Fourlanesend C P SCHOOL
DISCIPLINARY PROCEDURE

Adopted March 2016

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MODEL WHOLE SCHOOL DISCIPLINARY PROCEDURE

THE GUIDANCE

1 INTRODUCTION

1.1 This Model Disciplinary Procedure has been determined by the Schools' Employee Relations team in agreement with recognised trade unions, teachers' associations and the Governors Network This procedure is recommended to schools for adoption immediately; should schools decide to develop their own procedure, they will need to reopen trade union consultations on an individual basis.

1.2 This procedure reflects the legal provisions relating to dismissal, Sections 35 and 36 of the Education Act 2002, the School Staffing (England) Regulations 2009 (which replace the provisions set out in Schedule 16 and 17 of the School Standards and Framework Act 1998), and the ACAS Code of Practice 'Disciplinary Practice and Procedures' as amended by the ACAS guide ' Discipline and Grievance at Work'.

1.3 The use of the word 'should' in this introduction indicates the Secretary of State's recommended course that should be adopted in any particular functions to which it relates. These can be to functions of the Local Authority, Governing Body or the Headteacher. Where the word 'should' is used, it is intended that that is the course that is followed and any deviation should only be for a very good reason.

1.4 *Under the terms of the School Staffing (England) Regulations 2009 (Regulation 4),* whilst a Governing Body has overall responsibility for decisions relating to disciplinary sanctions in respect of misconduct from staff in its school, a Governing Body is allowed to delegate this responsibility to the Headteacher, an individual Governor or group of Governors (with or without the Headteacher) (with the exception of the dismissal of Headteachers).

1.5 The Governing Body may delegate the responsibility for decisions relating to disciplinary sanctions (including dismissal) in respect of misconduct from staff in its school to a Panel comprising solely of Governors or Governors and the Headteacher.

1.6 Where dismissal of a member of staff is under consideration, the School Staffing Regulations recommend that the Governing Body delegates such functions to the Headteacher, unless it thinks this would be inappropriate. In determining its delegated responsibilities to the Headteacher in this respect, Governors should give consideration to the following:-

- A Headteacher who is unwilling to perform this function and whose previous history of service at the school did not include any such responsibilities. This gives an existing Headteacher the option of preserving their current working arrangements but when the Governing

Body considers a new appointment for the Headteacher post, the normal expectation for the Headteacher to undertake these responsibilities should apply.

- Where the Headteacher has been directly involved in disciplinary procedures leading to dismissal, has instigated a proposal to dismiss or is a witness.

- Where the Governing Body of a school with a religious character has agreed staffing policies which provide for Governor involvement in the interests of preserving the school's religious character.

- A Headteacher subject to suspension, disciplinary or capability procedures or a disciplinary sanction.

- Where the Local Authority has made representation to the Chair of the Governing Body on grounds of serious concerns about the performance of the Headteacher.

- Where the Headteacher has failed to abide by financial limits agreed by the Governing Body for any school purpose.

1.7 Where the Governing Body decides not to delegate dismissal decisions to the Headteacher, the Headteacher has a right to attend and provide advice at all relevant proceedings (in accordance with Regulation 4 of the School Staffing Regulations 2009). Any advice must be considered by the governor or governors to whom the delegation has been made. This is normally provided by way of a report to the Disciplinary Panel of Governors.

1.8 The Governing Body is advised to contact the Schools' Employee Relations Team if any of these circumstances might apply.

1.9 The Governing Body should review, at least annually or otherwise where necessary, the continuation of any circumstances where the Headteacher does not lead on these staffing matters because of concerns about their conduct or performance.

1.10 Where a Headteacher is on long-term sick leave, secondment or some other long-term absence, the Governing Body should consider whether it is appropriate to pass delegated responsibility to the person acting in the Headteacher's place. The Headteacher should have an opportunity to make representations on any decisions to discontinue or continue delegated responsibility.

1.11 It is expected that typically meetings convened under the Procedure will be held during term-time. However, in the interests of best practice, fair treatment and the health and wellbeing of staff, meetings may be held during school holidays with the agreement of all parties - the staff member concerned, Headteacher, Governors, witnesses, trade union representative/workplace colleague.

If it is not possible to obtain the agreement of all parties to meet in a school holiday period, the appropriate notice should be given for an alternative term-time date.

1.12 The Governing Body/Headteacher are strongly advised to seek advice on the application of this procedure from the Schools' Employee Relations Team at the earliest possible opportunity.

