



Disciplinary Rules and Procedures

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Disciplinary Procedures

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The governors of Colleges Nursery and Family Centre have delegated the power to dismiss to the Headteacher.

Section A: Disciplinary Rules

1. Gross Misconduct

Gross misconduct is the committing of an act which renders it inadvisable for the employee to be allowed to remain at work. 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, s/he will be dismissed without further warning, unless there are mitigating circumstances. The 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.

- 1.1 Dishonesty associated with place of work or job being undertaken.
 - (a) Theft of property belonging to the School, Local Authority, contractor, an employee or pupil, or member of the public.
 - (b) Deliberate falsification of timesheets or expenses claims for pecuniary advantage.
 - (c) Demanding or accepting monies or other considerations as a bribe for the use of School or LA property, provision of School or LA service or the showing of favour on behalf of the School or LA.
 - (d) Falsification of any information given on an application form for a post to gain advantage whether pecuniary or otherwise.
 - (e) Failure to disclose 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.
- 1.2 Deliberate refusal to carry out a reasonable, lawful and safe instruction or the normal agreed defined duties of the post.
- 1.3 Gross negligence in failing to attend to or carry out the agreed duties of the post.
- 1.4 Wilfully ignoring responsibilities/instructions thus placing other employees/pupils in danger, e.g. ignoring handling instructions/safety regulations in respect of radioactive materials.
- 1.5 Being unfit to perform duties associated with the post as a result of taking drugs, other than in accordance with medical advice, or taking alcohol.
- 1.6 Wilful unauthorised disclosure of information (classified as confidential), by employees who, in the course of their duties, have access to such information which, by its release, could be harmful to the School, Authority, other employees or pupils.
- 1.7 Acts of violence or vandalism in the course of employment.
 - (a) Malicious damage to School/LA/Contractor/other employees/pupils' property.
 - (b) Actual physical violence towards members/officers of the LA, members of the school staff/Governors/parents/pupils/other members of the public.
- 1.8 Sexual misconduct at work.
 - (a) Sexual misconduct whether criminal or not.
 - (b) Sexual relations with students.
- 1.9 Off-duty misconduct.
 - (a) An act of criminal sexual misconduct by an employee who, in the course of duty, has contact with young people.
 - (b) Drug offences committed by employees whose job bring them into contact with young people.
 - (c) Sexual relations with students, or young persons.

- 1.10 Misuse of the internet or email facilities of the school.
- (a) Using the internet to access unseemly or sexually explicit material.
 - (b) Using email for communicating unseemly or sexually explicit material

2. Misconduct

Misconduct is of a degree less serious than that which would warrant immediate suspension from duty for a first offence but which could nevertheless lead to dismissal if persistent. The disciplinary procedure must be followed when dealing with misconduct. Some more serious acts of misconduct might justify omitting the first stage of disciplinary procedures by issuing a final warning in the first instance, if there is no satisfactory explanation. Only when it can be shown that the warnings have not been heeded will misconduct lead to action being taken which will lead to an employee's dismissal. The list of examples below is not intended to be exclusive or exhaustive and offences of a similar gravity will receive the same treatment.

2.1 Absenteeism and lateness, for example:

- (a) failure to remain at the place of work during normal working hours without permission or sufficient cause for absence;
- (b) frequent failure to attend work punctually;
- (c) failure to notify the school immediately or as soon as reasonably practicable when absence is due to sickness;
- (d) failure to provide medical certificates in accordance with the Conditions of Service.

2.2 Dishonesty - petty wrongs, for example:

- (a) making unauthorised private telephone calls and/or sending personal mail at the establishment's expense;
- (b) failure to report any loss and/or damage to any property issued to or by the employee in connection with his/her employment.
- (c) using the school's telephone, fax, email or internet for unauthorised personnel purposes.

2.3 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 LA 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, e.g. failure to act in accordance with the requirements placed on the school by the Special Education Needs Discrimination Act.
- (d) insubordination;
- (e) failure to exercise proper control or supervision of pupils or students.

2.4 Abusive behaviour/offensive language which arises directly out of or in connection with work and which is directed at members, officers of the LA, colleagues, Governors, pupils or members of the public.

2.5 Victimisation of other employees in the course of duty.

2.6 Unlawful discrimination against other employees, pupils or members of the public in the course of duty.

2.7 Discrimination, whether unlawful or not, in the course of duty against other employees, pupils or members of the public on the grounds of sex, marital status, ethnic origin, disability or sexual orientation.

2.8 Undertaking additional employment outside normal working hours which would be detrimental to the work to be performed as a full time employee of the LA.

