

Disciplinary Policy

About this policy

Purpose

This document describes the Disciplinary policy and procedure. Refer to the table of contents, below, for a full list of topics covered.

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Version control

The table below shows the history of the document and the changes that were made at each version:

Version	Date	Summary of changes
1.0	January 2008	First published version.
2.0	November 2009	6.2 Suspension. Updated with examples of when employees may be suspended without pay pending an investigation.
3.0	May 2011	Policy rewritten and republished.
4.0	September 2015	Addition of further guidance on dismissal and removal of links to Trustnet.
5.0	July 2016	Updated section on dismissal without notice.

Next major release

Although this document will be updated as legislation or procedures change, the next major review date will normally be scheduled for three years after the last release.

Distribution

This policy is available on Hackney Learning Trust's website.

1. Policy statement

The governing body is committed to being a fair and reasonable employer and expects reasonable standards of conduct from employees. It will support employees through guidance, information, advice, training or other suitable approaches to achieve acceptable standards of conduct.

However, from time to time an employee's conduct/performance may fall below the required standards. This policy provides a framework to ensure that, where necessary, an employee can improve their conduct to an acceptable level. It also ensures that conduct issues are managed fairly and consistently across the organisation.

2. Definitions

The following definitions are used in this document:

Code of Conduct, Rules and Standards	These set the standards of conduct required at work and are outlined in the contract of employment and the Code of Conduct for Schools.
Suspension	The removal of an employee from work, normally on full pay, to enable a disciplinary investigation to be carried out unimpeded.
Misconduct	Conduct that is not acceptable for an employee.
Gross Misconduct	Serious misconduct may justify the instant dismissal of an employee, even on the first occurrence.
Disciplinary Investigation	This is the process by which evidence is collected related to an allegation of misconduct and a summary of the findings is presented in a report. It is conducted by an appointed Investigating Officer.
Investigating Officer	This is the impartial trained manager selected to conduct the disciplinary investigation. The Headteacher is usually responsible for appointing them.
Disciplinary Hearing	This is the meeting at which the employee and Investigating Officer state their case regarding the disciplinary issue before a panel.

Appeal Hearing	This is the meeting at which the employee presents their grounds for appeal against the disciplinary action that has been issued to an Appeal Committee.
Appeal Committee	The Staff Disciplinary/Dismissal Appeal Committee of the governing body hears all appeals and makes the decision regarding whether the disciplinary decision should be upheld or overturned. The Committee consists of three members of the governing body who have not taken part in the decision to take disciplinary action.
Dismissal	The termination of an individual's employment which can be with or without paid notice.

3. Scope of the policy

This policy applies to all teaching and support staff who have successfully completed their probation period, regardless of grade, position, hours worked per week or whether their contract is permanent or fixed term.

This policy does not apply to alleged discrimination or harassment on grounds of gender, race, age, sexual orientation, disability, religion or belief, cultural and language differences or alleged bullying. These issues will be handled through the Dealing with Harassment and Bullying at Work Policy.

However, if a complaint of harassment or bullying is upheld, or if the complaint is found to be malicious or frivolous, the matter may be dealt with under this disciplinary policy.

There are separate policies covering capability, drugs and alcohol, and whistleblowing, which may be more appropriate than this disciplinary procedure in certain circumstances. Guidance and advice should be sought from HR at Hackney Learning Trust.

In applying this procedure, it is important to distinguish between capability and disciplinary matters. Generally, the disciplinary policy and procedure applies when a member of staff is capable but underperforming because of carelessness or lack of motivation/cooperation. The Capability Policy and procedure applies when acceptable performance standards are not met.

Where there are concerns regarding the conduct/performance of the Headteacher, no action under this policy should be initiated without reference to the Head of HR. The Chair of Governors should seek the advice and guidance from the Head of HR.

Where the HR service is provided by the Trust and there are concerns about the conduct/performance of the Headteacher, the Trust must send a written report to the Chair of the governing body and a copy of the report to the Headteacher. The Chair of Governors must notify the Trust in writing of the action proposed in light of the report.

4. Procedure: Informal action

Depending on the seriousness of the allegations of misconduct, every effort will be made to resolve the matter by informal discussions with the member of staff before taking formal disciplinary action.

This will involve the line manager discussing the perceived shortfall in conduct with the member of staff concerned, and advising on what standards are expected. The discussion should also outline what needs to be done to improve and when a follow-up meeting will be held. Support or training should be offered where relevant and written notes taken by the line manager.

