

CATHOLIC EDUCATION SERVICE – April 2007
MODEL DISCIPLINARY PROCEDURE (All Staff Members at the school)¹
FOR CATHOLIC VOLUNTARY AIDED SCHOOLS IN WALES WITH DELEGATED BUDGETS²

1. SCOPE

1.1 This Procedure should be used in all cases where misconduct or omission is such to warrant disciplinary action. The Governing Body must however, formally adopt their own disciplinary procedure. This Procedure is recommended by the CES for such adoption on an interim basis pursuant to agreement with local staff unions.

1.1.1 Governors are reminded that they are required by legislation to adopt rules and procedures to regulate the conduct and discipline of staff. A Governing Body must formally adopt its own procedures although it is expected to follow the guidance of the CES and to take into account that from the DSC, LA and Welsh Assembly Government (“WAG”). Governing Bodies are urged to review their policies and procedures annually. It should also be noted that Chairs of Committees should be appointed annually.

1.2 The Government of Maintained Schools (Wales) Regulations 2005³, makes further provisions to which Governing Bodies must have regard in the conduct of disciplinary matters. The Staffing of Maintained Schools (Wales) Regulations 2006⁴, also form part of the reference for this CES model disciplinary procedure. Further guidance is provided in the National Assembly for Wales Circular Number: 45/2004, issued in November 2004, ‘Staff Disciplinary Procedures in Schools’. Although the guidance in the Circular is non-statutory, all Governing Bodies are required to have regard to its guidance when involved in staff disciplinary matters.

Governing Bodies should be mindful of their role and continue to exercise their functions in relation to staff as employers of staff and, in the case of Foundation Governors, representatives of the local Ordinary within the school, and should only carry out their functions in consultation with Diocesan and Local Authority (“LA”) advisers, wherever possible.

1.3 This Procedure shall apply equally to Headteachers as it applies to other Staff Members⁵. Where the Headteacher is the subject of disciplinary action:

- the Chair of Governors will need to initiate consideration of the allegations;
- the Governing Body may make arrangements for the investigation to be carried out externally, by an Independent Person. Advice may be sought from the Diocesan Schools’ Commissioner (“DSC”)⁶ and the LA on the appointment of an Independent Person.
- presentation of the case against the Headteacher at the disciplinary hearing may be done by the Independent Person as Investigating Officer.

¹ We have consulted on this procedure with the Welsh Teacher Unions

² Developed in liaison with the Welsh Assembly Government

³ These Regulations (SI 2205/2914) came into force on 31st October 2005 and require Governing Bodies to establish a Staff Disciplinary and Dismissal Committee and a Staff Disciplinary and Dismissal Appeal Committee. The regulations also revoked the Education (School Government) (Wales) Regulations 1999 but the definition of temporary Governing Body and temporary Governors made within those Regulations continues to pertain.

⁴ Statutory Instrument 873

⁵ “Staff Member” throughout this Procedure means a teacher or other member of staff employed by the Governing Body.

⁶ “Diocesan Schools’ Commissioner” throughout this Procedure means the Diocesan Director of Education or Schools. They are the diocesan authority as referenced in Staff Disciplinary Procedures In Schools, National Assembly for Wales Circular No. 45/2004. The term shall include the Diocesan Schools’ Commissioner’s officers and representatives.

- 1.4 It is recommended that the Governing Body consults the DSC and a representative of the trade union to which the Headteacher belongs before appointing an Independent Person to act as an Investigating Officer. In selecting an Investigating Officer, the Governing Body should consider the need for both educational (particularly in terms of school management) and human resources expertise. The Independent Person could be a representative of the DSC or of the LA.
- 1.5 It is mandatory to use an Independent Person, appointed in accordance with prescribed requirements, in the case of any child protection allegation. This is set out at paragraphs 7.8 to 7.11 of this procedure and at Appendix 2.
- 1.6 The term "misconduct" in this Procedure covers instances of misconduct or omission, which may be reasonably attributed to wilful or negligent acts or omissions on the part of a Staff Member. Gross misconduct is used to mean an act or omission, or a series of acts or omissions, that fundamentally repudiates the contract of employment so that the Governing Body would be justified in dismissing the Staff Member. Summary dismissal without notice or payment in lieu of notice may be justified after a disciplinary hearing if there are no extenuating circumstances. Examples of the types of acts and omissions, which might constitute misconduct or gross misconduct and might be considered under this Procedure, are set out in Appendix 1. These examples are not intended to be exhaustive and advice should be taken from the DSC and Local Authority Human Resources Department as necessary.
- 1.7 Any disciplinary process should be completed by the relevant Committee of the Governing Body, notwithstanding the resignation of the Staff Member concerned.

2. MATTERS OUTSIDE THE SCOPE OF THIS PROCEDURE

- 2.1 This Procedure does not apply where employment is terminated by reason of redundancy or incapability arising from ill-health.
- 2.2 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 used. Where poor performance arises from negligence or lack of care on the part of the Staff Member, then the disciplinary process may be applied without going through the capability procedure first. Wilful disregard of professional standards of performance or refusal to cooperate with measures designed to improve performance may be considered as misconduct and in extreme cases as gross misconduct.
- 2.3 Staff Grievance Procedures are outside the scope of this procedure. If action under the Staff Grievance Procedure results in the need for disciplinary action, this procedure will then apply,
- 2.4 The normal management of Staff Members and associated processes such as the performance review are outside the scope of this Procedure.
- 2.5 Some cases of lesser misconduct and many cases of poor performance are best dealt with by informal advice, (coaching/counselling and or informal/verbal warning). These actions do not form part of the formal disciplinary procedure. As noted in paragraph 2.2, performance will, in all cases but wilful poor performance, be dealt with through the Capability Procedure.
- 2.6 Where action under the disciplinary procedure is necessary against a Staff Member as a consequence of a complaint brought forward under the Governing Body's complaints procedure, the disciplinary procedure will take precedence.

3. PRELIMINARY MATTERS

3.1 Disciplinary proceedings shall not usually be affected or interrupted by the Staff Member who is subject to the Procedure invoking the Grievance Procedure to ensure that matters are dealt with efficiently and with due speed. The Staff Disciplinary and Dismissal Committee has discretion to adjourn disciplinary proceedings to allow grievance procedures to be followed but should be mindful of vexatious or delaying grievances.

3.2 On occasion, Staff Members may be on sick leave either at the outset of a disciplinary investigation or as it progresses. Each case must be dealt with on its merits and advice should be sought from Diocesan and LA officers as to how to progress in these circumstances.

In most cases it would be usual to postpone a staff disciplinary hearing if the Staff Member is sick. However this is not always a satisfactory approach and may create uncertainty for the school and added stress for the member of staff. If the member of staff is expected to be sick for a long time it may be reasonable to go ahead with the disciplinary hearing provided the member of staff and his/her representative have been advised of this and the member of staff is given the opportunity to use a representative to present his/her case. The representative must have the same opportunity the Staff Member would have had to present evidence, call witnesses and sum up the Staff Member's case.

If the Staff Member were to decline the opportunity to use a representative to present his/her case and their own state of health would cause an extended delay in the proceedings, the Staff Disciplinary and Dismissal Committee could go ahead on the basis that the member of staff had been afforded reasonable opportunity to make his or her case. However, the Staff Disciplinary and Dismissal Committee would need to weigh up whether going ahead would be consistent with the need to act fairly and with its own procedures; and whether the Staff Member might be able to mount a claim for breach of contract.

3.3 In addition to seeking advice and assistance from the DSC before beginning disciplinary proceedings, Headteachers and Governors are advised to invite a representative of the DSC and/or as appropriate, the Diocesan Director of Religious Education and the appropriate LA officer to any meetings held in accordance with this Procedure. Where Disciplinary Procedures could lead to the dismissal of a teacher (including a Headteacher), advisory rights are statutorily⁷ accorded to the Chief Education Officer ("CEO")⁸ (through his representative officers) and he and the DSC, must be consulted and permitted to give advice.

3.4 At all meetings held under the terms of this Procedure, except for those under the informal procedure, Staff Members shall be entitled to be accompanied by a colleague or trade union representative.

3.5 The Staff Member has a statutory right⁹ to propose an alternative date, if his/her chosen companion would not be available for a proposed hearing date, provided that the alternative is reasonable and no more than 5 Working days after the date proposed by the Governing Body. The Governing Body must postpone the hearing to such a later date if so requested. In the case of sickness absence of a Staff Member facing allegations it would be usual to postpone the disciplinary hearing.