2 PURPOSE

2.1 To ensure that disciplinary action taken is both fair and reasonable and is applied equitably and with consistency in every case; the main purpose being to help and encourage staff to achieve and maintain acceptable standards of conduct.

3 SCOPE

3.1 The procedure applies to all staff employed at Fourlanesend C P School.

3.2 Whenever there are allegations of **misconduct relating to inappropriate behaviour/contact/conduct towards children and young people**, information contained in the relevant DfE publications must be followed (see Section 6*).* **Policy and Guidelines for the use of Physical Restraint in Schools and Care Settings** issued by Cornwall Council's Children Schools and Families Section (September 2010*)* should also be followed*.* Advice should be sought from the School's Employee Relations Team at the earliest possible stage where child protection issues are raised.

3.3 It is also imperative that in such circumstances described above at 3.2 the school's nominated safeguarding champion or deputy must contact the Local Area Designated Officer or his deputy at the earliest opportunity. The LADO may then refer to other agencies to establish a Strategy Meeting to discuss the issues and agree an action plan.

3.4 Where there are concerns about the conduct of a **trade union representative** employed at the school, early discussions on the circumstances of the case will be had with a full time official of the trade union concerned or a local representative, nominated by the trade union.

4 POLICY STATEMENT

4.1 The Governing Body of Fourlanesend C P School is fully committed to ensuring that high standards of conduct are achieved and maintained within the school. It also considers that all staff accept the need for high standards of conduct, particularly in the school environment, and do not find any difficulty in abiding by them.

4.2 However, it is also recognised that situations can arise where a staff member may appear to fall short in achieving the required standards of conduct. In addressing these issues, the Headteacher/Governing Body will ensure that all disciplinary cases follow the agreed Disciplinary Procedure, with each case

being considered on its merits, without unreasonable delay, and in an objective, reasonable, fair and consistent manner.

4.3 In most instances, good management practice will prevent recourse to formal disciplinary procedures. However, where the formal procedure *does* need to be applied, it will be done so in accordance with ACAS guide ' Discipline and Grievance a Work' 2009 and the principles of 'natural justice', that is:-

- in all circumstances where the formal procedure applies the member of staff will be informed in writing of any concern(s) about his/her conduct and will know the reason for the Disciplinary Procedure being instigated; a copy of this correspondence will be provided for the trade union representative where requested;

- the member of staff and/or their representative will be given an early opportunity to explain and account for any alleged misconduct before any disciplinary action is considered; and

- disciplinary hearings will be conducted fairly and impartially.

4.4 The maintenance of satisfactory conduct is the responsibility of **all** staff.

4.5 The procedure will be applied in a non-discriminatory way to all staff, in line with the Equality Act 2010.

4.6 The Governors will ensure that a copy of the procedure is available to all staff.

4.7 During the formal stages of this procedure the employee has a right to be accompanied via a work colleague or trade union representative.

5 CRIMINAL OFFENCES OUTSIDE EMPLOYMENT

5.1 A member of staff will not be dismissed solely because they are the subject of police enquiries or charges relating to a criminal offence outside their employment or they are absent through having been remanded in custody. This applies regardless of whether the offence has any relevance to the duties of the individual as a staff member.

5.2 On determining whether or not it is appropriate to apply the Disciplinary Procedure, careful consideration will be given to the extent to which the alleged offence is one which deems the staff member unsuitable for his or her type of work or unacceptable to colleagues. Should the charges become widely known, consideration will be given as to whether this would be detrimental to the school's interests or in any way weaken public confidence in the conduct of the school's business. In such a case, suspension from duty pending the outcome of police enquiries or legal proceedings may apply (see Section 11 Suspension).

5.3 The Disciplinary Procedure may be immediately invoked where this is determined appropriate, having regard to the consequences to the school of not taking such action and the need to ensure that internal investigations do not prejudice police enquiries or legal proceedings (see section 21.1 Police Investigations).

5.4 If, on conviction for any offence, a staff member is sentenced to a period of imprisonment, this will not be treated automatically as a reason for dismissal. However, in assembling the facts of the case, the Headteacher and/or Governing Body will need to take into account the effect on the school of the staff member's enforced absence. The outcome may be termination of the contract on the grounds of 'frustration of contract' as the staff member is unable to undertake the duties of the position.