Informal action does not constitute disciplinary action (although a repetition of the conduct or a failure to improve may lead to formal action), and there is no automatic right to be accompanied or right of appeal at the informal stage.

For cases of misconduct where the employee confirms the allegation is true and factual and shows remorse for their actions, the school will consider an agreed outcome, up to a written warning on the employees file, without the need for a disciplinary investigation or hearing. This will be decided at the discretion of the line manager and HR representative and will be dependent on the circumstances of the case.

5. Procedure: Formal action

If informal action does not bring about the desired improvement, or the matter could constitute serious or gross misconduct, the formal procedure should be undertaken.

The key stages in the formal disciplinary procedure are:

- Deciding what action to take (page 9).
- Investigation (page 13).
- Formal disciplinary hearing (page 14). Outcomes:
 - 1 - Recorded Verbal Warning.
 - 2 - Written Warning.
 - 3 - Final Written Warning.
 - 4a) - Dismissal
 - 4b) - Summary Dismissal.
- Appeals (page 18) – Every employee has the right to appeal against any action taken against them at the formal stages of the procedure.

The formal stages of the procedure involve some key features which are outlined below. Read this section before starting to follow the procedure.

Note: There is a toolkit on the Intranet which contains additional guidance on the Disciplinary Procedure and provides supporting report and letter templates.

5.1. General principles

The following general principles apply to the formal stages of the procedure:

5.1.1. Responsibility for disciplinary action and dismissal

The governing body has the overall responsibility for disciplining and dismissing staff, with powers to delegate this responsibility to the Headteacher. Where the Headteacher has not been involved in the case or investigation, they should be given the delegated responsibility to make decisions up to the initial dismissal decision, following which there would be an opportunity to appeal to a panel of governors.

Headteachers will therefore normally lead the process of making disciplinary and the initial dismissal decision unless the following circumstances apply:

- The Headteacher is unwilling to perform these functions and whose previous history at the school did not include any such responsibilities.
- The Headteacher has been directly involved in disciplinary procedures leading to dismissal (including any aspect of the investigation), has instigated a proposal to dismiss or is a witness of particular conduct giving grounds for the dismissal in question.

In situations where it is not appropriate for the Headteacher to perform these functions (see above), the Staff Discipline/Dismissal Committee of the governing body will be responsible for the process of making such decisions.

The governing body should nominate three members of the governing body who are not staff members to represent the Staff Discipline/Dismissal Committee and a further three governors, who are not staff members and who are different from the Staff Discipline/Dismissal Committee to represent the Appeals Committee. Hearings of the Staff Discipline/Dismissal Committee are usually convened by the clerk to the governors at the request of the Headteacher or Chair of Governors where they consider it appropriate.

The Trust will offer advice at all stages of this procedure (where the Trust is the HR provider). Headteachers should seek professional advice from their HR Adviser at the earliest opportunity.

In community and maintained schools, the Local Authority is ultimately the employer for these education establishments and any decision to dismiss an employee must be confirmed by the Local Authority before it is effective. Therefore, the Director of Education at Hackney Learning Trust must issue the dismissal notice to the employee, confirming the decision made by the Governing body. Please see further guidance on Dismissal Procedures in Schools.

5.1.2. Right to be accompanied

A member of staff has the right to be accompanied by a trade union representative or work colleague at the formal stages of this procedure.

If the accompanying person is not available at the proposed time, the member of staff or trade union representative may request a reasonable alternative time within five working days. The five day time limit may be extended in exceptional circumstances but the meeting should not usually be delayed by more than ten working days.

Role of the accompanying person

Accompanying persons are entitled (with consent of the member of staff) to:

- Put the case forward on behalf of the member of staff.
- Confer with the member of staff during the hearing.
- Sum up the case for the member of staff.
- Respond on behalf of the member of staff to any view expressed at the hearing.

However, accompanying persons are **not** entitled to:

- Answer questions on behalf of the member of staff.
- Address the hearing if the member of staff does not want them to.
- Prevent the school representative from explaining the case, or any other person at the hearing making a contribution to it.

Legal representation

In specific cases, where disciplinary charges are of such gravity that someone might be unable to work in the future in that professional capacity if the charges are proved, employees may have a right to legal representation at disciplinary hearings. This will usually apply in a specific set of circumstances where an employee in a regulated profession, for example teaching, may potentially face a life-long ban from working in their profession.

