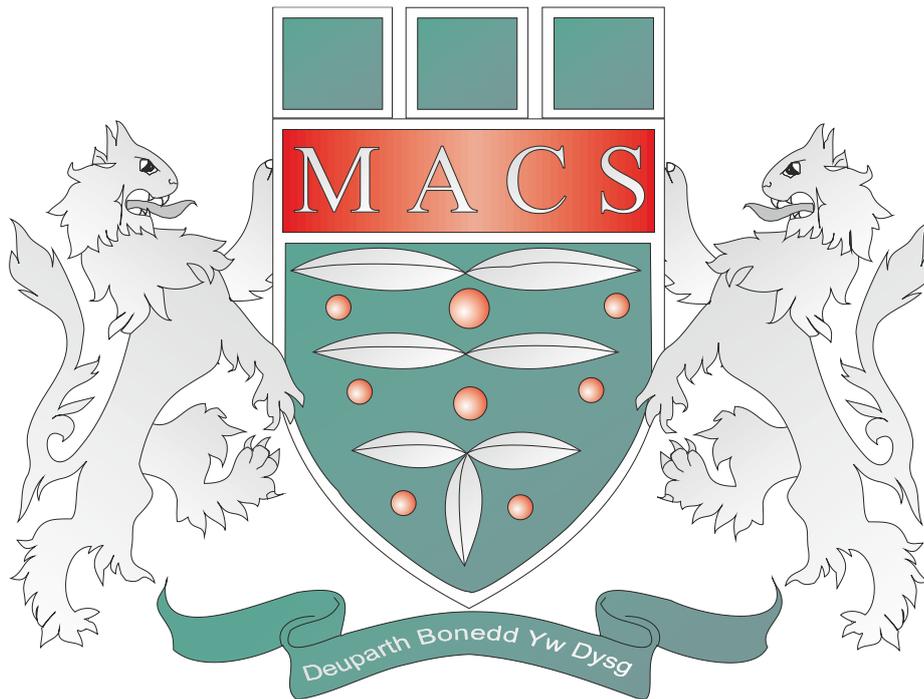


# MOUNTAIN ASH COMPREHENSIVE SCHOOL



## Disciplinary Procedure School Based Staff

Signed           *P. J. Jones*           (Chair of Governors)

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## **1. INTRODUCTION**

- 1.1 It is the responsibility of the Governing Body to establish a disciplinary procedure. This policy applies to all members of staff, appointed by the governing body, including the Headteacher. This includes supply staff provided by agencies.
- 1.2 The primary purpose of this procedure is to provide agreed arrangements for the Headteacher/Governing Body to make disciplinary decisions in respect to staff having regard to all the relevant information. The aim of the policy is to encourage appropriate standards of conduct and to ensure consistent and fair treatment.
- 1.3 This procedure should not be viewed primarily as a means of imposing sanctions, but rather as a way of helping and encouraging improvement amongst staff whose conduct is unsatisfactory.
- 1.4 This procedure has been written having regard to the:-
  - ACAS Code of Practice “Disciplinary and Grievance Procedures”, 2011;
  - Welsh Government Circular 002/2013;
  - Staffing of Maintained Schools (Wales) Regulations 2006;
  - The Safeguarding Vulnerable Groups Act 2006; and
  - Education (Supply of Information) (Wales) Regulations 2009
- 1.5 All timescales included in this procedure have been agreed by the Governing Body and the local staff unions. Depending on the circumstances of the case, there may need to be flexibility with regard to these timescales, e.g. where there is a large amount of paperwork, or the unavailability of staff.
- 1.6 Where required throughout this procedure the chair of governors will take appropriate action unless they are compromised, in which case the vice chair of governors will take over the role and actions normally carried out by the chair, If the vice chair is also compromised the governing body will have to select another governor who is not compromised and minute this decision.

## **2. MATTERS OUTSIDE THE SCOPE OF THE PROCEDURE**

- 2.1 The following matters are outside the scope of this disciplinary procedure:
  - 2.1.1 where employment is terminated by reason of redundancy or by an employee reaching the end of a temporary or fixed term contract.
  - 2.1.2 where any deficiencies in performance on the part of the staff member arise from a lack of aptitude or skill. The capability procedure should be followed whenever standards relating to performance are unacceptable.
  - 2.1.3 staff grievances and grievances lodged as a result of disciplinary action. If however, action under the staff grievance procedure results in the need for disciplinary action then this procedure will apply.

- 2.1.4 termination during or at the end of a probationary period, whether or not extended beyond its originally specified duration.
- 2.1.5 the function of the staff disciplinary and dismissal committee of a foundation school, foundation special school or voluntary aided school to decide that a person employed at the school should have their contract of employment renewed.
- 2.16 matters not raising staff disciplinary issues which should be dealt with under the Governing Body's complaints procedure,
- 2.1.7 Staff employed directly by the Local Authority (LA) e.g school meal staff or centrally employed teaching staff are not considered staff of the Governing Body and therefore this procedure does not apply to them.**