⁷ By the Staffing of Maintained Schools (Wales) Regulations 2006, SI 2006/873 (W.81)

⁸ Throughout this Procedure, "Chief Education Officer" means the Chief Education Officer of the school's maintaining Local Education Authority or his/her representative officer(s). Schools will normally liaise with senior LA Human Resources Officers on personnel matters.

⁹ Section 10, Employment Relations Act 1999.

- 3.6 The Governing Body is required to have both a Staff Disciplinary and Dismissal Committee and a Staff Disciplinary and Dismissal Appeal Committee with delegated powers. They should each consist of three Governors, and the same Governors may not sit on both Committees. The Staff Disciplinary and Dismissal Appeals Committee must include no fewer Governors than the Staff Disciplinary and Dismissal Committee, the decision of which is subject to the appeal. Governing Bodies should be mindful of the numbers of Governors that can be involved in disciplinary matters and strive to ensure that Governors are not 'tainted' (ie disqualified from sitting on a Committee as a result of prior knowledge) unnecessarily.
- 3.6.1 Where allegations are made against a Staff Member that involve issues of child protection the Staff Disciplinary Committee must not include less than two governors and must always include an Independent Person who is not a governor. (see paragraphs 7.8 et seq)
- 3.6.2 Similarly, the Staff Disciplinary and Dismissal Appeal Committee dealing with allegations against a Staff Member that involve issues of child protection must include an independent person who was not involved in the Staff Disciplinary Committee's decision.
- 3.6.3. For the purposes of paragraphs 3.6.1. and 3.6.2 , in accordance with the Staffing of Maintained School (Wales) Regulations 2006, a person is to be regarded as independent in if he:
- is not a governor of the school in question
 - is not a parent of a current or former pupil at the school in question
 - is not a former or current member of staff at the school in question
 - is not currently employed by the local education authority that maintains the school in question.
- 3.7 Appeals against decisions of the Staff Disciplinary and Dismissal Committee must be heard by a Staff Disciplinary and Dismissal Appeal Committee. Membership shall not include those members previously involved in the Staff Disciplinary and Dismissal Committee nor, wherever possible, any Governor currently employed at the school.
- 3.8 Non-Governors may be members of either Committee but they may not vote, with the exception of the Independent Person appointed to consider a child protection allegation (see 3.6.2 and 7.8 et seq). Membership of Disciplinary Committees may not overlap. The quorum for any meeting of either the Staff Disciplinary Committee or the Disciplinary Appeal Committee is three plus the non governor member (i.e. the independent person in any allegation relating to child protection set out in paragraph 3.6.2).
- 3.9 The Chair of Governors should not normally sit on either the Staff Disciplinary and Dismissal Committee or the Disciplinary and Dismissal Appeal Committee, in order that he/she is able to advise the Headteacher in cases involving other staff and is able to act in cases involving the Headteacher. The Headteacher cannot be a member of any Committee or Appeals Committee, although he/she can attend their hearings to give evidence.

4. CONDUCT OUTSIDE NORMAL DUTIES

- 4.1 Circumstances or allegations may arise outside a Staff Member's normal duties, which raise doubts as to whether the Staff Member can fulfil his or her responsibilities satisfactorily. If the concern is about conduct which prejudices that relationship of trust and confidence between Governing Body and Staff Member required by the post, it will be appropriate for such matters to be considered and substantiated by the Headteacher. If the Headteacher is the subject of the allegation the initial consideration and substantiation should be led by the Chair of Governors with appropriate LA and Diocesan advice. If the allegations appear to be substantiated, appropriate action may be taken in accordance with this Procedure.
- 4.2.1 If the matter under consideration relates to religious education at the school or may have an

impact on its delivery it is strongly recommended that a representative of the DSC *and* representative of the Diocesan Director of Religious Education should be invited to attend any meeting of the Staff Disciplinary and Dismissal Committee and the Staff Disciplinary and Dismissal Appeal Committee for the purposes of giving advice.

- 4.2.2 Where the matter concerns the religious character of the school, the Governing Body should consider whether the attendance of a representative of the Diocesan Director of Religious Education is also advisable.

5. INFORMAL PROCEDURE for Lesser Misconduct Matters

- 5.1 There will be occasions at work when it is appropriate for the Headteacher or other line manager to raise concerns about a Staff Member's performance (see paragraph 2.2) or conduct with him or her as part of normal management procedure. This provides an opportunity for the Headteacher or line manager to explain the standard of conduct (including wilful underperformance) expected of the Staff Member without entering into formal Disciplinary Procedure. In the majority of cases such discussions will make disciplinary action unnecessary and the matter may be dealt with by, for example, verbal advice, coaching or issuing unrecorded informal oral warnings. Such warnings are not part of formal disciplinary procedures. Managers need to ensure that problems are discussed so as to encourage and help members of staff to improve. The member of staff needs to understand what he or she needs to do in relation to their conduct in question; how performance or conduct will be monitored and reviewed and over what period; and that formal action might be taken if there is a recurrence of the conduct in question.
- 5.2 Where discussions in the normal course of management do not bring about any required change or improvement, the Staff Member must be advised that the next step could be referral to the Disciplinary Interview and further action. A memorandum, which may be in the form of a letter, acknowledging the steps to be taken should be issued. The Disciplinary interview is not a formal disciplinary hearing for the purposes of this Procedure.

INVESTIGATION BY HEADTEACHER

- 5.3 If the alleged misconduct is sufficiently serious, a single instance may warrant immediate referral to the formal Disciplinary Procedure. If the allegation is determined to be one of child protection the Headteacher, in this case, will immediately refer it to the LA lead officer for Child Protection and refer it to the statutory authorities as necessary.
- 5.4.1 If an allegation of misconduct amounting to lesser misconduct is made against the Headteacher, the matter must be brought to the attention of the Chair of Governors by the Staff Member or the other person raising the allegation. He/she would need to act in accordance with the arrangements set out in the school's Staff Disciplinary procedure.
- 5.4.2 In order to establish the facts, it will normally be necessary for the Chair of Governors to conduct or commission an investigation. The Chair of Governors could arrange for any investigation to be carried out externally ie by the LA, diocesan authority or an independent person.

5.5 PRINCIPLES FOR INVESTIGATION

- A Staff Member who is the subject of investigation may be accompanied at any interview or similar presenting officer/investigatory meeting by a trade union representative or colleague;
- The Staff Member and any witnesses who make statements during the course of any investigation will be provided promptly with a copy of any written statement of evidence that s/he has made;

- No disciplinary action shall be taken against any representative of a trade union until the case has been discussed with a full-time official of the trade union concerned. This should be done without delay.

5.6 Disciplinary Interview for Lesser Misconduct:

5.6.1 Where an investigation in accordance with paragraph 5.3 concludes that behaviour should be considered as lesser misconduct (see Appendix 1) or where a member of staff has failed to respond to informal warnings, as anticipated by 5.2 or where the Headteacher or senior manager determines that a Staff Member's behaviour justifies more formal action a "disciplinary interview" must be held.

5.6.2 The Staff Member must be notified in writing at least 5 School Days in advance of the interview. This notification should include the nature of allegations and any supporting documents; date, time and venue for interview; the names of witnesses to be called; the Staff Member's right to be accompanied by a trade union representative or friend. The possible outcomes of the interview should also be outlined.

5.6.3 At the interview the Staff Member must be able to answer allegations, question witnesses, and state his/her case. A contemporaneous written record must be made including the decision reached, and copied to the Staff Member without delay.

5.7 Warnings – Lesser Misconduct

5.7.1 It will often be possible to respond to cases of lesser misconduct by issuing a formal, verbal warning at the disciplinary interview. The warning should be placed on the Staff Member's personal file and copied to them. The Staff Member's acknowledgement of the warning should be obtained and put on file.

5.7.2 The formal warning should make clear what action the Staff Member needs to undertake to avoid any further disciplinary action and consequence of failing to take such action. They should also be informed of their right to appeal.

5.7.3 Warnings should be expunged from a Staff Member's file after a specified period. NAW Circular 45/2004 suggests the following periods:

- Formal oral warning - 2 full terms from the end of the term in which the warning was issued;
- Written warning – 3 full terms from the end of the term in which the warning was issued;
- Final written warning – 6 full terms from the end of the term in which the warning was issued.

Expunged warnings should be disregarded in any future disciplinary procedures.

5.7.4 The school's disciplinary procedures should allow for appeal against formal warning. The Staff Member should be informed of a time limit for notifying intention to appeal, ie 2-5 Working Days from receipt of the warning. The Disciplinary Committee should hear the appeal within 10 School Days of it being lodged wherever possible. The Staff Member should have at least 5 School Days notice of the appeal hearing.

