



# **Staff Disciplinary Policy and Procedure**

## Contents

Section		Page
1.	Scope	3
2.	Policy	3
3.	Authority to take Disciplinary Action	3
4.	Investigation/Suspension	4
5.	Stage 1: Informal Stage – Informal Management Meeting	4
6.	Stage 2: Formal Stage – Disciplinary Hearing	4
	6.1 Prior to Disciplinary Hearing	5
	6.2 At the Disciplinary Hearing	6
7.	Stage 3: Appeal Hearing	7
	7.1 Prior to Appeal Hearing	8
	7.2 At the Appeal Hearing	8
8.	Disciplinary Sanctions	9
	8.1 Duration of Warnings	9
	8.2 Other Sanctions	9
Annex A	Additional Guidance	10
	1. Investigation	10
	2. Child Protection Related Investigation	11
	3. Suspension	11
	4. Role of the Representative	12
	5. Disability Discrimination under The Equality Act	12
	6. Keeping Records	12
	6.1 Keeping Records (where the allegation is related to child protection)	13
	7. Guidance on Note Taking	13
	8. Collaboration of Governors	13
Annex B	Disciplinary Code	14
Appendix 1	Investigation Flowchart	18
Appendix 2	Preparation for Disciplinary Hearing Flowchart	19
Appendix 3	Disciplinary Hearing Flowchart	20
Appendix 4	Preparation for Appeal Hearing Flowchart	21
Appendix 5	Appeal Hearing Flowchart	22
Appendix 6	Front Sheet and Opening Statement for the Head of School/Chair of Panel	23
Appendix 7	Notification of Fact-Finding Meeting	25
Appendix 8	Notification of Suspension	26
Appendix 9	Notification of Disciplinary Hearing	27
Appendix 10	Notification of Outcome of Disciplinary Hearing	28
Appendix 11	Notification of Appeal Hearing	29
Appendix 12	Notification of Outcome of Appeal	30

## 1. Scope

The procedure applies to all staff directly employed by the Middlesex Learning Partnership. The procedure is not to be used to deal with matters of unsatisfactory performance due to lack of capability and absence due to ill health. Separate procedures exist to deal with matters of this nature.

Where the Executive Headteacher/Head of School is the subject of disciplinary proceedings, all reference to Head of School should be replaced with Chair of Governors/Directors.

## 2. Policy

This policy is to help and encourage all employees to achieve and maintain the required standards of conduct and provides a fair and consistent method of dealing with alleged failure to observe those standards as well as helping employees recognise and resolve any shortfall. It encompasses the following principles:

- No formal disciplinary action will be taken against an employee until the case has been fully investigated and a disciplinary hearing has taken place.
- The employee will be advised of the nature of the allegation and given the opportunity to prepare and present their case before any decision is made.
- The employee will have the right to be accompanied by a trade union representative, or a work colleague, at any stage of the disciplinary process. (See Annexe A for details about the role of the representative). Where an employee is not a member of a trade union and is unable to find a suitable work colleague to support them, they can make a request to the Academy Trust to bring a friend.
- No employee will be dismissed for a first breach of discipline except in cases of gross misconduct when the sanction may be dismissal without paid notice.
- An employee will have the right to appeal against any disciplinary action taken or sanction applied.
- Where disciplinary action is being considered against an employee who is a trade union representative, this procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.
- Any level of sanction can be applied which is deemed appropriate for the nature of the misconduct.
- Wherever possible, meetings should be held during the employee's normal working time unless otherwise agreed with the employee
- The timeframes specified within the Procedure are the minimum. It is recognised that at times it may be necessary to extend the specified timeframes, where this is the case the extension must be reasonable and the employee must be notified.

## 3. Authority to take Disciplinary Action

Academy Trusts are responsible for establishing procedures for the regulation of conduct and discipline of staff.

Regulation 4 of the School Staffing (England) (Amendment) Regulations 2013 allows the Academy Trust to delegate all its functions relating to staff employment in Academies, including dealing with disciplinary matters and taking initial dismissal decisions, to the Head of School. Therefore where the Head of School has delegated responsibility, it is expected that the Head of School will conduct disciplinary hearings with support from an HR Adviser. In cases where the potential outcome of a disciplinary hearing is likely to be dismissal, it is recommended that the Head of School has

two other governors, in addition to the Head of School, to form a Disciplinary Hearing Panel to hear the case. An example of where this could be the case is where the allegation constitutes gross misconduct or where the employee has an unspent written warning on their record.

Where the Head of School is not considered to be suitable to hear the case, either because they have previously been involved in the case e.g., as part of the investigation, or they are the investigating officer, or could not be seen as being impartial, or for any other valid reason, the case should be considered by a Disciplinary Hearing Panel consisting of 3 other governors.

Where the Head of School is the subject of disciplinary action, the matter will be considered by a Disciplinary Hearing Panel of 3 governors at any formal disciplinary hearing, with a representative of the Local Authority's representative present to give advice (see Section 3).

Where the Governing Body has not delegated responsibility for staffing matters to the Head of School, any formal disciplinary hearings will be conducted by a Disciplinary Hearing Panel of 3 governors.

All appeals against disciplinary sanctions will be heard by an Appeal Hearing Panel consisting of 3 governors.

The Disciplinary and Appeal Hearing Panels should consist of governors who are not staff governors and, ideally, not parent governors, and who must not have previously been involved in the case.

It is strongly recommended that a representative from Trust HR/Schools HR is present in an advisory capacity to the Head of School/Disciplinary Hearing Panel/Appeal Hearing Panel at any Disciplinary and Appeal Hearings.

#### **4. Investigation/Suspension**

When a disciplinary matter arises it is important to carry out an investigation to establish the facts as soon as possible (See Annex A for guidance on conducting an investigation). During the investigation it may be deemed necessary to suspend the employee (See Annex A for guidance on suspension)

#### **5. Stage 1: Informal Stage - Informal Management Meeting**

Issues related to standards of conduct should be dealt with at the earliest opportunity.

Some issues can be dealt with informally and appropriate support should be given to achieve the required result. The employee should be advised that informal efforts to resolve the issue are not part of the formal disciplinary process. The employee will be given a reasonable opportunity to achieve the required standard and informed that in the event of insufficient improvement formal disciplinary action will be taken.

A record of the informal meeting will not be held on the employee's personal file, but will be retained by the manager for a period of 6 months and can be referred to should similar allegation of misconduct arises within this period of time. The employee should be given the opportunity to make comments on any letter/record and this will be kept with the manager's records.

If a pattern emerges that the conduct remains satisfactory during the period of 6 months but declines soon after, then the line manager can proceed to deal with the matter under the Formal Stage.

#### **6. Stage 2: Formal Stage - Disciplinary Hearing**

If the investigation report recommends that the employee has a case to answer and for the matter to be considered formally at a Disciplinary Hearing, the Head of School should convene a formal Disciplinary Hearing as soon as possible.

Within Stage 2 – where the case is being heard by a Disciplinary Hearing Panel, all reference to Head of School should be replaced with Disciplinary Hearing Panel. The Disciplinary Hearing Panel should select a Chairperson to Chair the Hearing.

### **6.1 Prior to the Disciplinary Hearing**

The employee must be informed in writing of the disciplinary hearing (See Appendix 9). This notification will include:

- The date, time and place of the hearing
- The names of those to be present at the hearing
- The allegation(s) and whether if, judged proven, they constitute misconduct or gross misconduct and possible sanctions
- The employee's right to produce information and the date by which this must be received
- The employee's right to call witnesses and the date by which they must notify the Academy Trust of the names of the witnesses
- The employee's right to be accompanied by a trade union representative, or a work colleague.
- Copies of the evidence produced to support the case against the employee and this will include the investigation report and witness statements.
- Copy of the Trust's Disciplinary Procedure
- The employee's responsibility for communicating the details of the disciplinary hearing to their representative and providing them with a copy of the paperwork.

The letter confirming the above and the accompanying documentation must be sent to the employee no less than **10 working days** before the date of the hearing; with a copy to the designated HR Adviser at the same time.

The employee must submit any information they want to be considered at the hearing, including the names of witnesses they wish to call and their witness statements, no later than **3 working days** before the date of the hearing. The Head of School will forward any documents that have been submitted to the designated HR Adviser. If new evidence is presented after the given timeframe, the Head of School will need to decide whether or not the new evidence will be considered as part of the hearing.

