

Specialist advice
and support
for schools

2004

Model Procedure for Managing Staff Disciplinary Matters and Poor Performance in Community Schools

This model policy has been agreed with recognised
trade unions and is recommended by the LEA



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This model policy and procedure is one of a series produced by a working party involving the Kent LEA, National Professional bodies, Trade Unions, Governing Bodies and the relevant Diocese (where appropriate). It is designed for use in Kent maintained schools but can be adapted to suit other schools with the help of the Schools' Personnel Service.

MODEL PROCEDURE FOR DEALING WITH STAFF DISCIPLINARY MATTERS AND MANAGING POOR PERFORMANCE

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Section One

DISCIPLINARY PROCEDURE

1.1 Scope and purpose of the procedure

These procedures will apply to all staff employed to work in this School. It is a fundamental principle of good management practice that disciplinary procedures should be applied fairly and consistently to all staff. The primary objective of this procedure is to ensure that high standards of staff conduct and behaviour are maintained at all times in the interests of providing children/students with the best possible education.

In addition this School is committed to principles of natural justice and to ensuring that confidentiality is maintained for all parties.

1.2 Levels of management authorised to take disciplinary action

Since the implementation of the Staffing Regulations and Guidance

from the Secretary of State in September 2003, it is now expected that Headteachers will manage any disciplinary issues in schools, up to and including initial dismissal decision. However, the Guidance also sets out circumstances when this might not be appropriate, although the Headteacher has the right to attend to offer advice. (See Appendix C) Disciplinary issues short of dismissal can be delegated to other managers where appropriate.

It should be noted that the disciplinary procedure can be implemented at any stage if the alleged misconduct warrants such action (e.g. where the alleged offence is sufficiently serious to warrant issuing of a final written warning without going through the formal oral and first written warning stages etc.).

However, some concerns may be better dealt with through firm but informal management guidance, often termed an ‘informal warning’. Headteachers and line managers with delegated authority may take such action, although it

must be emphasised that it will not be regarded as part of an employees’ disciplinary record, even if a written note has been made. The basis for any informal action must be made clear to the employee and the employee should have adequate opportunity to respond to the concern before informal action is taken. The presence of a union representative/workplace colleague does not necessarily make a meeting “formal”, and the School should consider inviting the employee to be accompanied when discussing concerns informally. There is no right of appeal against informal action.

For the purposes of this procedure “working day” will normally refer to one of the 195 days in the school year, or for staff on employment contracts outside the school term “working day” will mean any day other than a Saturday, a Sunday or a day which is a bank holiday. Use of disciplinary (incl. poor performance), grievance and harassment procedures will be monitored for equalities purposes to enable KCC to fulfil its duties as

Level of Warning	Authority to take action	Appeal within five working days to:
First Level Written Warning	Headteacher or his/her representative	Chairperson of the Staff Disciplinary Committee/Headteacher
Second Level Written Warning	Headteacher or his/her representative.	Chairperson of the Staff Disciplinary Committee/Headteacher
Final Written Warning	Headteacher	Chairperson of the staff Disciplinary Committee
Dismissal	Headteacher or Staff Disciplinary Committee of Governors	Chairperson of the Appeals Committee

a public authority under the Race Relations (amendment) Act 2000.

NB : SEPARATE ARRANGEMENTS APPLY TO DEALING WITH POOR PERFORMANCE (SEE SECTION 3)

1.3 Informing employees of complaints against them

Employees must be notified of an allegation(s) or complaint(s) made about them at the earliest practicable opportunity. If this concern is considered sufficiently serious to warrant a formal investigation or immediate consideration of formal disciplinary action then the concern must be confirmed in writing.

In the event of a formal investigation an employee should be advised that he/she will be given a further opportunity to respond to the concern during the investigation process, and at any subsequent disciplinary hearing. He/she should also be provided with a copy of this procedure

1.4 Right to be accompanied

Employees have the right to be accompanied at all formal meetings held under this procedure by either a workplace colleague or a Trade Union representative of their choice. School based representatives of professional

associations or trade unions are entitled to be accompanied by an official of their organisation.

1.5 Initiating an investigation

When a disciplinary matter arises the Headteacher should ensure a suitable investigating officer is appointed to establish the facts promptly before recollections fade and obtain statements from any relevant available witnesses. It is important that records are kept for later reference.

In the event that the concern relates to allegations against the Headteacher then it is a matter for the Chairman of Governors to appoint a suitable investigating officer.

Disciplinary interviews need to be conducted promptly and sensitively, recognising that they could place staff in difficult situations.

Child protection issues are an exception to the above and consequently are set out in a separate procedure.

The school will take appropriate professional Personnel advice at all formal stages of this procedure. The school will also consider engaging someone with suitable experience who is external to the school to undertake a disciplinary investigation and/or to present the case at a hearing if the circumstances merit this approach.

It is an essential principle of best practice that an investigating officer will not be able to hear the case.

1.6 Conducting an investigation

Whilst it is important that disciplinary matters are concluded as quickly as possible it is equally important that as thorough investigation is conducted as is reasonable in the circumstances.

Throughout the proceedings the test of 'reasonableness' according to the circumstances will be used as a guide for management action.

At the beginning of the investigation the employee is entitled to be informed of the nature of the complaint, although it may not be possible to be specific at this stage. However, the employee should be informed of the broad nature of the concern and be given some indication of the likely timescale for completing the investigation.

A formal interview with the employee is an important part of the fact-finding process. At this interview it should be made clear that the meeting is to establish the facts surrounding the concern and not to make any decision about further action. The employee should be encouraged to give his/her version of the concern and invited to make a written statement.

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If the investigation is likely to proceed further then the employee should be asked if there are witnesses that he/she would wish to be interviewed as part of the process. If the concern is admitted then the employee should be invited to submit any explanation or mitigating circumstances.