6 REPORTING MISCONDUCT TO THE INDEPENDENT SAFEGUARDING AUTHORITY (ISA) AND GENERAL TEACHING COUNCIL (GTC)

6.1 Employers (the Governing Body/Cornwall Council)) have a duty, under the Safeguarding Vulnerable Groups Act 2006 to produce a formal report to the ISA when a person is dismissed from employment on grounds of misconduct relating to the safeguarding of children or Vulnerable Adults or resigns in circumstances which would have led to their dismissal if they had not resigned.

6.2 This report will normally be produced once the employer's procedures have been completed and sent to the **ISA , P O Box 181, Darlington DL1 9FA** (The Governing Body is advised to contact the School's Employee Relations Team in the first instance.)

6.3 Reports should be made promptly, within a month of the person's dismissal or resignation.

6.4 Employers are required to report the facts of the case and provide all relevant information relating to the dismissal or resignation to the Secretary of State. When a person has not been convicted of an offence, the Secretary of State can only act if the allegation of misconduct has been substantiated by other means.

6.5 Employers should also inform the staff member that their case is being reported to the ISA and advise them to retain any relevant paperwork which they may need if their case is considered further.

6.6 The Secretary of State has the power to bar an individual through List 99 or restrict a person's employment.

6.7 If the case does not relate to the safety and welfare of children, the ISA will pass the report on to the GTC which will then consider the case under its disciplinary functions. Since 20 January 2009, employers have been required to refer cases relating to registered teachers to one of two bodies:

- the GTC
- the Independent Safeguarding Authority (ISA).

Referral to either body is a statutory requirement.

The GTC deals with cases where issues concerning the safety or welfare of children do not arise and where a registered teacher is dismissed for misconduct or incompetence, or resigns in circumstances where dismissal was possible.

6.8 Current DfE publications include:

- Safeguarding Children and Safer Recruitment in Education (January 2007).

As publications are revised periodically, Headteachers/Governing Bodies are advised to check with the DfE for the most recent.

6.9 Further information can be obtained direct from:

Independent Safeguarding Authority PO Box , Darlington , DL1 9FA

And from the following website:

www.isa-gov.org.uk

THE PROCEDURE

7 INFORMAL APPROACH

7.1 Minor failures to achieve standards of conduct or adhere to established rules will be dealt with informally in the immediate work environment, ie between the line manager and staff member. This may take the form of a discussion, and/or advice. The staff member will be advised of the improvement in conduct required and the possible consequences of formal action in the event of failure to achieve the required level of improvement.

7.2 The informal approach will normally be the first step unless the offence is repeated or serious enough to warrant recourse to the formal procedure. The objective of any such action will be to help the staff member improve.

7.3 Line managers will retain their own notes of informal action as they may be relevant if formal action is taken later. Hard copy notes should be kept securely and confidentially on the staff member's personal file and a copy of any notes kept should be given to the staff member. If a satisfactory improvement in conduct is achieved and sustained under the informal process, the notes will be removed from the file. This is likely to be within 6 months.

7.4 It should be emphasised that it is normal management practice for line managers to speak to their staff informally when necessary about their work or conduct, and that, if approached constructively by both parties, it is unlikely that formal action will be required.

7.5 However, if the informal approach does not rectify the situation or if more serious action is deemed necessary, the line manager may recommend to the Headteacher that a formal disciplinary investigation be conducted in accordance with Section 9 of the formal procedure.

8 FORMAL APPROACH

8.1 The decision to invoke the formal Disciplinary Procedure rests with the Headteacher and/or Governing Body.

8.2 The Governing Body/Headteacher are advised to contact the Schools' Employee Relations Team initially on all disciplinary matters. Where the concern is related to child protection, financial or IT matters, the Council's Joint Consultancy Team, Internal Audit or Computer Audit sections, respectively, must also be notified and may carry out the investigation.

9 DISCIPLINARY INVESTIGATION
(Appendix 1 – guidelines)
(Appendix 2 – standard letter)

9.1 A full formal investigation into any concerns or allegations regarding the conduct of a member of staff will be conducted by the immediate line manager in most cases, or a senior member of staff nominated by the Headteacher as the Investigating Officer, prior to any hearing being held under this procedure. Investigations will be undertaken without delay, particularly in cases of alleged gross misconduct.

9.2 Careful consideration should be given to identifying the appropriate person to undertake the investigation. In all cases, the person undertaking the investigation should be senior to the employee facing the concerns or allegations.

9.3 The Headteacher may act as the Investigating Officer or, as in most cases, the Investigating Officer will prepare a written report detailing the substance of the allegations, and the facts relevant to the case, for presentation to the Headteacher. In cases of alleged gross misconduct where the Headteacher may be responsible for making the decision to dismiss (ie: as part of a Disciplinary Panel), the Headteacher should not be involved in the investigation nor have sight of the investigatory report prior to the hearing. In these circumstances, the Investigating Officer will be required to make a decision without consulting the Headteacher as to whether or not the case merits consideration at a disciplinary hearing.