### **3. ROLE OF GOVERNING BODY / HEADTEACHER AND COMPOSITION OF DISCIPLINARY COMMITTEES**

- 3.1 The Governing Body is responsible for ensuring that disciplinary rules and procedures are in place and that all members of staff are aware of these rules and procedures. The Governing Body will appoint a Staff Disciplinary and Dismissal Committee and a Disciplinary and Dismissal Appeals Committee. These committees will also fulfil the requirements of the Statutory Dismissal Committee. The quorum for meetings will be three members.
- 3.2 The management of the disciplinary procedure (provided the allegation constitutes lesser misconduct) is the responsibility of the Headteacher, provided that this has been delegated by the Governing Body. The Headteacher/Chair of Governors will arrange for the investigation of any allegations, excluding child protection issues. Where the Headteacher considers that s/he will preside over the formal proceedings, i.e. where the outcome is misconduct, a senior member of school staff or if the Chair of Governors determines, a Human Resources representative should be appointed as the investigatory officer. Such support will be provided by the Human Resources Unit, under the terms of the Service Level Agreement (if required). **Please note that if the Chair of Governors determines to request an independent investigation outside the HR SLA, then any cost will be borne direct by the school.** This is subject to paragraph 18 below (allegations made against the Headteacher).
- 3.3 The Headteacher will ensure that all allegations which are considered gross misconduct are heard by the Disciplinary Committee after a full investigation is undertaken.
- 3.4 The Disciplinary and Dismissal Appeals Committee will consist of the same number or more governors as constituted for the initial Staff Disciplinary and

Dismissal Committee and the quorum for the meeting will also be three members. No governor will be a member of both committees.

- 3.5 Membership of these committees will need to be checked by the School at the start of each case so that any governor who is either involved in the allegations under consideration or has a close relationship with the member of staff involved does not become a member of either committee.
- 3.6 Members of the Governing Body must at all times treat all information they receive relating to allegations against members of staff with the utmost **confidentiality**.
- 3.7 The Headteacher will not be a member of either committee as it will generally be the Headteacher's responsibility to arrange for the case to be investigated. Under SLA arrangements, the Human Resources Unit can be requested to provide support to the Headteacher in investigating the allegations if required by the Chair of Governors. The investigating officer will not present the case if it proceeds to a disciplinary hearing since they will act as a witness, although they may be present throughout the hearing to be questioned on any issues that arise with regard to the investigation undertaken. The presenting officer cannot be called as a witness.
- 3.8 Section 18 deals with procedures when allegations are made against the Headteacher.
- 3.9 Arrangements for hearings and recording of the proceedings at any disciplinary hearing referred to the **Staff Disciplinary and Dismissal Committee/ Disciplinary and Dismissal Appeals Committee** including decisions and discussions surrounding these decisions will be fulfilled by the clerk to the respective committees.
- 3.10 In order to protect the integrity and impartiality of the governors who are members of the Staff Disciplinary and Dismissal Committee, any objection to the membership should be made to the chair of governors. It would be for the chair of governors (subject to delegation of this responsibility by the governing body) to make a decision as to whether the objection is valid and the Chair of Governors may discuss the matter with the LA, taking account of the advice received. If the objection is accepted, the Chair of Governors may contact governors on a reserve list previously agreed by the governing body in priority order. The Chair should inform those involved who the substitute would be. The decision of the governing body to allow the Chair to take the decision regarding the objection and to choose a substitute from a reserve list agreed by the governing body should be clearly minuted.
- 3.11 If a situation arises involving allegations of tainting against a substantial number of the members on the staff disciplinary and dismissals committee the Governing Body should consider reviewing the composition of the respective Staff Disciplinary and Dismissal Committee/ Disciplinary and Dismissal Appeals Committees; alternatively the Chair of

Governors can decide to include non-governor members on the initial committee, in a non-voting capacity, to assist with a balanced consideration of matters.

#### **4. ROLE OF THE LOCAL AUTHORITY**

- 4.1 In the event that the Governing Body/Staff Disciplinary and Dismissal Committee/ Disciplinary and Dismissal Appeals Committee feels that a situation warrants the need to obtain independent legal advice this will be sought on their behalf. As this service falls outside of the Human Resources Service Level Agreement any costs associated with this advice will be charged to the school budget. This advice will be legally privileged.
- 4.2 The Director of Education & Life Long Learning, or his/her representative, will have the right to attend all formal meetings held in relation to this procedure. This attendance will ensure that advice is available on procedural issues and any employment legislation matters. Before the start of any hearing, the members of the Staff Disciplinary and Dismissal Committee/ Disciplinary and Dismissal Appeals Committee should indicate whether this advice is given in private or in front of all parties and fully recorded by the clerk to the committee.

#### **5. CONFIDENTIALITY**

- 5.1 In order to preserve the rules of natural justice for the staff member concerned, the head teacher, governors and staff concerned must ensure that matters relating to the allegations are not discussed prior to any formal hearing which may take place.

#### **6. CRIMINAL PROCEEDINGS**

- 6.1 Where a member of staff is convicted, charged, accepts a caution or is subject to a criminal investigation connected or unconnected with his / her employment, the Head teacher/Chair of Governors should consider whether there is a need to engage the disciplinary procedure including child protection considerations. Such action would be completely independent of any investigations being made by the Police.
- 6.2 Consideration will need to be given to the nature of the offence (alleged offence) and the implication for the member of staff's employment. The Headteacher/Chair of Governors is encouraged to seek advice from Human Resources when considering a way forward.

#### **7. PRINCIPLES UNDERLYING THE DISCIPLINARY PROCEDURES**

- 7.1 No disciplinary action will be taken against an employee until the case has been investigated (except as provided by the Fast Tracking Process referred to below).

7.2 At every stage in the disciplinary procedure the employee will be advised of the specific nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.

7.3 No employee will be dismissed for a first breach of discipline **except** in the case of serious or gross misconduct.