Any relevant witnesses who are likely to be in a position to give direct evidence should be interviewed as soon as possible. Staff should feel secure and supported when being interviewed as part of an investigation and they may, therefore wish to be accompanied by an appropriate workplace colleague or trade union representative.

The witnesses should be advised of the possibility that they could be asked to give evidence at a disciplinary hearing, should it be necessary. However, it is important that the school considers any arrangements that are necessary to ensure that any witnesses feel they are able to provide their evidence in a sensitive and supported environment.

There should be a written, signed and dated account of all interviews conducted during the investigation.

Interviews with pupils must only be conducted with the consent of the parents or guardians beforehand and should only be conducted by a person competent to interview

children. A parent or guardian should be offered the opportunity to attend the interview or to nominate another adult to attend. Where financial concerns or irregularities are identified then reference should be made to the Financial Handbook, Financial Procedures (10.3) and the Chief Internal Auditor notified.

In addition to witness statements it may be necessary to collect other evidence such as current disciplinary warnings, previous performance management records, written records, school timetables etc. The nature and number of such evidence will depend entirely on the circumstances.

Generally in serious disciplinary cases it may be necessary to interview the employee on two separate occasions - once at the outset when the concerns are more general and imprecise and secondly at the point when the investigation has enabled a clear picture of the concerns to emerge.

Throughout the process it is important that the investigation is conducted with an impartial perspective and that no assumptions are made until the investigation is completed.

At the conclusion of the investigation the following options are available:

- 1) No case to answer and the matter is dropped
- 2) A minor concern is identified and the matter is dealt with through informal action.
- 3) There is a case to answer on a matter of misconduct which warrants consideration of formal disciplinary action.

The decision as to which of the above courses of action should not be referred to a disciplinary committee, but should be taken by the line manager, Headteacher or other appropriate person such as Chair of Governors depending on the circumstances. However, the employee should be notified formally of the position within five working days of this decision being made. Any correspondence confirming this position should be copied to the employee's representative, unless requested otherwise.

1.7 Suspension of staff

Both the Headteacher and Governing Body have the right to suspend any member of staff at the school if, in their opinion, his or her exclusion is required. In all cases, the Governors and the LEA, usually via the Chair of the Board of Governors or Headteacher need to be informed of any suspension of a member of

staff. Suspension can only be ended by the Governing Body. Suspension should only be imposed after careful consideration and where there is no other suitable alternative (e.g. arranging a period of authorised leave or redeployment to another job).

Periods of suspension should be reviewed regularly and formally to ensure they are not unnecessarily protracted. It should be made clear that suspension is considered to be a neutral act, without prejudice to the employee's position and does not constitute disciplinary action. Suspension should only be considered in one or more of the following situations :

- 1) where children are at risk
- 2) where the employee needs protection
- 3) where the allegations amount to gross misconduct
- 4) where the school's reputation would be significantly damaged
- 5) where the presence of the member of staff may impede the investigation
- 6) to prevent the member of staff being a disruptive influence in the workplace

It is advisable that a formal meeting is set up with the member of staff and his/her representative to explain why he/she is being suspended and the conditions that apply. The details of the suspension must be confirmed in writing as

soon as possible but within five working days. Where possible, the employee should be given an indication of how long the suspension is likely to last.

Terms of Suspension :

- 1) The employee receives full pay.
- 2) The employee must not discuss the details of any allegation with any other member of staff, pupil or parent from the school without the prior permission of the Governing Body / Headteacher. The employee should refrain from any unnecessary contact with someone connected with the school that could compromise their position. The employee will be given the name of an appropriate contact person from the School's Personnel provider who will be able to advise on this or any related matters.
- 3) Where possible, the employee should be contactable by telephone during normal working hours. However, most contact with the employee should be made in writing and telephone contact should be kept to an appropriate level.
- 4) The employee will be provided with a named contact at the school for maintaining communication during the suspension. The employee

should be kept informed through provision of school newsletters, notes of meetings, new policies etc. The named contact should be agreed with the employee although it should be clarified that this person will not be able to discuss any aspect of the disciplinary investigation.

- 5) The employee should be informed of the confidential counselling service provided by Kent County Council (Support Line - 01622 605539) and, if appropriate the national service for teachers (Teacherline - 08000 562 561).

NB: Schools are entitled to request funding for a limited period from the Area Personnel Manager for the cost of providing cover for a member of staff who has been suspended.

Suspension may only be ended by the Governing Body. However, a provisional decision to end a period of suspension may be made by the Headteacher, Chair of Governors or a disciplinary committee of governors. This must be confirmed formally by the Governing Body but this requirement need not delay a return to work.

Section Two

DISCIPLINARY HEARINGS

2.1 The purpose of the disciplinary hearing

It is important that disciplinary hearings are set up properly in order that the hearing, when it takes place, constitutes a fair hearing for the employee. Before the hearing is arranged there must have been an appropriate investigation into the alleged misconduct. The onus is on those considering the disciplinary breach to reach a reasoned and reasonable conclusion based on the balance of probability. At the conclusion of the hearing the following options are available :

- 1) that there is an insufficient case against the employee and that the matter should therefore be concluded; or
- 2) a decision to give the employee a warning in accordance with the School's disciplinary rules and procedures; or
- 3) a decision to dismiss the employee - with or without notice; or
- 4) some other disciplinary action, e.g. downgrading, transfer to another job or withholding of incremental progression.

2.2 Arranging the disciplinary hearing

Once the decision has been made that disciplinary action may be necessary as a result of the information obtained during the investigation, it will be necessary to set a date, time and venue for a disciplinary hearing. The hearing should take place at a reasonable time and place. It would not be reasonable to arrange a hearing outside the school term unless the employee's terms and conditions of employment provide otherwise or it is agreed by the respective parties to conduct the hearing outside of normal working hours.