HR will advise where this is applicable.

5.1.3. Confidentiality

Confidentiality should be maintained by all those involved, including the member of staff, at all stages throughout the procedure by ensuring that only those people who need to know have access to details. No other member of staff should be informed that a colleague is subject to action under the procedure.

While respecting confidentiality, it is important that the member of staff is free to discuss issues with their trade union representative or work colleague who may be able to assist or support them through what is acknowledged to be difficult circumstances.

Written records of issues will be treated as confidential and kept no longer than is necessary in accordance with the Data Protection Act 1998. Please refer to the HR Records Policy.

5.1.4. Sickness absence

Reasonable steps should be taken to enable attendance at meetings and hearings, and certified absence and entitlement to sickness pay do not of themselves represent grounds for deferring this procedure.

A member of staff pleading that they are unfit to attend a meeting or hearing must provide a medical certificate stating physical incapability of attending and/or inability on mental or psychological grounds to participate reasonably in the proceedings. Should the member of staff be unable to provide a certificate specifically justifying their absence, failure to attend may constitute a disciplinary offence in itself.

The Chair of the panel will consider whether the meeting or hearing should go ahead in the absence of the individual. A considerate, sympathetic approach should be adopted but in general any justification for delay should be discussed with Occupational Health (OH) and HR.

If a meeting or hearing is to go ahead in the absence of the member of staff, the member of staff should be notified, giving at least three working days' notice of the meeting. In such circumstances a full account of the meeting or hearing should be provided to the member of staff in writing, confirming any decision taken.

If sickness absence occurs before the commencement of the **formal** stages of the procedure, the case should be referred immediately to Occupational Health to assess the person's health and fitness for continued employment. Short absences should not delay any part of the formal procedure.

5.2. Deciding what action to take

This section describes how to decide what action to take before instigating formal disciplinary action:

- It may also be necessary to suspend the member of staff.
- Consideration should be given to whether there are child protection issues.
- A thorough investigation should be carried out.

5.2.1. Suspension

In cases of alleged serious or gross misconduct it may be necessary to suspend the member of staff (usually on full pay and conditions) before a decision about disciplinary action is taken.

Only the governors (normally the Chair of Governors) or the Headteacher have the power to suspend a member of staff. Only the governing body may end the suspension.

Suspension of an employee is a precautionary neutral act and does not in itself constitute disciplinary action or a presumption of guilt. It may be appropriate in the following circumstances:

- Where children are at risk.
- Where employees need protection themselves.
- Where the allegations amount to gross misconduct.
- Where the school's reputation might suffer unduly.
- Where the presence of the employee may impede investigation.

In certain cases employees may be suspended without pay pending an investigation. For example, an employee may be suspended without pay where:

- The employee has been imprisoned.
- There are serious criminal proceedings which are likely to result in imprisonment.
- There may be a legal restriction on the employee's employment (e.g. immigration issues).

Note: This is not an exhaustive list.

Considering whether to suspend an employee

1. The Headteacher, following consultation with the Chair of Governors, makes the decision whether to suspend. Advice from HR should be sought.
2. The decision is confirmed in writing within three working days. The letter should state that the suspension is precautionary, pending the outcome of the investigation and advise the member of staff of:
 - The reasons for suspension (the allegations against them), and possible disciplinary sanction if the allegations are proven.
 - The terms and expected duration of the suspension.
 - That the action of suspension does not imply guilt or that a decision about the outcome has been reached.
 - That the employee must be contactable, but not attend the workplace or contact work colleagues unless required to do so by management.
 - That the employee should not seek to influence anyone involved in the investigation.

Actions during a suspension

- Whilst a member of staff is suspended:
 - The line manager should communicate with them regularly, keeping them informed of the status of the suspension and of progress on the investigation; the member of staff must not take alternative paid employment and must be available to assist with or participate in the investigation.
 - The member of staff must confirm any sickness and annual leave.

5.2.2. Child protection

Where an allegation of an offence is received that may be covered by the remit of legislation dealing with the protection of children, consideration should be given to the suspension of any member of staff under investigation in accordance with Department for Education guidance in “Safeguarding Children and Safer Recruitment in Education”.

Where there is a potential child protection issue, the Headteacher should consult with the governing body to make a decision about the course of action that should be taken. Advice from HR and the Principal Officer for Vulnerable Pupils should be sought.