**7.4 Any investigation which has resulted in a warning involving child protection issues or vulnerable adults will remain on the employee's ``personal file permanently, and may subsequently be referred to ``in future investigations.**

7.5 An employee will have the right to appeal against any disciplinary penalty imposed.

7.6 An investigation or suspension that does not subsequently result in disciplinary action

shall not be retained on file save in exceptional circumstances. For the purpose of this clause, exceptional circumstances include disciplinary matters involving the abuse and/or harassment or the alleged abuse and/or harassment of children or vulnerable adults. In such circumstances the Governing Body is able to refer to previous records for the purposes of identifying patterns of behaviour, if any. A note will be placed on the employee's file to make clear that the investigation or suspension did not result in disciplinary action.

## **8. TRADE UNION OFFICIALS**

8.1 No disciplinary action should be taken against a Trade Union official without first notifying the appropriate local Branch Secretary or full time officer. If the local Branch Secretary is the subject of potential disciplinary action then the full time Trade Union official must be notified.

## **9. REPRESENTATION**

9.1 Where an employee is subject to a disciplinary investigation or hearing he/she may choose to represent himself/herself or request to be represented / accompanied by a fellow worker, a lay trade union official, or an official employed by a trade union ['representative']. A trade union official must comply with the following (as laid down in the Employment Relations Act 1999):-

9.1.1 Be employed by a trade union of which he/she is an official within the meaning of section 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992;

- 9.1.2 An official of a trade union (within the meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings.
- 9.2 The Trade Union and Labour Relations (Consolidation) Act 1992 specifies that the Certification Officer shall keep a list of trade unions. The fact that the name of an organisation is included in the list of trade unions is evidence that the organisation is a trade union.
- 9.3 An employee may ask an official from any trade union to accompany them regardless of whether or not they are a member of that Union.
- 9.4 The right to be accompanied is subject to the employee's request being reasonable in the context of the disciplinary process in question.

## **10. RESIGNATION OF A MEMBER OF STAFF**

- 10.1 If a member of staff resigns while Disciplinary Procedures are pending or are incomplete and where the allegations could:-
- amount to gross misconduct ; and/or
  - be defined as a reportable incident; and/or
  - otherwise lead to the termination of the individual's employment

the Disciplinary Procedure will continue to its completion. The Disciplinary Committee will have to determine whether the evidence available would have led to a dismissal. Where this is the case the investigation papers will be forwarded to the **General Teaching Council Wales and/or Independent Safeguarding Authority who will undertake their own investigation in order to determine the suitability of the individual continuing to be employed within a school environment.**

## **11. SUSPENSION FROM DUTY**

- 11.1 The Headteacher or the Chair of Governors have the right to suspend a member of staff. Suspension should only be imposed after careful consideration and advice should be sought from Human Resources.
- 11.2 In the first instance a suspension interview should take place between the Head teacher (or if the allegations are against the Headteacher, the Chair of Governors) and member of staff. Support can be provided by Human Resources if requested. The member of staff can be accompanied to the meeting by a trade union representative or work colleague.
- 11.4 If at the end of the meeting, the Head teacher/Chair of Governors determine that the member of staff should be suspended, reasons for this should be clearly outlined at the meeting. The clerk to the Governing Body will then confirm this in writing.

- 11.5 Should it be determined that suspension is not necessary but alternative duties etc are required, this should be made clear to the member of staff at the meeting and followed up in writing by the clerk to the governing body.
- 11.6 Suspension is not a punishment and must not be treated as such. It should be used only in one (or more) of the following circumstances:-
- 11.6.1 It appears necessary to remove the member of staff for the protection of the pupils, staff, property or efficient running of the school;
- 11.6.2 To facilitate the carrying out of any enquiries or investigation; or
- 11.6.3 Where the initial allegation/concern is serious enough to be viewed as potential serious/gross misconduct.
- 11.7 The member of staff will be allocated an officer of the authority as a point of contact during the period of suspension.
- 11.8 The member of staff is entitled to full pay during the period of suspension (that is, the pay he/she would have received whilst at work) or sick pay should the suspended member of staff be sick (and present the relevant documentation from his/her GP) at any time during the suspension.
- 11.9 The decision to lift the suspension must be conveyed in writing to the member of staff including the reasons for the decision. The governing body will delegate this function (i.e. ending the suspension) to the Chair of Governors.
- 11.10 Suspension should not normally extend beyond a period of 3 months. Should the suspension last for more than 3 months, the decision to suspend and the attendant conditions will be reviewed at that point and subsequently on a regular basis, and the suspended employee will be informed of the outcome of the review.
- 11.11 Annual leave (where appropriate) should be requested and taken as normal during a period of suspension in agreement with the Headteacher. Should the period of suspension extend into a new annual leave year, there will be no entitlement to carry over any untaken annual leave into the new leave year. No meetings / interviews will be arranged while employees are on annual leave.

## **12. CHILD PROTECTION ISSUES**

- 12.1 An allegation/complaint that is received and transpires to be of a child protection issue should be brought immediately to the attention of Head teacher or Chair of Governors (if allegation made against the Head teacher) and designated child protection officer of school. They will make an initial assessment (but not investigate) to determine the nature and circumstances of the allegation. Advice should be sought at this stage from the LA lead child protection officer and Human Resources to determine if the allegation is child protection and

considered gross misconduct or whether there is evidence of misconduct other than child protection.