A minimum of 10 working days notice of the date for the hearing should be given to enable adequate preparation, although these timescales may be varied by mutual agreement.

Where possible, a mutually convenient date should be arranged with the employee and his/her representative. This is to ensure that hearings do not have to be delayed or postponed at the last minute. Where the chosen representative cannot attend on the date proposed, the employee can suggest an alternative date and time. The alternative date and time should be reasonable being, as far as possible, acceptable to both parties but not normally more than five working days later than the original date

suggested by the School. (N.B. the five day period begins on the next working day after the day proposed by the School).

Consideration should be given to the adequacy of the location of the hearing. There should be adequate rooms for the parties and their witnesses and arrangements to ensure that the hearing is conducted with discretion.

Notice of the hearing should be given in writing and the employee should be :

- 1) advised that the hearing will be held under the terms of the School's disciplinary procedure;
- 2) given details of the allegations which have been made against them;
- 3) given an explanation of the issues that will be considered during the hearing;
- 4) given an explanation of the process to be followed during the hearing;
- 5) provided with a list of those who will be present at the hearing;
- 6) given the names of witnesses to be called;
- 7) provided with copies of all documentation to be presented at the hearing;

- 8) given an explanation of the right to be accompanied;
- 9) given a statement advising of the possible disciplinary sanction that will result should the allegation(s) be substantiated;
- 10) given a request to provide details of those they wish to call as a witness and a statement telling them that they are responsible for ensuring that witnesses can attend on the relevant date.

2.3
Non attendance
at a hearing

There may be instances in which, due to specific circumstances, the employee may not be able to attend a hearing. In this event the employee is required to inform the school at the earliest possible opportunity.

In normal circumstances the hearing will be held on another date. However, this will depend on individual circumstances, the needs of the school, the reason for the non-attendance, likely timescale for attending and the seriousness of the allegations.

Prior to a hearing taking place without the employee present then the employee must be informed that he/she may submit written representations or request his/her representative to submit the case at

the hearing on behalf of the employee.

2.4
Access to information

In the interest of natural justice, all documents which are to be presented at the hearing must be made available to all parties in good time for the hearing. Normally the management statement of case with supporting documents should be issued to the employee with the notice of the hearing.

In any event in circumstances of allegations of serious misconduct then the employee must have received the case papers at least 10 working days prior to the hearing unless agreed otherwise. In all cases the employee should be given reasonable access to all relevant information upon written request.

The employee is obliged to submit any additional documents and a list of witnesses to be called at least three working days before the hearing. Where the employee is afforded greater notice of the hearing (i.e. more than 10 working days) the School reserves the right to request that the employee provides their written submissions and list of witnesses being called at a reasonably earlier date. Where the employee submits their written submission and list of witnesses after the deadline, the panel is entitled to disregard such

documentation. However, unless there are good reasons to the contrary it is advisable that late documentation should be considered, particularly where it offers new information or evidence.

Witnesses should be made aware that they will only participate in the hearing whilst they are being interviewed. However, they should remain available for the remainder of the Hearing should they need to be questioned further. All witnesses must be advised not to discuss any aspect of the disciplinary hearing or matters under consideration with anyone outside of the hearing.

2.5
Procedure to be followed at
a disciplinary hearing

The key objective of the disciplinary hearing is to establish the facts, taking into account both the evidence of the School's Representative and the employee's version of events. This can only be achieved where the employee is given every reasonable opportunity to put forward any points that he/she feels are pertinent to the case and to have any mitigating factors taken into account. It is important that both parties try to avoid blame, accusations, aggressiveness and personal remarks.

The hearing should be reasonably formal and polite but held in

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private ensuring discussions are kept confidential. All witnesses should be treated fairly and with sensitivity ensuring that the practical arrangements and facilities are supportive for all parties involved.

The disciplinary hearing will be held before the Headteacher/line manager or before a committee of governors, who will not have had any direct involvement in the case prior to the hearing. This will depend upon the level of sanction under consideration (see paragraph 1.2).

The School will make arrangements for full and fair notes to be taken during the Hearing. An additional suitable person (for example the Clerk of the Governing Body) should be present whose sole responsibility is to take official notes - that is, they will not take part in the questioning or decision making process. Either party is entitled to bring their own note taker to assist in the efficient conduct of the hearing.

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

1) Introduce the personnel present and explain the purpose of the hearing - that it has been called to consider the allegation(s) against the employee and to decide whether disciplinary action should be taken.

- 2) Explain how the hearing will be conducted, the roles of those present and that following the hearing, the Headteacher/panel will adjourn to consider its findings and reach a decision.
- 3) The School's representative shall put the case for disciplinary action in the presence of the employee and his/her representative. In addition, the School's representative may call witnesses and refer to written submissions and evidence.
- 4) The employee or his/her representative and the Headteacher/panel will have the opportunity to ask questions of the School's representative and any witnesses called.
- 5) The employee, or his/her representative, will then present his/her case and provide details of mitigating circumstances where appropriate. The employee may also call witnesses and refer to written documentation.
- 6) The School's representative and the Headteacher/panel will have the opportunity to ask questions of the employee and any witnesses called.
- 7) The Headteacher/panel, including any professional adviser, may ask any questions at any stage although it may be

preferable to avoid disruption to the flow of the hearing if any questions are reserved until the cross-examination of each witness has concluded.

- 8) The Headteacher/panel will invite both parties to sum up their cases, with the employee or their representative having the final word. The hearing will then be adjourned whilst the Headteacher/panel deliberates over the evidence.
- 9) The Headteacher/panel should discuss any outstanding points and seek to reach a clear view about what took place. If any facts are in dispute, the Headteacher/panel should decide which version is the more probable. If new facts have emerged during the hearing, they should consider whether the hearing ought to be reconvened for further questioning of the employee or witnesses before a final decision is reached. This should be undertaken in the presence of all parties.
- 10) If there is an important point of procedure or employment law on which the Headteacher/panel has sought the guidance of the professional adviser then the hearing should be reconvened so that this advice can be explained to the parties. The Headteacher/panel will then be able to consider any response from the parties to the advice given.