9.4 If the Investigating Officer is to be accompanied by a *member of the Schools' Employee Relations Team,* then the employee must be offered the opportunity to be accompanied by a workplace colleague or trade union representative. However, there is no statutory right for the employee to be accompanied.

9.5 The Investigating Officer will prepare a written report detailing the substance of the allegations, and the facts relevant to the case, for presentation to the Headteacher.

9.6 The timing of such interviews and any notice given will take account of the availability of all the parties and will be determined by the Investigating Officer paying due regard to the circumstances of the case, the overall timetable for the investigation and the need not to unreasonably delay its completion. The unavailability of the employee's preferred companion at the interview will not normally be reason for the interview not taking place or being re-arranged.

9.7 The employee will be given written notice in reasonable time of an investigatory interview which will include clear details of the allegation(s).

9.8 The Headteacher on reviewing the report will determine (i) that no further action is required or (ii) whether alternative action (for example, informal counselling/oral caution) is necessary or (iii) whether a formal Disciplinary Hearing is necessary.

9.9 A formal disciplinary penalty will only be imposed as a result of a disciplinary hearing where the case has been carefully investigated, all relevant facts considered and the allegations against the staff member are founded (or founded on the balance of probability).

9.10 Further advice on conducting a Disciplinary Investigation is available from the Schools' Employee Relations Team

10 GROSS MISCONDUCT

10.1 Should the Headteacher believe the alleged misconduct is so serious that it may constitute gross misconduct, s/he may suspend the staff member on full pay and without any loss of emoluments, pending a formal investigation.

10.2 **Definition of 'Gross Misconduct'**

'Gross Misconduct' occurs where a member of staff acts in a way which is incompatible with the faithful discharge of his or her duty to the employer. The misconduct must be gross or grave, seen in the light of all the circumstances of the case and so serious that it goes to the root of the contract of employment and makes the staff member's continued employment incompatible with the best interests of the school.

Some examples of conduct which potentially amount to gross misconduct (justifying summary dismissal (that is, instant dismissal without notice or payment in lieu of notice)) might include:-

- all fraud, theft or serious dishonesty at work
- deliberate, serious (negligent) acts which have the potential for causing serious injury to staff members or pupils
- damaging school property deliberately or recklessly
- serious violent or threatening behaviour at work
- deliberate serious breach of confidentiality
- supplying or being in possession of illegal drugs
- serious or persistent sexual or racial harassment
- drunkenness (such as to impair the performance of duties) or being under the influence of illegal drugs during school hours
- insolent or abusive behaviour towards parents, pupils, or other members of staff
- sexual misconduct
- serious act of insubordination *(This list is not exhaustive)*

11 SUSPENSION (Appendix 3 – standard letter)

11.1 Before the decision is taken to suspend a staff member, the Headteacher is advised to contact the Schools' Employee Relations team to confirm that suspension is the most appropriate action as there are other options that may be more appropriate.

11.2 However, in the event of a decision being taken to suspend a staff member, the Headteacher will immediately inform the Chair of the Governing Body (in writing or verbally). The Director of Children, Schools & Families (or representative) and Schools' Employee Relations team will also be advised.

11.3 At the time of suspension, the staff member will be interviewed by the Headteacher and will be given an adequate opportunity to offer an early explanation. The staff member will be encouraged to be accompanied by a trade union representative or a workplace colleague at this interview. The non-availability of a specific companion will not result in the postponement of the interview. A representative from the Schools' Employee Relations team may also be in attendance. At the interview the staff member will be verbally advised of the details of the allegation, that an investigation will be carried out and the anticipated timescales, and that he or she is to be suspended on full pay pending the outcome of the investigation.

11.4 This will be confirmed in writing in a letter to the staff member with a copy for the workplace colleague or trade union representative.

11.5 Suspension will apply in circumstances where it is deemed inappropriate by the Chair of the Governing Body and/or Headteacher for the staff member to remain at work while the facts and relevant information are being obtained. Suspension should apply where the allegations may amount to gross misconduct or where a staff member is the subject of a police investigation for an alleged offence which is considered relevant to his/her duties. In these cases, suspension will apply for the duration of the disciplinary process. Suspension is not a sanction or detriment to the member of staff, it is an entirely neutral act.