The Local Authority Designated Officer (LADO) should be informed of all allegations where an employee has:

- Behaved in a way that has harmed a child, or may have harmed a child.
- Possibly committed a criminal offence against or related to a child.
- Behaved towards a child or children in a way that indicates they are unsuitable to work with children.

The LADO will consult police and social care colleagues as appropriate. They should also be informed of any allegations that are made directly to the police or to children’s social care.

If the alleged offence is within the school’s remit, a disciplinary investigation should be carried out in accordance with normal procedure, even if other external agencies, (e.g. police, social services) are carrying out investigations. It is important that the school’s investigation does not compromise the work of the external investigation. For example, this may mean it would not be appropriate to interview and take statements from some witnesses.

External procedures involving the police and social care colleagues are often, by their very nature, extensive and are unlikely to meet the deadlines normally set within the disciplinary procedure. Cases need to be viewed on their merits, with advice taken from the external agencies and an appropriate timetable set. A disciplinary hearing may, if sufficient information is available, take place before external agencies have concluded their case. In these instances it is not unusual for the member of staff to decline to attend.

Suspension should be considered where there is cause to suspect a child is at risk of significant harm, or the action warrants investigation by the police or is so serious that it might be grounds for dismissal. However, a person should not be suspended automatically or without careful thought.

Where an initial evaluation concludes that there should be enquiries by social care and/or an investigation by the police, the LADO should canvas police and social care views about whether the accused member of staff needs to be suspended, to inform the school's decision. Where the decision is taken to suspend, the school should provide appropriate support to the individual who is the subject of the allegations.

The fact that a person tenders his or her resignation, or ceases to provide their services, must not prevent an allegation being followed up in accordance with these procedures. Compromise agreements must not be used in these cases.

In all cases in this area it is essential that excellent communication is maintained between the school, HR and the Principal Officer for Vulnerable Pupils at The Learning Trust (where the HR service is provided by the Trust), Social Care, Child Protection Officers, the Police and other external agencies.

It is important that a clear and comprehensive summary of any allegations made, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on a person's confidential personnel file. The record should be retained for a period of 10 years from the date of the allegation.

Referrals to the Independent Safeguarding Authority (ISA)

As an organisation, we have a duty to refer information to the Independent Safeguarding Authority (ISA) when we have dismissed an individual, or an individual resigns, because they harmed, or may harm, a child or vulnerable adult.

We also must refer information to the ISA where:

- An individual who is working closely with vulnerable groups has harmed, or may harm, a child or vulnerable adult.
- An individual who might in the future work closely with vulnerable groups has harmed, or may harm a child or vulnerable adult.
- We think the ISA may consider it appropriate to bar the individual.

Relevant information should be referred to the ISA as soon as it becomes available.

Referrals to the General Teaching Council (GTC)

Misconduct cases that relate to the safety of children and young people under 18 should be referred to the ISA as stated above. Other conduct cases are dealt with by the GTC.

Cases to be referred to the GTC by employers are where the teacher:

- Is dismissed for a reason relating to misconduct.
- Resigns in circumstances where dismissal was a possibility.

5.3. Investigation

All allegations of misconduct should be thoroughly investigated before formal action is taken. The purpose of the investigation is to establish the facts surrounding the alleged misconduct.

Note: An investigation should not be undertaken where child protection issues arise. In conjunction with HR the Headteacher will decide whether the police and/or Child Protection Officers should be called in immediately - see *Child protection*, on page 10 of this procedure.

Investigations should usually be carried out by an Investigating Officer. This will be a trained manager, who is appointed by the Headteacher or their representative. This may be the individual's line manager if it is practical and appropriate.

It is recommended that Headteachers only carry out investigations in exceptional circumstances as their input may be required at a later stage, should it be decided that the employee has a case to answer.

If the allegation is against the Headteacher, then the Chair of Governors should undertake the investigation themselves or appoint an appropriate alternative, who may be external.

The investigation should be conducted in a timely fashion as it is in the interests of all parties for the matter to be dealt with quickly and efficiently. Some investigations are more complex than others but in general they should be carried out within 10 – 20 working days of the Investigating Officer being appointed.

The Investigating Officer is responsible for ensuring that the investigation is documented and the findings, if any, are supported by reliable evidence. They must:

1. Write to the member of staff advising them of the investigation and inviting them to a meeting to provide information relevant to the investigation.

Note: The investigation meeting is still part of the information gathering exercise and does not constitute disciplinary action.