5.7.5 The Disciplinary Committee may not impose a more severe penalty than that originally awarded by the Headteacher or member of the senior management team.

Referral to Formal Procedure for Gross Misconduct

- 5.8 Another possible outcome of a disciplinary interview may be that the seriousness merits referral to the Governing Body. At this stage, the school's procedures for dealing with matters of gross misconduct take over.
- 5.9 If normal management processes and action under the informal procedure for lesser misconduct matters have not brought about the required changes in behaviour or performance (where poor performance is wilful and is therefore a disciplinary not a capability matter), the Staff Member should be referred to the formal Disciplinary Procedure.

6. **SUSPENSION**

- 6.1. If it is necessary for the Headteacher or Governing Body to suspend a Staff Member (see Appendix 4) while an investigation is carried out into the situation giving rise to concern, s/he must immediately inform the Chair of Governors (or, as the case may be, Headteacher), the DSC and the CEO of the action taken.
- 6.2 If it is necessary to suspend the Headteacher this must be done by the Chair of Governors following consultation with the DSC. The guidance of the CEO should also be obtained. The Chair of Governors should, upon suspension of the Headteacher, immediately inform the CEO and DSC. The Chair of Governors may then instruct an Independent Person to conduct an investigation into the allegation(s). The Independent Person may be a representative of the DSC or LA.
- 6.3 Suspension does not constitute disciplinary action in itself. If it is necessary to suspend a Staff Member during investigations this will be at full pay. Suspension will not be unnecessarily protracted. A suspension may only be ended by the Governing Body.
- 6.4 At the conclusion of an investigation into an allegation of gross misconduct during which the Staff Member is suspended, if an Independent Person has been commissioned to investigate the matter and prepare a report, he must submit it for the consideration of the Disciplinary Committee.
- 6.5 The Disciplinary Committee must decide whether to dismiss the case where no case to answer is found and the suspension ended, action taken to address lesser misconduct under this procedure taken or a disciplinary hearing to consider gross misconduct will be convened.

7. **GROSS MISCONDUCT**

Preliminary

- 7.1 This section deals with allegations relating to child abuse and Gross Misconduct. Specific procedural requirements relating to child abuse allegations are set out below.
- 7.2 It is good practice for the Governing Body to be involved in the consideration of all cases which may lead to dismissal, as all cases of gross misconduct may. By law, the Governing Body is only required to be involved in decisions resulting in dismissal but failure to be involved in the early stages of cases where dismissal is a possibility could lead to delay, duplication and greater stress for the individual(s) concerned.
- 7.3 Determination of whether the conduct of a Staff Member has been sufficiently serious to warrant possible dismissal will usually be made by the Headteacher. Where the Headteacher fails to act or where it is the conduct of the Headteacher himself that is at issue, the Chair of Governors will need to reach such a determination and initiate procedures.

Allegations to be referred to the Statutory Authorities (Police and Local Authority Social

Services) (NAW 45/2004)

- 7.4 The Government of Maintained Schools (Wales) Regulations 2005¹⁰ require the Governing Body to delegate its disciplinary/dismissal function to two committees, the Staff Disciplinary and Dismissal Committee and the Staff Disciplinary and Dismissal Appeal Committee. Regulation 29 of the Staffing of Maintained Schools (Wales) Regulations 2006 provides for both committees to decide to terminate a member of staff's contract.
- 7.5 Where a school does not have a delegated budget, section 55 (5) of the School Standards and Framework Act 1998 applies. This is cross referenced by the Government of Maintained Schools (Wales) Regulations 2005. Section 55(5) states that the authority may, after consulting the Governing Body, give the Governing Body directions in relation to the educational qualifications of the teachers to be employed for giving secular education. The authority may also require the Governing Body to dismiss any teacher at the school. The authority is not obliged to consult the Governing Body before issuing a direction to dismiss.
- 7.6 Reference to the statutory authorities is necessary:
- Where the allegation relates to a criminal offence
 - Where the allegation relates to child abuse.
- 7.7 Allegations of conduct which may be criminal or which may constitute child abuse should be brought immediately to the attention of the Headteacher or Chair of Governors, if the allegation is against the Headteacher. The headteacher or Chair of Governors should make an initial assessment of, but not investigate, the nature and circumstances of the allegation. This should establish:
- That an allegation has been made
 - The general nature of the allegation
 - When and where the episode(s) is alleged to have occurred
 - Who was involved
 - Any other persons present.

Allegations relating to Child Abuse

- 7.8 The definitions of child abuse and neglect as defined in Safeguarding Children, Working Together under the Children's Act 2004¹¹ are set out at Appendix 2.
- 7.9 If the allegation concerns child abuse the Headteacher must consult the LA officer designated to lead on child protection as a matter of urgency. In the case of an allegation against the Headteacher, the Chair of Governors must consult the designated LA officer. If the designated officer is not available, the Headteacher (or Chair of Governors, where appropriate) must approach the designated manager for child protection in the local authority's *social/children's* services department. This is also the manager to whom the designated LA Officer and Headteacher (or Chair of Governors where appropriate), must turn if they feel in need of advice. Seeking advice does not in itself constitute a referral. The Headteacher should additionally advise and may consult the DSC when an allegation relating to child abuse is made. In the event of an allegation of child abuse being made against the Headteacher, the Chair of Governors must advise the DSC as a matter of urgency.
- 7.10 If the allegation relates to a potentially criminal act or indicates that a child has suffered or is likely to suffer significant harm, the matter must be referred immediately by the Headteacher (or Chair of Governors, as appropriate) and designated LA officer to the relevant body under local child

¹⁰ SI 2005/2914, Regulation 55

¹¹ Anticipated February 2007 but publication not confirmed at the time of issue

protection procedures established by the Local Safeguarding Children Boards.¹² The referral will usually be to the local social services authority. They will involve the police where there is an allegation of criminal behaviour.

- 7.11 Existing Welsh Government advises that If the allegation relates to the use of reasonable force to restrain a pupil it may be appropriate for the allegation to be dealt with under disciplinary procedures without recourse to the LA designated child protection officer, unless the allegation is of assault beyond reasonable force or the child has sustained an injury, in which case the Headteacher (or Chair of Governors, where appropriate) should make an immediate referral in accordance with paragraph 7.9. In practice however, it maybe that all potential child protection allegations are referred to the statutory authorities. The Headteacher or chair should take advice from the LA and DSC to determine the appropriate action.

Allegations of Criminal Misconduct

- 7.12 If following initial consideration and consultation, which should include consultation with the designated social service manager for child protection, the situation is not clear cut, and the LA lead officer and Headteacher (or Chair of Governors) conclude that:
- The allegation relates to inappropriate behaviour or poor practice on the part of the member of staff.
 - The pupil had not suffered or is not likely to suffer significant harm, and no criminal offence appears to have been committed, the matter should be considered under usual disciplinary procedures.

- 7.13 Allegations against a Staff member of criminal behaviour relating to fraud, theft, criminal damage and other criminal activity other than child abuse should be referred to the police by the Headteacher or Chair of Governors (where the allegations relate to the Headteacher). The LA and DSC should also be advised of the referral.

False Allegations

- 7.14 If it becomes clear to the LA designated officer and Headteacher (or Chair of Governors, as appropriate) that the allegation is demonstrably false because the circumstances of the allegation show beyond doubt that it is not possible for it to be true, for instance, because the Staff Member concerned was not in school at the time in question, the matter can be dealt with by the school.
- 7.15 Appendix 2 contains a list of documentation recommended by the National Assembly for Wales which deals with the action a school may need to take to deals with the underlying reasons for a false allegation.

Gross Misconduct Matters: General

- 7.16 Where is it decided that allegations (including child protection and criminal matters) may result in dismissal, ie any cases relating to gross misconduct, they must be heard by the Staff Disciplinary and Dismissal Committee. The Staff Member shall be informed in writing of:
- (a) the nature of the alleged misconduct and, where applicable, the warning stage which the Staff Member has already reached, the possible outcomes of the hearing;
 - (b) the date, time and place of the hearing;
 - (c) their statutory right to be accompanied by a friend, who may be a representative of their trade union;
 - (d) their statutory right to produce written statements and invite witnesses to give evidence

¹² Revised All Wales Child Protection procedures will be published in 2007 and is anticipated in February 2007

on his/her behalf (any written statements will be circulated to the parties and to those hearing the case 5 School Days before the hearing).