11.6 During the period of suspension the member of staff is required to remain away from their workplace and not to contact work colleagues, other than with the Headteacher's agreement.

11.7 The period of suspension will depend on the complexity of the investigation and may be determined by police enquiries or legal proceedings. It should not be unnecessarily protracted.

11.8 The staff member's suspension should be reviewed throughout the course of the investigation. The Governing Body may make the decision to end a suspension.

11.9 Suspended staff members will be reminded of the opportunity to use the Council's confidential counselling service provided by Relate, should they or their family require suitable support as a result of the suspension.

11.10 A school colleague should be nominated to maintain contact with the member of staff during the period of suspension.

11.11 The member of staff may be required to assist the school with its investigations or to attend a disciplinary hearing.

12 DISCIPLINARY ACTION

12.1 Where, following an investigation, a Disciplinary Hearing is considered necessary this will be convened at one of four stages determined according to the nature and extent of any previous action and the seriousness of the concerns.

12.2 **Stage One**

Where an informal approach has not achieved the desired outcome or where the situation warrants moving directly into the formal procedure, and there are minor matters under consideration.

12.3 **Stage Two**

Where matters dealt with by action at Stage One continue to be of concern, where there is an accumulation of minor matters not previously considered under the formal procedure or where there are more serious concerns about conduct or performance.

12.4 **Stage Three**

Where matters dealt with at Stage One or Stage Two continue to be of concern or where there are very serious concerns about conduct or performance.

12.5 **Stage Four**

Where matters dealt with by action at Stage One, Two or Three continue to be of concern or in cases of gross misconduct or gross negligence.

13 SCHOOL SUPPORT STAFF AND SHORT SERVICE WITH CORNWALL COUNTY COUNCIL

13.1 During the first 6 months of employment with Cornwall County Council of school support staff, any conduct which does not conform to the standards required will be discussed with the staff member on an informal basis in the first instance and the employee will be given a reasonable time in which to improve. Should the staff member not meet the required standards of conduct within the period for improvement, formal action will be taken at Stages Two and Four of the procedure. Stages One and Three will therefore not apply.

14 DISCIPLINARY HEARING
(Appendix 4 – standard letter)
(Appendix 5 – procedure to be followed at the hearing)

14.1 In the event of formal disciplinary action being taken the staff member will be requested, in writing, to attend a disciplinary hearing. In most cases, **a minimum of 2 calendar weeks' notice** *(see also section 1:11*) will be given in order to allow the member of staff reasonable time to prepare their case (see paragraph 14.2 below). In certain circumstances, this period can be curtailed if all parties agree at the outset and in the best interests of the employee. The member of staff will be advised in writing of the right to be represented by a workplace colleague or (recognised) trade union representative.

14.2 In exceptional circumstances, it may be appropriate to provide a longer period of notice for a disciplinary hearing. Such circumstances would include complex cases with extensive documentation and cases requiring the involvement of a senior regional trade union representative whose availability may be restricted.

14.3 The letter convening the hearing sent to the employee will include clear details of the allegation(s). Copies of all documents to be referred to at the hearing and details of all witnesses to be presented at the hearing by the person conducting the hearing will also accompany the letter sent to the employee. The employee and/or the representative should provide names of witnesses and copies of any documents they intend to refer to at the hearing as soon as reasonably practicable but not less than 1 calendar week before the hearing.

14.4 Where a workplace colleague or trade union representative are not available on the proposed date, the employee can offer an alternative time and date so long as it is reasonable and is within 1 calendar week of the original scheduled date. Only 1 postponement will be allowed. (If this relates to school holidays, see Section 1.11 Introduction.)

14.5 During the course of the hearing, the employee's representative should be allowed to address the hearing to put and sum up the employee's case on their behalf and confer with the employee during the hearing. The representative does not, however, have the right to answer questions on behalf of the member of staff.

14.6 The disciplinary hearing, in most cases, will be conducted by the Headteacher. However, the panel may consist of the Headteacher and line manager for minor alleged disciplinary breaches, or members of the Governing Body for more serious allegations. The constitution of the panel will depend on the nature of the alleged misconduct.

14.7 Where the Headteacher is the Investigating Officer, or presenting the case against a member of staff, it may be more appropriate for a panel of Governors to hear the case. A representative from the Schools' Employee Relations Team is entitled to attend as a Locality Authority representative for the purpose of giving advice.