2. Collect all documentation relevant to the investigation.
3. Interview witnesses (if appropriate) and consider any other written or physical evidence that supports the case. Outline to each interviewee the proposed structure of the interview and their rights to be accompanied by a work colleague or trade union official.
4. Create the witness statements electronically and get them signed by the witnesses.

5. Produce a final report covering the findings, any key issues that arose during the investigation, including any conflicting evidence. The report should also state whether they feel there is a case to answer.

Note: Please refer to guidance on Conducting a Disciplinary Investigation.

5.3.1. Involvement of others

Although the member of staff has the right to be accompanied by a trade union official or work colleague at an investigation meeting, they should not bring along a person who may be interviewed as part of the investigation or who is normally their line manager.

Persons directly involved in the investigation may present a case or appear as a witness, but may not give advice to or sit on any subsequent disciplinary panel.

5.4. Formal disciplinary hearing

A formal hearing will be convened if the findings of an investigation suggest that formal disciplinary action may be required. Please refer to section *Responsibility for disciplinary action and dismissal*, on page 7 for details of who chairs the disciplinary hearing.

The purpose of the formal hearing is for evidence to be presented and considered. The member of staff will have the opportunity to prepare a response to the evidence presented and answer any allegations that have been made. They will also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses.

Note: Refer to Conducting a Disciplinary Hearing, which provides additional guidance to support the hearing process and the information contained in this section.

5.4.1. Preparing for the hearing

The Headteacher is normally responsible for the arrangements for a disciplinary hearing conducted by the Headteacher and the Clerk to the Governors is normally responsible for the arrangements for formal hearings before the Staff Discipline/Dismissal Committee. They will be supported by a HR representative and, in most cases, a minute taker.

1. Arrange a location for the hearing and someone to take the minutes.
2. Write to the employee, usually within five working days of receiving the investigation report, to advise the member of staff of:
 - The grounds that have led the school to consider disciplinary action against them (the allegations), the reasons why the alleged conduct is unacceptable and possible disciplinary sanctions if the allegations are proven.
 - The school's intention to institute formal procedures.
 - The date, time and place of the hearing (usually within ten working days of the date of the letter).

- The right to be accompanied by a trade union representative or a work colleague.
- Details and copies of any documents intended to be used as evidence.
- Details of any other persons who will be attending the hearing.
- The right to submit documentation and call witnesses as appropriate.
- That the deadline for submission is within three working days of the hearing.

Note: The submission of late evidence (in particular, evidence submitted on the day of appeal) will only be admitted at the discretion of the disciplinary panel, and only under exceptional circumstances if there are mitigating circumstances.

3. Employee submits evidence and details of witnesses to be called.
4. Circulate details of the investigation and notification of any witnesses to be called to all parties.
5. Invite witnesses if appropriate. Give three working days notice.

Non-attendance

If the member of staff and/or accompanying person cannot attend a hearing, they should inform the Chair in advance. If the member of staff fails to attend through circumstances outside their control and unforeseeable at the time of the hearing, another hearing should be arranged. However, a decision may be taken in their absence if the member of staff fails to attend the re-arranged hearing within five working days without good reason. The hearing will only be rearranged once.

5.4.2. Conducting the hearing

The Investigating Officer is responsible for presenting the case to the disciplinary panel.

It is for the person conducting the hearing to decide whether late evidence from either side can be admitted. If late evidence is accepted in the form of written documentation, it would be usual to allow reading time by way of a brief adjournment.

It may be appropriate to adjourn the meeting to collate further information or to consider the alleged misconduct in light of the response provided by the employee.

At the end of the formal hearing, one of the following options may apply:

- The case is not proven and no further action is required.
- A recorded verbal warning is issued.
- A formal written warning is issued.
- A final written warning is issued.
- The employee is demoted, redeployed or dismissed.
- The employee is suspended pending further investigation.

Before making any decision, account should be taken of any mitigating circumstances, the live disciplinary and general record of the member of staff, and whether the intended disciplinary action is reasonable under the circumstances.

Once a decision is made, the member of staff should be notified of the decision in writing within five working days of the hearing, including any right of appeal. A copy of this letter should be sent to the relevant trade union representative or work colleague and Chair of Governors.

Notes of the hearing will be circulated by the person who was responsible for organising the hearing, to be agreed by the employee and members of the disciplinary panel. A copy of the letter of outcome should be stored on the employee's personal file in accordance with Data Protection principles. Formal warning letters should be removed from the personal file when the 'live' period expires.