- 12.2 If the conclusion is that beyond any doubt it is impossible for the allegation to be true then no action needs to be taken against the member of staff and no referral to RCT's Children's Services Team or Human Resources is required.
- 12.3 If there is evidence that the allegation should be treated as misconduct other than child protection, the matter should be referred if determined by the Chair of Governors to Human Resources for investigation.
- 12.4 However, if after initial assessment and advice, there is an indication that the allegation is of a child protection nature and may be true, the matter should be referred to RCT's Children's Services Duty Team for the area in which the child lives. The recipient of the allegation/complaint can seek advice from Children's services or the Council's Safeguarding Co-ordinator but this should not delay the referral process. All allegations will be dealt with in accordance with the All Wales Child Protection Procedures 2008 which includes holding a strategy discussion to determine whether a professional strategy meeting is appropriate in the case.
- 12.5 The member of staff and their union representative will normally be informed of the decision to refer, however there may be occasions where this is inappropriate i.e knowledge of the referral could lead to member of staff seeking to tamper with evidence.
- 12.6 If following the strategy discussion it is determined that the allegation is not of a child protection nature, The matter should then be referred back to the Head teacher/Chair of Governors to complete the staff discipline process.
- 12.7 If the allegation is confirmed as child protection during the strategy discussion, a professional strategy meeting will be convened to deal with the case. A strategy meeting decides whether enquiries by social services or the police will proceed further.
- 12.8 Once the statutory authorities have completed their considerations of the allegation, if the matter is not considered child protection it should then be referred back to the Head teacher/Chair of Governors to complete the staff discipline process. If following consideration it is still considered child protection it should be referred back to the Governing Body to appoint an independent investigator.

### **13. INDEPENDENT INVESTIGATOR**

- 13.1 Regulation 7 (3) of the Staffing of Maintained Schools (Wales) Regulations 2006 states that where an allegation of a child protection nature is made against a member of the school's staff the governing body must appoint an independent investigator prior to a hearing of any proceedings relating to those allegations. This task has been delegated to the Chair of Governors.

- 13.2 The Chair of Governors will engage an independent investigator:-
- 13.2.1 after the statutory authorities have completed their investigation and referred the matter to the governing body; or
  - 13.2.2 on the conclusion of any court action.
- 13.3 The Head teacher and Chair of Governors (chair and another governor in respect of allegations against the Head teacher) will discuss the allegation and confirm referral for independent investigation. The Head teacher and Chair of Governors can utilise the services of an Independent Investigation Service (IIS) to undertake the investigation. The Welsh Government has commissioned the services of an IIS to undertake these types of investigation and this service is free of charge. Alternatively another independent investigator may be appointed but the cost of this will be borne by the School.
- 13.4 In accordance with the above regulations a person appointed as an independent investigator is to be regarded as independent in the following circumstances:-
- 13.4.1 he/she is not a governor of the school;
  - 13.4.2 he/she is not a parent of a current or former pupil at the school;
  - 13.4.3 he/she is not a current or former member of staff at the school;
  - 13.4.4 he/she is not currently employed by the local education authority.
- 13.5 Once completed the independent investigator should submit the report to the head teacher and the Chair of Governors, or in the case of an investigation into the headteacher the Chair of Governors and the governor who has responsibility for child protection matters (or another named governor if the Chair of Governors has responsibility for child protection) will be required to consider the evidence collated and decide whether:
- 13.5.1 there is evidence to support the child protection allegation which is well founded and constitutes gross misconduct. In such circumstances a formal staff disciplinary/dismissal hearing is undertaken by the appropriate committee;
  - 13.5.2 the evidence supports a decision that the allegation constitutes lesser misconduct which can be dealt with by the head teacher; or
  - 13.5.3 there is no evidence to support the child protection allegation and no further action needs to be taken against the member of staff.
- 13.6 The Chair of Governors and Head teacher/ Child Protection Governor (or other named governor) will take no part in any disciplinary hearing, in order to avoid any allegation of tainting.**
- 13.7 The member of staff and union representative will be informed of the decision as soon as is reasonably practicable.

#### **14. INDEPENDENT NON GOVERNOR**

- 14.1 The Government of Maintained Schools (Wales) Regulations 2006 requires that where allegations are made against a member of staff of a child protection nature the disciplinary committee must include not less than two governors and an independent non governor who will possess full voting rights.
- 14.2 The disciplinary appeals committee must include no fewer governors than the first disciplinary committee and when considering allegations of a child protection nature an independent non governor who was not involved in the first hearing.
- 14.3 The role of the non governor is to stay with the disciplinary committee/ disciplinary appeals committee when they deliberate the evidence from the hearing and assist in considering all the evidence and reaching a fair decision.
- 14.4 Advice on who is eligible to be appointed as an independent non-governor can be obtained from Human Resources.

#### **15. REPORTING AND SAFEGUARDING PROCEDURES**

- 15.1 The Safeguarding Vulnerable Groups Act 2006 places a legal obligation on an employer to refer information to the Independent Safeguarding Authority (ISA) about a member of staff when they have:-
  - 15.1.1 been removed from regulated activity on the basis that they have on the balance of probability engaged in conduct or posed a risk of harm to children/ vulnerable adults; or
  - 15.1.2 left employment in circumstances where they would or might have been dismissed because of a safeguarding issue.
- 15.2 An employer is also required by the Education (Supply of Information) (Wales) Regulations 2009 to make a report to the General Teaching Council for Wales (GTCW) where they cease to use a registered teacher's services on the grounds of misconduct, professional incompetence or conviction of a relevant offence, where the conduct does not involve the harm, or risk of harm, to a child.
- 15.3 In the event that the employer reaches a compromise agreement with a member of staff and the circumstances giving rise to this mutual termination falls within 10.1 and

10.2 above the employer still has a duty to report the case to the GTCW or ISA as appropriate.