11) The Headteacher/panel will ultimately have to decide whether, on the balance of probabilities, the case has been established or not and then whether it is appropriate and reasonable to take disciplinary action against the employee.

**2.6
Outcome of the disciplinary hearing**

Depending on the relevant circumstances, the School may impose sanctions ranging from a first level warning for a minor disciplinary offence to summary dismissal for an offence which amounts to gross misconduct. A checklist of factors to consider when deciding on a disciplinary sanction is given in Appendix A.

The table below shows the possible sanctions :

Employees have the right to appeal against a decision to extend any warning. (See Section 1.2)

Other forms of action available for consideration, either as an alternative to a formal warning or in support of such action include downgrading, transfer, and withholding of incremental pay progression etc. Training needs in the relevant area should also be considered. In particular careful consideration of such actions should be made as an alternative sanction to dismissal, if appropriate.

At the end of the expiry date the Headteacher/appropriate manager/ Governors will review the position. If there has been no further misconduct then the record will be expunged from the employee's personal file and the employee will be notified. If the employee has been absent from work for a significant part of the period for which the warning was

in force then the lifetime of the warning may be extended by the amount of time the employee has been absent to a maximum further period of one school term. The employee will be informed of this in writing with reasons and will be informed that he/she has the right of appeal against this decision if he/she feels the action to be unreasonable.

**2.7
Considerations in sanctioning dismissal**

The decision to dismiss an employee may have a devastating impact on the employee and indeed on employee relations within the school. A decision to dismiss must, therefore be taken only after very careful deliberation of all of the evidence, the circumstances, including the impact of the alleged misconduct and any mitigating factors.

Level of Warning	Expiry of Warning	Further Proven Misconduct within Time Limit
First Level Written Warning	After six months	Headteacher or appropriate manager may impose extension of warning (to total of 12 months) or proceed to further stage.
Second Level Written Warning	After 12 months	Headteacher or appropriate manager may impose extension of warning (to total of 18 months) or proceed to further stage.
Final Written Warning	After 18 months	Headteacher or Governors may impose extension of warning (up to total of 24 months) or proceed to further stage.
Dismissal		

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For a dismissal to be fair for misconduct the School will have to address three questions.

Firstly, is there reasonable belief of misconduct, i.e. is the evidence reasonably persuasive on the balance of probabilities?

Secondly, has the School conducted a reasonable investigation?

In addition to this question it is essential that the School is able to demonstrate that it has followed its own adopted disciplinary procedure throughout the proceedings, in particular that the hearing has been fairly conducted.

And thirdly, is dismissal a reasonable response to the misconduct that has been proven? In this respect it is vital that the School has considered carefully and rejected other courses of action such as downgrading, transfer to other work or department etc.

2.8 Communicating the decision

When a decision has been reached the employee should be informed and this will usually be verbally at the conclusion of the hearing, in the presence of all parties.

Employees are entitled to receive a written confirmation of the decision of the disciplinary hearing, which should be issued within five working days of the hearing. This also applies to oral warnings, informal action and also decisions not to proceed with disciplinary action.

Where no decision has been reached at the scheduled end of the hearing, then the hearing will need to reconvene at the earliest

opportunity. Written notification of the decision should be sent to the employee within five working days of this later date.

Where a sanction is imposed, employees should be advised of their right to appeal, that the appeal should be made in writing with the grounds for their appeal and that it should be made within five working days of receipt of written confirmation of the action taken. Section Four sets out the arrangements for appeal hearings.

In respect of a dismissal decision the written notification must include the following:

- 1) the reason for dismissal with reference to the list of examples of misconduct and gross misconduct as set out in appendix B.
- 2) confirmation whether the dismissal is with or without contractual notice.
- 3) the date of dismissal, and the date of termination, and the date when pay will cease.
- 4) the right of appeal against the decision and the method through which the appeal should be raised.
- 5) any other administrative matters, for example any

arrangements for the return of school property or for the employee to collect personal effects.

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

In the event that the employee does not appeal against the decision to dismiss then the effective date of a summary dismissal or the date of commencement of contractual notice will be the date of the initial dismissal decision.

2.9 Record keeping and confidentiality

During the investigation stage reliable and reasonable notes of all formal meetings, interviews and relevant telephone conversations should be recorded and then verified by the respective parties. Any witness statements should be signed and dated.

At a formal disciplinary hearing a separate notetaker should be present, although this person has no role in questioning or decision making. The deliberations of the panel should not be recorded although it is important that the decision as it is communicated to the employee must be recorded together with any other issues raised at this stage.

As far as possible records of all meetings involving the employee, including notes of any hearing should be agreed with the employee or their representative. All records and information, including those relating to the level of action taken are a matter of confidence between the employee and the employer. The school must exercise extreme care in deciding who needs to be informed of the disciplinary outcome and this will depend upon circumstances, for example the employee's position or level of authority in the school.

If formal disciplinary action is taken against a member of staff then records should be kept detailing the breach of the disciplinary rules, the action taken and the reason for it, whether any appeal was lodged and its outcome with any further developments.

In the event that the matter under consideration is dropped due to insufficient or inconclusive evidence then all documentation should be destroyed at that time. Issues relating to child protection claims are an exception to this - see separate procedure.

All records relating to formal disciplinary action must be destroyed after the expiry date for the action taken. The exceptions to this are in respect of child protection issues - see separate procedure - and records relating to employment tribunal claims.