Section B: Misconduct by employee other than the Headteacher

[To be read in conjunction with the School Staffing (England) Regulations 2003 and the Secretary of State's Guidance]

Definitions

- 1.1 The term "Head teacher" also refers to any other title used to identify the Head teacher where appropriate.
- 1.2 The term "employee" refers to any member of the staff, whether teaching or not (with the exception of the Head teacher), employed to work solely at the school.
- 1.3 The term "senior manager" refers to any member of the Leadership Group, as defined by the School Teachers' Pay and Conditions Document, or a senior support member of staff in cases involving support staff, delegated by the Head teacher to deal with a disciplinary matter under these procedures. A senior manager may only make a decision to issue up to and including a final written warning.
- 1.4 If the Head teacher, following consultation with the Chair of Governors, considers that there is no senior manager to whom s/he can reasonably delegate a specific disciplinary matter then the Head teacher will take the role of the senior manager for that specific case and the role of the "Head teacher" under this procedure will be performed by a "Staff Dismissal Committee" of the Governing Body consisting of not less than 3 governors, (except in circumstances provided for in the Secretary of State's guidance on the Staffing Regulations), none of whom will have had previous involvement in the case.
- 1.5 "Misconduct" is defined in the Disciplinary Rules which accompany the Misconduct Procedure.

2. Oral Warning

- 2.1 The following procedure does not relate to informal oral warnings, which might be given to the employee by a member of the senior manager team. However, repeated misconduct after an oral warning would normally lead to more serious disciplinary action in accordance with the procedure.
- 2.2 There is no appeal against an oral warning, which will not be recorded on the employee's personal record but should be confirmed in a written memorandum. The employee may make written comment on the memorandum if s/he has any objection to the issuing of an oral warning.

3. First Written Warning

- 3.1 If the senior manager, having carried out appropriate investigation, considers on the facts that formal disciplinary action for misconduct is necessary, s/he will write to the employee to inform him/her, at least ten working days in advance, setting out:
 - a) the date, time and place of the disciplinary hearing.
 - b) the nature of the complaint.
 - c) the employee's right to be accompanied by his/her representative of an independent trade union or a workplace colleague.
 - d) the titles of enclosed copies of any documents to be used as evidence.
 - e) the names of any witnesses to be called by the senior manager.
 - f) his/her right to call witnesses on his/her behalf.
 - g) The name and office of any adviser who will accompany the senior manager at the hearing.

(At the employee's request, an extra copy of this notice, together with any enclosures, should be provided for his/her representative).
- 3.1 If, following the investigations and professional advice, the senior manager considers that the facts of the case amount to a prima facie case of gross misconduct the matter will be referred to the Head teacher.
- 3.3 At the disciplinary hearing before the senior manager and his/her adviser, the employee (and his/her representative) will be given a reasonable opportunity to state his/her case and to question the senior manager and any witnesses. At the conclusion, following an adjournment for consideration of the facts, the senior manager will state his/her decision and his/her

reasons and will soon afterwards confirm them in writing to the employee and his/her representative.

3.4 If the senior manager decides the complaint was justified, s/he may give the employee a first written warning which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to a final warning, unless there are mitigating circumstances.

3.5 If the employee is given no further written warning of misconduct within twelve months of the date of the first written warning, then this warning is disregarded and the warning letter will make this clear.

4. Final Written Warning

4.1 If a further complaint is made about the employee's conduct within twelve months of the date of the first written warning, the same procedure (as in **3** above) will be followed.

4.2 If the senior manager decides at the conclusion of the disciplinary hearing that this further complaint is justified, s/he may give the employee a final written warning, which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to dismissal, unless there are mitigating circumstances.

4.3 Again this final warning, together with any previous warning, will be disregarded if there is no further complaint about misconduct within twelve months of the date of the final warning, and the warning letter will make this clear.

5. Dismissal

5.1 If a further complaint is received within twelve months from the date of the final warning, the complaint will be referred to a hearing before the Head teacher, following a similar procedure to that in paragraphs **3** above. The Head teacher, who shall be accompanied by an adviser, who will normally be a representative of the Director of Education, has a duty to consider any advice given by the LA.

5.2 If the Head teacher decides the complaint is justified, s/he may decide to dismiss the employee. The Head teacher will state his/her decision and his/her reasons and inform the employee of his/her right to appeal to the Appeals Committee of the Governing Body. S/he will soon afterwards confirm the decision and right of appeal in writing to the employee (and his/her representative). The Head teacher will record the outcome of his/her considerations and the names of persons present at the hearing.

5.3 The Head teacher will notify the LA in writing that the employee is to be dismissed, whether the decision was with or without notice, or with pay in lieu of notice. The LA must give written notice of dismissal to the employee, together with the right of appeal, within 14 days of notification by the Head teacher.

6. Gross Misconduct

6.1 If the complaint is considered so serious that it may amount to gross misconduct, justifying dismissal without previous warning and without notice (see the Disciplinary Rules), the employee will be informed by the Head teacher that s/he is suspended on full pay pending further investigation of the complaint before the Head teacher, who, if s/he considers the complaint constitutes gross misconduct, may decide to dismiss the employee. The procedure to be followed will be as in paragraph 5 above.

6.2 Where a suspension has taken place that suspension may only be lifted by the Chair of Governors acting on behalf of the Governing Body, or by the Appeals Committee referred to in **7 3**, or the Staff Dismissal Committee in the circumstances identified in **1.4** of these procedures.

