation of management submission including attendance of management witnesses
- Questioning of management witnesses
- Employee's response including attendance of employee witnesses
- Questioning of employee's witnesses
- Summing-up by both presenting officer and employee
- Decision

18.3 During the Hearing

18.4 The Chairperson must outline the procedure for presenting information/evidence to the hearing. He/she must ensure that the Disciplinary Hearing Protocol is followed and that the proceedings are conducted in a calm and dignified manner.

18.5 Interrupting proceedings to bring them back in line with agreed protocol may be necessary in circumstances where, for example:

- One party is interrupting the other or speaking out of turn
- The proceedings have turned into a debate between the two parties
- During cross examination of witnesses and/or the other party's submission either party intentionally or unintentionally commences to present their own submission rather than ask questions of the other.

18.6 Other circumstances in which the Chairperson should intervene include:

- When questions asked are irrelevant, inappropriate e.g. personal or discriminatory.
- When the tone in questioning is inappropriate e.g. threatening, intimidatory, aggressive
- When leading questions are asked at inappropriate times
- When questioning is unnecessarily persistent
- When questioning is lengthy or intense and a break is required
- When witnesses appear to be getting anxious, emotional, upset and may be unable to continue.

18.7 It is important to remember that cross-examination of witnesses is supposed to be a process whereby facts can be established. It is not appropriate for a witness to be cross examined in a way that will cause unnecessary distress or duress; questioning designed to 'trip up' a witness on irrelevant detail should also not be allowed.

18.8 In harassment cases it is particularly important that areas of questioning are appropriate. For example in cases of sexual harassment it should not be necessary to question the complainant about their code of dress or manner of behaviour or otherwise in a manner

which makes assumptions that they may have been acting in a way that provoked the individual(s). If it is alleged that the complainant encouraged the employee being disciplined in some particular way then questions should focus specifically on those points only.

18.9 *N.B Ensuring short breaks during the hearing is advisable, not least for panel members who have to absorb a significant amount of information.*

19. THE ADJOURNMENT/DECISION

19.1 It is generally good practice to adjourn before a decision is taken about whether a disciplinary sanction is appropriate. This allows time for proper consideration and reflection. It also allows time for further checking of any matters raised, particularly if there is any dispute over facts. If new facts emerge then consideration should be made as to whether it is necessary to re-convene the hearing.

19.2 The process of deliberation should take into account the following matters:

- Is there sufficient evidence to substantiate some or all of the allegation(s) made against the employee? The test to be applied is one of 'probability' rather than the criminal law test of 'beyond all reasonable doubt'.
- How serious is the misconduct? What does the schools Disciplinary Code state is the level of sanction that is likely to be imposed as a result of the particular misconduct?
- What level of penalty has been imposed in similar cases in the past?
- Are there any mitigating circumstances that ought to be taken into account when determining the appropriate level of sanction?
- Check the employee's previous disciplinary record, general work record, work experience, position and length of service.
- Is the sanction to be imposed reasonable in view of all the circumstances?

19.3 In reaching their decision the disciplinary panel should be clear about the basis upon which their decision has been reached. In reaching their decision it may be that the disciplinary panel also form a view on associated matters such as follow up training to be provided, supervision, communication of standards etc.

19.4 Where the employee subject to the hearing has been suspended consideration will also need to be given to his/her return to work and how this will be managed. Similarly where a decision to dismiss has been made consideration will need to be given to the practicalities of implementing this decision.

19.5 On reaching a decision the disciplinary panel will prepare a statement outlining the panel's decision. The hearing will then be reconvened and the Chairperson will read the statement. This statement can later be used to form the basis of the letter sent to the employee confirming the outcome of the hearing.

19.6 Given the anxiety and pressure induced by disciplinary proceedings it is good practice for the Chairperson to thank those who have participated in the proceedings.

- 19.7 *N.B In all cases where a formal recorded disciplinary warning or dismissal is imposed the employee should be informed of their right of appeal.*
- 19.8 Following on from the hearing the disciplinary panel may wish to provide feedback to certain managers, for example, in relation to management practice, supervision arrangements, training etc. Where the panel has recommended certain action such as training, counselling, arrangements need to be made to ensure that these requirements are implemented by the relevant line manager.
- 19.9 The Chairperson of the Disciplinary Panel is responsible for writing to the employee following the hearing setting out the following information:
- The outcome of the Hearing
 - The nature of any misconduct found to be proven
 - Confirmation of any disciplinary sanction imposed
 - The period of time given for improvement and the improvement expected
 - Any support the school will provide to assist the employee
 - The likely consequences of further misconduct
 - (Where a written warning or dismissal has been imposed as the sanction) the timescale for lodging an appeal and how it should be made
- 19.10 The HR Adviser to the Panel, where present, will be able to provide assistance should this be required.