If the employee's Representative cannot reasonably attend the meeting, there is an obligation on the Academy Trust to rearrange the meeting once. In such circumstances, another date can be put forward so long as it is reasonable and should not be more than **5 working days** after the original date. Any extension of this timeframe will be at the discretion of the Head of School.

### **6.2 At the Disciplinary Hearing**

At the Disciplinary Hearing, the employee and their representative are entitled to be present at all times except when any matter falls solely for the Head of School to consider with advice from the HR Adviser.

Witnesses should attend in person. Witnesses should appear one at a time and should only be present whilst they are giving evidence or being questioned. Where a witness is unable to attend, the Head of School will take into consideration their statement and may reduce the weighting given to the statement.

The Head of School explains the procedure to be followed (See Appendix 6 for guidance), states the allegation(s) against the employee and asks whether the employee admits or denies the allegation(s).

#### **If the employee admits to the allegations:**

1. The Head of School asks the employee if they wish to offer an explanation for the allegation(s) against them and to present any mitigating circumstances.
2. The Head of School asks the Investigating Officer if they have any comments to make on the explanation or mitigating circumstances offered by the employee.

3. The Head of School can ask questions of the employee concerning the employee's explanation/mitigation.
4. The Head of School asks both parties to withdraw whilst the Head of School, advised by an HR Adviser, reaches a decision on the evidence presented.

**If the member of staff denies some or all of the allegations:**

The Hearing should proceed in the following manner:

**Management Case**

5. The Head of School asks the Investigating Officer to present the management case against the employee and call any witnesses.
6. The Head of School invites the employee and employee's representative to ask any questions of the Investigating Officer and any witnesses called.
7. The Head of School may ask any questions of the Investigating Officer and any witnesses called.

**Employee Case**

8. The Head of School asks the employee and/or the employee's representative to present the employee's case and call any witnesses.
9. The Head of School invites the Investigating Officer to ask any questions of the employee and/or the employee's representatives and any witnesses called.
10. The Head of School may ask any questions of the employee and/or the employee's representative and any witnesses called.

**Summing Up**

11. The Head of School invites both parties to sum up their case in the order in which they were presented. The Head of School may wish to adjourn the Hearing briefly, if necessary, to allow both parties to prepare their summations.
12. During the summing up no new evidence should be introduced by either party.
13. Following the summations, the Head of School invites both parties to withdraw whilst the Head of School, advised by an HR Adviser, reaches a decision.

**The Decision**

The Head of School considers the evidence presented seeking advice from the HR Adviser and, if present, the representative of the Local Authority.

If there is any uncertainty about the information presented, or the discussion raises the need for further questioning of either party's evidence, the Head of School should invite both parties to return so that further clarification can be sought from either or both parties.

If the Head of School wishes to question either party on matters which have not already been raised, or new evidence emerges at this stage, either party may request an adjournment to carry out further investigation before responding. The Head of School, shall determine on any such requests including the length of any adjournment.

Once the Head of School has reached a decision, both parties should be recalled and informed of the decision.

Where the allegation is proven, before deciding the level of sanction, the Head of School will consider the nature and level of the current offence in relation to the employee's job, any mitigating circumstances evident from the case presentations, and the employee's current disciplinary record.

The Head of School will inform the employee:

- The precise nature of the misconduct; and whether it is considered to be misconduct or gross misconduct
- Whether any mitigating circumstances have been taken into account;
- What disciplinary action (See Section 8), if any, is being taken and the length of the time for which the disciplinary action is valid; or in the event of dismissal whether it will be with or without contractual notice (the latter will only be in cases of gross misconduct).
- The employee should be informed of the consequences of further misconduct within the set period of the disciplinary sanction issued. For instance that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority.
- Their right of appeal and the appropriate timescale within which the employee needs to submit their appeal.

Where the allegation(s) is judged not proven all reference to the matter will be removed from the employee's file.

The outcome of the Hearing should be confirmed in writing within **5 working days** of the date of the Disciplinary hearing.

At times, due to the complex nature of the case and the extent of the evidence presented, it may not always be possible for the Head of School to reach a decision within the timeframes set for the day. At times the Hearing itself may continue late into the day and it may be considered reasonable to allow the employee and their representative to go home. In these circumstances, the employee will be notified of the decision and the corresponding reasons in writing within 5 working days of the date of the hearing.

## **7. Stage 3: Appeal Hearing**

An employee has the right to appeal against any formal disciplinary action. The appeal is against the decision reached at the Disciplinary Hearing and should not be a re-hearing of the case.

If the employee wishes to appeal against the disciplinary action imposed, they must confirm this in writing to the Chair of Governors, within **10 working days** of the written notification of the disciplinary action, stating their grounds and reasons for appeal which can be based on any of the following:

- The severity of the disciplinary action is considered too harsh in relation to the misconduct
- The findings of the disciplinary hearing are disputed on a point of fact that may have influenced the outcome
- There was a failure to adhere to agreed procedure that may have affected the outcome
- New evidence

Where no appeal is lodged within the given timescales, the matter will be closed.

The Chair of Governors/Clerk to the Governing Body will arrange for an Appeal Hearing to be convened within **6 working weeks** of receiving the employee's letter.

The Head of School, and who for the purposes of this procedure will be known as 'The Presenting Officer', will be required to present the management's case at the appeal hearing. They will also provide a written management case statement which should include the rationale for the decision reached at the Disciplinary Hearing and address any other points raised by the employee in their letter of appeal.

### **8.1 Prior to the Appeal Hearing**

Middlesex Learning Partnership/Staff Disciplinary Policy

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Reviewed: As required

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Governor/Director owner: Chair of Operations Committee

Lead Staff Member owner - HR Manager

The employee must be given no less than **10 working days'** notice of the Appeal Hearing in writing.

The written notification will include:

- The date, time and place of the hearing
- The names of those to be present at the hearing
- The employee's right to call witnesses
- The employee's right to be accompanied by a trade union representative or a work colleague, and their responsibility to notify their chosen representative of the details of the appeal hearing
- Documentation to be considered at the hearing, including that from the Disciplinary Hearing and including the management case statement, and the employee's responsibility to provide a copy to their chosen representative
- Possible outcomes of the appeal hearing
- Copy of the Trust's Disciplinary Procedure

A copy of the same must also be sent out to the Appeal Hearing Panel, the Presenting Officer, and the designated HR Adviser.

If the employee's representative cannot reasonably attend the meeting the Academy Trust is obliged to rearrange the meeting on one occasion with the understanding that a further postponement will not be possible. In such circumstances, another date can be put forward so long as it is reasonable and should not be more than **5 working days** after the original date. Any extension of this timeframe will be at the discretion of the Appeal Hearing Panel.

If the employee considers there is new information that has come to light which they have not included in their written appeal statement, they should submit this information no later than 3 working days before the hearing.

## **8.2 At the Appeal Hearing**

At the Appeal Hearing the same format will be followed as for the Disciplinary Hearing but with the order of the presentations being reversed i.e. the employee or their representative will present their case first giving their reasons for appealing.

Where the appeal is on the grounds of new evidence the Appeal Hearing Panel may consider adjourning the Hearing if it is determined that further investigation is required in relation to the new evidence. Where this is the case the most appropriate person to carry out this additional investigation would be the Head of School in their role as Presenting Officer. The Appeal Hearing will be reconvened where the findings of the investigation will be presented and considered. The employee will be given **10 working days'** notice of the reconvened Appeal Hearing.

### **The Decision**

The same principles in terms of the process apply as for the Disciplinary Hearing.

Once the Appeal Committee has reached a decision, both parties should be recalled and informed of the decision by the Chairperson.

The Appeal Panel may take one of the following decisions at the conclusion of the appeal hearing:-

- Uphold the appeal and dismiss any disciplinary action
- Substitute a lesser level of disciplinary action
- Dismiss the appeal and uphold the disciplinary action

If the appeal is upheld then all records relating to the disciplinary action must be removed from the employee's file.

The decision of the Appeal Hearing Panel is final and should be confirmed in writing to the employee within **5 working days** of the Appeal Hearing.

## 8. Disciplinary Sanctions

There are three levels of sanctions which can be applied depending on the nature and severity of the misconduct.

- **Written Warning**
- **Final Written Warning**
- **Dismissal\***

**\*NB:** Dismissal will generally be with notice and will be applied from the date of the written notification of the outcome of the Disciplinary Hearing. Dismissal without notice should only occur where gross misconduct constituting a breach of contract has been established, and the presence of the employee can no longer be tolerated. In this case, the dismissal is with immediate effect i.e. from the date the decision is reached.