7. Right of Appeal

7.1 The employee has a right of appeal against a written warning issued by a senior manager (see paragraphs 3 and 4). The appeal will be heard by the Disciplinary Panel of Governors. The number of governors on the Disciplinary Panel of Governors will not be less than two. The panel shall be advised by a person engaged for the purpose by the Governing Body. The

panel can either confirm the warning, reduce a final warning to a warning or cancel the warning.

- 7.2 Appeals against formal warnings by the senior manager should be made in writing to the Clerk to the Governors within 10 working days of the receipt of the written decision.
- 7.3 The employee has a right of appeal against a decision to issue a warning or to dismiss by Head teacher (see paragraph 5). An appeal against a warning by the Head teacher will be to the Disciplinary Panel of Governors referred to in paragraph 7.1 above.
- 7.4 An appeal against dismissal will be to the Appeal Committee of the Governors, which shall have a membership of not less than 3 governors, none of whom shall have any previous involvement in the case. The Appeal Committee shall be advised in its deliberations, normally by a representative of the Director of Education. The Appeals Committee has a duty to consider any advice given by the LA.
- 7.5 Appeals against decisions by the Head teacher should be made in writing to the Clerk to the Governors within 10 working days of the receipt of the written decision.
- 7.6 All appeal hearings will be held as soon as possible after receipt of the appeal.

8. Variation in Penalties

- 8.1 The senior manager or the Disciplinary Panel of Governors may decide to give an oral warning instead of a written warning, or a written warning instead of a final written warning.
- 8.2 The senior manager may decide that the misconduct is so serious that it justifies a first and final written warning.
- 8.3 The senior manager may decide to issue a further final warning rather than refer the complaint to the Head teacher.
- 8.4 The Head teacher may decide to issue a warning or final warning rather than dismiss.
- 8.5 The Appeal Committee may decide to issue a warning or a final warning rather than dismiss, and that any warning may last for a specified period longer than the original twelve months of any previous final warning, if appropriate. There is no right of appeal against such a decision of the Appeal Committee of the Governors.
- 8.6 In the event that the Appeal Committee decides not to uphold the Head teacher's decision to dismiss, the LA shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

9. Trade Union Officials

- 9.1 Although normal disciplinary standards must apply to the conduct of a trade union official as an employee, no disciplinary action beyond an oral warning should be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

10. Confidentiality

- 10.1 The proceedings of this disciplinary procedure shall remain confidential to the parties concerned. Only the decision of a disciplinary hearing may be reported.

Section C: Misconduct by Headteacher

1. Definitions

- 1.1 The term “Head teacher” also refers to any other title used to identify the Head teacher where appropriate.
- 1.2 The term “Line Manager” refers to the Chair of Governors, or another senior governor or other senior governors delegated by the Governing Body.
- 1.3 The “Staff Dismissal Committee” of the Governing Body shall consist of 3 governors, (except in circumstances provided for in the Secretary of State’s guidance on the Staffing Regulations), none of whom will have had previous involvement in the case.
- 1.4 “Misconduct” is defined in the Disciplinary Rules which accompany the Misconduct Procedure.

2. Oral Warning

- 2.1 Misconduct is defined in the Disciplinary Rules, to which reference should be made. The following procedure does not relate to informal oral warnings, which might be given to the Head teacher by the Line Manager. However, repeated misconduct after an oral warning would normally lead to more serious disciplinary action in accordance with the procedure.
- 2.2 There is no appeal against an oral warning, which will not be recorded on the Head teacher’s personal record but should be confirmed in a written memorandum. The Head teacher may make written comment on the memorandum if s/he has any objection to the issuing of an oral warning.

3. First Written Warning

- 3.1 If the Line Manager, having carried out appropriate investigation, considers on the facts that formal disciplinary action for misconduct is necessary, s/he will write to the Head teacher to inform him/her, at least ten working days in advance, setting out:
 - a) the date, time and place of the disciplinary hearing.
 - b) the nature of the complaint.
 - c) the Head teacher’s right to be accompanied by his/her representative of his/her trade union or a workplace colleague.
 - d) the titles of enclosed copies of any documents to be used as evidence.
 - e) the names of any witnesses to be called by the Line Manager.
 - f) his/her right to call witnesses on his/her behalf.
 - g) The name and office of any adviser who will accompany the Line Manager at the hearing.(At the Head teacher’s request, an extra copy of this notice, together with any enclosures, should be provided for his/her representative).
- 3.2 If, following the investigations and professional advice, the Line Manager considers that the facts of the case amount to a prima facie case of gross misconduct the matter will be referred to the Staff Dismissal Committee.
- 3.3 At the disciplinary hearing before the Line Manager and his/her adviser, the Head teacher (and his/her representative) will be given a reasonable opportunity to state his/her case and to question the Line Manager and any witnesses. At the conclusion, following an adjournment for consideration of the facts, the Line Manager will state his/her decision and his/her reasons and will soon afterwards confirm them in writing to the Head teacher and his/her representative.
- 3.4 If the Line Manager decides the complaint was justified, s/he may give the Head teacher a first written warning which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to a final warning, unless there are mitigating circumstances.
- 3.5 If the Head teacher is given no further written warning of misconduct within twelve months of the date of the first written warning, then this warning is disregarded and the warning letter will make this clear.