Section Three

CAPABILITY – MANAGING PERFORMANCE

3.1 Principles of dealing with poor performance

Good management, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through performance review and monitoring will help to avoid the need for formal capability procedures. In some cases an improvement may be achieved informally with appropriate support and attention. However, it is important that all reasonable support, including advice, assistance and further training where appropriate, should have been explored before resorting to formal procedures.

The aim of this procedure is to assist employees, whose performance appears to be inadequate, with support to improve and to reach the standards required of their jobs. This is essential in the provision of the highest standards of education and care of children/students. For this reason employees who continue to fall short of the required standards of performance may eventually be dismissed.

If it becomes apparent that ill-health may be a significant factor to poor performance then the School should suspend this procedure and consider any reasonable adjustments that could

assist the employee to achieve the required level of performance.

3.2 Induction/Probationary staff

These procedures do not apply to staff during probationary periods of service as any performance issues should be dealt with as part of the supervision and induction for new staff. Where newly appointed staff fail to meet the expected standards during their probationary period there will be no recourse to either the disciplinary or capability procedures. However, a reasonable process of monitoring and review would be expected to take place within this period.

3.3 Action to address poor performance

Where there are concerns about the performance of a member of staff the Headteacher or Line Manager should investigate and collect evidence. Concerns may have arisen through the application of the school's Performance Management policy or through other sources. The Chair of Governors must make arrangements for an investigation to be done if the performance of the Headteacher is in question.

Once the facts are gathered and the seriousness of the problem established there are three initial options :

- 1) Drop the matter (no case to answer)
- 2) Arrange a standard setting meeting (informal support without using the formal procedure)
- 3) Arrange a formal interview (formal approach for more serious cases)

3.4
Standard setting –
informal action

Employees should be given every opportunity to improve their performance and therefore in most cases it will be normal to commence with informal action to address poor performance. It is considered good practice that employees are given the opportunity to be accompanied even at an informal stage. During the standard setting meeting the employee should be made fully aware of the following:

- 1) The areas of performance that are cause for concern
- 2) The expected standards of performance.
- 3) That timescales will be set during which time it is expected performance will improve and that at the end of that period performance will be reviewed.
- 4) The timescale involved should be long enough to allow improvement (this will be dependent on the nature of the poor performance but should not be an excessively long period).
- 5) The ongoing support that will be made available i.e. advice, guidance and appropriate training.

- 6) That targets will be set to determine that the required standard has been achieved.
- 7) Arrangements for the monitoring / assessment of the targets.
- 8) That failure to reach and sustain the required standard will lead to the formal procedures being invoked.

It is important that notes are taken at the initial meeting as well as at all subsequent review meetings. The employee should be provided with a written statement of the arrangements agreed at the meeting to support him/her and advised of the consequences of not reaching the required standard.

During the review period the employee should be given support, advice and assistance to improve their performance. Training, where appropriate, should be made available and additional support, such as the monitoring, observation and feedback of performance should also be used.

At the end of the review period the employee should be invited to a meeting to discuss progress. The employee should either be advised :

- 1) That performance has improved to an acceptable level and it is anticipated that performance can be sustained; in which case the informal procedures will be ended (although informal monitoring will continue to check that performance is sustained), or
- 2) That performance has not reached an acceptable standard, or it is not anticipated that any improvements made will be sustained; in which case the formal procedures will be invoked.

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3.5
Timescales

The timescales quoted in this procedure should be viewed as maximum limits and can be shortened where appropriate. This procedure states there should be a maximum limit of two terms for the formal assessment of capability.

The period of assessment may be shortened if justified, for example where it becomes clear that an acceptable level of improvement is beyond the ability of the person assessed, where there is a lack of co-operation with reasonable measures to achieve improvement or where the performance improvement required has been achieved in a shorter time.

In addition, particularly serious cases of irredeemable incompetence may be handled in up to four weeks where the education of children is in jeopardy. Examples of this might be where a teacher's classroom control is so poor that no order can be established to enable teaching to take place, or where all the pupils under the teacher's care fail to progress in that teacher's lessons.

3.6
Formal capability
procedure

Where an assessment is made that the formal capability procedures may need to be invoked the employee should be invited to attend a Formal Performance Assessment Meeting. The employee should be given at least 10 working days notice of the meeting. The employee should be advised of their right to be accompanied by an appropriate workplace colleague or trade union representative.

At the formal interview the employee should be made fully aware of the concerns that remain about his/her performance and have the opportunity to respond to the concerns. If it becomes clear that further investigation into the issues raised is necessary the interview should be adjourned for an appropriate length of time to allow this to happen. At the conclusion of the interview(s) the following options are available :

- 1) Postpone the formal action and extend the informal action (depending on the mitigating factors)
- 2) Issue a first capability warning
- 3) Issue a final capability warning (in the most serious cases only)

The outcome of the Formal Performance Assessment Meeting should be confirmed in writing to the employee. Where the line manager determines that a capability warning is necessary, the employee should also be notified of his/her right to appeal against the warning.

In the event that the employee does appeal against a warning, the arrangements for the preparation and hearing of the appeal will not interrupt the timescales and process of the formal capability process, unless the appeal decision leads to the matter being reconsidered. Following the issuing of the capability warning the process immediately moves onto the first assessment stage (see below).

Either at the Formal Performance Assessment Meeting, or as soon as possible after, the employee should be advised of the expected targets and standards he/she will need to attain and the consequences of not reaching those standards. This should be confirmed in writing to the employee.

3.7 First assessment stage

During the first assessment stage (up to a maximum of 20 term-time weeks), the employee will be expected to work toward achieving the formal targets set within given timescales. He/she should also be advised of how they will be supported, monitored and assessed during the review period.

Regular monitoring meetings should be held during this stage to assess performance. Where appropriate targets have been met, the first assessment period can be ended during the monitoring meetings and the decision confirmed in writing.