5.4.3. Outcome

The outcome of the hearing may be that the case is not proven and no further action is required, or one of the following actions:

1 - Verbal warning

In the case of a minor infringement, a member of staff may be given a verbal warning. The verbal warning will normally state:

- The nature of the offence.
- That any further misconduct may result in further disciplinary action.
- The period that the warning will remain 'live' (usually six months) and any timescales for improvement.

A letter confirming the fact that the warning has been given, the date on which it was given and, in broad terms, the reason for the warning, should be sent to the member of staff within five working days of the hearing. The letter should also include the right to appeal against the decision. This should be a simple record of fact and is entirely confidential.

Documentation regarding verbal warnings will normally be destroyed after six months.

2 - Formal written warning

If the infringement is regarded as more serious, the member of staff may be issued with a formal written warning. A letter confirming the decision will be issued and will set out:

- The nature of the misconduct.
- The likely consequences of further misconduct under this disciplinary procedure.
- The change in behaviour required and timescales for improvement.
- That a written formal warning has been given.
- That note has been taken of previous warnings (if appropriate).
- That the warning will be recorded on their personal file.

- The period for which the warning will remain 'live' (usually 12 months).
- The right of appeal against the decision and how it should be made.

The letter will also advise the member of staff that failure to address their behaviour may result in further disciplinary action.

This letter will be sent to the member of staff within five working days of the disciplinary hearing. A copy of this letter should be sent to the relevant trade union representative or work colleague, if appropriate.

Formal written warnings will normally be removed from personal files and destroyed after 12 months.

After 12 months management will determine whether or not the required improvements have been achieved. If so, the member of staff will be advised in writing of the outcome of the review, and that the record of the formal action will be destroyed.

3 - Final written warning

Where there is failure to improve conduct, or a serious infringement occurs, the member of staff may be given a final written warning. A letter confirming the decision will be issued and will set out:

- The nature of the offence.
- That a final formal warning has been given.
- That any further misconduct may result in dismissal.
- The period the warning will remain 'live' (usually two years).
- The right to appeal and how it should be made.

The letter will make it clear that failure to address misconduct may result in further disciplinary action. Final written warnings will normally be removed from personnel files and destroyed after two years.

After two years management will conduct a review to determine whether or not the required improvements have been achieved. If so, the member of staff will be advised in writing of the outcome of the review, and that the record of the formal action will be destroyed. Warnings should be disregarded for future disciplinary purposes once the relevant timescale has elapsed.

4a - Dismissal with notice

Where there is still no improvement in conduct, despite the issuing of a final written warning, or a serious infringement occurs, the member of staff may be dismissed with the relevant notice period. A letter confirming the decision will be issued and the member of staff will be advised of their right of appeal. The letter will also advise the member of staff why this decision was taken. The dismissal will be effective from the point at which the employee is informed of the decision

Payroll should be informed of the dismissal date on the same day as the employee is notified.

A member of staff may work their notice period or be paid in lieu of notice, at the discretion of management.

4b - Dismissal without notice

Where a disciplinary panel determines a charge of gross misconduct, the member of staff will be dismissed without notice. The dismissal will be effective from the point at which the employee is informed of the decision. A letter confirming the decision will be issued and the member of staff will be advised of their right to appeal. The letter will also advise why this decision was taken. Payroll should be informed of the dismissal date on the same day as the employee is notified.

In community and maintained schools, the Local Authority is ultimately the employer for these education establishments and any decision to dismiss an employee must be confirmed by the Local Authority before it is effective. Therefore, the Director of Education at Hackney Learning Trust must issue the dismissal notice to the employee, confirming the decision made by the Governing body. Please see further guidance on Dismissal Procedures in Schools.

5.5. Appeals

All appeals will be heard by the governing body Staff Disciplinary/Dismissal Appeal Committee consisting of not less than three members of the governing body who have not been involved in any previous action or decision connected with the dismissal (see *Responsibility for disciplinary action and dismissal*, on page 7). The decision of this Committee is final, subject to the employee's legal rights. Where there are not enough governors available, the appeal may be heard by two governors, but there should be no fewer than the number that made the initial decision.

The Committee will be supported by a HR representative who has not previously been involved in the case.