[See sample letter at Appendix 5]

INVESTIGATION

- 7.17 Before the decision to hold a disciplinary hearing is made, there should be an investigation into the allegations. The decision to have such an investigation will be made by the whole Governing Body or their Staff Disciplinary and Dismissal Committee, usually with the advice of the Headteacher. The investigation may be conducted internally or by an external party eg an officer of the diocese, but members of the Governors' Disciplinary and Dismissal Committee should not be involved. The person leading the investigation (the Investigating Officer) will prepare a report, and attach relevant papers, for the Staff Disciplinary and Dismissal Committee. (further guidance on carrying out such an investigation is contained in Section 5 of Circular 45/2004). If the Investigating Officer concludes that there is a case of potential gross misconduct to answer the Chair of the Staff Disciplinary and Dismissal Committee should ask the Clerk to the Committee to immediately proceed to setting up a disciplinary hearing. Where the investigation relates to an **allegation of child abuse**, the Chair of the Staff Disciplinary and Dismissal Committee must appoint an Independent Investigator¹³ to conduct the investigation and prepare a report. The Independent Investigator must not commence his investigation until the statutory authorities have completed their consideration of the allegation, unless the statutory authorities give their express consent that the Governing Body investigation may proceed contemporaneously.

Procedure Prior to Hearing

- 7.18 Notice of the hearing shall be delivered to the Staff Member by hand wherever possible. Where hand delivery is not possible, the letter should be sent by guaranteed and recorded next day delivery.
- 7.19 At least 5 School Days before the meeting, the Staff Member shall provide the Clerk to the Committee with any written evidence s/he wishes to submit together with the names of any persons s/he intends to call to provide evidence on his/her behalf.
- 7.20 A hearing will not normally be held in the absence of the Staff Member, except by mutual agreement, unless s/he fails to attend a hearing without reasonable cause or is otherwise constrained from attending (for example, s/he is held in custody). The date of the hearing will be postponed by up to 5 Working Days on request if the Staff Member's representative is unable to attend on the specified date. The Staff Member may seek a postponement of the hearing if there is a good reason why they cannot attend.
- 7.21 The requirements for action under section 7 to take place within specified periods measured in School Days may be modified if periods of school closure mean that there would be undue delay. Governing bodies should be mindful of the need to address matters within this procedure with due speed.

Procedure at Formal Hearing

- 7.22.1 A Clerk must be appointed to the Staff Disciplinary or Staff Dismissal Appeal Committee in accordance with Regulation 58 of the Government of Maintained Schools (Wales) Regulations 2005. The Clerk may not be the Headteacher and will usually be the Clerk to the Governing Body. If the Clerk fails to attend a meeting of the committee to which he is appointed, the committee may appoint any one of their number (who is not the Headteacher or an agreed alternate) to act as clerk for the purposes of that meeting. The Clerk to the Governors should take no part in the proceedings but will remain with the Committee to provide procedural advice – he shall also make

¹³ The Welsh Assembly Government has engaged a company, the Dream Group Ltd., to operate this independent investigation service. Governing Bodies may use the service of Dream Group Independent Investigators free of charge but may alternatively use Independent Investigators from other sources but who nevertheless comply with statutory requirements, at their own expense.

available the notes taken of the evidence and will record the Committee's decision.

- 7.22.2 The Clerk must convene meetings of the Committee; attend meetings of the Committee and ensure that minutes of the proceedings are drawn up and perform such other functions with respect to that Committee as may be determined by the Governing Body from time to time.
- 7.22.3 The Governing Body may remove any clerk appointed to any of their Committees from office at any time.
- 7.22.4 An LA and Diocesan Officer should be invited to be present to advise the Committee in accordance with their advisory rights.
- 7.22.5 The Staff Member, the Headteacher (except where they are the subject of the hearing) and person presenting or presenting officer/investigator (where appropriate) are entitled to be present at all times except when the Staff Disciplinary and Dismissal Committee continues in private to consider its decision. In the majority of cases, the Headteacher will be the presenting officer (or Chair of Governors where the Headteacher is the subject of disciplinary proceedings). The Headteacher may not be a member of the Disciplinary and Dismissal Committee, nor of the Disciplinary and Dismissal Appeal Committee. In a child protection matter, the Independent Person must not present the case.
- 7.22.6 All parties may be accompanied by a representative and, if they so wish, a scribe and all references to the Staff Member, the Headteacher and Investigating Officer (where appropriate) shall be taken to include their representatives.
- 7.22.7 The Chair of the Committee will invite the Headteacher or Investigating Officer (where appropriate (ie not in child protection cases) and the Staff Member in that order to make submissions to the meeting and invite cross examination.
- 7.22.8 The introduction of relevant additional documentary evidence will be allowed and the Chair of the Committee will allow proper time for the receiving party and the Committee to read and consider the evidence. (The Committee may adjourn to consider new evidence or for private session).
- 7.22.9 The Headteacher or Investigating Officer (where appropriate) and the Staff Member in that order will have the right to call witnesses who will be available for questioning by the Headteacher or Investigating Officer (where appropriate), the Staff Member and the Committee.
- 7.22.10 The Chair of the Committee will invite Committee members to ask questions of the Staff Member, Headteacher or Investigating Officer (where appropriate) and any witnesses.
- 7.22.11 Witnesses will only remain in the meeting for so long as they are giving evidence or being questioned.
- 7.22.12 The Headteacher or Investigating Officer (where appropriate) and the Staff Member in that order will have the right to make a final or closing statement to the Committee.
- 7.22.13 All other parties to the hearing will then withdraw and the Committee will consider the allegations and reach a decision. Any Diocesan or LA officers present during the hearing should withdraw when the Committee considers its decision. They are not entitled to any vote or have any role in the making of the decision. No warning that has expired, in accordance with the terms upon which it was given to the Staff Member, may be considered during any disciplinary interview or hearing.
- 7.22.14 If the Committee decides that further questions need to be asked or clarifications required the full meeting will be resumed.

7.22.15 Regulations permit some non-Governor membership of the Committee (see paragraph 3.6) such members may not participate in any vote. The Chair of the Committee must always be a Governor.

7.22.16 The Clerk to the Governors will document the proceedings of the meeting and will confirm the decision in writing to the Headteacher or Investigating Officer (where appropriate), the Staff Member, their representatives, the DSC, LA and the Chair of the Committee who heard the case within 5 School Days of the conclusion of any meeting. The Clerk to the Governors will indicate the rights of appeal and the procedures for exercising those rights in the letter. The Staff Disciplinary and Dismissal Committee hearing the case may make a determination that is within their delegated powers. The determination will be confirmed in writing within 5 School Days. The Staff Member will be informed whether or not the allegations have been upheld. If the allegations are upheld, in full or in part, the findings and the decision will be confirmed in terms of:

- (a) the nature of the misconduct;
- (b) the sanction that has been imposed, *for example, a reminder of expectation of conduct, a first or final warning or a determination that the Staff Member shall be dismissed;*
- (c) how to appeal against the decision and/or any disciplinary sanction, the length of time within which an appeal must be lodged, and to whom it should be addressed;
- (d) what improvement is expected for the future;
- (e) any other information in respect of the improvement required for example, any review of arrangements, and whom the Staff Member should contact for assistance; any support to be given to the Staff Member;
- (f) what might happen if conduct does not improve and what further sanction might be imposed.

[See sample letter at Appendix 5]

7.22.18 If the hearing falls at the end of a school term, the Clerk will confirm the decision within 7 consecutive days.

8. SANCTIONS: WARNINGS AND DISMISSAL

8.1 Unless the circumstances relate to gross misconduct, no Staff Member should be dismissed without first having received at least 1 written warning and having had the opportunity to improve his/her conduct or performance.

8.2 Written warnings will normally remain in force for a period of not more than 12 months. In exceptional cases, the Staff Disciplinary and Dismissal Committee may make a determination that the warning will stay in force for a longer period. This may be appropriate where there is a history of repeated breaches of the same or similar disciplinary rules, or where the misconduct is serious enough that the Staff Disciplinary and Dismissal Committee hearing the case could consider dismissal as a possible sanction.

8.3 For the time that formal warnings should remain on record *see paragraph 5.7.3*

8.4 In addition to any disciplinary sanction, the Governing Body may, in appropriate circumstances, take action to recover monies or property legitimately due to it. In the case of certain types of alleged misconduct, report must be made immediately to statutory authorities ie where the allegation relates to a criminal offence; and where the allegation relates to child abuse. A report must be submitted to the National Assembly for Wales, (and to the General Teaching Council For Wales in the case of teachers) when an employer has ceased to use a person's service on the grounds of misconduct, or would have done had the person not ceased to provide these services. This applies to all Staff Members and not only employees. Further guidance is available in

Circular 45/2004.