If at any point during the first assessment stage the circumstances suggest a more serious problem a decision may be made to move directly to a First Formal Review.

The employee should be given at least 5 working days notice of the First Formal Review meeting. Again, he/she should be reminded of their right to be accompanied by an appropriate workplace colleague or trade union representative. If the level of performance has been satisfactory and there is confidence that the performance can be sustained the capability procedure can end. This should be confirmed to the employee in writing.

If performance has continued to be unsatisfactory a final capability warning should be issued, in writing.

Arrangements for further monitoring, evaluation, guidance and support should be agreed for a further period and also confirmed in writing (see Second Assessment Stage below).

The employee should be informed that failure to achieve an acceptable standard of performance, with confidence that it can be maintained, may lead to dismissal (or other sanction).

The employee should also be notified of his/her right to appeal against the final capability warning. In the event that the employee does appeal against a warning, the arrangements for the preparation and hearing of the appeal will not interrupt the timescales and process of the formal capability process, unless the appeal decision leads to the matter being reconsidered.

Following the issuing of final capability warning the process immediately moves onto the second assessment stage.

3.8 Second assessment stage

Regular monitoring and evaluation of performance, with guidance, supervision, training and support as necessary should continue for a further period of up to six term time weeks.

The employee should be given at least five working days notice of a Final Formal Review. Again, he/she should be reminded of their right to be accompanied by an appropriate workplace colleague or trade union representative.

If the level of performance has been satisfactory and there is confidence that the performance can be sustained the capability procedure can end. Performance will continue to be monitored and supported through the school's Performance Management policy. This should be confirmed to the employee in writing within five working days of the review meeting.

If performance has been unsatisfactory the employee should be told that the matter will be referred to the Headteacher or Staff Capability Committee. The result of the assessment, main points of the meeting and date of the Capability Hearing (if known) should be recorded in a letter to the employee (a minimum of 10 working days before the hearing date).

3

<p>3.9 Staff capability committee stage</p> <p>Where necessary, the Governing Body should set up a Staff Capability Committee of at least three Governors.</p> <p>The membership of this committee may be the same as the Staff Disciplinary Committee although this position needs to be reviewed to ensure fairness. Members of the committee may be ‘tainted’ if they have been involved in previous decisions in other procedures, such as discipline.</p> <p>The arrangements and procedure to be followed at the Capability hearing and notification of the outcome and any subsequent appeal mechanism will be the same as a disciplinary hearing.</p> <p>These arrangements are set out in section 2 and also section 4 of this document.</p>	<p>3.10 Summary of possible action <i>(see table 3 below)</i></p>	<p>3.11 Staff absent through illness</p> <p>Staff absent through illness during the capability procedure and who are likely to be off for a long term should be referred to the Occupational Health Service or equivalent medical adviser. The School will take a considerate and sympathetic approach according to the circumstances, but in general the length of time for health improvement and the process for considering whether to terminate employment on health grounds should be subject to the School’s procedure on Managing Sickness Absence.</p>
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	Outcome	Appeal
Formal Procedure (reviewed at a Formal Performance Assessment Meeting)	Issue resolved First Capability Warning	Staff Capability Committee/ Headteacher
	Final Capability Warning (serious cases only: to be issued by Headteacher)	Staff Capability Committee
First Assessment Stage (reviewed at First Formal Review)	Issue resolved Final Capability Warning	Staff Capability Committee
Second Assessment Stage (reviewed at Final Formal Review) Committee/Headteacher	Issue resolved Referral to Staff Capability	
Capability Hearing Stage	Issue resolved Extend Final Written Dismissal	Staff Capability Committee Appeal Committee

Section Four

APPEALS

4.1 Right of appeal

Members of staff will have a right of appeal, as set out in this section, against any formal disciplinary or capability action taken against them.

In general terms an appeal against action taken by a line manager will be considered by the Headteacher. An appeal against action taken by the Headteacher will be considered by a Disciplinary or Capability Committee of governors depending on the procedure, unless it is an appeal against dismissal by the Headteacher in which case it will be heard by the Appeals Committee. An appeal against action taken by a Disciplinary or Capability Committee will be considered by the Appeals Committee.

4.2 Lodging an appeal

The employee must register his/her appeal in writing, with clear reasons as to why the appeal should be considered. This must be submitted to the Clerk to the Governing Body within five working days of the employee being notified of the action, unless the employee has been notified of different arrangements.

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

- unfairness of decision
- unreasonable penalty
- new evidence
- significant procedural
- irregularities

The Clerk will ensure that an appropriate appeals mechanism is set up in accordance with this procedure.

4.3 Arranging an appeal hearing

Where the employee submits a written appeal against disciplinary or capability action to the Headteacher or Chair of the panel, which states his/her grounds of appeal, a hearing should be arranged and the date notified to the employee. The appeal should be set up as soon as is reasonably practicable and generally this should be within 10 working days of notification of appeal. The employee should be reminded of their right to be accompanied/represented.

Where an employee is appealing against a dismissal, the Appeal Committee should contain at least as many as that of the dismissal committee. Governors who sit on the disciplinary committee cannot also sit on the appeals panel.

The appeal panel needs to be clear whether it is reviewing a decision or conducting a re-hearing.

It is a crucial role for the Appeal

Committees to consider whether there have been breaches of the procedure and look to see whether the procedural breach makes any difference to the fairness of the dismissal.

The employee should be provided with copies of all the relevant documents to be considered by the Headteacher or panel, including any witness statements, the notes of the disciplinary hearing and the reasons for the original decision. This should be provided at least five working days before the appeal hearing.

The employee should provide copies of all relevant documents for consideration at least three working days before the appeal hearing.