20. DELAYS AND COMPLICATIONS

- 20.1 Unfortunately given the sensitivities around disciplinary proceedings it is possible for hearings to be disrupted at short notice with for example a witness not showing up, or one party walking out of the hearing because emotions are running high. Fine judgments are often necessary in such situations to ensure that the need for fairness and compliance with procedure are balanced with the need for the particular misconduct issue to be addressed within a reasonable timescale.
- 20.2 Whilst new evidence should not emerge during a Disciplinary Hearing, if it does and it is considered relevant it may be appropriate to suspend the hearing for a short period so that the new information presented can be carefully considered.

21. RECORD KEEPING

- 21.1 Notes should taken at the hearing to ensure:-
- sufficient information is available to prepare the outcome letter to the employee; and
 - the availability of a record of the evidence considered and the decision reached by the panel for future use should the situation deteriorate further (possibly resulting in an unfair dismissal claim being heard at an Employment Tribunal).
- 21.2 The following checklist should assist in ensuring that the notes taken will satisfy both their requirements:

1. The date, venue and start time of the hearing
2. An account of those attending and their roles
3. Details of the allegations stated to the employee and of the supporting evidence e.g. witness statements
4. Details of the employee's response and of the supporting evidence
5. A record of any adjournments, the reasons and approximate timings
6. Consideration of the employee's previous record
7. The decision on whether disciplinary action was appropriate or not, and the type of action taken and the appropriate timescale
8. The review date and a clear statement of intent if improvement does not occur
9. Reference to the right of appeal (where written warning or dismissal imposed) and the finish time of the hearing
10. Reference to the note-taker's name plus a date and signature

22. ARRANGEMENTS FOR APPEAL

- 22.1 The school will seek to identify a convenient date for all relevant parties to the appeal hearing.

23. CONDUCT OF APPEAL

- 23.1 The arrangements for the appeal to be heard will vary according to the basis on which the appeal is lodged by the employee. Appeals will not be heard by anyone involved in the original disciplinary proceedings.

- 23.2 The appeal hearing will be conducted in accordance with the protocol set out for a Disciplinary Hearing, however the employee and/or his/her representative will present the employee's submission in the first instance. The exception to this is where the grounds for appeal are on new evidence coming to light in which case will be re-heard by the original disciplinary panel, with the normal Disciplinary Hearing protocol being applied.

- 23.3 The Chairperson of the original Disciplinary Hearing will normally act as the 'management presenting officer' at the appeals hearing.

24. RANGE OF POSSIBLE OUTCOMES OF APPEAL HEARING

- 24.1 The persons hearing the appeal will have the authority to:

- dismiss the appeal and uphold the original decision of the disciplinary panel;
- reduce the level of sanction; or
- allow the appeal and overturn the original decision of the disciplinary panel.

- 24.2 The persons hearing the appeal **do not** have the authority to increase the level of disciplinary sanction. In cases where it is considered by the Appeals Panel that a higher level of sanction would have been appropriate the case must be referred back to the original disciplinary panel and the case be re-heard. In such cases the employee will be able to lodge a further appeal against the outcome of the re-hearing of the case.

25. THE RIGHT TO BE ACCOMPANIED

- 25.1 Employees have a statutory right to be accompanied by a fellow worker, trade union representative or official employed by a trade union where they are required or invited by their employer to attend certain disciplinary meetings (meetings at which a decision regarding disciplinary action may be taken).
- 25.2 The model Disciplinary Procedure extends this statutory right to certain other meetings e.g. investigative interviews and clearly states when it is necessary to provide an employee with this right. If the school fails to comply with a reasonable request to be accompanied the employee may present a complaint to an Employment Tribunal.
- 25.3 When employees are choosing their companion they should bear in mind:
- their request to be accompanied should be reasonable and
 - the practicalities of the arrangements for the meeting.
- 25.4 A fellow worker who has agreed to accompany a colleague is entitled to take reasonable time off with pay to fulfil that responsibility. This should cover time off to attend any disciplinary meetings and also time off to familiarise themselves with the case

25.5 Applying the right

Where possible, in arranging a meeting under the Disciplinary Procedure you should allow the employee's chosen companion a say in the date/time of the meeting. This will avoid dates being set which, later prove to be inconvenient for the other parties involved.

- 25.6 If the employee's chosen companion will not be available at the time proposed for the hearing by the school, the school must postpone the meeting to a time proposed by the employee provided that the alternative time is both reasonable and not more than five working days after the date originally proposed. Whilst there is no statutory or contractual obligation to require you to provide the employee with a third date you should ensure that your response in these circumstances is reasonable.