15.4 The Headteacher may also receive information about members of staff from other regulatory bodies e.g. GTCW. In such cases, the School reserves the right to consider whether any action should be taken under the Disciplinary Procedure.

## **16. HISTORICAL INFORMATION**

16.1 An investigation or suspension that does not subsequently result in disciplinary action shall not be retained on file save in exceptional circumstances. For the purpose of this clause, exceptional circumstances include disciplinary matters involving the abuse and/or harassment or the alleged abuse and/or harassment of children or vulnerable adults. In such circumstances the Governing Body is able to refer to previous records for the purposes of identifying patterns of behaviour, if any. A note will be placed on the staff member's file to make clear that the investigation or suspension did not result in disciplinary action.

16.2 Any investigation which has resulted in a warning involving children or vulnerable adults will remain on the staff member's, personal file permanently, and may subsequently be referred to in future disciplinary hearings. The member of staff will be advised when invited to a disciplinary hearing of any previous expired warnings that management intend to rely on. Reference to expired warning(s) will only be made by management:-

16.2.1 if on the balance of probability the allegation under consideration has been proven; and

16.2.2 before consideration of the sanction to be imposed.

## **17. ALLEGATIONS OF MISCONDUCT OTHER THAN CHILD PROTECTION - PROCEDURE**

**This section should be read subject to paragraph 19 below.**

17.1 Following a reported allegation of misconduct the Headteacher/Chair of Governors will:

### **17.2 Identify the Area of Concern**

17.2.1 This may be obvious in some circumstances, for example persistent lateness. In other circumstances, it may be less obvious, for example, in areas of conduct. Advice may be sought from Human Resources.

17.2.2 In the event that an allegation/complaint is received by the Headteacher, Chair of Governors which may raise issues of child protection and following advice from the Council's Safeguarding Co-ordinator it is determined that it does **not**

constitute child protection there will be no requirement to appoint an independent investigator.

### **17.3 Investigate the Circumstances**

17.3.1 It would be reasonable and appropriate in most cases for the member of staff to be made aware that an investigation is being carried out. The purpose of the investigation is to establish all the relevant facts relating to the allegation. Evidence from witnesses should be recorded in writing by means of statements. Where possible, statements will be written up at the conclusion of the interview, and the witness requested to sign and date his or her statement at that time. No undertaking of confidentiality will be provided to witnesses.

17.3.2 The member of staff concerned will be interviewed as part of the investigation process and be advised of his/her right to be accompanied by a trade union representative or work colleague.

17.3.3 Investigations should be controlled and properly managed in order to limit the scope to the relevant issues relating to the areas of concern. However, if during the course of the investigation different and unrelated issues emerge also requiring managerial investigation then the member of staff should be informed. Where appropriate these issues can then be investigated in conjunction with the original investigation.

### **17.4 Consider if a Disciplinary Hearing is necessary**

**17.4.1 Discipline is an essential part of management and appropriate priority should be given to enabling the process to be completed speedily and effectively. The School will endeavour to conclude the investigation process and hold a disciplinary hearing within 3 months of the initial allegation. However, there may be occasions when due to the nature of the investigation, it may go outside the 3 month period. Where this occurs all parties concerned will be informed accordingly. It is important for the Headteacher, Governors and staff to provide the fullest co-operation. Members of staff required as witnesses should be released from work to enable attendance.**

17.4.2 Once the investigation has been concluded, the investigating officer will present the findings to the head teacher or the Chair of Governors (or Chair of Governors and another Governor in the case of a Head teacher). This should be done as soon as practicable after the conclusion of the investigation.

17.4.3 When deciding if any action should be taken the head teacher/Chair of Governors will consider whether the allegation constitutes one of the following:-

- gross/serious misconduct;
- misconduct; or
- lesser misconduct
- no evidence to support the allegation

17.4.4 In the event of lesser misconduct a management discussion may occasionally be a more satisfactory method of resolving problems than a disciplinary hearing. This will take the form of a discussion with the objective of helping and encouraging a member of staff to improve. At the completion of the management discussion a brief note will be retained for reference purposes, including a letter to the member of staff outlining the reason for and outcome of the meeting. This will not constitute formal disciplinary action.

17.4.5 In the event that the Head teacher/ Chair of Governors has determined that there is a case to answer it will need to be decided:-

- whether the allegation constitutes misconduct or gross/serious misconduct; and
- who will hear the case. The Headteacher can issue a sanction up to final written warning in misconduct cases. In the event that the allegation is gross misconduct and may warrant a final written warning or dismissal the case will be heard by the disciplinary committee.
- where dismissal could result because a member of staff is currently on a final written warning, the case must be referred to the staff disciplinary and dismissal committee.

17.4.6 The staff member and their trade union representative will be informed as soon as possible of the outcome of the investigation by the clerk who will have recorded the decision made by the head teacher / Chair of Governors. Any formal disciplinary procedure will normally be invoked by the clerk issuing the member of staff involved with a written instruction to attend a disciplinary hearing unless the Head teacher is hearing the information.

17.4.7 It is important that the member of staff subject to disciplinary action is made clearly aware of the allegation(s) which are to be considered at the hearing. The allegation(s) must be in writing containing sufficient detail and identifying the relevant conduct and/ or unacceptable performance including dates and times wherever possible. The member of staff should be provided with all documentary evidence including witness statements that will be considered and relied on during the hearing. This information should be made available to the member of staff at least 10 working days before the date of the hearing. In the event that the allegation(s) could constitute gross misconduct the member of staff should be advised that his/her employment could be at risk if the allegation is proven on the balance of probability.