If the appeal is undertaking a full re-hearing then it may be necessary to recall any or all of the witnesses to the initial hearing. It may not be necessary to recall witnesses whose evidence is in not dispute. If the appeal it is not a full re-hearing then the necessity to recall witnesses will be dependent on the grounds for appeal and the relevance of the witnesses testimony to those grounds.

The hearing should be held at a reasonable time (ie within the normal school working day wherever possible) and location, ensuring discussions are kept confidential.

The School must make arrangements for full and fair notes to be taken during the Hearing. An additional suitable person should be present whose sole responsibility is to take notes - they should not take part in the questioning or decision making process.

4.4 Procedure to be followed at the appeal hearing

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

- 1) Introduce the personnel present and explain the purpose of the hearing - that it has been called to decide whether disciplinary or capability action taken against the employee was fair and reasonable.
- 2) Explain how the hearing will be conducted, the roles of those present and that following the hearing, the Headteacher/panel will adjourn to consider its findings and reach a decision.
- 3) The employee or their representative shall put the case in support of the grounds for appeal, including any mitigating circumstances. This may include calling witnesses and/or referring to written submissions and evidence.
- 4) The School's representative and the Headteacher/panel will have the opportunity to ask questions of the employee, their representative and any witnesses called.
- 5) The School's representative, will then present the case for upholding the previous decision and may also call witnesses and refer to written documentation.
- 6) The employee or representative and the Headteacher/panel will have the opportunity to ask questions of the School's representative and any witnesses called.
- 7) The Headteacher/panel, including any professional adviser, may ask any questions at any stage although it may be preferable to avoid disruption to the flow of the hearing if any questions are reserved until the cross-examination has concluded.
- 8) The Headteacher/panel will invite both parties to sum up their cases, with the employee or his/her representative having the final word. The hearing will then be adjourned whilst the Headteacher/panel deliberates over the evidence.
- 9) The Headteacher/panel should discuss any outstanding points and seek to reach a clear view about what took place. If any facts are in dispute, the Headteacher/panel should decide which version is the more likely, on the balance of probabilities. If new facts have emerged during the hearing, they should consider whether the hearing ought to be reconvened for further questioning of the employee or witnesses before a final decision is reached. In this event, any such questioning should take place in the presence of all parties.
- 10) If there is an important point of procedure or employment law on which the Headteacher/panel has sought the guidance of the professional adviser then the hearing should be reconvened so that this advice can be explained to the parties. The Headteacher/panel will then be able to consider any response from the parties to the advice given.
- 11) The Headteacher/panel will ultimately have to decide whether, on the balance of probabilities the case has been established or not and then whether it is appropriate and reasonable to take disciplinary action against the employee.

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4.5 Outcome of the appeal hearing

When deciding the outcome of the appeal, the Headteacher/panel should ensure that any representations made by the employee (whether verbally or in writing) have been considered in full.

Where the reasonableness of the decision of the previous hearing is being challenged the Headteacher/panel should consider whether that decision was within a reasonable band of decisions given the circumstances.

The outcomes available to the Headteacher/panel are:

- 1) Uphold the previous decision in full
- 2) Uphold the previous decision in part but to reduce the level of sanction or amend other elements of the decision
- 3) Uphold the employee's appeal in full and to withdraw the sanction fully.

The Headteacher/panel cannot impose a higher level of sanction than that reached previously.

The appeal panel decision is final even where it is a full re-hearing.

4.6 Communicating the decision

When the Headteacher/panel has reached its decision the employee should be informed and this will usually be verbally at the conclusion of the hearing, in the presence of all parties. Employees are entitled to receive a written confirmation of the decision of the appeal hearing. The written decision will be the definitive decision and will be issued within five days of the hearing.

Where the Headteacher/panel is unable to reach a decision at the scheduled end of the hearing then it will be necessary to reconvene at the earliest opportunity. Written notification of the decision should be sent to the employee within five days of this later date.

Should any disciplinary sanction be reconsidered and effectively withdrawn, all written reference should be expunged from the employee's personal record and the employee notified accordingly.

The chairman of the panel must ensure that the Area Personnel Manager is informed of a decision to dismiss. It will be sufficient for the Chairman to provide the Area Personnel Manager with a copy of the letter of confirmation sent to the employee. The Area Personnel Manager will then confirm this decision on behalf of the Local Education Authority.

The effective date for a summary dismissal, i.e. without notice, will be the date the letter from the Local Education Authority was received at the last known address for the employee, unless alternative arrangements have been agreed.

In the event of a dismissal with contractual notice then the notice period will commence either at the time of the dismissal hearing if the employee is present to hear the decision or the date the letter from the Local Education Authority was received at the last known address for the employee.

Appendix A

CHECKLIST OF FACTORS TO CONSIDER WHEN DECIDING ON A DISCIPLINARY SANCTION

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| <ul style="list-style-type: none"> • The nature and severity of the offence • The relevant provisions of the School's rules and procedures • Whether a fair and reasonable disciplinary procedure has been followed • Any relevant provisions in the employee's contract of employment • The employee's previous conduct, including any previous verbal or written warnings (taking into account the reasons for those warnings and when they were given) - 'spent' warnings should not be considered. However if the allegation is a child protection matter then previous records held by LEA's child protection co-ordinator or other statutory agencies must be taken into account • The School's treatment of other employees who have committed the same offence • Whether the employee knew the conduct in question contravened the School's rules • The employee's attitude toward the offence • The employee's position and seniority • The employee's length of service | <ul style="list-style-type: none"> • The extent of any mitigating circumstances • How the employee might be encouraged to improve their conduct or performance |
|---|--|