The purpose of an appeal is for the member of staff to request the overturning of a decision, which they deem as unfair or unreasonable, for example because they believe the penalty/action was unduly severe, new evidence has come to light, or the proper procedure was not followed in the original hearing.

If an employee wishes to appeal against the outcome of a disciplinary hearing, they should write to the Chair of Governors within five working days of being notified of the disciplinary decision. The member of staff should clearly state in their initial letter the grounds for appeal.

The appeal hearing need not take place before the dismissal or disciplinary action takes effect.

During an appeal hearing the member of staff may be accompanied by a trade union representative or a work colleague and shall be given a full opportunity to state the grounds for their appeal and present new evidence (if any).

Note: Refer to Conducting a Disciplinary Appeal Hearing, which provides additional guidance to support the appeal process and the information contained in this section.

5.5.1. Preparing for an appeal hearing

The Clerk to the Governors is normally responsible for the arrangements for formal hearings.

1. Arrange a location for the appeal and someone to take minutes.
2. Write to the employee to arrange an appeal hearing, normally within five working days of being given the appeal letter. The member of staff should be given written notification of at least five working days before the appeal hearing is to take place and should be informed of the date, time and location of the hearing and the right to be accompanied by a trade union representative or work colleague.
3. Invite the person who conducted the disciplinary hearing and supporting HR representative to attend the appeal hearing to present evidence and the outcome of the panel's decision.
4. The employee and person who conducted the disciplinary hearing present documentation and provide details of relevant witnesses three days prior to the appeal hearing.

Note: The submission of late evidence (in particular, evidence submitted on the day of the hearing) will only be admitted at the discretion of the hearing panel, and if there are mitigating circumstances.

5. Invite witnesses, if appropriate. Give three working days notice.

5.5.2. Conducting an appeal hearing

At the appeal hearing, once the relevant issues have been thoroughly explored, the hearing will be adjourned in order for a decision to be taken. The decision does not need to be taken immediately if the Committee requires additional time to assess all the information; however the member of staff should be notified of the outcome within five working days of the decision being made.

The Chair of the Committee is responsible for writing the letter, with the support of the HR representative on the appeal panel. A copy of the letter of outcome should be stored on the employee's personal file in accordance with Data Protection principles.

Notes of the hearing will be circulated by the HR representative to be agreed by the employee and members of the Appeal Committee.

The decision of the Appeal Committee will be final and binding on all parties concerned. No further appeals are allowed and there is no further recourse under this procedure.

The minutes and any supporting documents should be retained for a period to be determined by the panel.

6. Procedure: Grievance during a disciplinary case

During the disciplinary procedure a member of staff might raise a grievance. When the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. For example, where a grievance is raised in direct response to the disciplinary procedure, the disciplinary procedure should be expanded to include the grievance issue, dealt with during the investigation and/or at the disciplinary hearing.

If it is found that the grievance issue should “stand alone”, then the Grievance Procedure should be undertaken and it may be appropriate to suspend the disciplinary procedure for a short period. This may apply where there is possible discrimination or bias is alleged in the disciplinary proceedings.

Advice should be sought from HR regarding the appropriate course of action in the specific circumstances.

7. Procedure: Criminal offences

Employees of the school are expected to declare all convictions. A member of staff charged with or convicted of a criminal offence should notify the Headteacher immediately, as this may lead to disciplinary action. Failure to notify a criminal conviction or charge may be deemed gross misconduct.

Any such information will be treated on a confidential basis, but will need to decide whether the offence has breached the mutual trust that exists between the school and the member of staff, or is a clear breach of the statutory rules concerning the employment of staff.

Where disciplinary action is appropriate, a formal disciplinary hearing will be conducted. If the member of staff is unable to attend because of imprisonment/detainment, the procedure may be applied in their absence.

A member of staff who is unable to report for work due to imprisonment as a result of a conviction or who is on remand, will be suspended without pay until the conclusion of the disciplinary procedure (unless they have been dismissed in accordance with this procedure).

Note: Under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, persons who work with children or vulnerable adults need to declare all convictions even though they may be deemed as 'spent' under the above Act.