17.4.8 The purpose of the procedural formalities is to ensure that all relevant information is aired at the disciplinary hearing from both the school and the employee's point of view to enable a reasonable and fair decision to be made.

## **18. ALLEGATIONS MADE AGAINST THE HEADTEACHER (OTHER THAN CHILD PROTECTION)**

- 18.1 Where allegations of misconduct are made against the Headteacher, the disciplinary investigation will be undertaken by the Chair of Governors **or persons nominated by the Chair of Governors**. It would be advisable for the Director of Education & Life Long Learning or his representative to provide support to the investigatory officer at all stages of the proceedings. **Alternatively the Chair may wish to consider inviting the Human Resources Unit to undertake the disciplinary investigation or engage an independent investigator. It should be noted that the cost of an independent investigation would be picked up by the school.**

## **19. FAST TRACKING PROCESS**

- 19.1 There may be instances where the need for a full disciplinary process is not required. These may include such cases where the member of staff has admitted to the misconduct or poor performance, contrary to the School's rules. In such cases, the Investigating Officer on behalf of the School should consult with the employee and his/her representative.
- 19.2 If agreement can be reached with all parties concerned, the Headteacher (Chair of Governors if allegation is against the Headteacher) has discretion to arrange a formal disciplinary meeting and issue a warning without the need to undertake a full investigation of the incident that has occurred.
- 19.3 The member of staff will be provided with the name of the presenting officer, the names of persons who will be present at the hearing and in what capacity, full details of the allegations, an outline of the evidence to be presented with supporting evidence, the names of any witness to be called and copies of any written statements if taken prior to the hearing.
- 19.4 The member of staff has the right to be represented at this meeting in accordance with point 19.
- 19.5 Investigations and hearings will be conducted (all or part) in Welsh or English, or with access to interpretation, at the request of the member of staff.
- 19.6 This process cannot be used in investigations, where the allegation(s) could constitute gross misconduct.

## **20. PROCEDURE AT THE FAST TRACK HEARING**

- 20.1 At the beginning of the hearing, the Headteacher/Chair of Governors shall explain the procedure to the parties, and clarify that both are happy to proceed with the fast tracking process.
- 20.2 The procedure at the hearing should be as follows:
- The presenting officer will briefly outline the circumstances of the case.

- The member of staff/representative will be given the opportunity to put his/her case, to ask questions, respond and to sum up.
- The Headteacher/Chair of Governors may ask questions of any party during the process.
- The decision will normally be announced orally following the conclusion of the hearing, and the decision, together with the reasons, will be confirmed to the member of staff in writing usually within 5 working days of the hearing.
- The normal rights of appeal will be applicable to this process.

## 21. **DISCIPLINARY HEARINGS**

21.1 A disciplinary hearing will be held as soon as it can be arranged by the clerk to the discipline and dismissal committee unless the Head teacher is hearing the information. In such cases Human Resources will carry out this function.

21.2 The staff member will be informed in writing of:

The date, time and venue of the hearing

The purpose of the hearing and range of possible outcomes

The right to be accompanied by a Trade Union representative or work colleague.

21.3 Any documents to be presented by the investigating officer at the hearing must be exchanged no later than 10 working days prior to the hearing and tabled with the Headteacher/ Discipline Committee. The member of staff or his / her representative will be required to provide their documents to Human Resources no later than 5 working days prior to the hearing. Both parties will be responsible for calling witnesses to support their case.

**21.4 It is the responsibility of each party to ensure that the relevant documentation is submitted by the agreed timescales.**

21.5 If the date of the hearing is inconvenient for either side, **then one postponement** is allowed for both parties. If the appellant is unable to attend the re-arranged hearing, it may be heard in their absence. The appellant will however have the right to make written representations and to have their chosen representative present.

21.6 The member of staff will also be provided with the membership of the committee prior to the hearing and advised of the right of objection to any member on the basis of any evidence that calls in to question their ability to act impartially in the circumstances of the case.

- 21.7 The member of staff will be provided with the name of the presenting officer, the names of persons who will be present at the hearing and in what capacity, full details of the allegations, an outline of the evidence to be presented with supporting evidence, the names of any witness to be called and copies of written statements prior to the hearing.
- 21.8 Investigations and hearings will be conducted (all or part) in Welsh or English, or with access to interpretation, at the request of the member of staff.

## **22. PROCEDURE AT THE DISCIPLINARY HEARING**

- 22.1 At the beginning of the hearing, the Headteacher/ Chair of the Discipline Committee shall explain the procedure to the parties and introduce all members and the clerk where applicable.
- 22.2 The procedure at the hearing should be orderly, but flexible. The following running order will normally be used, but can be varied in the interest of clarifying evidence in order to reach as informed a decision as possible.
- 22.3 The presenting officer will communicate the allegation and evidence gathered. Witnesses may be called and in child protection cases the independent investigator may be required to answer question on his/her report. In all other cases, the investigating officer may be required to answer any questions that arise during the hearing in respect of their investigation.
- 22.4 The member of staff/ representative and Headteacher/disciplinary committee will have the opportunity to ask questions of the investigator and any witnesses he/she has called.
- 22.5 The member of staff/representative will put his/her case and may call witnesses. They may confer. The representative may not answer questions on behalf of the employee nor prevent him or her from speaking. The representative must not address the hearing if instructed by the employee not to do so
- 22.6 The Headteacher/ discipline committee or presenting officer will have the opportunity to ask questions of the member of staff and any witnesses he/she has called.
- 22.7 The Headteacher/discipline committee may ask questions of any party and call for further information to clarify matters. If as a result of questioning new evidence emerges, then both parties will be given the opportunity to comment and, if necessary to seek an adjournment. The decision on whether to adjourn, for how long and what the expected outcome of the adjournment will be is at the discretion of the Headteacher/ discipline committee. Should it be necessary to adjourn, then both sides will be asked to withdraw.
- 22.8 The presenting officer will have the opportunity to sum up their case. No new evidence may be introduced at this stage.