4. Final Written Warning

- 4.1 If a further complaint is made about the Head teacher's conduct within twelve months of the date of the first written warning, the same procedure (as in **3** above) will be followed.
- 4.2 If the Line Manager decides at the conclusion of the disciplinary hearing that this further complaint is justified, s/he may give the Head teacher a final written warning, which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to dismissal, unless there are mitigating circumstances.
- 4.3 Again this final warning, together with any previous warning, will be disregarded if there is no further complaint about misconduct within twelve months of the date of the final warning, and the warning letter will make this clear.

5. Dismissal

- 5.1 If a further complaint is received within twelve months from the date of the final warning, the complaint will be referred to a hearing before the Staff Dismissal Committee, following a similar procedure to that in paragraphs **3** above. The Staff Dismissal Committee shall be advised by a representative of the Director of Education and has a duty to consider any advice given by the LA.
- 5.2 If the Staff Dismissal Committee decides the complaint is justified, it may decide to dismiss the Head teacher. The Staff Dismissal Committee will state its decision and its reasons and inform the Head teacher of his/her right to appeal to the Appeals Committee of the Governing Body. The Staff Dismissal Committee will soon afterwards confirm the decision and right of appeal in writing to the Head teacher (and his/her representative). The Staff Dismissal Committee will record the outcome of its considerations and the names of persons present at the hearing.
- 5.3 The Governing Body will notify the LA in writing that the Head teacher is to be dismissed, whether the decision was with notice, or with pay in lieu of notice. The LA must give written notice of dismissal to the Head teacher, together with the right of appeal, within 14 days of notification by the Governing Body.

6. Gross Misconduct

- 6.1 If the complaint is considered so serious that it may amount to gross misconduct, justifying dismissal without previous warning and without notice (see the Disciplinary Rules), the Head teacher will be informed by the Line Manager that s/he is suspended on full pay pending further investigation of the complaint before the Staff Dismissal Committee which, if it considers the complaint constitutes gross misconduct, may decide to dismiss the employee. The procedure to be followed will be as in paragraph 5 above.
- 6.2 Where a suspension has taken place that suspension may only be lifted by the Chair of Governors acting on behalf of the Governing Body, or by the Staff Dismissal Committee or the Appeals Committee referred to in 7 3.

7. Right of Appeal

- 7.1 The Head teacher has a right of appeal against a written warning issued by a Line Manager (see paragraphs **3** and **4**). The appeal will be heard by the Disciplinary Panel of Governors. The number of governors on the Disciplinary Panel of Governors will not be less than two. The panel shall be advised by a person engaged for the purpose by the Governing Body. The panel can either confirm the warning, reduce a final warning to a warning or cancel the warning.
- 7.2 Appeals against formal warnings by the Line Manager should be made in writing to the Clerk to the Governors within 10 working days of the receipt of the written decision.
- 7.3 The Head teacher has a right of appeal against a decision to issue a warning or to dismiss by Staff Dismissal Committee (see paragraph **5**). An appeal against a warning by the Staff Dismissal Committee will be to the Disciplinary Panel of Governors referred to in paragraph **7.1** above.

- 7.4 An appeal against dismissal will be to the Appeal Committee of the Governors, which shall have a membership of not less than 3 governors, none of whom shall have any previous involvement in the case. The Appeal Committee shall be advised in its deliberations, normally by a representative of the Director of Education. The Appeals Committee has a duty to consider any advice given by the LA.
- 7.5 Appeals against decisions by the Staff Dismissal Committee should be made in writing to the Clerk to the Governors within 10 working days of the receipt of the written decision.
- 7.6 All appeal hearings will be held as soon as possible after receipt of the appeal.

8. Variation in Penalties

- 8.1 The Line Manager or the Disciplinary Panel of Governors may decide to give an oral warning instead of a written warning, or a written warning instead of a final written warning.
- 8.2 The Line Manager may decide that the misconduct is so serious that it justifies a first and final written warning.
- 8.3 The Line Manager may decide to issue a further final warning rather than refer the complaint to the Staff Dismissal Committee.
- 8.4 The Staff Dismissal Committee may decide to issue a warning or final warning rather than dismiss.
- 8.5 The Appeal Committee may decide to issue a warning or a final warning rather than dismiss, and that any warning may last for a specified period longer than the original twelve months of any previous final warning, if appropriate. *There is no right of appeal against such a decision of the Appeal Committee of the Governors.*
- 8.6 In the event that the Appeal Committee of the Governors decides not to uphold the Staff Dismissal Committee's decision to dismiss, the LA shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

9. Trade Union Officials

- 9.1 Although normal disciplinary standards must apply to the conduct of a trade union official as an employee, no disciplinary action beyond an oral warning should be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

10. Confidentiality

- 10.1 The proceedings of this disciplinary procedure shall remain confidential to the parties concerned. Only the decision of a disciplinary hearing may be reported.