14.8 In the event that there is an indication that the staff member will not attend the hearing, the Headteacher should contact the Schools' Employee Relations team for further advice. It may become necessary, to conduct the hearing in the staff member's absence. This option would only apply as a last resort where all other alternative options of conducting the hearing had been exhausted.

14.9 Disciplinary Hearings will follow a set procedure to ensure fairness and consistency in process (see Appendix 5).

14.10 Disciplinary letters will be handed personally to the member of staff wherever possible. However, where this is not practicable, the letter will be posted by **recorded delivery** to the staff member, at his/her home address, marked 'STRICTLY CONFIDENTIAL'.

14.11 Hard copy notes of the hearing will be retained securely and confidentially on the staff member's personal file, for the specified time periods stated under each of the potential disciplinary sanctions outlined in Section 15. A copy may be made available to the staff member on request.

15 DISCIPLINARY SANCTIONS

15.1 The outcomes of a disciplinary hearing will depend upon the circumstances of the case, but may include any of the following formal disciplinary sanctions.

15.2 The employee will be asked, at the end of the disciplinary hearing, whether s/he wished a copy of the letter to be sent to their trade union representative or workplace colleague. A copy should **not** be sent without the employee's permission.

WARNINGS

15.3 The outcome of the hearing, including the reasons for the decision, will be confirmed to the member of staff in writing within **1 calendar week** of the hearing.

15.4 **Stage One - Oral Warning**
(Appendix 6 – standard letter)

- If an oral warning is deemed necessary, the staff member will be informed that his/her conduct is expected to improve. Objectives may be specified to confirm the accepted standard and it will be made clear by the supervisor that if further acts of misconduct occur, then further disciplinary action may be taken.

- An oral warning will remain active for a period of **6 months** after the hearing and will be disregarded for future disciplinary purposes.

15.5 **Stage Two - Written Warning**
(Appendix 7 – standard letter)

- In the case of more serious concerns or a repeat of the misconduct for which an oral warning has been given, the staff member may be given a formal written warning.

- If a written warning is determined, the staff member will be informed that should any further act of misconduct occur, further disciplinary action may be taken.

- A written warning will remain active for a period of **12 months** after the hearing and will be disregarded for future disciplinary purposes.

15.6 **Stage Three - Final Written Warning**
(Appendix 8 – standard letter)

- In the case of very serious concerns, or a repeat of the misconduct for which a written warning was issued, a final written warning may be issued.

- If a final warning is determined , the member of staff will be informed that should any further act of misconduct occur, further disciplinary action may be taken.

- A final warning will normally remain active for a maximum of **12 months** after the hearing (with the exception of the circumstance where a final written warning is issued as an alternative to dismissal – see paragraph 18.1) and will normally be disregarded for future disciplinary purposes.

16 WARNINGS – ADDITIONAL GUIDANCE

16.1 Warnings should cease to be live following the specified period of satisfactory conduct and should be disregarded for future disciplinary purposes.

16.2 However, depending on the nature of the case, the hearing may impose a final written warning that will remain in force for a period of greater than 1 year. This is particularly so where the imposition of a lesser penalty is an act of leniency (see Section 18 Other Options). In this event, the employee must be informed in writing how long the warning will remain active and the reason for the longer time period.

17 DISMISSAL
(Appendices 9 & 10 – standard letters)

17.1 Taking into consideration the recommendation of the School Staffing (England) Regulations 2009 for the Headteacher to normally lead in all initial staff dismissal decisions, the Governing Body may delegate the responsibility for dismissal to the Headteacher (See Section 9.3 Disciplinary Investigation). In such circumstances t is recommended that the Headteacher involves other Governors in this process in the interests of objectivity. (If the dismissal

relates to a Headteacher, see Section 21.8 Disciplinary Action Against a Headteacher.)

17.2 A representative from the Schools' Employee Relations Team is entitled to attend a Disciplinary Hearing to give advice where dismissal is the potential outcome. The Headteacher/Disciplinary Panel will need to consider any advice given prior to making a decision to dismiss. Dismissal should not take place before advice is sought from the Schools' Employee Relations Team.

17.3 Where advice has not been sought, or advice given has been disregarded, the school may be liable for any costs which arise as a result of its actions.

17.4 Once the decision is taken to dismiss, the member of staff will be advised verbally at the hearing of the decision and of the right of appeal. This decision will be confirmed in writing to the staff member, within 1 calendar week. This letter will state the date of dismissal (with or without notice) and will include the right of appeal.

17.5 In the case of summary dismissal for gross misconduct, the date of dismissal will be the date of the disciplinary panel's decision to dismiss and pay will be stopped immediately. Should the dismissal be overturned at appeal, pay will be reinstated from the date of dismissal.