8.5 **Formal Warnings**

- 8.5.1 Where a Staff Member's misconduct is such as to warrant a formal warning, an oral warning will normally be the appropriate sanction where there is no previous warning current. Such an oral warning must be confirmed in writing.
- 8.5.2 Where a previous warning is current or where the matter is sufficiently serious to warrant the imposition of a stronger sanction, written warning may be given.

8.6 **Final Warning**

- 8.6.1 Where a first written warning is current any further misconduct during the currency of that warning will normally lead to a final written warning being issued. A final written warning may also be issued in circumstances where a Staff Member is shown to have committed serious misconduct, omission, or failure in performance short of gross misconduct. It may also be appropriate where dismissal would be a reasonable sanction, but the Staff Disciplinary and Dismissal Committee has good reason to believe that a warning will prove to be effective. A final written warning will contain a clear indication that any further disciplinary offence during the currency of the warning will normally, if substantiated at a hearing, result in dismissal without further warning.
- 8.6.2 A final written warning may be imposed by the Headteacher or Staff Disciplinary and Dismissal Committee. If there is a possibility the Staff Member may be dismissed the matter must go to the Staff Disciplinary and Dismissal Committee. Similarly, where there is no prospect of dismissal, the Chair of Governors may impose a final written warning on the Headteacher.

8.7 **Dismissal**

- 8.7.1 Dismissal is not normally appropriate for a first offence of lesser misconduct. If further allegations of misconduct are brought while a final written warning is current, the committee hearing the case will normally determine that the Staff Member shall be dismissed, unless there are strong mitigating circumstances. The seriousness of the conduct giving rise to both the warning and subsequent disciplinary action will, of course, be material considerations.
- 8.7.2 If the allegations against the Staff Member are so serious that they would constitute gross misconduct (see Appendix 1) if proven, the Staff Disciplinary and Dismissal Committee may determine that the Staff Member shall be dismissed, even where no disciplinary warning is current.
- 8.7.3 Where the Staff Member's misconduct is not such as to constitute gross misconduct, but has, nevertheless, led to a fundamental breakdown of mutual trust and confidence such that it would be impossible or impractical to continue his/her employment, the Staff Disciplinary and Dismissal Committee may determine at the conclusion of the hearing that the Staff Member shall cease to work at the school. In such case, subject to the outcome of any appeal, the Governing Body will dismiss the Staff Member with due notice. Such a case would be very exceptional.
- 8.7.4 A decision that a Staff Member shall be dismissed from the school may only be taken by an appropriate Staff Disciplinary and Dismissal Committee empowered to do so under the School Government Regulations in force at the time. The CEO and Diocesan DSC have advisory rights and are entitled to attend any meeting of a Governing Body or its committees which may determine that a Staff Member shall be dismissed from the school.
- 8.7.5 Any appeal lodged by a Staff Member against a determination that s/he shall cease to work at the school must be decided before the Governing Body dismiss the Staff Member.

8.8 Referral of Cases to General Teaching Council for Wales

8.8.1 The Governing Body is statutorily required to refer cases of the unacceptable professional conduct of and the serious professional incompetence of teachers to the General Teaching Council for Wales (“GTCW”).

8.9 Referral of cases to the National Assembly for Wales

8.9.1 The Governing Body must also report to the GTCW the facts of any case where it has ceased to use the services of a registered teacher on a ground relating to professional incompetence¹⁴, or might have done so if the teacher had not ceased to provide such services. The GTCW powers relate to teachers who are registered or who have applied to registered (regardless of when the alleged incompetence took place), and also to teachers who were registered at the time of the alleged incompetence but who are no longer registered.

8.9.2 Governing Bodies should refer cases of serious professional incompetence directly to the GTCW not the NAW or the DfES.

The Governing Body must report the facts of a case relating to unacceptable professional conduct¹⁵ to the NAW, where:

- It has ceased to use a person’s service on the grounds that he is unsuitable to work with children;
- It has ceased to use a person’s service on a ground relating to misconduct;
- It has ceased to use a person’s service on a ground relating to the person’s health where a relevant issue (i.e. one concerning the health and welfare of children) is raised; or
- Might have ceased to use a person’s services on such a ground if the person had not ceased to provide them.

8.9.3 The NAW will, in turn, refer such a matter to the DfES. If misconduct involves a criminal offence the police, rather than the Governing Body, will refer the case to the DfES.

8.9.4 The DfES will consider any cases of unacceptable professional conduct referred to it in order to determine whether they concern issues of health, the safety and welfare of children or unregistered teachers. If they do, these cases will be retained by the DfES. Other cases of alleged misconduct involving registered teachers in Wales will be referred by the DfES to the GTCW for investigation.

8.10 Format for Statutory Referrals to GTCW and NAW

The Education (Supply of Information) (Wales) Regulations 2003 and Circular 45/2004 both provide details of the information which should be provided by a Governing Body to either the GTCW or NAW in the circumstances outlined in paragraphs 8.8.and 8.9.

9 APPEALS

9.1 The Staff Member shall be entitled to appeal against any disciplinary sanction.

- Where the sanction was imposed by the Headteacher, the appeal shall be to the Staff Disciplinary and Dismissal Committee of the Governing Body.
- Where the sanction has been imposed by the Staff Disciplinary and Dismissal Committee,

¹⁴ The Education (Supply of Information) (Wales) Regulations 2003 S1 2003/J42 (W.76)

¹⁵ The Education (Supply of Information) (Wales) Regulations 2003 S1 2003/54L (W.76)

the appeal will be to the Staff Disciplinary and Dismissal Appeal Committee, which shall not include those Governors previously involved in the disciplinary hearing.

Appeals against a Sanction Imposed for Lesser Misconduct

- 9.1.1 The Staff Member must give notice of his intention to appeal to the Staff Disciplinary Committee against the formal warning imposed within 5 School Days from receipt of the formal warning. The notice does not have to give grounds of appeal.
- 9.1.2 The Clerk to the Committee should seek to set a date for the appeal hearing within 10 School Days of the appeal being lodged wherever possible. The Staff Member should be advised of the date, time, place and purpose of the hearing in writing and not less than 5 School Days before the hearing.
- 9.1.3 The Staff Member should submit grounds of appeal and any relevant documentation no later than 3 days before the hearing.
- 9.1.4 The Clerk should give the Committee no less than 5 Working Days notice of any disciplinary or dismissal appeal hearing.
- 9.1.5 The procedure to be followed is the same as that for an appeal for gross misconduct and is set out below in paragraphs 9.1.7 to 9.1.16.
- 9.1.6 The Committee cannot impose a more severe penalty than that imposed by the head teacher or senior manager.

Appeals against a Sanction Imposed for Gross Misconduct

- 9.1.7 The Staff Member must give notice of his intention to appeal within 5 School Days. This notice does not have to give grounds of appeal.
- 9.1.8 The Staff Member must submit grounds of appeal and any other relevant documentation to the Clerk of the Committee 5 School Days before the appeal hearing.
- 9.1.9 Wherever possible, the appeal hearing should take place no more than 10 School Days after the Staff Member has lodged his notice of appeal.
- 9.1.10 The Clerk should give the Staff Member no less than 7 School Days notice of the date of the hearing.
- 9.1.11 The Clerk should give the Committee no less than 5 Working Days notice of any disciplinary or dismissal appeal hearing.
- 9.1.12 The purpose of the hearing is to enable the Disciplinary Appeal Committee to satisfy itself that the decision reached by the Staff Disciplinary Committee was reasonable and fair in all the circumstances. The appeal may take the form of a rehearing or a submission on the facts of the case, as the Staff Member wishes.
- 9.1.13 The appeal needs to take into account any new evidence; to consider matters of fact and those in dispute; and to consider the procedures followed. The procedure if there is a rehearing should be the same as for the disciplinary hearing except that the Committee needs to have regard for the record of the disciplinary hearing and its findings.
- 9.1.14 The main grounds for an appeal are likely to be:

- (a) if the Staff Member wishes to contest the finding and/or the disciplinary sanction;
- (b) if new relevant evidence not available to the original hearing becomes available;
- (c) if there is an alleged lack of fairness in the original hearing;
- (d) if there is an allegation that Procedures were not followed correctly.

9.1.15 The Procedure for the conduct of an appeal is set out in Appendix 3. A Staff Disciplinary and Dismissal Appeal Committee may:

- (a) uphold the original finding and sanction;
- (b) uphold the original finding but impose a lesser sanction;
- (c) not uphold the finding and conclude that no action should be taken against the Staff Member.

A Staff Disciplinary and Dismissal Appeal Committee should not impose a more severe penalty.

The decision of the Staff Disciplinary and Dismissal Appeal Committee shall be final.