If the employee appeals successfully against a dismissal decision then the notice of dismissal shall be withdrawn or, if the notice period has already been exhausted or the employee had been dismissed without notice, the employee will be re-instated with effect from the date that their employment had ended.

### 8.1 Duration of Warnings

- **Written Warning** to remain on the employee's file for 12 months
- **Final Written Warning** to remain on the employee's file for 2 years

Provided the employee's conduct has remained satisfactory throughout the duration of the warning period, all reference to it should be removed from the employee's file.

The ACAS Guidelines state that where a pattern emerges of lapses in conduct soon after the expiry of warnings and there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long any current warning should last.

Exceptionally, there may be circumstances where the misconduct is so serious, verging on gross misconduct, that it cannot be disregarded for future disciplinary purposes. In such cases, the final written warning may never be removed and any recurrence will lead to dismissal.

Sanctions relating to allegations of child protection should remain on the employee's file until the person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.

### 8.2 Other Sanctions

Other action may also be used in conjunction with formal warnings. However, in all cases advice must be taken from Schools HR. The following may be considered:-

- Transfer to another post
- Demotion with or without protection of salary

## ADDITIONAL GUIDANCE

### 1. INVESTIGATION

When a matter of concern regarding conduct arises, it is important that a thorough investigation takes place to establish the facts as soon as possible. It is important to be able to demonstrate that any subsequent disciplinary action is based on reasonable attempts to investigate all the circumstances surrounding the alleged incident.

The Head of School must consider the appropriate person to conduct the investigation having regard to the seniority status of the accused employee and the nature of the allegation. The Investigating Officer should be neutral and independent and not otherwise involved in deciding the outcome of the case. It is strongly recommended that the Head of School should not, unless absolutely unavoidable, carry out investigations as this will automatically exclude them, on grounds of impartiality and objectivity, from taking part in any subsequent disciplinary hearing.

Once an Investigating Officer has been appointed, they must be clear from the outset about:

- The reason for the investigation
- The precise issues to be investigated
- How the investigation will be conducted
- The proposed time frame
- All key and relevant evidence to be gathered

The extent of the investigation will depend on the nature and seriousness of the alleged misconduct. For example, in the case of poor timekeeping, a meeting with the employee and a record of attendance, and previous informal efforts to deal with the matter may be the only form of investigation required prior to a decision on whether or not to convene a formal disciplinary hearing. In other cases the alleged misconduct may be of a more serious nature and will require a more detailed investigation.

It is important to identify the types of evidence needed and this will be determined by the nature of the alleged misconduct. The investigation will usually require the person making the allegation and any witnesses to the alleged incident to be interviewed as soon as possible in order to obtain as accurate an account of events as possible. However there may be other forms of evidence that may be relevant e.g., documentary evidence, CCTV footage, computer records. Care should be taken to ensure such evidence is obtained as a priority as it may be destroyed before being obtained.

Often, further facts will come to light during the investigation. This may present the need for the Investigating Officer to carry out further investigation and may involve interviewing other witnesses or revisiting certain areas of the investigation with the witnesses or the employee for clarification or fresh evidence.

During any fact-finding interviews, care should be taken to adopt a probative approach and to avoid using leading questions. Any questions should encourage people to recall their version of events in their own words. **Witnesses must be advised of the purpose and confidential nature of the interview and that they must not discuss the investigation with people outside of it.** Witnesses must be informed that they may be required to give evidence at any subsequent disciplinary hearing. Reasonable notice should be given of the interview (1 working day). Interviews should be documented in writing showing the date and time of interview with signature of witness.

At times a witness may be reluctant to present evidence or will only do so if they are given an assurance of anonymity. In such circumstances, the Investigating Officer should try and establish the reasons for such reluctance and ensure the witnesses are aware of their obligation to help assist with establishing the facts. It would also be reasonable to investigate the motivation of any informant and why there is any reason for anonymity.

No guarantee of complete anonymity can be given to witnesses as there is always a risk that if the matter becomes subject to legal proceedings, they may be required to present evidence.

Where a child is a witness to an alleged incident, it is the responsibility of the Head of School, in conjunction with the parents/carer, to determine whether they may be interviewed or questioned. Any such interview will only be carried out following advice from the Local Authority Designated Officer for Child Protection (LADO). However, this does not preclude the Head of School asking the child to give a written account of events.

The employee should be notified of the allegation(s) and asked to attend a meeting with the Investigating Officer (see Appendix 7). They should be informed that the meeting is not a disciplinary hearing but an opportunity for them to respond to the allegation(s) and to assist in establishing the facts. The employee should be given reasonable notice of the meeting and advised that they may be accompanied by a trade union representative or work colleague. At the meeting, any explanations put forward by the employee, including whether there are any special circumstances to be taken into account must be considered and investigated. If the employee unreasonably refuses to participate in the investigatory meeting, they should be informed that a decision will be based on the remaining evidence gathered.

At the end of the investigation, it is advisable to have a further meeting with the employee to obtain a further statement on presentation of the facts of the investigation. Where discussion with the employee results in further information being obtained which needs investigating, the investigation must continue for the information to be explored. It may be necessary to reconvene the meeting with the employee following the investigation of the information.

Once the investigation has been concluded, the Investigating Officer will submit their findings in the form of an investigation report which should clearly identify options for action by the Head of School and/or Academy Trust. If the recommendation is to proceed to a formal disciplinary hearing, the Investigating Officer will be required to present the case at any such hearing. Where there is no case to answer all reference to the alleged misconduct will be removed from the employee's file.

## **2. CHILD PROTECTION RELATED INVESTIGATION**

Allegations relating to child protection against employees should be dealt with in accordance with the Dealing with Allegations of Abuse against Teacher and other Staff procedure.

## **3. SUSPENSION**

In certain circumstances it may be deemed necessary to suspend the employee from all Academy Trust duties during an investigation for the following or other reasons:

- The investigation may be prejudiced by the employee remaining at work
- There are serious concerns raised by the nature of the allegation(s) under investigation
- It may be considered unreasonable to expect the employee to be at work whilst an investigation is going on around them

In certain circumstances the Head of School may agree to a period of voluntary absence with pay or transfer to alternative work, as opposed to suspension. Circumstances where this might occur include those where the period of investigation is short and the nature of the alleged offence is of a less serious nature.

Suspension should be for the minimum amount of time possible in all circumstances and will be with full contractual pay. Suspension is a neutral act and has absolutely no implication of guilt.

Both the Head of School and the Academy Trust have authority to suspend an employee but only the Academy Trust has the authority to end a suspension.

The employee will be notified in writing of the suspension giving reasons for the suspension (See Appendix 8).

Being suspended from work can be very distressing for an employee and they can be left feeling very vulnerable. They must be reassured that suspension is a neutral act and does not imply guilt and is invariably to save them the distress of being present amidst an investigation which involves them. It is recommended that the employee is given details

of any employee assistance programme that the Academy Trust may have in place so that the employee can access support if needed. It is recommended that the Head of School appoints a designated person who will maintain regular contact with the employee and they will keep the employee up to date about events in the workplace. The employee must be informed of this designated point of contact in case they wish to communicate with the Academy Trust.

If a suspended employee is to return to work, consideration must be given to what help and support might be appropriate (e.g. a phased return to work and/or provision of a mentor) to assist the employee in their return to work.

#### **4. ROLE OF THE REPRESENTATIVE**

Employees have a statutory right to be accompanied, regardless of length of service, by a trade union representative or a work colleague at a disciplinary hearing and any subsequent appeal hearing. If the Representative is a work colleague, they should be afforded reasonable paid time off. This should cover time to attend the hearing and also time to familiarise themselves with the case and confer with the employee before and after the hearing.

A Representative has the right to address the hearing in order to:

- Confer with the employee
- Put across the employee's case
- Sum up the employee's case
- Respond on the employee's behalf to any view expressed at the meeting

A Representative does not have the right to:

- Answer questions on the employee's behalf
- Address the hearing if the employee does not wish them to do so
- Prevent the Investigating Officer from explaining their case

Given the importance of the Representative's role, it is good practice to allow them to ask questions and participate as fully as possible.