Section D: Lack of capability of employee other than the Headteacher

[To be read in conjunction with the School Staffing (England) Regulations 2003 and the Secretary of State's Guidance]

1. Definitions

- 1.1 The term "Head teacher" also refers, where appropriate, to any other title used to identify the Head teacher.
- 1.2 The term "employee" refers to any member of the staff, whether teaching or not (with the exception of the Head teacher), employed to work solely at the school.
- 1.3 The term "senior manager" refers to any member of the Leadership Group, as defined by the School Teachers' Pay and Conditions Document, or a senior support member of staff in cases involving support staff, delegated by the Head teacher to deal with a capability matter under these procedures. A senior manager may only make a decision to issue up to and including a final written warning.
- 1.4 If the Head teacher, following consultation with the Chair of Governors, considers that there is no senior manager to whom s/he can reasonably delegate a specific capability matter then the Head teacher will take the role of the senior manager for that specific case and the role of the "Head teacher" under this procedure will be performed by a "Staff Dismissal Committee" of the Governing Body consisting of not less than 3 governors, (except in circumstances provided for in the Secretary of State's guidance on the Staffing Regulations), none of whom will have had previous involvement in the case.
- 1.5 "Lack of capability" is defined as a situation in which an employee fails consistently to perform his/her duties to a wholly satisfactory standard of performance over a period of time.

2. Guidance prior to using the Capability Procedure

- 2.1 If an employee's performance is less than wholly satisfactory, as a first step the senior manager, or other person with line management responsibility for the employee, will discuss with the employee the shortcomings as specifically as possible. In the case of a teacher this could include the team leader responsible for the teacher's performance review under the school's performance management policy. Structured information and systematic recording will inform the discussion. The employee will be given a reasonable opportunity to comment and explain. In the course of these discussions, appropriate targets will be set and any appropriate remedies, e.g. in-service training, visits to other schools, discussion with appropriate colleagues or professionals, will be considered and planned. The employee will also be informed that his/her performance will be monitored over an identified and specified period. This will not normally exceed six weeks. However, if the concerns relate to a lack of capability that poses a real risk to the health, safety or well-being of children, or is likely to result in serious damage to pupils' education, a shorter timescale may be appropriate. In extreme cases, the senior manager may decide to initiate formal procedures immediately if to do otherwise would expose students to serious risk in terms of their health, safety, well-being or educational prospects.
- 2.2 At this stage an oral warning may be given that if wholly satisfactory performance is not achieved within a defined period this could cause the matter to be dealt with under the formal procedures set out below. An oral warning is not part of the formal procedure that follows.
- 2.3 There is no appeal against an oral warning, which will not be recorded on the employee's personal record but should be confirmed in a written memorandum. The employee may make written comment on the memorandum if s/he has any objection to the issuing of an oral warning.
- 2.2 Continuing failure to achieve a wholly satisfactory level of performance following an oral warning would normally lead to formal action being taken in accordance with the procedures below.
- 2.3 Where a teacher is failing to perform to a wholly satisfactory level and guidance as indicated above has not brought about the desired improvement then the matter will be dealt with under the procedures below and will be separate from the school's performance management policy.

3. Time Scale (must be observed when the employee is a teacher)

- 3.1 The time scale adopted will reflect the seriousness of the lack of capability. However, the overall period for improvement will not exceed the equivalent of two school terms from the date of entry into the formal procedures. Formal procedures commence on the date of the meeting at which a written warning is first issued.
- 3.2 In exceptional cases, it will not be appropriate or necessary to proceed through the first written warning stage of the procedure before a final warning can be issued. The decision to dispense with a first warning, however, would need to reflect the seriousness of the lack of capability of the employee concerned.
- 3.3 When there are genuinely extreme circumstances in which a period for improvement of two terms would seriously jeopardise the health, safety, welfare or education of pupils, the period for improvement may be reduced to a period of not less than four weeks.
- 3.4 In extreme cases, where it is clear that the health, safety or well-being of pupils would be compromised if even a shortened capability procedure were followed, an employee may be suspended on full pay. In such cases, the formal procedures would be suspended and a recommendation for dismissal made to the Head teacher or Staff Dismissal Committee.

4. Sickness absence and the use of this procedure

- 4.1 It is important that sickness absence should not be used to delay or avoid the use of formal capability procedures. If there are concerns that an employee may be using sickness absence in this way then arrangements should be made to seek medical advice from an occupation health adviser to assess the employee's health and fitness for continued employment at the school.
- 4.2 Following receipt of medical advice consideration may be given to moving from this procedure to procedures used by the school to terminate the employment of the employee on the grounds of ill health.
- 4.3 If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the occupational health adviser could also be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure.