9.1.16 If as a result of an appeal or any other review, a disciplinary complaint against a Staff Member is withdrawn, or is found to have been mistakenly initiated, any record of that action will be removed from the Staff Member's personnel file and destroyed.

10 ADVICE AND SUPPORT TO WORKERS

10.1 In most cases Staff Members subject to allegations or complaints being dealt with under this Procedure will seek the advice and support of their trade union. However, Staff Members may address questions about how the Procedure will work, the conduct of investigations or hearings, or other related matters to the Headteacher in the first instance or, if the query regards the actions of the Headteacher, to the Chair of Governors.

10.2 In cases where the investigation is prolonged, and especially where the Staff Member is suspended from duty, pending investigations, it will normally be appropriate to make arrangements to keep the Staff Member informed of developments and to offer support. This should be arranged through an appropriate member of the Governing Body ie not a member of the Staff Disciplinary and Dismissal Committee or the Staff Disciplinary and Dismissal Appeal Committees. Support may be arranged, for example by the senior management team, a representative of the DSC or LA. This individual should not be involved in the investigation or procedure in any other way. The name of a nominated individual should be notified to the member of staff subject to the disciplinary procedures.

10.3 If a Staff Member wishes to raise a grievance about the conduct of a disciplinary case, at any stage before a disciplinary hearing is convened, this should be done in accordance with the school's grievance procedures. Any complaints made after a hearing has been convened or during the course of a hearing should be dealt with by the individual or committee hearing the case and/or as part of any appeal process.

Appendix 1

Gross Misconduct and Lesser Misconduct

The lists below are offered by way of example to indicate how behaviour may be regarded. Judging the level of misconduct and how it must be handled has to be determined on the facts of each case. Where gross misconduct is alleged, Headteachers and Governors should always seek the advice of their DSC and LA.

Gross misconduct – means an act or omission, or a series of acts or omissions 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.

This list is not exhaustive but examples of gross misconduct include:

- conduct which is incompatible with the precepts of the school;
- 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;
- physical, sexual or emotional abuse of pupils or staff;
- sexual misconduct at work;
- fraud;
- dishonesty ie tampering with examination papers or 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;
- criminal misconduct outside the workplace which reflects adversely upon the school or the member of staff's suitability to continue to be employed at the school;
- knowingly providing false information on any matter relating to the member of staff's employment;
- persistent, serious, or flagrant discrimination or harassment on the grounds of race, gender, religion, colour, disability, sexual orientation etc;
- unlawful discrimination;
- illegal drugs in the Staff Member's possession, custody or control on the school's premises;
- being drunk or under the influence of alcohol during working hours;
- internet or email abuse;
- bringing the school into disrepute.

Lesser misconduct – such breaches of discipline will not normally result in dismissal for a first offence, but may result in dismissal if repeated. The extent or severity to which something usually thought of as lesser misconduct, may mean that it amounts to gross misconduct. **(Such acts or omissions may fundamentally repudiate the contract of employment.)**

Examples of lesser misconduct may include: (amended)

- refusal to carry out a reasonable instruction;
- negligence or abuse causing minor injury or damage to property;
- neglect or unsatisfactory standards in performance of duties;
- offensive behaviour, insubordination or using abusive language;
- disclosure of confidential information;
- harassment or discrimination on any grounds;
- victimisation of colleagues, parents or pupils;
- petty theft; eg making unauthorised private telephone calls or sending personal mail at the school's expense.

Appendix 2

Definitions of Child Abuse and Neglect¹⁶

Abuse or neglect may occur by inflicting harm or by failing to act to prevent harm.

Key definitions and concepts

Abuse: emotional	The persistent emotional ill-treatment of a child such as to cause severe and persistent adverse effects on the child's emotional and behavioural development.
Abuse: neglect	See <i>Neglect</i> below.
Abuse: physical	The hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates or induces illness in a child whom they are looking after.
Abuse: sexual	Forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening, including: <ul style="list-style-type: none"> • physical contact, including penetrative or non-penetrative acts; • non-contact activities, such as involving children in looking at, or in the production of, pornographic material or watching sexual activities; or • encouraging children to behave in sexually inappropriate ways.
Child in need	A child is a child in need if: <ul style="list-style-type: none"> • he/she is unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him/her of services by a local authority; • his/her health or development is likely to be significantly impaired, or further impaired, without the provision for him/her of such services; or • he/she is disabled.
Child protection	Child protection is a part of safeguarding and promoting welfare. This refers to the activity which is undertaken to protect specific children who are suffering or are at risk of suffering significant harm as a result of abuse or neglect.
Children	A child is anyone who has not yet reached their 18 th birthday. 'Children' therefore means 'children and young people' throughout. The fact that a child has become sixteen years of age is living independently or is in Further Education, or is a member of the armed forces, or is in hospital, or in prison or a young offenders institution does not change their status or their entitlement to services or protection under the Children Act 1989.
'Children's social services' or 'local authority children's social services'	The work of local authorities exercising their social services functions with regard to children. This is not meant to imply a separate 'children's social services' department.
Development	Physical, intellectual, emotion, social or behavioural development.
Harm	Ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of

¹⁶ All Wales Child Protection procedures

	another.
Health	Physical or mental health.
Local Authority	A county council or county borough council.
Neglect	The persistent or severe neglect of a child, or the failure to protect a child from exposure to any kind of danger, including cold, starvation or extreme failure to carry out important aspects of care, resulting in the significant impairment of the child's health or development, including non-organic failure to thrive.
Safeguarding and promoting the welfare of children	<ul style="list-style-type: none"> • Protecting children from abuse and neglect; • Preventing impairment of their health or development; and • Ensuring that they receive safe and effective care; ... so as to enable them to have optimum life chances.
Significant harm	Section 31(10) of the Children Act 1989 states that "where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child".
Welfare and Well-being	<p>There is no statutory definition. The Children Act 1989 introduced the welfare checklist that a court shall have regard to in certain circumstances. The 1989 Act states that a "court shall have regard in particular to-</p> <ul style="list-style-type: none"> • the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding); • His physical, emotional and educational needs; • The likely effect on him of any change in his circumstances; • His age, sex, background and any characteristics of his which the court considers relevant; • Any harm which he has suffered or is at risk of suffering; • How capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; • The range of powers available to the court under this Act in the proceedings in question."

Guidance and Other Documents Relevant to the Consideration of child Abuse Allegations, including False Allegations

Welsh Office Circular 52/95 Protecting Children from Abuse: The Role of the Education Service: October 1995

Working Together to Safeguard Children: A Guide to Inter-Agency Working to safeguard and promote the welfare of children – published by the National Assembly for Wales: September 2000

Framework for the Assessment of Children in Need and their Families: National assembly for Wales and home Office 2001

Joint NEOST/Teacher Union Guidance on Education Staff and Child Protection: Staff Facing an Allegation of Abuse – Guidelines on Practice and Procedure: September 2002 (Supersedes the guidance included in the Annex to Welsh Office Circular 52/95)

Guidance produced by The National Network of Investigation and Referral Support Co-ordinators in

England:

- Definitions and Thresholds for Managing Allegations Against Education Staff – January 2004
- Staff Subject to Allegations: Thresholds for and Alternatives to Suspension – January 2004
- Managing the Aftermath of Unfounded and Unsubstantiated Allegations – January 2004

Safeguarding Children: Working Together for Positive Outcomes: National Assembly for Wales:
March 2004

Appendix 3

Appeals Procedure

To be read in conjunction with **paragraphs X to Y** of this procedure in relation to lesser misconduct and with **paragraphs X to Y** of this procedure in relation to gross misconduct.

Where the Staff Member is not satisfied with the manner in which the disciplinary action has been conducted or with the outcome of any hearing, s/he has a right of appeal. Where the sanction was imposed by the Headteacher/Chair of Governors (ie for Lesser Misconduct) the appeal shall be to the Staff Disciplinary and Dismissal Committee. Where the sanction has been imposed by the Staff Disciplinary and Dismissal Committee (ie for Gross Misconduct), the appeal will be to the Staff Disciplinary and Dismissal Appeal Committee, consisting of no fewer than three Governors who shall not include those Governors previously involved.

Lesser Misconduct

The Staff Member should submit his/her Notice of Appeal, to the Clerk to the Governors within 5 School Days of receiving written confirmation of the decision (ie the formal warning). S/he should submit the grounds on which s/he is appealing, together with any relevant documentation, X days before the hearing. The Clerk to the Governors will forward all papers previously considered by the Headteacher, Senior Staff Member or Chair of Governors to the Staff Disciplinary and Dismissal Committee.