17.6 Should the member of staff choose not to stay to hear the outcome, the decision will only be given and confirmed in writing to the staff member. A second copy of the letter will be enclosed for the employee to forward to his/her trade union representative.

18 OTHER OPTIONS

18.1 As an alternative to dismissal, there may be circumstances which warrant other penalties. These may include, where feasible, sanctions such as redeployment, transfer, change or removal of duties, or downgrading; all of which may have an impact on an individual's earnings. These sanctions may be implemented together with a final written warning. Advice will be sought from the Schools' Employee Relations Team. Such a final written warning will normally remain active for an extended period of greater than 12 months (as is the usual time span of a final written warning, referred to in paragraph 15.6) and will then be disregarded for future disciplinary purposes.

18.2 When action other than dismissal is taken, the staff member will be warned that if further acts of misconduct occur whilst the warning is still "active" the Disciplinary Procedure may again be invoked.

19 APPEALS
(Appendix 11 – procedure to be followed at appeal)

19.1 The Appeals Panel will receive all documentation considered at the Disciplinary Hearing. The staff member and his/her representative may make verbal and/or written submissions.

19.2 The Appeals Panel, having considered the matter, may confirm the decision made, uphold the appeal, impose a lesser penalty or, where new evidence not available to the person(s) who made the original decision is presented, send the matter back to that person(s) for further consideration.

19.3 Should an appeal be upheld, reference to the disciplinary action will be removed immediately from the personal file of the staff member, unless less serious disciplinary action is decided upon by the Appeals Panel.

19.4 The employee will be asked, at the end of the appeal hearing, whether s/he wished a copy of the letter to be sent to their trade union representative or workplace colleague. A copy should **not** be sent without the employee's permission.

19.5 The Appeals Panel may announce their decision verbally, but the outcome will be confirmed to the member of staff in writing within **2 calendar weeks** of the appeal. This decision is final.

19.6 **Oral, Written and Final Written Warnings**

- Appeals against oral or written warnings must be made by the staff member in writing to the Headteacher or, where the appellant is the Headteacher, to the Chair of the Governing Body, outlining the reason for the appeal, within **2 calendar weeks** of receiving written confirmation of the warning. The appeal must clearly detail the grounds on which the appeal is being made. A failure to clearly state the grounds of the appeal within the 2 week period will result in the appeal being out of time.

- Appeals will be heard, where practicable, within **2 calendar weeks** of receipt of the appeal application.

- Appeals against oral and written warnings will be heard by the Appeals Committee of the Governing Body. The Appeals Panel of the Governing Body will exclude any members who sat on the Disciplinary Panel which made the original recommendation to issue an oral/written warning. In addition, the number of governors constituting the Appeals Panel of the Governing Body cannot be less than the number of individuals who sat on the Disciplinary Panel which made the decision to issue a written warning.

- An appeal against an oral, written or final written warning will give specific consideration to the grounds of appeal as identified in the employee's letter of appeal and will not typically be conducted as a full re-hearing of the case.

- The outcome of the appeal, including the reason for the decision, will be confirmed in writing within **1 calendar week.**

20 APPEAL AGAINST DISMISSAL

20.1 An appeal against dismissal may be made by the staff member in writing to the Headteacher or, where the appellant is the Headteacher, to the Chair of the Governing Body, outlining the reason for the appeal, within **2 calendar weeks** of receiving the written confirmation of the dismissal. The appeal must clearly detail the grounds on which the appeal is being made. A failure to clearly state the grounds of the appeal within the 2 week period will result in the appeal being out of time.

20.2 Appeals will be heard, where practicable, within **2 calendar weeks** of receipt of the appeal application.

20.3 The appeal will be heard by an Appeals Panel of at least 3 Governors who have not been involved in any previous action or decision connected with the dismissal. Where there are not enough of such Governors available, the appeal may be heard by 2 Governors or a Governor from another school may be seconded to the panel. Where applicable, there should be an equal number of Governors on dismissal hearings and appeal hearings.

20.4 Appeals against dismissal will take the form of a full hearing of the case, depending on the grounds for dismissal. Further advice should be sought from the Schools' Employee Relations Team.