#### **5. DISABILITY DISCRIMINATION UNDER THE EQUALITY ACT**

Reasonable adjustments should be made for employees or their Representatives who have a disability within the meaning of the Equality Act 2010 to ensure they are not disadvantaged and can participate fully in the disciplinary processes. The nature of the reasonable adjustments, which have to be considered, will depend on an assessment of all the facts and circumstances of each case.

#### **6. KEEPING RECORDS**

It is important, and in the interests of both the Academy Trust and the employee, to keep written records during the disciplinary process. Records should include:-

- The complaint against the employee
- The employee's defence or mitigation
- Findings made and the actions taken
- The reasons for actions taken
- Whether an appeal was lodged
- The outcome of the appeal
- Any grievance raised during the disciplinary procedure; and
- Any subsequent developments

Records should be treated as confidential and should be retained in accordance with the data protection principles.

## **6.1 Keeping Records (where the allegation is related to child protection)**

Details of allegations that are found to have been malicious should be removed from personnel records.

For all other allegations, even in cases where the allegation has not been substantiated, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on the person's confidential personnel file, and a copy provided to the person concerned.

The record should be kept at least until the person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.

Working Together to Safeguard Children (2010) explains that the purpose of retaining this record is to:-

- Enable accurate information to be given in response to any future employment reference;
- To provide clarification if a future DBS disclosure reveals information that an allegation was made which did not result in prosecution or conviction; or
- To prevent unnecessary investigation if an allegation re-surfaces after a period of time.

## **7. GUIDANCE ON NOTE TAKING**

- Formal note taking at hearings is not a requirement of either the disciplinary or appeal procedure but is advisable to do so. If the Chairperson of the Committee makes the decision that notes will be taken, the provision of the note-taker will be the responsibility of the Committee/Academy Trust.
- The panel and HR Adviser may take notes at hearings for their own purposes, which are adequate to enable for key decisions to be made. These are informal notes and are not for distribution to attendees.
- The outcome of the hearing must be fully documented, including the issues that were considered (including mitigation) in reaching the decision and the detailed rationale behind the decision.
- Tape recording of meetings will not be used unless there are exceptional circumstances, i.e., in the case of a person with a disability when a tape recording may be necessary and regarded as a reasonable adjustment.

## **8. COLLABORATION OF GOVERNING BODIES**

The Schools Governance (collaboration) (England) Regulations 2003, S.I 1962 and as amended by the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013, S.I 1624 Part 1 Regulation 4, enable the governing bodies of two or more maintained schools to work together in relation to staffing functions including dismissals. These provisions allow schools to draw on a wider pool of governors for the purposes of the disciplinary processes.

A school wishing to use collaborated governors should seek advice from Schools HR regarding the engagement of collaborated governors and the procedure to follow.

## Disciplinary Code

### 1. Scope

This Code applies to all employees of the Middlesex Learning Partnership.

### 2. Principles

Offences, which breach the Disciplinary Rules, can be considered as either Gross Misconduct or Misconduct according to the seriousness of the offence and the nature of the employee's job.

The disciplinary rules contained in this document are applicable to all employees.

The list and types of misconduct in these rules is neither exclusive nor exhaustive.

This document and the rules contained within may be amended or extended following consultation with the trades unions through the appropriate machinery.

### 3. Definitions

#### 3.1 Gross misconduct

Misconduct of such a nature that the Academy Trust cannot allow the continued presence of the employee at work and that, if the offence is established and there are no acceptable mitigating circumstances, will result in dismissal without any previous warnings. A dismissal for gross misconduct is justified at the first offence and may, depending on the circumstances, be without notice. It is strongly recommended that in cases where gross misconduct and summary dismissal is considered then the Head of School and/or governing body should seek the advice of their HR advisers.

#### Misconduct

Misconduct will not normally warrant dismissal without previous warnings. In the case of misconduct an employee shall be entitled to at least a written warning before a decision to dismiss is made.

### 4 Disciplinary Rules

#### 4.1 Gross Misconduct

The following are examples of offences that would normally be considered as gross misconduct. This list is not exhaustive and the panel may consider a derivative of these examples as an offence constituting gross misconduct. However they may also be considered as misconduct according to the seriousness of the offence and the nature of the employee's job.

##### 4.1. 1 Acts which take place in the course of employment:

- a) Any act which could be subject to criminal proceedings. (Certain circumstances may call for the discretion of the Head of School depending upon the nature and context of the offence).
- b) Stealing from the Academy Trust, its staff or the public.
- c) Deliberate damage to or deliberate neglect of Academy Trust property (unless for justifiable reasons of protection or safety)
- d) Gross negligence in failing to attend to or to carry out the duties of the post

- e) Falsification of any document, for monetary advantage.
- f) Deliberate falsification of qualification or information which is a stated requirement of employment and/or which could result in financial gain.
- g) Soliciting or accepting gifts or gratuities.
- h) Involvement in any acts of bribery.
- i) Attempted use of official position for private advantage; dishonest or improper use of information obtained in the Academy Trust's employment.
- j) Doing unauthorised private work (whether paid or not) during hours when contracted to work for the Academy Trust or during periods of sick leave.
- k) Sexual misconduct at any time with any person for whom you have a responsibility and is in your care in your capacity as an employee of the Academy Trust.
- l) Child abuse or other conduct giving rise to child protection issues.
- m) Fighting or physical assault at work either with fellow employees or other persons; including maltreatment of persons in the care of the Academy Trust. This does not include reasonable self-defence in the case of an assault on employee. (Refer to the policy on Violence in the Workplace).
- n) Serious breaches of safety regulations, endangering yourself or other people, including deliberate damage to, neglect or misappropriation of safety equipment.
- o) Deliberate disclosure without authorisation, to the media of information about an employee or student who has AIDS/HIV.
- p) Deliberate acts of harassment, on grounds of age, disability, gender, sexual orientation, race and ethnicity, and religion or belief, that involve physical and/or verbal intimidation and/or assault/unlawful discrimination.
- q) Conduct resulting in breach of trust and confidence
- r) Any act that could bring the Academy Trust into serious disrepute
- s) Serious insubordination – undermining of the Leadership and Management of the Academy Trust
- t) Unauthorised disclosure of information classified as confidential by the Academy Trust, governors or the Local Authority
- u) Abuse of the Academy Trust's internet or email Policy
- v) Breaches of the Trust's Social Networking Policy.

#### **4.1.2 Acts which take place outside course of employment:**

Dismissal will result where criminal offences have been committed outside the course of employment where:

-

- a) Employment by the Academy Trust in any way enabled or assisted in the commission of the offence.
- b) Academy Trust property was used to aid the commission of the offence.
- c) Continued employment would put at risk those served or employed by the Academy Trust.

#### **4.2 Misconduct**

The following are examples of offences that would normally be considered as misconduct. However they may also be considered as gross misconduct according to the seriousness of the offence and the nature of the employee's job.

##### **4.2.1 General**

- a) Refusal to carry out a reasonable instruction within the remit of the employee's job description.
- b) Offensive or abusive behaviour (including harassment on grounds of age, disability, gender, sexual orientation, race and ethnicity, and religion or belief) towards other employees or students
- c) Being under the influence of drink or drugs (other than those that have been medically prescribed) so that performance of duties is detrimentally affected and/or which could endanger anyone's safety.
- d) Sleeping on duty unless expressly permitted.

#### **4.2.2 Absence from Duty and Timekeeping**

- a) Unauthorised absence from work or being late without sufficient cause.
- b) Failure to report absence from work and the reason for such absence.
- c) Failure to provide a medical certificate as required under sickness absence procedures.
- d) Bad timekeeping including taking excessive refreshment breaks.
- e) Abuses of the sick pay scheme relating to failure to provide acceptable reasons for short-term sickness absence.

#### **4.2.3 Neglect of Duty**

- a) Failure to discharge obligations in accordance with a statute or contract of employment without sufficient cause.
- b) Negligent, careless or wilfully inadequate standards of work.
- c) Failure to account properly for or to make a prompt and true return of any money or property, which comes into the possession of an employee during the course of duty.

#### **4.2.4 Misuse/Falsification of Information**

- a) Knowingly or through neglect making a false, misleading or inaccurate oral or written statement in respect of official business.
- b) Failure to disclose a conviction, caution, reprimands or final warnings that are not 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended in 2013.
- c) Communicating to persons outside of the Academy Trust of proceedings of any committee meeting or the contents of any document unless required by law or authorised to do so or unless seeking advice of their union on the implications of the meeting.
- d) Deliberate disclosure without authorisation to colleagues, any members of the public or person known to an employee or client, of information about an employee or student who has AIDS/HIV.