The Clerk should provide details of the hearing to the Staff Member 5 School Days before the hearing and to the Committee no less than 5 Working Days before.

A hearing of the Staff Disciplinary and Dismissal Appeal Committee should take place within 10 School Days of receipt by the Clerk to the Governors of the Notice of Appeal.

The appeal should follow the same procedure as the original hearing, as set out in **paragraphs 7 - Y**.

To avoid excessive delay (for instance, where an appeal is lodged shortly before the beginning of the summer vacation), the parties may agree to proceed with the Appeal on shorter notice or on a day on which the school is closed. No detriment or prejudice shall be inferred by the refusal by one party to agree to such short notice or accelerated timetable.

Gross Misconduct

A Diocesan and/or LA Officer should be invited to be present to advise the Staff Disciplinary and Dismissal Appeal Committee. Any advisers must withdraw when the Committee begins to consider its decision.

The Staff Disciplinary and Dismissal Appeal Committee will review or re-hear the case. The decision as to whether the Appeal will take place by way of review or rehearing is the Appellant's (ie the Staff Member's). The Committee will convey its decision orally to both parties and confirm the decision in writing within 5 Working Days. The decision of the Staff Disciplinary and Dismissal Appeal Committee will be final and no further rights of appeal or hearing will be allowed under this Procedure.

The decision will also be sent to the Headteacher, the LA and the Diocesan Schools Adviser.

Governors should be aware of the possible perception that one Committee may be unlikely to overturn the decision of another Committee.

Appendix 4

Suspension

The purpose of suspension from duty is to allow an allegation of a serious disciplinary matter to be investigated. It is a neutral act not a punishment or pre-judgement of matters under consideration. Both the Headteacher and the Governing Body have the power to suspend a Staff Member. Only the Governing Body can end a period of suspension.

Suspension from duty pending disciplinary proceedings should only be considered where:

- there appears to be a significant risk to the interests or safety of other members of staff, pupils or property or the orderly conduct of the school;
- the continued presence at work of the Staff Member would be an obstacle to proper investigation of the allegations made against the Staff Member; and
- there is no other suitable option available, eg restricting the duties of the Staff Member.

Such suspension shall be on full pay without loss of emoluments and for as short a period of time as is practicable. Suspension shall be followed by consideration of the matter leading to it, in accordance with the Disciplinary Procedure. Suspension should be reviewed regularly and no less than every 20 Working Days. Only the Governing Body can end a period of suspension.

Headteachers or Governing Bodies considering suspending a Staff Member should first seek advice from the DSC and LA, wherever possible. If the decision to suspend is taken, both the DSC and the CEO should be informed immediately. In the case of Headteachers, this should be done by the Chair of Governors in writing, in other cases, by the Headteacher.

A Staff Member will only be suspended without a meeting to discuss the proposed suspension being held with the teacher and a representative from his or her trade union (where the Staff Member wishes to be represented) in rare circumstances for instance, that witnesses will be intimidated, crucial evidence could be tampered with or destroyed or that pupils could be at risk. Where it is necessary to move too quickly to allow a meeting with representation to be arranged, the DSC and/or LA should be consulted before the Staff Member is suspended in line with normal suspension procedure. **Off site?**

Suspension Interview

Where suspension is being considered, the Staff Member should be called to a meeting with the Headteacher. Where the suspension of the Headteacher is being considered, the meeting should be conducted by the Chair of Governors.

Where the Staff Member is a trade union or health and safety representative, there should be discussion with the relevant full-time official of the union concerned before the interview is arranged.¹⁷

The Headteacher (or Chair, where the Headteacher is being considered for suspension) should advise a Staff Member called to a meeting to discuss their suspension to seek the advice and assistance of a friend or work colleague or his/her union representative.

The Headteacher or Chair of Governors should give the Staff Member as much information as it is possible to disclose without interfering with or hampering the investigation of the allegation, including the reason for any proposed suspension. The Staff Member should be given an opportunity to make representations concerning the suspension and offered a brief adjournment before responding.

¹⁷ ACAS Code of Practice on Disciplinary and Grievance Procedures

Appendix 5

Sample Letters

1. Letter to: Staff Member advising of Disciplinary hearing.

Dear *[Name]*

Disciplinary Action Against You

I am writing to advise you that as a result of the investigation into allegations that *[set out summary details of the Staff Member's alleged misconduct]*, your attendance is required at a formal disciplinary hearing.

The hearing will take place on *[date]* at *[place]* at *[time]* am/pm. It will be conducted by the Staff Disciplinary and Dismissal Committee of the Governing Body.

You have the right to be accompanied by a friend, who may be a representative of your trade union or professional association. If your chosen representative is unable to attend the hearing at the time given above, you may propose to me another date and time for the meeting to take place. Any such alternative date must be on or before *[date of the fifth working day after the proposed meeting date]*.

You also have the right to produce written statements and to invite witnesses to give evidence in support of your case. You should ensure that copies of any written statements upon which you wish to rely at the hearing are given to me at least 5 Working Days before the hearing, together with the names of any witnesses that will be attending on your behalf.

[Finally, I wish to remind you that you are already subject to [an oral] [a first/final] written warning.]

If there is any aspect of this letter or of the Disciplinary Procedure, to the extent that it applies to you, that you do not understand, please contact me.

Yours sincerely

Clerk to the Governing Body's Disciplinary and Dismissal Committee

[In the case of disciplinary action against a Headteacher, the letter should be sent by the Chair of Governors].

2. Suspension pending Disciplinary investigation

Dear *[Name]*,

In accordance with the Disciplinary Procedure and following our conversation and suspension interview of *[date]*, I confirm that you are suspended on full pay pending the current investigation into the gross misconduct *[allegation – details]*. Once the investigation is complete, I will contact you further to arrange a meeting.

You are requested to remain at home and available should I need to contact you. I would ask that, at this stage, you do not contact any of your work colleagues.

In the meantime, should you have any information which might be of assistance to our investigation or you wish to discuss anything, please contact me, and if I am not available, contact *[Name]*.

Yours sincerely,

[Chair of Governors / Headteacher]

3. Letter to: Staff Member advising of the outcome of a Disciplinary hearing

Dear *[Name]*

Disciplinary Action Against You

Following the disciplinary hearing against you on *[date]*, I write to confirm that *[I/the Committee]* has determined that

[the allegations against you have not been proven and no further action will be taken].

[the allegations against you have been upheld in full].

[the following allegations [give details] have been upheld against you but [I/the Committee concluded that allegations that you [give details] were not proven].

As a result of *[my/the Committee's]* decision that you *[give details of misconduct]*, *[I/the Committee]* has decided that

[you should receive a first/final written warning, and this letter constitutes notice of the same].

[you are to be dismissed and your employment terminated with effect from [date]].

[no formal action will be taken on this occasion but I/the Committee requires you to (details of standard of Conduct required) and remind[s] you that failure to maintain such standards may result in further disciplinary action being taken against you].

The warning will remain on your record for *[two/three/six]* full terms from this date.

You have the right to appeal against this decision. If you wish to appeal, you must submit a written Notice of your intention to appeal to the Clerk of the Governing Body by *[date 5 School Days after date of this letter]*. Any appeal will be heard by *[Staff Disciplinary and Dismissal Committee/Staff Disciplinary and Dismissal Appeal Committee]*.

[Set out details of improvement expected of Staff Member, if applicable]. To assist and support you in attaining these standards *[details of support structures]*. Your progress will be reviewed at the meeting *[with the Headteacher/your Line Manager (Name)]* in *[x]* week's time.

[If you fail to reach the required standards, further disciplinary action may be taken against you, which could lead to a final written warning be issued or your dismissal without further warning].

If there is any aspect of this letter you do not understand or on which you require further clarification,

please contact me.

Yours sincerely

[Headteacher/Chair of Governors]

4. Letter to: Headteacher from Chair of Governors requesting their attendance at an informal meeting

Dear *[Name]*

Allegation of Misconduct

An allegation of an act of misconduct by you has been brought to my attention *[today]*.

The allegation is that you *(give broad details of the category of the misconduct at (insert name of school) Catholic Primary/Secondary School on or about*

The details of the allegation are set out in the attached letter/document.

I am inviting you to attend an informal meeting with me under section 5 of that Procedure at on

The meeting is intended to clarify the situation and for me to determine whether the matter can be resolved without any further action or if there is a potentially serious matter that needs to be dealt with in a formal manner.

I enclose a copy of the school's Disciplinary Procedure for your information.

Please acknowledge receipt of this letter and of your intention to attend the meeting at the date and time specified in writing by *[Insert an appropriate date by which confirmation of receipt etc must be received]*.