20.5 **Community, Voluntary Controlled, Community Special and Maintained Nursery Schools (Appendix 12 – standard letter)**

- If the member of staff is employed by Cornwall County (remove) Council, the Governing Body/Headteacher must notify the Director of Children, Schools & Families (or representative) and the Schools' Employee Relations Team of the recommendation to dismiss and the reasons for the dismissal, as soon as practicable. Within **2 calendar weeks** of the receipt of notification, Children, School and Families HR Administration will write to the staff member terminating his/her contract of employment with the Authority, stating the reasons for dismissal. This termination can be with or without notice (as in the case of summary dismissal for gross misconduct where pay ceases at the date of the disciplinary panel's decision to dismiss). Where a contract is terminated without notice because of the conduct of the member of staff, the termination may be rescinded if an appeal is upheld.

20.6 **Foundation, Voluntary Aided, Foundation Special Schools and Academy Trust Schools**
(Appendix 13 – standard letter)

- If the member of staff is employed by the Governing Body or (in the case of Academy Trusts) members, notice terminating employment should be

issued by the Governing Body/members following the dismissal decision. This termination can be with or without notice (as in the case of summary dismissal for gross misconduct where pay ceases at the date of the disciplinary panel's decision to dismiss). Where a contract is terminated without notice because of the conduct of the member of staff, the termination may be rescinded if an appeal is upheld.

21 OTHER RELATED MATTERS

21.1 POLICE INVESTIGATIONS

21.2 Where the misconduct is such that the police are also conducting a criminal investigation into the same allegations, there can be difficulty and delay in collecting information due to awaiting the outcome of the police investigation.

21.3 Disciplinary proceedings should not commence alongside police investigations until careful consideration in consultation with the police has been undertaken to ascertain the appropriateness of commencing internal disciplinary proceedings whilst police investigations are underway. Police investigations do not determine disciplinary issues which will include assessment of wider issues than whether a crime has been committed.

21.4 The circumstances of each case should be carefully considered prior to making the decision to pursue a disciplinary investigation where police investigations are underway. In making the decision how to proceed, the school must liaise with the police in order to identify whether an internal investigation can be carried out without the employee incriminating themselves in relation to the criminal proceedings. Considerations to be borne in mind when making this decision may include how long the police enquiries will take to conclude, the extent to which this may be accommodated by the school, the extent to which the employee can respond to the allegations without implicating their position in the criminal investigation and whether a sufficiently full investigation can be undertaken under the circumstances.

21.5 Statements made to the police by potential witnesses in the disciplinary proceedings, including the accused member of staff, can and should be made available for use in the disciplinary proceedings provided consent is given by the individual making the statement.

21.6 INVESTIGATION FOLLOWING RESIGNATION

21.7 Under DfE guidelines *Safeguarding Children and Safer Recruitment in Education* the fact that a person resigns must not prevent an allegation being followed up. It is important that every effort is made to reach a conclusion in all cases of allegations bearing on the safety or welfare of children. This includes cases in which the person concerned refuses to co-operate with the process. Wherever possible the person should be given a full opportunity to answer the allegation and make representations. However, the process of recording the allegation and any supporting evidence, and reaching a

judgement about whether it can be regarded as substantiated should continue even if the person does not co-operate or respond. It may not be possible to apply disciplinary sanctions if a person's notice period expires before completion of the process but it is important to reach and record a conclusion wherever possible.

21.8 DISCIPLINARY ACTION AGAINST A HEADTEACHER

21.9 Where a Headteacher is the subject of disciplinary action, the Chair of the Governing Body may request the Head of Service (Schools and Achievement) (or representative) to present the case against the Headteacher to a Committee of the Governing Body.

21.10 Where the Chair of the Governing Body believes the alleged misconduct of a Headteacher is so serious that it may constitute 'gross misconduct', he/she will take immediate advice from at least 2 other governors and consult the Director of Children, Schools & Families (or representative) before suspending the Headteacher on full pay pending a formal investigation.

21.11 GRIEVANCE RAISED DURING THE DISCIPLINARY PROCESS

21.12 If in the course of a disciplinary process, a staff member raises a grievance that is related to the case, the School's Grievance Procedure may apply. The Headteacher/Governing Body should consult the Schools' Employee Relations Team consider whether or not to suspend the disciplinary procedure for a short period while consideration is given as to how the grievance is dealt with. Depending on the nature of the grievance, consideration may need to be given to who continues to deal with the disciplinary process.

21.13 The current ACAS Guide *'Discipline and Grievance at Work, April 2009* gives the following guidance:

- Where an employee raises a grievance during a disciplinary process, the process may be temporarily suspended in order to deal with the grievance.

- However where the grievance is related to the disciplinary case it is recommended that both issues are dealt with concurrently.