#### **4.2.5 Misuse of Academy Trust Materials/Equipment/Resources**

- a) Unjustifiable wastage of Academy Trust materials/equipment/resources.
- b) Deliberate failure to report any loss or damage to any property of the Academy Trust, within your area of responsibility.
- c) Unauthorised use of Academy Trust vehicles whether during or outside the working day.  
Unauthorised use of Academy Trust vehicles for personal journeys including journeys to and from home or during the lunch break.
- d) Unauthorised use of any Academy Trust facilities for private purposes unless authorised by a relevant Academy Trust authority to do so.
- e) Use of waste Academy Trust material without express authority.
- f) Use of Academy Trust labour, materials, equipment or resources for private purposes

#### **4.2.6 Discrimination**

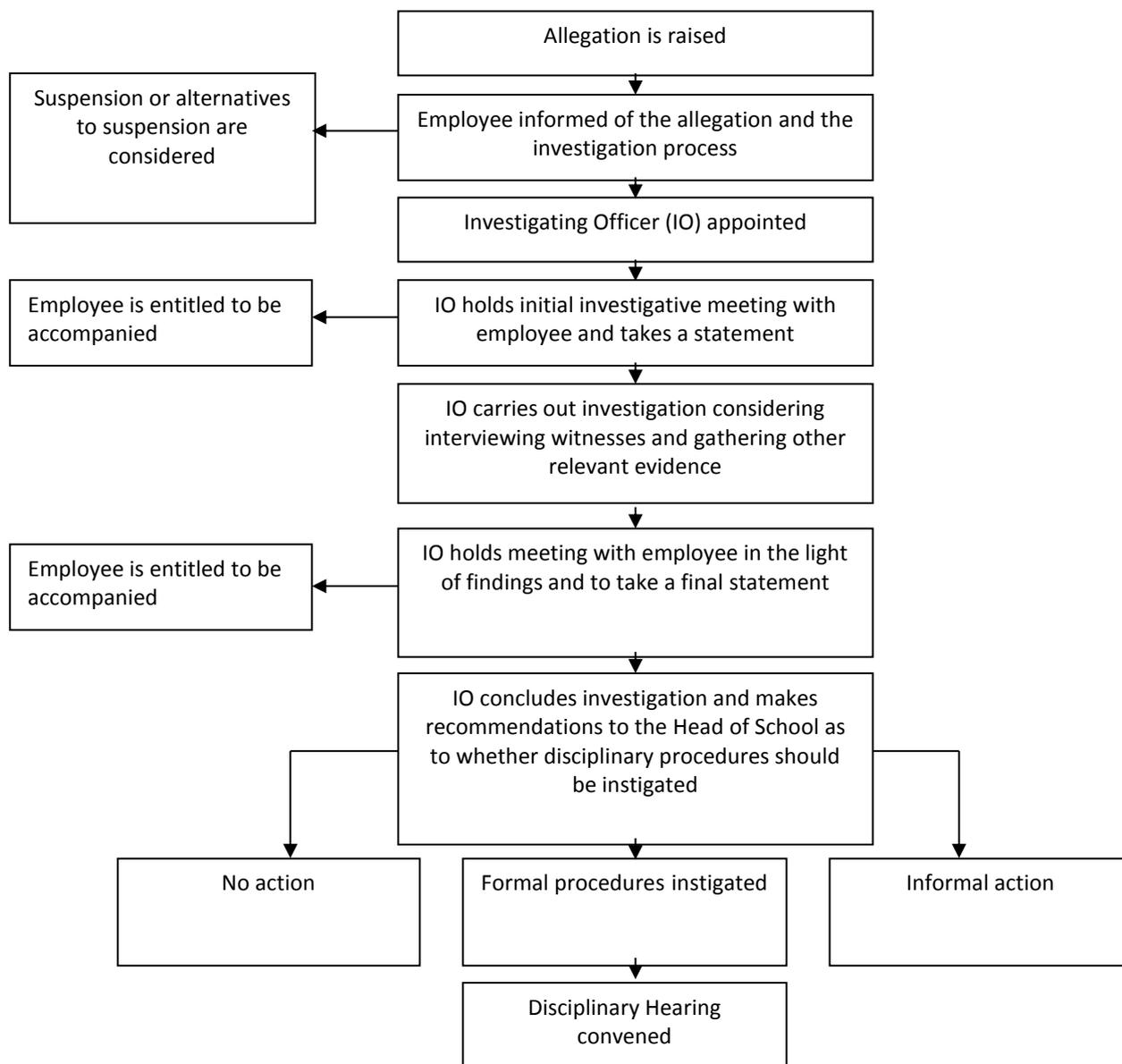
- a) Discrimination against an employee, student, parent or a member of the public on **any grounds** including age, disability, gender reassignment, marriage & civil partnership, pregnancy & maternity, race, religion and belief, sex and sexual orientation.

#### **4.2.7 Health and Safety**

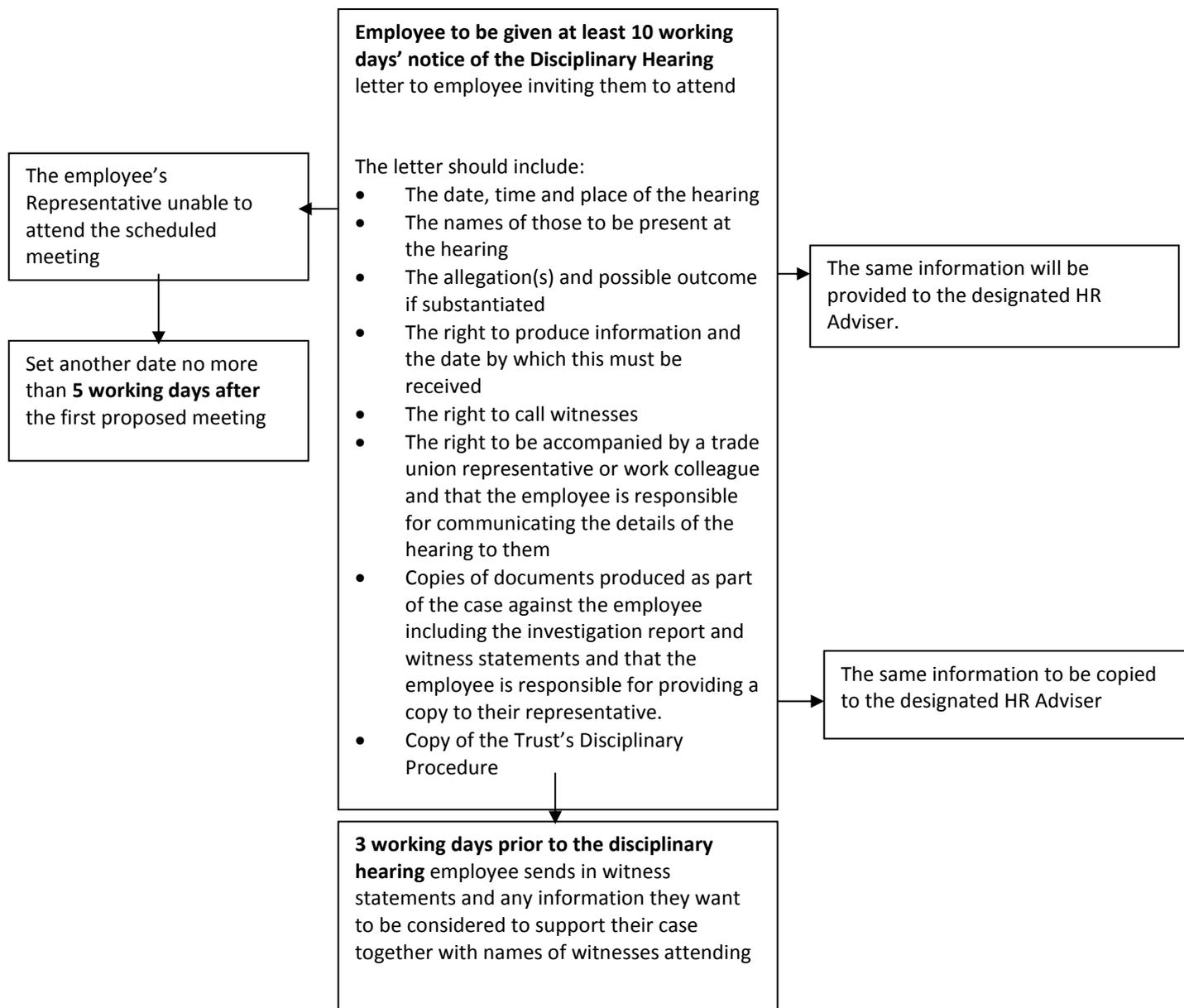
- a) Failure to comply with the obligation placed upon you under the terms of the Health and Safety at Work Act 1974.
- b) Failure to wear appropriate protective clothing or use necessary safety equipment provided by the Academy Trust for particular duties.
- c) Failure to comply with accident reporting procedures.
- d) Failure to comply with department hygiene requirements.