Appendix B

DISCIPLINARY RULES

GROSS MISCONDUCT

- 1) Gross misconduct is the commission of an act which renders it inappropriate for the employee to be allowed to remain in their job. Any employee suspected of committing an act of gross misconduct, as indicated in the list below, will be suspended with full pay pending investigation. If after proper investigation it is decided that the employee has committed an act of gross misconduct or if the act is admitted by the employee, he/she will be dismissed following a disciplinary hearing without further warning, unless there are mitigating circumstances. The agreed disciplinary procedure must be followed in all cases. The list of examples below is **not intended to be exclusive or exhaustive** and offences of a similar gravity will receive the same treatment in the same establishment.
 - a) theft of property belonging to the School, Council Contractor, another employee or pupil;
 - b) deliberate falsification of timesheets or expenses claims for pecuniary advantage;
 - c) demanding or accepting moneys or other consideration as a bribe for the use of Council/school property, provision of Council service or the showing of favour on behalf of the Council;
 - d) falsification of any information given on an application form to gain advantage whether pecuniary or otherwise;
 - e) failure to disclose if asked criminal convictions not exempt under the terms of the Rehabilitation of Offenders Act, 1975;
 - f) falsification of registration of pupils or students for pecuniary gain.
- 2) Dishonesty associated with place of work or job being undertaken.
 - a) Deliberate and continued refusal to carry out a reasonable, lawful and safe instruction or the normal agreed defined duties of the post.
 - b) Gross negligence in failing to attend or carry out the agreed duties of the post.
 - c) Wilfully ignoring responsibilities/instructions thus placing other members of staff/pupils in danger, eg ignoring handling instructions/safety regulations in respect of radio-active materials.
- 3) Being unfit to perform duties associated with the post as a result of taking alcohol or drugs other than in accordance with medical advice.
- 4) Misuse of computer facilities in contravention of the Data Protection Act. Wilful unauthorised disclosure of information classified as confidential by staff who, in the course of their duties, have access to such information which, by its release, could be harmful to the Authority, other staff or pupils.
- 5) Acts of violence or vandalism in the course of employment.
 - a) malicious damage to school/Council/Council Contractor/other members of staff/pupils' property;
 - b) actual physical violence towards members/officers of the Authority, other members of the school staff/parents/pupils/ other members of the public.
- 6) Sexual misconduct at work.
 - a) an act of criminal sexual misconduct by an employee who, in the course of duty, has contact with young people;
 - b) sexual relations with pupils;

- 10) Inappropriate relationship or contact with a pupil or pupils - please refer to the Child Protection Procedure.
- 11) Drug offences committed by employees whose job brings them into contact with young people.
- 12) Criminal offences which are relevant to the post occupied by the employee, whether or not a criminal conviction occurs, for example finance officer convicted of embezzlement
- 13) Arson, or similar activity
- 14) Persistent and substantial failure to follow procedures and regulations
- 15) Breaking statutory provisions that would render the Governing Body or Kent Council Council liable to prosecution
- 16) Serious breach of health and safety rules
- 17) Serious or persistent acts of harassment/victimisation of other employees, including wilful discrimination or incitement to discriminate.
- 18) Actions outside of the workplace that could be so serious as to fundamentally breach the trust and confidence placed in the employee.

MISCONDUCT

- 1) Misconduct is of a degree less serious than that which would warrant immediate suspension from duty and/or dismissal for a first offence but which could nevertheless lead to dismissal if persistent. The Disciplinary Procedure will be followed when dealing with misconduct.
- 2) Some more serious acts of misconduct might justify omitting the first stage of disciplinary procedures by issuing a final written warning in the first instance if there is no satisfactory explanation. Occasionally an act of misconduct might be so serious as to justify dismissal. Normally, however, only when it can be shown that the warnings have not been heeded or there is a pattern of misconduct for a variety of reasons will misconduct lead to dismissal.
- 3) Absenteeism and lateness – for example:
 - a) absenting from the place of work during normal working hours without permission or sufficient cause for absence;
 - b) persistent failure to attend work punctually;
 - c) persistent failure to notify the school as soon as reasonably practicable when absence is due to sickness;

- d) failure to provide medical certificates in accordance with the Conditions of Service or school's procedure.
- 4) Dishonesty – for example, making unauthorised private telephone calls and/or sending personal mail at the school's expense.
- 5) Neglect of duty – for example:
 - a) failure to adopt safe working practices/use protective equipment where required by law or management;
 - b) negligent use of school property in such a way as is likely to cause serious damage or loss;
 - c) failure to discharge without sufficient cause the obligations which statute or the contract of employment places on the employee;
 - d) insubordination;
 - e) failure to exercise proper control or supervision of pupils.
- 6) Abusive behaviour/offensive language which arises directly out of or in connection with work and which is directed at members, officers or the Authority, colleagues, pupils or members of the public.

APPENDIX C

HEADTEACHERS AND DISMISSAL

The 2003 Statutory Guidance sets out the following circumstances when it might not be appropriate for the Headteacher to take dismissal decisions:-

- A head teacher who is unwilling to perform these functions and whose previous history of service at the school did not include such responsibilities. This give an existing head teacher the option of preserving their current working arrangements, but when the governing body considers a new appointment for the head teacher post the normal expectation for the head teacher to undertake these responsibilities should apply.
- Where the head teacher has been directly involved in disciplinary procedures leading to dismissal, has instigated a proposal to dismiss, or is a witness of particular conduct giving grounds for the dismissal in question. The arrangements for delegating initial dismissal decisions will therefore need to be considered on a case by case basis in the light of circumstances.
- 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.
- Appointments of support staff outside the leadership group who are required to act in a senior management capacity. This ensures that the governing body may also lead in the appointment of support staff with senior management responsibilities.
- A head teacher subject to suspension, disciplinary procedures (including capability), or disciplinary sanction.
- Where the LEA has made representations to the chair of the governing body on grounds of serious concerns about the performance of the head teacher.
- Where the head teacher has failed to abide by financial limits agreed by the governing body for any school purpose.

Date of Approval by the Governing Body: _____

Signed: _____

Position: _____

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