26. ROLE OF CHOSEN COMPANION

26.1 Disciplinary Investigation Interview

There is not legal right to be accompanied at a disciplinary investigation meeting as this is not a Disciplinary Hearing rather it is a meeting to gather information and to establish facts.

- 26.2 The model Disciplinary Procedure however does provide an employee with the right to be 'accompanied' (not 'represented') at a disciplinary investigation interview.

26.3 What this means is that the chosen companion is in attendance to 'support' the employee. This support will take the form of ensuring that the proceedings are conducted fairly and in accordance with procedure and also providing emotional support to the employee. The role of the chosen companion at an investigation interview is not to answer questions of behalf of the employee.

26.4 Where requested by either the employee or chosen companion, reasonable time should be granted if they need to confer at any stage during the interview.

27. Disciplinary Hearing and Disciplinary Appeal Hearing

27.1 The right to be accompanied at a Disciplinary Hearing and appeal hearing is established by law and the role of the chosen companion at Disciplinary Hearings is to 'represent' the employee and in doing so to speak on their behalf.

27.2 You should allow the employee's chosen companion to address a Disciplinary Hearing in order to:

- put the employee's case;
- sum up the employee's case; and
- respond on the employee's behalf to any view expressed at the meeting.

27.3 The chosen companion should also be able to confer with the employee during the meeting. The chosen companion does **not** have a right to answer questions on the employee's behalf, or address the meeting if the employee does not wish them to, or to prevent the school from presenting the employer's case.

28. EMPLOYEES ON SICK LEAVE

28.1 If the employee is on sick leave at any point during the Disciplinary Procedure this should not significantly delay its implementation. If a meeting under the Procedure is due to take place, the relevant manager should have an initial conversation with the employee to establish whether they are likely to be well enough to attend the meeting. If they are, they should be given the opportunity to attend the meeting and, where applicable, the required notice of the meeting. If it is determined they are not fit to attend the meeting (or should they choose not to attend the meeting), they should be given the opportunity to make their representations in writing. In certain circumstances it may be advisable to refer the employee to the school's occupational health provider in order to establish their fitness to engage with the Procedure.

29. KEEPING RECORDS

29.1 Following the completion of the Disciplinary Procedure all spare copies of disciplinary papers should be confidentially destroyed with a master copy being retained by the school for the currency of the disciplinary sanction. The exception to this is where the misconduct relates to a children's or vulnerable adults safeguarding issue. Schools and colleges have an obligation to preserve records which contain information about allegations of sexual abuse for the Independent Inquiry into Child Sexual Abuse (IICSA),

for the term of the inquiry (further information can be found on the [IICSA website](#)). All other records relating to allegations of abuse should be retained at least until the accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer.

29.2 The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 has implications for any records kept as part of the Disciplinary Procedure.

29.3 Records kept must be relevant, accurate, confidential and secure and in accordance with the provisions of the GDPR and the Data Protection Act 2018.

30. CONFIDENTIALITY

30.1 Confidentiality should be maintained during all stages of the Disciplinary Procedure. This is to be done by ensuring that only people who need to know have access to the details of the case. Other staff should not normally be informed of a disciplinary process unless they are required to be interviewed as part of that process and/or there is an effect on day to day working relationships. If it is considered necessary to inform other staff that of a disciplinary process, then no details of the case should normally be discussed. In this situation the views of the employee who is the subject of the disciplinary process should be sought in relation to the information which is conveyed to other staff.

30.2 All papers relating to disciplinary matters must be marked private and confidential and kept securely.

30.3 All staff involved in a disciplinary matter should ensure that confidentiality is maintained at all times. A breach of this requirement may lead to disciplinary action.

31. ANNUAL LEAVE

31.1 Reasonable consideration will be given to annual leave requests made by an employee subject to disciplinary proceedings or by a potential witness in any such proceedings whilst ensuring the employee's/witness' availability to attend meetings as required.

32. EMPLOYMENT REFERENCES

32.1 Any current disciplinary proceedings and sanctions may be referred to in the provision of an employment reference. Managers should refer to the model Reference Policy and/or seek advice from the HR Advisory Service when providing a reference in these circumstances. If the applicant has been subject to disciplinary procedures involving issues related to the safety and welfare of children or young people, including any in which the disciplinary sanction has expired, this may be referred to together with the outcome of the procedure. Details of any allegations or concerns that have been raised about the applicant that relate to the safety and welfare of children or young people or behaviour towards children or young people, and the outcome of those concerns e.g. whether the allegations or concerns were investigated, the conclusion reached, and how the matter was resolved may also be disclosed. Again, Managers should refer to the model Reference Policy and/or seek advice from the HR Advisory Service when providing a reference in these circumstances.

For further advice and guidance on the Disciplinary Procedure please contact a member of the HR Advisory Service.