- e) Dangerous or reckless behaviour involving risk of injury to yourself or to other persons or other conduct at work likely to diminish safety standards.
- f) Neglecting to carry out any instructions of a medical officer appointed by the Academy Trust, while absent from duty on account of sickness, committing any act or adopting any conduct calculated to delay return to duty.
- g) Smoking in areas designated as no smoking.

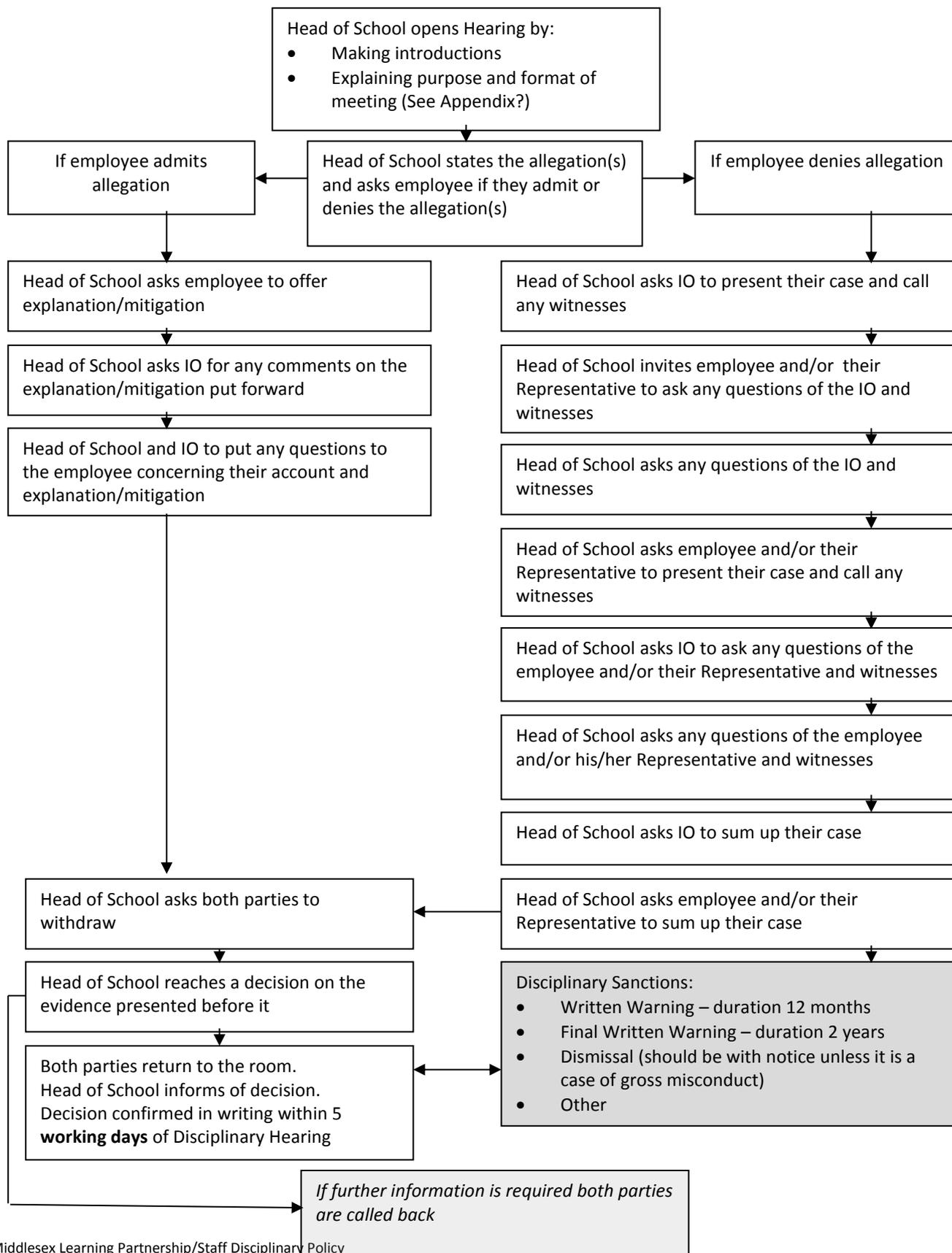
**Investigation Flow Chart**



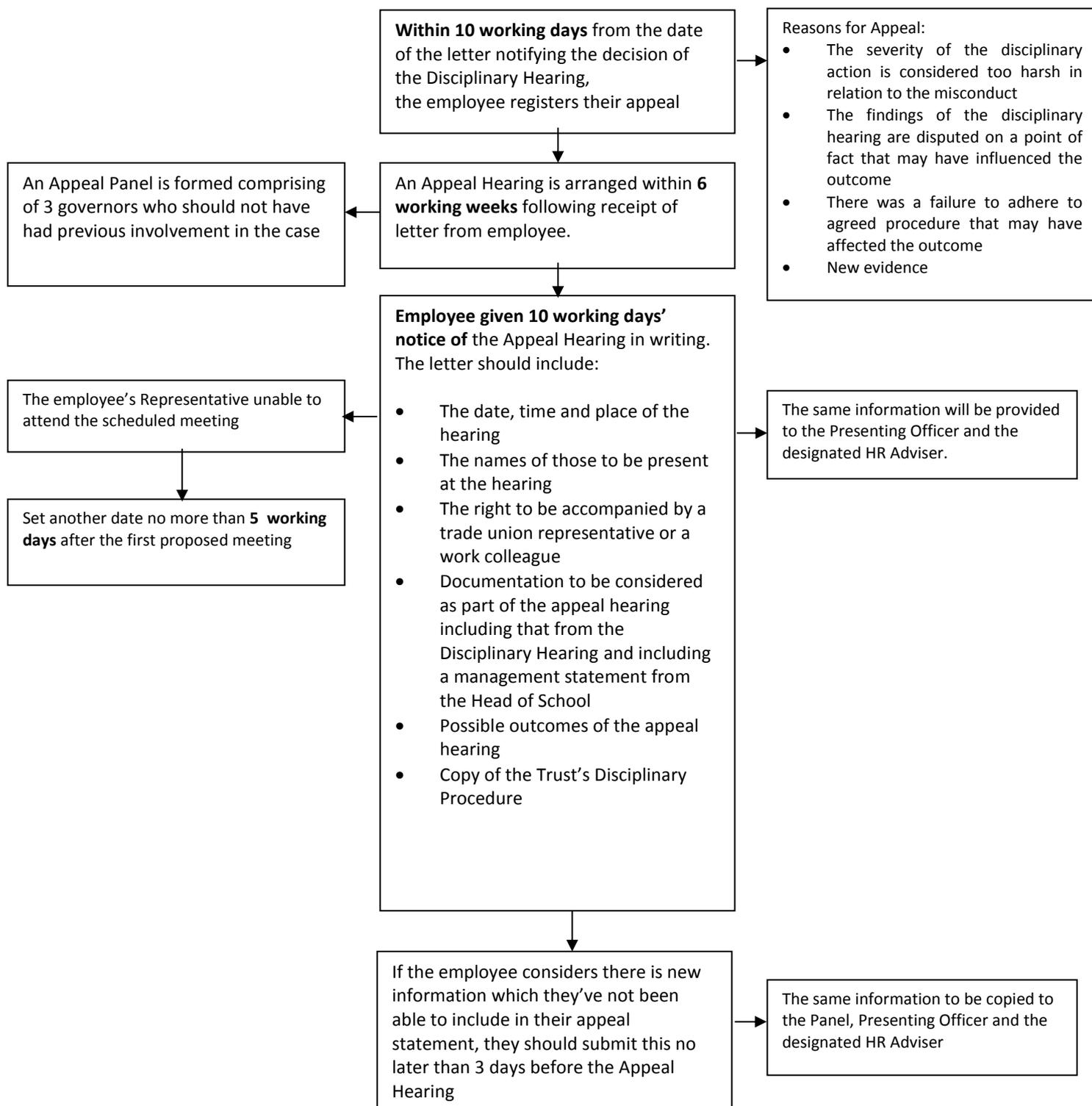
**Preparation for Disciplinary Hearing Flowchart**