5. First Written Warning

- 5.1 If, after a reasonable period from the action taken in paragraph 2 above, it is considered that the employee's performance has not reached a wholly satisfactory level, the employee will be required to attend a meeting with the senior manager.
- 5.2 The senior manager will write to the employee at least ten working days in advance to inform him/her about:
 - a) the date, time and place of the meeting.
 - b) the basic details of the concerns about the employee's performance.
 - c) the employee's right to be accompanied by a representative of his/her trade union or a workplace colleague.
 - d) the titles of enclosed copies of any documents to be used at the meeting.
 - e) names of any witnesses to be called.
 - f) his/her right to call witnesses on his/her behalf.
 - g) The name and office of any adviser who will accompany the senior manager at the hearing.
- 5.3 An extra copy, together with any enclosures, should be provided for his/her representative. At the meeting, the employee (or his/her representative) will be given a reasonable opportunity to comment on the concerns and to ask questions. At the conclusion, the senior manager will state his/her decision and will afterwards confirm this in writing to the employee (with a copy for his/her representative).

- 5.4 If the senior manager considers that the concern about the employee's performance was justified, s/he will give the employee a first written warning. The warning letter will make clear:
- a) the nature of the shortcomings in the employee's performance
 - b) the period during which and the way in which the employee's performance will be assessed
 - c) that failure to perform to a wholly satisfactory level may lead to a final written warning.
 - d) that if the employee's performance becomes wholly satisfactory before or by the end of the assessment period, the written warning will be disregarded.
- 5.5 The warning letter or documentation following the letter will also make clear
- a) the support to be provided to the employee
 - b) the improvements in performance that the employee must demonstrate during the monitoring period and the kinds of evidence that will be sought to ascertain whether these improvements have been achieved
 - c) those aspects of the employee's performance that will be assessed and by whom
- 5.6 If the senior manager considers that the employee's performance is still not wholly satisfactory by the end of the assessment period but that a final warning is not justified, s/he will call another meeting as outlined in the above paragraphs. The senior manager may decide to give the employee a further written warning in accordance with the above paragraphs, rather than a final written warning, if s/he thinks this is fair and will be effective.

6. Final Written Warning

- 6.1 If the senior manager considers that the employee's performance is still not wholly satisfactory, even if there has been some improvement, by the end of the assessment period, s/he will call another meeting as outlined above.
- 6.2 If at the conclusion of the meeting the senior manager still considers that the employee's performance is not wholly satisfactory, the senior manager may decide to issue a final written warning which will make clear over what period and in what respect the employee's performance will be assessed and that failure to perform to a wholly satisfactory level will lead to a hearing before the Head teacher, who has the power to dismiss.
- 6.3 At this stage, rather than refer the matter to the Head teacher, consideration could be given to the employee being given a different range of duties or an alternative post. By agreement, this may include transfer to a post suited to the employee's capabilities. If this post is at a lower salary level, the substantive lower salary would apply.

7. Right of Appeal against a formal written warning

- 7.1 The employee has a right of appeal against a written warning issued by a senior manager (see paragraphs 5 and 6). The appeal will be heard by the Disciplinary Panel of Governors. The number of governors on the Disciplinary Panel of Governors will not be less than two. The panel shall be advised by a person engaged for the purpose by the Governing Body. The panel can either confirm the warning, reduce a final warning to a warning or cancel the warning.
- 7.2 Appeals against a written warning shall be restricted to considering the reasonableness of the decision made by the senior manager, any relevant new evidence not previously available to the senior manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Clerk to the Governors within ten working days of the formal written warning having been received.
- 7.3 All appeal hearings will be held as soon as possible after receipt of the appeal.
- 7.4 Pending any appeal the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and his/her progress towards the achievement of these targets may be monitored during this period.

8. Dismissal

- 8.1 If the senior manager considers that the employee has failed to meet the required standards by the end of the specified assessment period, the employee will be informed, in writing, of the requirement to attend a hearing before the Head teacher in accordance with the procedure for calling a meeting as set out in 5.2 of these procedures. Where such a meeting with the Head teacher is called the employee shall be suspended on full pay pending the outcome of the hearing.
- 8.2 If the Head teacher decides that the complaint is justified, s/he may decide to dismiss the employee and will confirm his/her decision and reasons in writing to the employee (copy to his/her representative) as soon as possible after the hearing.
- 8.3 The Head teacher may decide not to dismiss but to issue a further written warning for a specified assessment period.

9. Right of Appeal against a decision to dismiss

- 9.1 The employee has a right of appeal to the Appeals Committee of the Governing Body against a decision of the Head teacher or the Staff Dismissal Committee.
- 9.2 The Appeals Committee shall consist of at least 3 governors, none of whom will have had any involvement in the case.
- 9.3 The employee's notice of appeal should be sent to the Clerk to the Governors within ten working days of receipt of the written decision to dismiss.
- 9.4 Appeal hearings should be held as soon as possible after receipt of the appeal.

10. Notice of Dismissal

- 10.1 Following a decision to dismiss the Governing Body will notify the LA in writing that the employee is to be dismissed, whether with notice or with pay in lieu of notice in accordance with the decision of the Head teacher. The LA must give written notice to the employee within 14 days of notification by the Governing Body.
- 10.2 In the event that the Appeal Committee of the Governors decides not to uphold the decision to dismiss, the LA shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

11. Grievances arising during the procedure

- 11.1 Where an employee has a grievance against the way the senior manager has conducted the procedure this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the senior manager is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered.