22.9 The member of staff/representative will have the opportunity to sum up his/her case. No new evidence may be introduced at this stage.

22.10 The parties to the case will withdraw from the hearing and the Headteacher/discipline committee will consider their decision. The HR Advisor and Clerk will remain with the committee during this process. Any procedural advice will be given in private.

22.11 The decision will normally be announced orally as soon as possible following the conclusion of the hearing, and the decision, together with the reasons, will be confirmed to the member of staff in writing by the clerk/Human Resources to the committee normally within 5 working days of the hearing.

### **23. DISCIPLINARY PENALTIES**

23.1 For the purpose of this procedure, the Headteacher can issue a sanction up to a final written warning. For actions which may warrant a dismissal this must be referred to the disciplinary committee of the governing body.

23.2 Except for serious or gross misconduct, no member of staff will be dismissed for a first breach of discipline. The types of action which could constitute misconduct or gross misconduct are identified in Annex 1 of this code of practice.

23.3 With regard to the abuse of alcohol and / or drugs, the Governing Body recognises that help is available for people with such dependency problems and will attempt to assist staff to seek such help before disciplinary action is considered.

#### **23.4 First Warning**

23.4.1 If at the conclusion of the hearing it is decided that the complaint is of sufficient importance or seriousness to bring to the attention of the member of staff formally, a first warning may be given by the Headteacher/Chair of Governors.

23.4.2 The warning will be issued in writing to the member of staff by Human Resources or the clerk to the staff disciplinary and dismissal committee and will state:

The nature of the misconduct

The stage reached in the procedure

What is expected in the future

The right of appeal, the time limit there on and how the appeal should be made.

23.4.3 A letter confirming this warning will be placed on a member of staff's personal file.

23.4.4 The member of staff will be required to indicate receipt of the written confirmation of the first warning.

## 23.5 Written Warning

23.5.1 If at the conclusion of the hearing it is decided that the case has already involved the First Warning Stage and insufficient improvement has been made, or where the complaint is of sufficient importance or seriousness, a written warning may be issued by the Headteacher . **A written warning may also be issued for *minor misconduct / unacceptable performance where there is an active first warning (for a related or unrelated reason) on the member of staff's record.***

23.5.2 The written warning will be issued in writing to the member of staff by Human Resources or the clerk to the staff disciplinary and dismissal committee and will state:

:

The nature of the misconduct

The stage reached in the procedure

What is expected in the future

The right of appeal, the time limit there on and how the appeal should be made.

23.5.3 A letter confirming this warning will be placed on a member of staff's personal file.

23.5.4 The member of staff will be required to indicate receipt of the written confirmation of the written warning.

## 23.6 Final Written Warning

23.6.1 Where the member of staff has already received a written warning and insufficient improvement has been made a final written warning may be given by the Head teacher or where the complaint is of sufficient importance or seriousness, a final written warning may be given by the discipline committee following a hearing.

23.6.2 The final written warning will be issued in writing to the member of staff by Human Resources (heard by Head teacher) or the clerk to the staff disciplinary and dismissal committee and will state::

- The nature of the misconduct
- The stage reached in the procedure
- What is expected in the future
- That the next stage will be dismissal
- The right of appeal, the time limit there on and how the appeal should be made.

23.6.3 A letter confirming this warning will be placed on a member of staff's personal file.

23.6.4 The member of staff will be required to indicate receipt of the written confirmation of the final written warning.

23.7 **A final written warning may also be given for minor misconduct unacceptable performance where there is an active written warning on the employee's record whether it is for a related or unrelated reason.**

23.8 **Any disciplinary penalty will remain on the employee's file once it has expired**, however it will be disregarded for the purposes of any future disciplinary action save in exceptional circumstances. For the purpose of this clause, exceptional circumstances include, but are not limited to, disciplinary matters involving the abuse and/or harassment of children or vulnerable adults or allegations of such abuse.

### 23.9 **Dismissal**

23.9.1 **The Discipline Committee may consider dismissal where:-**

- **the member of staff has an active final written warning for any reason (performance or misconduct) and there is a further act of misconduct or poor performance (related or unrelated to the previous reason for the warning);**
- **the case is of sufficient importance or seriousness to constitute gross/serious misconduct.**

### 23.10 **Other Sanctions**

It may be necessary for the Discipline Committee to issue other sanctions which may include:

- Mandatory training and development
- Relegation to a lower graded position with loss of salary within the school (short of dismissal)

## 24. **TIME LIMIT ON LIFE OF WARNINGS**

24.1 In cases of:

First Warning	The time limit will be 6 months
Written Warning	The time limit will be 9 months
Final Written Warning	The time limit will usually be 12 months; however in exceptional circumstances there is discretion to extend beyond 12 months dependent on the nature of the misconduct. Justification will be provided on why warning is over 12-months.