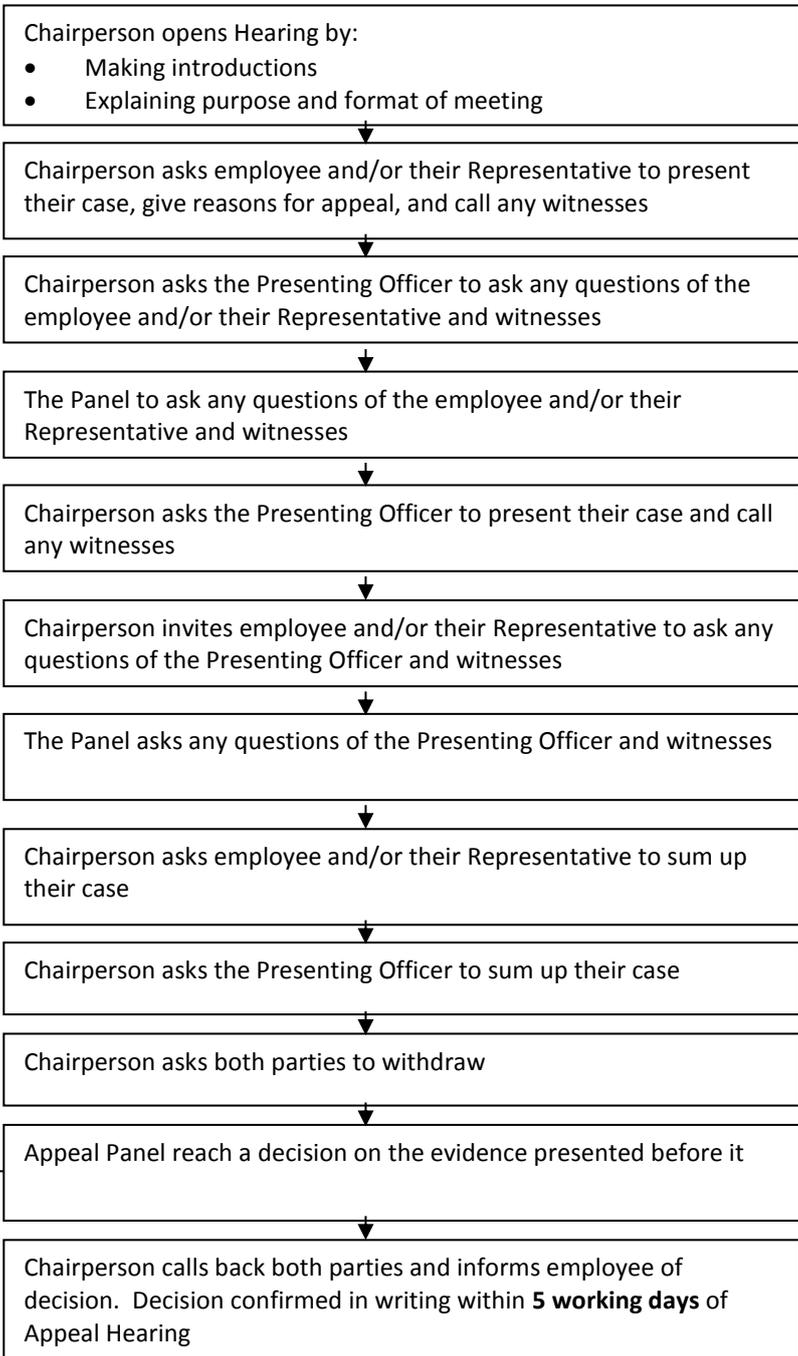
**Disciplinary Hearing Flowchart**



Preparation for Appeal Hearing Flowchart



**Appeal Hearing Flowchart**



Where the appeal is on the grounds of new evidence, the Appeal Hearing Panel may consider it necessary to adjourn the Hearing if further investigation into the new evidence.

Where this is the case, it is expected that the Presenting Officer is the most appropriate person to conduct this investigation.

The Appeal Hearing will be convened once the investigation has been concluded.

The employee will be given **10 working days'** notice of the reconvened Hearing.

*If further information is required both parties are called back*

Outcomes of the Appeal Hearing can be one of the following:

- Uphold the appeal and dismiss any disciplinary action
- Substitute a lesser level of disciplinary action
- Dismiss the appeal and uphold the disciplinary action

**Front Sheet and Opening Statement for the Head of School/Chair of Panel**


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**(INSERT NAME OF EMPLOYEE)**  
**Disciplinary Hearing**

**Date of Hearing:** (insert date of hearing)

**Time of Hearing:** (insert time of hearing)

**Venue:** (insert venue)

<b>Head of School/Disciplinary Hearing Panel:</b>	(Insert name of Governor 1)
	(Insert name of Governor 2)
	(Insert name of Governor 3)
<b>Investigation Officer:</b>	(Insert name of Investigating Officer)
<b>HR Adviser:</b>	(Insert name of HR Adviser)
<b>Employee's Representative:</b>	(Insert name of Representative and if a union rep state which union)
<b>Names of Witnesses being called by the Investigating Officer:</b>	(List the names of witnesses)
<b>Names of Witnesses being called by the Employee:</b>	(List the names of witnesses)

<p><b>Allegation(s)</b></p> <p>Insert the allegation(s) here as outlined at the outset</p>
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<p><b>Documents Enclosed:</b></p> <p>List the documents which are being enclosed under cover of this Front Sheet</p>
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## Opening statement for the Head of School/Chair of Panel

“Thank you for attending the meeting today. I will start with introductions, I am (Name), I will be chairing the meeting today and this is (introduce the other members of the panel). Can I ask you to introduce yourselves as well so that we all know who is who.

The purpose of the meeting today is to consider the allegations made against (insert name of employee). An investigation has been carried out and it is considered that (insert name of employee) has a case to answer. I will now go through the order of the meeting today:

- I will read out the allegation(s)
- I will ask (insert name of employee) if he/she admits to the allegation(s) wholly or in-part

### If (insert name of employee) admits to the allegations wholly or in-part:

- I will ask (name of employee) if he/she would like to offer an explanation and if there are any mitigating circumstances that he/she would like the panel to take into consideration.
- The Investigating Officer and I/the Panel may ask any questions of (name of employee) on the explanation given.
- I will then ask both parties to leave the room and wait outside so that I/the panel can reach a decision on the evidence presented. All parties will be called back into the room once a decision has been reached.

### If (insert name of employee) does not admit to the allegations wholly or in part:

- I will ask (insert name of the Investigating Officer) to present his/her case during which he/she may call witnesses. (insert name of employee) and (insert name of Representative) may ask (insert name of the Investigating Officer) and any witnesses that are called questions about the facts presented by them.
- Any witnesses called will appear one at a time and remain in the room only whilst they are giving evidence.
- I will then ask (insert name of employee) to present his/her case during which he/she may call any witnesses. Then (insert name of Investigating Officer) and the panel may ask (insert name of employee) and his/her witnesses questions on the facts presented by them.
- After this, both parties will be invited to sum up their case in the order in which presentations were made.
- After this I will ask both parties to leave the room and wait outside whilst the panel reach a decision. I will call everyone back into the room when a decision has been reached.
- If during our deliberations I/we need to seek clarification from either party about the evidence that has been presented, both parties will be called back into the room.
- I would just like to clarify the role of (insert name of employee)'s Representative (insert name of Representative) in this meeting. He/she may: present (employee's name)'s case, sum up (employee's name)'s case, respond on (insert employee's name)'s behalf to any view expressed in this meeting; however, he/she cannot answer any questions on (insert employee's name)'s behalf which are put to him/her in this meeting.
- Does anyone have any questions about the order and the process of the meeting?

I will now read out the allegation(s) against (insert name of employee).

(state the allegation(s) here)

(insert employee's name) do you admit to the allegation(s) which has/have been made against you?"