8. Summary of roles and responsibilities

8.1. Governors/Headteachers

In respect of any member of staff they manage, all managers have responsibility to:

- Establish standards of staff conduct.
- Be conversant with the disciplinary policy.
- Ensure members of staff have access to the disciplinary policy.
- Inform members of staff of their rights under the disciplinary policy.
- Apply the disciplinary policy fairly.
- Manage the disciplinary procedure when it is necessary to take disciplinary action.
- Inform the member of staff of any allegation against them, and give them the opportunity to respond and raise any mitigating circumstances before a decision is reached.
- Ensure that allegations are thoroughly investigated before taking disciplinary action.
- Determine whether it is necessary to suspend the member of staff in line with the suspension guidelines.
- Ensure that the correct procedure under the disciplinary procedure is followed.
- Ensure that any disciplinary action is appropriate and proportionate to the conduct of the member of staff.
- Make notes of all meetings and agreed actions covered by this procedure, and retain all such notes in a confidential file for the required period of time.
- Ensure that any records are held in a confidential manner and in accordance with the principles contained within the *Data Protection Act 1998*.
- If the member of staff is a trade union representative, inform the union's regional office if the formal stages of the procedure are invoked.

8.2. Employees

Members of staff are individually responsible for:

- Familiarising themselves with this disciplinary policy and understanding their rights and obligations under it.
- Achieving reasonable and acceptable standards of personal conduct and behaviour at work.
- Co-operating with any disciplinary investigation including attending meetings and hearings when requested and obeying all lawful and reasonable directions of the management.
- Demonstrate the level of commitment required to improve, if improvement is required.
- Attending all relevant counselling, support or formal disciplinary meetings as required.

8.3. Human Resources

- Attend any hearing which may result in dismissal/disciplinary action being taken against a member of staff and appeal hearings.
- Provide high level advice to the Headteacher/Chair of Governors/Appeal Committee as appropriate.
- Ensure that correct procedures are followed.
- Ensure that any disciplinary action is appropriate and proportionate to the conduct of the member of staff.
- Report any concerns about the disciplinary case to the Head of HR immediately.
- Support managers to keep to the timescales stated in the policy at each stage.
- Ensure that any records are held in a confidential manner and in accordance with the principles contained within the Data Protection Act 1998.

9. Toolkit

There is a toolkit on the Intranet that supports the procedures in this document. The toolkit contains:

Guidance notes

- Conducting a Disciplinary Investigation
- Conducting a Disciplinary Hearing
- Conducting a Disciplinary Appeal Hearing

Letter and report templates

- Suspension letter
- Investigation Report template
- Meeting minutes
- Invitation to disciplinary investigation meeting
- Invitation to disciplinary hearing
- Outcome of disciplinary hearing
- Dismissal letter
- Invitation to disciplinary appeal
- Outcome of disciplinary appeal

10. Further information

For further information, refer to:

See...	Provides...
ACAS website	Advice on dealing with disciplinary matters and the ACAS Code of Practice on Discipline and Grievance.
Department for Education website	Guidance on safeguarding children and safer recruitment in education.
Independent Safeguarding Authority (ISA) website	Information on preventing unsuitable people from working with children and vulnerable adults and the circumstances under which a referral should be made.

Appendix A – Examples of gross misconduct

Gross misconduct comprises acts of such a serious and fundamental nature that they result in a breach of an employee's contractual terms and makes continuation of the working relationship impossible. Such behaviour may justify dismissal without notice.

Where there is alleged gross misconduct it may be necessary to suspend the employee (on full pay) pending investigation.

Examples of gross misconduct might include:

- Misuse of official position for personal gain.
- Serious misuse of school property.
- Fraud, theft, unauthorised removal or possession of property belonging to the school or others.
- Acts of violence, including physical assault, threats or intimidating behaviour towards others.
- Serious sexual misconduct (behaviour at or away from work that affects the employee's suitability for employment e.g. child protection issues).
- Deliberate or malicious damage to school property.
- Bringing the name of the school into disrepute.
- Serious insubordination.
- Irresponsible or negligent behaviour likely to endanger the health and safety of others.
- Serious negligence or incompetence that causes unacceptable loss, damage or injury.
- Falsification of qualifications or information that is a statutory or essential requirement for employment or which results in additional remuneration.
- Dishonesty, including theft and deliberate falsification of records.
- Acceptance of bribes or corrupt practices.
- Being incapable of adequately performing work duties as a result of drunkenness or unauthorised drug taking.
- Unauthorised disclosure of confidential records, including computer generated information and files.
- A criminal offence, alleged or otherwise, relevant to the employee's suitability to remain in employment or right to work in the UK.
- Performing services (paid or voluntary) that conflict with the employee's obligations to the school.

Note: This list is not exhaustive.