**24.2 The time limit for Warnings will be applicable for periods when employee is in work e.g. if an employee is absent due to sickness for a period of 2-months , then the warning will be extended for that length of time**

## **25. RIGHT OF APPEAL AGAINST DISCIPLINARY ACTION**

25.1 Should the member of staff wish to pursue an appeal he/she is required to write to clerk to the governing body within 5 working days of written notification of the decision. The letter of appeal **must** outline the grounds for the appeal.

25.2 The employee will have the same right to be accompanied as applied at the disciplinary hearing

## **26. DISCIPLINARY APPEAL HEARING**

26.1 An appeal against a sanction imposed by the Headteacher, for example, First Warning, Written Warning or Final Written Warning will be made to the Staff Disciplinary And Dismissal Committee. An appeal against a dismissal will be heard by the Disciplinary and Dismissal Appeals Committee.

26.2 Any documents, including the statements of case, must be presented by both sides to the relevant committee/ no later that 10 working days prior to the appeal hearing. The notes of the first hearing will form part of these documents and will be relied on as an accurate record of the first hearing. If the appellant has any concerns with these notes, they should inform the clerk to the relevant committee prior to the appeal hearing taking place.

26.3 Witnesses that were called for the original disciplinary hearing will not automatically be invited to the appeal hearing; therefore it is the responsibility of both parties to call any witnesses they feel will support their case at the appeal. The procedure for hearing the appeal is as follows:

26.3.1 All Appeals; The Chair of the relevant committee will

request both parties to introduce themselves and any representatives, which are. attending the hearing. Representatives will be requested to confirm the capacity in which they are attending the hearing i.e. trade union official or work colleague.

- 26.3.2 The format of the appeal hearing will be as documented in point 22 above.
- 26.3.3 If the decision is to substitute a different level of discipline or to reinstate the employee, the letter must set out clearly the terms of the reinstatement or of the disciplinary sanction.
- 26.3.4 If as a result of an appeal, disciplinary action is withdrawn, all details thereof will be expunged from the member of staff's personal file and they will be informed accordingly.
- 26.3.5 If the decision is to uphold a staff disciplinary and dismissal committee's recommendation for dismissal, the LA will be informed.
- 26.3.6 The decision of the relevant committee will be final and the staff member will be informed in writing by the clerk of the discipline appeals committee.

## **Appendix A**

### **DEFINITIONS OF MISCONDUCT**

**GROSS MISCONDUCT** - means an act, or series of actions, that fundamentally repudiates the contract of employment so that the governing body would be justified in no longer tolerating the continued presence at work of the member of staff. These

acts may justify summary dismissal without notice or payment in lieu of notice unless there are extenuating circumstances.

Some acts by their nature are so serious that they destroy the employment relationship between the employee and the employer and make any further working relationship and trust impossible. These acts are considered to be gross misconduct and will normally lead to summary dismissal (dismissal without notice following a hearing).

So that all employees are aware of the acts which will jeopardise their future work with the School examples of the 'offences' which will bring about summary dismissal are listed below. The lists below are neither exclusive nor exhaustive, but are only an indication of how an offence may be treated. Each case will be determined on the individual facts.

Examples include:

- theft of property belonging to the LA, the school, fellow members of staff or pupils;
- malicious damage to property belonging to the LA, the school, fellow members of staff or pupils;
- violent behaviour including physical assault outside the definition of the authorised school intervention policy;
- serious sexual misconduct at work;
- theft or fraud including the misuse of the School budget or private funds, in and out of the workplace
- dishonesty, e.g tampering with examination papers, revealing examination papers prior to examinations or altering examination results
- serious violation of the LA's or the school's health and safety rules and standards;
- knowingly providing false information on any matter relating to the member of staff's employment;
- Serious incapability at work brought on by alcohol or other illegal substances on school premises
- serious breach of child protection procedures;
- Improper use of an official position for private gain or the private gain of some other person including soliciting or accepting bribes.

- Failure by a member of staff to report actual or suspected physical or sexual abuse of a child or vulnerable adult by another member of staff or other person having contact with a child or vulnerable adult.
- Deliberate falsification of time sheets, claim forms, letters etc.
- Malicious damage to property, materials, equipment including computer software of the School, its clients or other employees.
- Unauthorised use of School materials including equipment, computer, software, vehicles or School facilities whether during or outside the working day.
- Misuse of the Internet and Electronic Mail
- Conduct, including conduct of a criminal nature, prejudicial to the School's interest whether:
  - a) committed at work: or
  - b) committed outside working hours, having regard to the nature of the offence, the duties of the employee's post and any damage to the reputation and integrity of the Council.
- Doing private work during hours when contracted to work for the School - this includes unpaid voluntary work unless it has been approved by the Governing Body.
- Behaviour which cannot be justified: is in conflict with the Council's Equal Opportunities Policy: is found to be offensive by the victim: is perceived by the victim to be harassment and which persists despite the victim making it clear to the harasser that they object to the behaviour in question or continues despite the offence caused being apparent to a reasonable person.
- This type of behaviour need not involve direct abuse but could include general remarks about sex, race etc., which are offensive, including the use of patronising terminology, "jokes", or other words or actions detrimental to a good working environment.
- Continuous Bullying
- Physical Violence
- Gross negligence
- Serious insubordination

- Specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment etc
- Physical, sexual or emotional abuse of pupils
- Serious breach of contractual obligation
  
- Deliberately accessing offensive or obscene material via internet sites, social networking sites or by messaging
- Inappropriate texting
- Humiliation of staff, victimisation of colleagues, parents/carers or pupils
- Serious breach of confidentiality