.....continue the meeting in the order as stated above

**Notification of Fact-Finding Meeting**

Dear

**Fact-Finding Meeting**

I am writing to inform you that there is an allegation against you that you .....(*insert allegation(s)*).

Under the Disciplinary Policy and Procedure I am required to carry out an investigation into the allegation and would like you to attend a meeting on (date) at (time) at (place). You may bring a work colleague or a trade union representative to accompany you to the meeting.

I would like to inform you that this is not a disciplinary meeting. The purpose of the meeting is to give you the opportunity to respond to the allegation and assist in establishing the facts.

I realise that this will be a difficult time for you and would advise you to contact your Union or Doctor's counselling service if you require support at this time.

If you have any questions about the content of this letter please contact me.

Yours sincerely

Investigation Officer

**Notification of Suspension**

Dear

I am writing to confirm the decision taken under the Trust' Disciplinary Procedure to suspend you from work with effect from ..... until further notice. Your suspension is without prejudice and on full pay.

The reason for your suspension is to facilitate a full investigation into the allegation that you (*details of allegations*) ..... . It is expected that the investigation will be concluded by (*enter date*). However, if due to unforeseen circumstances, it has not been possible to complete the investigation by the given date, you will be informed of any extension to your suspension.

Please do not return to the Academy Trust unless it is with my express agreement.

The decision to suspend will be reviewed regularly and may be reconsidered at any time in the light of new evidence during the investigation. As suspension can be lifted at any time, during this time you are regarded as being available for work or to attend for any other reason.

Following the investigation, if it is considered that you have a case to answer, the Trust's Disciplinary Procedure will be followed and you will be notified accordingly.

(Name of designated person) will be your designated point of contact at the Academy Trust during the period that you are away from the Academy Trust. He/she will keep you informed of general activities and news at the Academy Trust. If you wish to contact the Academy Trust for any reason please telephone (name of designated person) on (insert telephone number). I must ask you not to contact any other member of staff, student at the Academy Trust or any member of the Academy Trust whilst the suspension is in force.

If you wish to collect any personal belongings at the Academy Trust please contact (name of designated person) who will make the appropriate arrangements.

I realise that this will be a difficult time for you and would advise you to contact your Union or Doctor's counselling service if you require support at this time.

Yours sincerely

Head of School/Chair of Governors

<b>Notification of Disciplinary Hearing</b>
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Dear

**Disciplinary Hearing**

I am writing to advise you that as a result of the investigation into allegation(s) that you (*set out summary details of the alleged misconduct*), your attendance is required at a formal Disciplinary Hearing.

The Hearing will take place on (*date*) at (*place*) at (*time*) and will be heard by (*list those hearing the hearing*).

*I must inform you that if the allegation is proven it will constitute gross misconduct under the Disciplinary Code and, without any acceptable mitigation, will lead to your dismissal.*

*or*

*I must inform you that if the allegation is proven it will constitute misconduct under the Disciplinary and could lead to a /written warning/final written warning*

*or*

*I must inform you that if the allegation is proven it will constitute misconduct under the Disciplinary Code.*

*In the event that you are already subject to a written warning/final written warning, this will be taken into account when determining the level of sanction.*

The following witnesses will be called to give evidence at the Hearing in support of the Management Case:-

*(state the names of witnesses)*

You have the right to be accompanied by a trade union representative or work colleague. It is your responsibility to arrange for a representative to accompany you to the Hearing. If your chosen representative is unable to attend the hearing at the time given above, you may propose another date and time for the meeting to take place to me. Any such alternative date must be on or before (*enter date 5 working days after the date being proposed in this letter*).

You also have the right to produce written statements and to invite witnesses to give evidence in support of your case. You should ensure that copies of any written statements upon which you wish to rely at the hearing are given to me no later than 3 working days before the hearing, together with the names of any witnesses that will be attending.

I enclose copies of the documentation which will be considered at the hearing and includes the Investigation Report, Witness Statements and a copy of the Trust's Disciplinary Policy and Procedure. It is your responsibility to pass a copy of the paperwork to your representative.

I appreciate that this will be a difficult time for you and would advise you to contact your Union or Doctor's counselling service if you require support at this time.

If you have any queries with regards to the contents of this letter or the Disciplinary Procedure please contact me.

Yours sincerely

Head of School/Chair of Governors

## Notification of outcome of Disciplinary Hearing

Dear

### **Outcome of Disciplinary Hearing on ..... (insert date)**

Following the disciplinary hearing on (*date*), I write to confirm that I/the Disciplinary Hearing Panel has determined that:-

*The allegations against you have not been proven and no further action will be taken*

*The allegations against you have been upheld in full and constitute (misconduct/gross misconduct)*

*The following allegations (give details) have been upheld against you but (the panel) concluded that allegations that you (give details) were not proven*

The reasons for reaching this decision are .....

As a result the Disciplinary Committee has decided that

*You should receive a written warning /final written warning to remain on your record for (12 months/2 years/other) and this letter constitutes notice of the same*

*You are to be dismissed and your employment terminated with effect from (date)*

*No formal action will be taken on this occasion but I/Disciplinary Hearing Panel require(s) you to (details of standard of conduct required) and reminds you that failure to maintain such standards may result in further disciplinary action being taken against you.*

*You should receive a written warning/final written warning, but as you are already subject to a written warning/final written warning, you will receive a final written warning/you will be dismissed.*  
(Set out details of improvement expected of employee, if applicable).

To assist and support you in attaining these standards (*details of support structures*). Your progress will be reviewed at the meeting with (*Head of School/line manager*) in (x) weeks' time.

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

Notes from the Disciplinary Hearing are attached for your information.

You have the right to appeal against the disciplinary action in accordance with the Trust's Disciplinary Procedure. If you wish to appeal, you must submit a written statement of appeal to me within 10 working days of receipt of this letter. The letter should clearly state the grounds of the appeal, which should be based on any or all of the following:

- The severity of the disciplinary action and/or
- The finding of the disciplinary hearing on a point of fact and/or
- A failure to adhere to agreed procedure
- New evidence

Any appeal will be heard by an Appeal Hearing Panel.

Yours sincerely

Head of School/Chair of Governors

<b>Notification of Appeal Hearing</b>
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Dear

**Appeal Hearing**

Following your letter of (date) notifying the Academy Trust that you wish to appeal against the decision taken at the Disciplinary Hearing held on (date), I am writing to inform you that an Appeal Hearing will take place on (date) at (time) at (venue) to hear your appeal.

You are appealing on the grounds of: *(select whichever is relevant)*

- The severity of the disciplinary action and/or
- The finding of the disciplinary hearing on a point of fact and/or
- A failure to adhere to agreed procedure
- New evidence

The Appeal Hearing Panel will be:

*List the 3 panel governors here*

*Name of Head of School/Chair of Disciplinary Hearing Panel will present the Academy Trust's case in response to your grounds for appeal.*

You have the right to be accompanied by a trade union representative or a work colleague. It is your responsibility to arrange for a representative to accompany you to the Hearing and to inform them of the details of the Appeal Hearing. If your chosen representative is unable to attend the hearing on the given date and time, you may propose another date and time for the meeting to take place to me. Any such alternative date must be no later than *(enter 5 working days after the date being proposed in this letter)*.

The documentation to be considered at the Appeal Hearing is attached. It is your responsibility to provide a copy to your representative should they request it.

Yours sincerely

**Notification of Outcome of Appeal**

Dear

Following the Appeal Hearing on (date) I am writing to confirm the decision of the Appeal Panel.

In making their decision the Appeal Panel considered all of the information presented to them by yourself, the Presenting Officer, and the documentary evidence available.

*Indicate here any other factors which have influenced the decision*

It is the Appeal Panel's decision to:

Dismiss your appeal and to uphold the decision taken by the Disciplinary Hearing Panel.

Uphold your appeal and dismiss the disciplinary action. The panel has reached this decision based on ..... *(state the grounds for the decision)*

You are to be re-instated in your post as *(post title)* with effect from *(date) date of termination/where the notice has expired from the date of the expiry of the notice period.*

Any record of the disciplinary action that has been placed on your personnel file will be removed.

OR

Substitute a lesser level of disciplinary action to:

- Written warning/Final Written warning
- Transfer to another post *(state details of post and effective date)*  
OR
- Demotion to *(post title)* *with/without* protection of salary

*The panel may wish to make recommendations around monitoring and review of conduct in the post/any trial periods etc.*

I must advise you that the Appeal Hearing Panel's decision is final.

Yours sincerely