12. Trade Union Officials

- 12.1 Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

13. Confidentiality

- 13.1 The proceedings of this disciplinary procedure shall remain confidential to the parties concerned. Only the decision of a disciplinary hearing may be reported.

Section E: Lack of capability of Headteacher

1. Definitions

- 1.1 The term "Head teacher" also refers to any other title used to identify the Head teacher where appropriate.
- 1.2 The term "Line Manager" refers to the Chair of Governors or another senior governor or other senior governors delegated by the Governing Body.
- 1.3 The "Staff Dismissal Committee" of the Governing Body shall consist of 3 governors, (except in circumstances provided for in the Secretary of State's guidance on the Staffing Regulations), none of whom will have had previous involvement in the case.
- 1.4 "Lack of capability" is defined as a situation in which an employee fails consistently to perform his/her duties to a wholly satisfactory standard of performance over a period of time.

2. Guidance prior to using the Capability Procedure

- 2.1 If the Head teacher's performance is less than wholly satisfactory, as a first step the Line Manager, will discuss with the employee the shortcomings as specifically as possible. Structured information and systematic recording will inform the discussion. The Head teacher will be given a reasonable opportunity to comment and explain. In the course of these discussions, appropriate targets will be set and any appropriate remedies, e.g. in-service training, visits to other schools, discussion with appropriate colleagues or professionals, will be considered and planned. The Head teacher will also be informed that his/her performance will be monitored over an identified and specified period. This will not normally exceed six weeks. However, if the concerns relate to a lack of capability that poses a real risk to the health, safety or well-being of children, or is likely to result in serious damage to pupils' education, a shorter timescale may be appropriate. In extreme cases, the Line Manager may decide to initiate formal procedures immediately if to do otherwise would expose students to serious risk in terms of their health, safety, well-being or educational prospects.
- 2.2 At this stage an oral warning may be given that if wholly satisfactory performance is not achieved within a defined a period this could cause the matter to be dealt with under the formal procedures set out below. An oral warning is not part of the formal procedure that follows.
- 2.3 There is no appeal against an oral warning, which will not be recorded on the Head teacher's personal record but should be confirmed in a written memorandum. The employee may make written comment on the memorandum if s/he has any objection to the issuing of an oral warning.
- 2.4 Where a Head teacher is failing to perform to a wholly satisfactory level and guidance as indicated above has not brought about the desired improvement then the matter will be dealt with under the procedures below and will be separate from the school's performance management policy.

3. Time Scale (must be observed when the lack of capability relates to the role as a classroom teacher)

- 3.1 The time scale adopted will reflect the seriousness of the lack of capability. However, the overall period for improvement will not exceed the equivalent of two school terms from the date of entry into the formal procedures. Formal procedures commence on the date of the meeting at which a written warning is first issued.
- 3.2 In exceptional cases, it will not be appropriate or necessary to proceed through the first written warning stage of the procedure before a final warning can be issued. The decision to dispense with a first warning, however, would need to reflect the seriousness of the lack of capability of the employee concerned.
- 3.3 When there are genuinely extreme circumstances in which a period for improvement of two terms would seriously jeopardise the health, safety, welfare or education of students, the period for improvement may be reduced to a period of not less than four weeks.

- 3.4 In extreme cases, where it is clear that the health, safety or well-being of students would be compromised if even a shortened capability procedure were followed, an employee may be suspended on full pay. In such cases, the formal procedures would be suspended and a recommendation for dismissal made to the Staff Dismissal Committee.

4. Sickness absence and the use of this procedure

- 4.1 It is important that sickness absence should not be used to delay or avoid the use of formal capability procedures. If there are concerns that a Head teacher may be using sickness absence in this way then arrangements should be made to seek medical advice from an occupation health adviser to assess the employee's health and fitness for continued employment at the school.
- 4.2 Following receipt of medical advice consideration may be given to moving from this procedure to procedures used by the school to terminate the employment of the Head teacher on the grounds of ill health.
- 4.3 If the Head teacher's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the occupational health adviser could also be asked to assess whether the Head teacher absent through sickness is fit enough to attend a meeting under this procedure.