Yours sincerely

Chair of Governors
..... Catholic Primary/Secondary School

Encl: Disciplinary Procedure & Copy Letter

5. Letter to: Headteacher from Chair of Governors requesting their attendance at a formal meeting (where dismissal is not anticipated)

Dear *[Name]*

Allegation of Misconduct Against You

Further to our informal meeting on (give date) which was held in accordance with (insert school name) Catholic Primary/Secondary School's Disciplinary Procedure, I confirm that I found that the allegation of misconduct by you is a potentially serious matter that merits further consideration in a formal context.

The allegation is that you (give broad details of the category of the misconduct at Catholic Primary/Secondary School on or about

The details of the allegation are set out in the attached letter(s)/documentation (Send copies not the originals).

In accordance with the Disciplinary Procedure for members of staff employed by the Governors of Catholic Primary/Secondary School I am inviting you to attend a meeting held under that Procedure on ...(date)... at ...(time)... in ... (place)... so that you will have an opportunity to comment on, explain or refute the allegation. [I would also like to remind you that you have already received an oral/written warning in connection with this/a related matter].

You are entitled to bring a friend to the meeting, who may be a representative of your trade union, and I enclose a copy of the documentation for that purpose, together with the school's Disciplinary Procedure.

If you wish you may submit written evidence and bring witnesses to testify on your behalf. Any documentation that you wish to present should be given to me at least 5 Working Days before the meeting, as should be the names and addresses of any witnesses you wish call.

The meeting may uphold the allegations against you in whole or in part or may determine that they are not proven and dismiss the case against you. If the allegation(s) is/are proven on the balance of probability, an oral/written/final warning may be imposed. If I consider that dismissal is a possibility after hearing the evidence, the matter must be referred to the Staff Disciplinary and Dismissal Committee of the Governing Body.

Yours sincerely,

Chair of Governors

.....Catholic Primary/Secondary School

Encl: Disciplinary Procedure & Copy Letter

6. Letter to: Headteacher from Clerk to the Governors requesting their attendance at a formal meeting (where dismissal is a possible outcome)

Dear [Name]

Allegation of Misconduct Against You

Further to our informal meeting on (give date) which was held in accordance with (insert school name) Catholic Primary/Secondary School's Disciplinary Procedure, I confirm that I found that the allegation of misconduct by you is a potentially serious matter that must be considered by the Staff Disciplinary and Dismissal Committee.

The allegation is that you (give broad details of the category of the misconduct - see notes for

guidance in the Disciplinary Procedure) at Catholic Primary/Secondary School on or about

The details of the allegation are set out in the *attached letter(s)/documentation*. (Send copies not the originals).

In accordance with the Disciplinary Procedure for a member of staff employed by the Governors of Catholic Primary/Secondary School I am inviting you to attend a meeting of the Staff Disciplinary and Dismissal Committee to be held under that Procedure on ...(date).... at ...(time).... in ... (place)... so that you will have an opportunity to comment on, explain or refute the allegation. [I would also like to remind you that you have already received an oral/written warning in connection with this/a related matter].

You are entitled to bring a friend to the meeting, who may be a representative of your trade union, and I enclose a copy of the documentation for that purpose, together with the school's Disciplinary Procedure.

If you wish you may submit written evidence and bring witnesses to testify on your behalf. Any documentation that you wish to present should be given to me at least 5 Working Days before the meeting, as should be the names and addresses of any witnesses you wish call.

The meeting may uphold the allegations against you in whole or in part or may determine that they are not proven and dismiss the case against you. If the allegation(s) is/are proven on the balance of probability, an oral/written/final warning may be imposed or you may be dismissed.

Yours sincerely,

Chair of Governors

..... Catholic Primary/Secondary School

Encl: Disciplinary Procedure & Copy Letter

7. Letter to: Headteacher advising of the outcome of a Disciplinary hearing

Dear [Name]

Disciplinary Action Against You

Following the disciplinary hearing against you on [date], I write to confirm that [I/the Committee] has determined that

[the allegations against you have not been proven and no further action will be taken]

[the allegations against you have been upheld in full]

[the following allegations [give details] have been upheld against you but [I/the Committee concluded that allegations that you [give details] were not proven].

Where there has been misconduct....

As a result of [my/the Committee's] decision that you [give details of misconduct], [I/the Committee] has decided that

*[you should receive a written/final written warning, and this letter constitutes notice of the same]
[you are to be dismissed and your employment terminated with effect from [date]]
[no formal action will be taken on this occasion but I/the Committee requires you to (details of Standard of Conduct required) and reminds you that failure to maintain such standards may result in further disciplinary action being taken against you].*

The warning will remain on your record for *[three/six]* full terms from this date.

You have the right to appeal against this decision. If you wish to appeal, you must submit a written statement of appeal to the Clerk of the Governing Body by *[date 5 School Days after date of this letter]*. Any appeal will be heard by the Staff Disciplinary and Dismissal Appeal Committee.

[Set out details of improvement expected of Staff Member]. To assist and support you in attaining these standards *[details of support structures]*. Your progress will be reviewed at the meeting *[with the Chair of Governors (Name)]* in *[x]* weeks' time.

If you fail to reach the required standards, further disciplinary action may be taken against you, which could lead to *[a final written warning be issued or your dismissal without further warning]*.

If there is any aspect of this letter you do not understand or on which you require further clarification, please contact me.

Yours sincerely

[Chair of Governors (lesser misconduct) /Chair of Staff Disciplinary and Dismissal Committee(gross misconduct)]

8. Recorded oral warning

Staff Member's Name

Post Title

Date

[Name] has been advised of the reason for the warning and has been given an opportunity to explain his/her behaviour.

An oral warning under the School's Disciplinary Rules and Procedures was given to *[Name]* in respect of *[give details of the misconduct/poor performance]*.

[Name] was advised of the consequences if there is *[any other misconduct/any repetition of this misconduct or no improvement in conduct]* by *[date]* and/or if it was not sustained for *[.....]* months.

[Name] was also advised that this oral warning will lapse if there is no repetition of the misconduct *[or commission of any further misconduct over the next [two terms]*.

[Name] was advised of his/her right to appeal against this decision to [Name/Address] within 5 School Days of the date of this warning.

Headteacher's signature Date

Staff Member's signature Date

This form must be forwarded, together with any notes taken at the interview, to the Headteacher for retention on the personnel file.

9. First written warning

Dear [Name]

Further to the Staff Disciplinary and Dismissal Committee hearing which took place on [date], I write to confirm the decision to issue you with a first written warning for [specify misconduct failing to improve/unsatisfactory conduct and give details].

As discussed at the hearing, if the required improvement in your conduct is maintained over the next three full terms or if there is not further misconduct of any nature committed, this warning will lapse. However, [if sufficient improvement has not occurred by [review date]] [if there is a recurrence of the same or similar offence or if you commit any other acts of misconduct], further [disciplinary] action will be taken.

I hope this warning will result in the improvement required so that it will not be necessary to take further action.

Finally, you have the right of appeal against this decision and to exercise this right you should write to [Name/Address] within 5 School Days of receipt of this letter.

[Chair/Headteacher's] signature

..... Date

Staff Member's signature Date

This form must be forwarded, together with any notes taken at the interview, to the Headteacher for retention on the personnel file. A copy should be provided to the Staff Member.

10. Letter: the Governing Body confirming dismissal from their service

Dear *[Name]*

Disciplinary Action Against You

This letter refers to the meeting of the Staff Disciplinary and Dismissal Committee on *[date]* *[not more than 5 School Days before the date of this letter]*, which was held in accordance with Section 7 of the school's Disciplinary Procedure.

I confirm that, having listened very carefully to all the evidence presented, the Staff Disciplinary and Dismissal Committee found on the balance of probabilities the allegation(s) of your gross misconduct/misconduct in respect of *(give brief details using the same or similar wording to that used in the letter stating the allegation and inviting the Staff Member to the disciplinary meeting)* to have been proven.

I confirm that your misconduct is of such a serious nature that the Committee determine that your employment should be terminated with immediate effect.

You have the right to appeal against this decision.

You must advise the Clerk to the Governing Body of your intention to appeal in writing within 5 School Days of receiving this letter.

In the event of an Appeal, please send a copy of any papers you wish to present at the meeting, together with the names of any witnesses you wish to call, to the Clerk at *[address]* at least 5 Working Days before the date of the hearing. Any appeal will be conducted in accordance with section 9 and Appendix 2 of the Disciplinary Procedure.

A copy of this letter is enclosed for your representative.

Yours sincerely,

[Chair of Staff Disciplinary and Dismissal Committee]

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