5. First Written Warning

- 5.1 If, after a reasonable period from the action taken in paragraph 2 above, it is considered that the Head teacher's performance has not reached a wholly satisfactory level, the Head teacher will be required to attend a meeting with the Line Manager.
- 5.2 The Line Manager will write to the Head teacher at least ten working days in advance to inform him/her about:
- a) the date, time and place of the meeting.
 - b) the basic details of the concerns about the Head teacher's performance.
 - c) the Head teacher's right to be accompanied by a representative of his/her trade union or a workplace colleague.
 - d) the titles of enclosed copies of any documents to be used at the meeting.
 - e) names of any witnesses to be called.
 - f) his/her right to call witnesses on his/her behalf.
 - g) the name and office of any adviser who will accompany the Line Manager at the hearing.
- An extra copy, together with any enclosures, should be provided for his/her representative.
- 5.3 At the meeting, the Head teacher (or his/her representative) will be given a reasonable opportunity to comment on the concerns and to ask questions. At the conclusion, the Line Manager will state his/her decision and will afterwards confirm this in writing to the Head teacher (with a copy for his/her representative).
- 5.4 If the Line Manager considers that the concern about the Head teacher's performance was justified, s/he will give the Head teacher a first written warning. The warning letter will make clear:
- a) the nature of the shortcomings in the Head teacher's performance
 - b) the period during which and the way in which the Head teacher's performance will be assessed
 - c) that failure to perform to a wholly satisfactory level may lead to a final written warning.
 - d) that if the Head teacher's performance becomes wholly satisfactory before or by the end of the assessment period, the written warning will be disregarded.
- 5.5 The warning letter or documentation following the letter will also make clear
- a) the support to be provided to the Head teacher
 - b) the improvements in performance that the Head teacher must demonstrate during the monitoring period and the kinds of evidence that will be sought to ascertain whether these improvements have been achieved
 - c) those aspects of the Head teacher's performance that will be assessed and by whom

- 5.6 If the Line Manager considers that the Head teacher's performance is still not wholly satisfactory by the end of the assessment period but that a final warning is not justified, s/he will call another meeting as outlined in the above paragraphs. The Line Manager may decide to give the Head teacher a further written warning in accordance with the above paragraphs, rather than a final written warning, if s/he thinks this is fair and will be effective.

6. Final Written Warning

- 6.1 If the Line Manager considers that the Head teacher's performance is still not wholly satisfactory, even if there has been some improvement, by the end of the assessment period, s/he will call another meeting as outlined above.
- 6.2 If at the conclusion of the meeting the Line Manager still considers that the Head teacher's performance is not wholly satisfactory, the Line Manager may decide to issue a final written warning which will make clear over what period and in what respect the Head teacher's performance will be assessed and that failure to perform to a wholly satisfactory level will lead to a hearing before the Staff Dismissal Committee, which has the power to dismiss.

7. Right of Appeal against a formal written warning

- 7.1 The Head teacher has a right of appeal against a written warning issued by a Line Manager (see paragraphs 5 and 6). The appeal will be heard by the Disciplinary Panel of Governors. The number of governors on the Disciplinary Panel of Governors will not be less than two. The panel shall be advised by a person engaged for the purpose by the Governing Body. The panel can either confirm the warning, reduce a final warning to a warning or cancel the warning.
- 7.2 Appeals against a written warning shall be restricted to considering the reasonableness of the decision made by the Line Manager, any relevant new evidence not previously available to the Line Manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Clerk to the Governors within ten working days of the formal written warning having been received.
- 7.3 All appeal hearings will be held as soon as possible after receipt of the appeal.
- 7.4 Pending any appeal the Head teacher will be expected to continue to work in accordance with targets set for the next stage of the procedure and his/her progress towards the achievement of these targets may be monitored during this period.

8. Dismissal

- 8.1 If the Line Manager considers that the Head teacher has failed to meet the required standards by the end of the specified assessment period, the Head teacher will be informed, in writing, of the requirement to attend a hearing before the Staff Dismissal Committee in accordance with the procedure for calling a meeting as set out in 5.2 of these procedures. Where such a meeting with the Staff Dismissal Committee is called the Head teacher shall be suspended on full pay pending the outcome of the hearing.
- 8.2 If the Staff Dismissal Committee decides that the complaint is justified, it may decide to dismiss the Head teacher and will confirm its decision and reasons in writing to the Head teacher (copy to his/her representative) as soon as possible after the hearing.
- 8.3 The Staff Dismissal Committee may decide not to dismiss but to issue a further written warning for a specified assessment period.

9. Right of Appeal against a decision to dismiss

- 9.1 The Head teacher has a right of appeal to the Appeals Committee of the Governing Body against a decision of the Staff Dismissal Committee.
- 9.2 The Appeals Committee shall consist of at least 3 governors, none of whom will have had any involvement in the case.
- 9.3 The Head teacher's notice of appeal should be sent to the Clerk to the Governors within ten working days of receipt of the written decision to dismiss.
- 9.4 Appeal hearings should be held as soon as possible after receipt of the appeal.

10. Notice of Dismissal

- 10.1 Following a decision to dismiss the Governing Body will notify the LA in writing that the Head teacher is to be dismissed, whether with notice or with pay in lieu of notice in accordance with the decision of the Staff Dismissal Committee. The LA must give written notice to the Head teacher within 14 days of notification by the Governing Body.
- 10.2 In the event that the Appeal Committee of the Governors decides not to uphold the decision to dismiss, the LA shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

11. Grievances arising during the procedure

- 11.1 Where a Head teacher has a grievance against the way the Line Manager has conducted the procedure this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the Line Manager is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered.

12. Trade Union Officials

- 12.1 Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

13. Confidentiality

- 13.1 The proceedings of this disciplinary procedure shall remain confidential to the parties concerned. Only the decision of a disciplinary hearing may be reported.

Adopted by the Governing Body of Colleges Nursery and Family Centre July 2009