



Performance Management Policy

Part 1: Performance Management Policy

Part 2: Capability Procedure

Part 3: Disciplinary Procedure

**Updated: July 2016
Review Date: September 2017
Responsibility: Resources Committee**

Introduction

This policy and procedure has been consulted upon with the recognised trade unions and professional associations for Hampshire maintained schools. Where Hampshire maintained schools wish to localise this policy and procedure further, consultation will need to take place with staff and representatives of the recognised unions and associations. This policy and procedure is commended to academies and other schools who have freedom to develop their own policy and procedure, although such schools who wish to adopt this policy and procedure are advised to take this through their own negotiation/consultation framework.

This policy and procedure will be reviewed every three years or whenever a change in employment legislation necessitates a review, whichever is sooner.

The Capability Procedure is a supportive process aimed at generating sustained improvement.

Purpose

This document sets out the framework for a clear and consistent assessment of the overall performance of employees, including the Headteacher, and for supporting their development within the context of the school's plan for improving educational provision and performance, and the standards expected of teachers and other staff. It also sets out the arrangements that will apply when employees fall below the levels of competence that are expected of them.

Application

The Performance Management Policy is for all employees working within Crestwood College with the exception of those employees on contracts of less than one term, those undergoing induction (i.e. NQTs), and those who are subject to the Capability Procedure (see Part 2 of this document).

The Capability Procedure is for all employees working within Crestwood College.

Part 1 – Performance Management Policy

	Page Number
1. Principles	4
2. The Performance Management Cycle	5
3. Appointing Reviewers	5
4. Setting Objectives	6
5. Reviewing Performance	8
6. Dealing with Performance Concerns	11

Part 2 – Capability Procedure

	Page Number
1. Principles	17
2. Stages of the process	19
3. Stage 1- Formal Meeting	20
4. Stage 2- Formal meeting	21
5. Stage 3 Headteacher /Governors' Committee Hearing	23
6. Improvement in performance achieved	24
7. Fast Track procedure	24
8. Gross Incapability	25
9. Failure to make progress during a review period	25
10. Right of Appeal	25
11. Requirement for Schools to Pass on Information about a Teacher's Capability to a new Employer.	26
12. Support	26

Part 3- Disciplinary Procedure

	Page Number
1. Purpose	29
2. Legal Context	29
3. Scope	29
4. Principles	30
5. Special Considerations	32
6. Roles and Responsibilities	32
7. The right to be accompanied	34
8. Suspension and requests to stay away from school	34

9.	Investigations	37
10.	Disciplinary Hearing	38
11.	Disciplinary Action	40
12.	Governors' Appeals Committee	41
13.	Referrals to Relevant Bodies	43
14.	Headteachers	43

Appendix 1

Disciplinary Procedure for Employees in Educational Establishments
During their first or second year of service

Appendix 2

Model Disciplinary Rules

Appendix 3

Procedure for a Headteacher or Governors' Committee Hearing

Part 1 – Performance Management Policy

1. Principles

- 1.1 Performance management at Crestwood College will be a **supportive and developmental** process designed to ensure that all employees have the skills and support they need to carry out their role effectively. It will help to ensure that all employees are able to continue to improve their professional practice and to develop in their careers.
- 1.2 The process of setting and reviewing performance objectives for staff in schools is an integral part of the school's overall approach to school improvement and development. Performance objectives will be written in such a way that they complement and link to the targets expressed in the school improvement plan and will be recorded electronically utilising the appropriate Performance Management google word document for the role.
- 1.3 It is important to recognise that the objectives set for any member of staff will not represent the complete job that the individual is expected to perform. Reviewing performance is about measuring the progress made against the objectives set with appropriate support, which will represent key priorities for that individual, and in addition, assessing and recognising the overall performance of that person in the job, including an assessment against any relevant standards/accountabilities.
- 1.4 There is no correct number of objectives to set for any member of staff. The number will depend on the role they undertake, the relevant priorities for that person at that time and the nature and complexity of each objective set.
- 1.5 The process of performance management will be carried out in accordance with this policy, which is underpinned by the statutory regulations for teachers and local agreements for support staff.
- 1.6 Performance management will be carried out in such a way to ensure consistency of treatment and fairness.
- 1.7 The Governing Body and Headteacher will monitor the operation and effectiveness of the school's performance management arrangements.
- 1.8 The performance management process will be treated with confidentiality. Normally only the reviewer, reviewee, Headteacher and Deputy Headteacher with the responsibility for performance management oversight will have access to performance management information and documentation relating to the reviewee. However, in the event of an Ofsted inspection taking place, Ofsted inspectors may request that anonymised information about the school's performance management arrangements, including the most recent performance management outcomes and their relationship to salary progression, is provided.

Governors may also request an anonymised sample of performance management statements to enable them to perform their role in monitoring the effectiveness of the school's performance management system.

- 1.9 The Governing Body and Headteacher will ensure that all written performance management records are retained securely for six years and then destroyed.
- 1.10 Where an employee's performance is affected by a health problem and/or sickness absence, the matter will normally be dealt with in accordance with the school's Absence Policy and Procedure. This is likely to lead to a referral to Occupational Health in order to assess the employee's fitness for work.
- 1.11 When assessing an employee through the performance management process, factors such as any periods of ill health, or maternity leave, will be taken into account as this may affect an employee's ability to meet their objectives.
- 1.12 Text in italics denotes areas where schools may wish to exercise discretion.
- 1.13 The audio or video recording of any meetings or hearings held under this procedure is not permitted. Where an employee is unable to take his or her own notes of a meeting due to a physical, sensory, or mental impairment, it is expected that the employee's representative will take notes on their behalf and/or an alternative option will be considered to remove any disadvantage that an employee may have. Only in exceptional cases may an employer request an audio or video recording of the meeting as an alternative, in such cases, consideration will be given as to whether or not recording the meeting is appropriate in all the circumstances, including an assessment of whether other options have been considered as above.

2. The Performance Management Cycle

- 2.1 The performance management cycle for the Headteacher and all teachers will run for twelve months, with the end of year review being completed by October 31st for teachers, and December 31st for the Headteacher, in reference to the previous academic year. The performance management cycle for support staff will run for twelve months with the end of year review being completed by December, in reference to the *previous academic year or current financial year*.
- 2.2 Employees who are employed on a fixed-term contract of less than one year will have their performance managed in accordance with the principles underpinning this policy. The length of the period will be determined by the duration of their contract.
- 2.3 The performance management cycle will link to the pay arrangements for employees. In the case of teaching staff, the end of year review and the annual pay determination will take place by the end of October each year (December for the Headteacher) and is informed by the performance management cycle concluding at the end of the previous academic year (31 August). In the case of support staff who are performance managed via the Individual Performance Planning (IPP) process, the end of year review will be completed by December in order for decision about pay to be made, effective from 1 April each year.

3. Appointing Reviewers

- 3.1 The Headteacher's performance will be reviewed by the Governing Body, supported by a suitably skilled external adviser who has been appointed by the Governing Body for that purpose.
- 3.2 At Crestwood the task of reviewing the Headteacher and setting objectives will be delegated to a sub group consisting of two members of the Governing Body, including the Chair of Governors, and additionally the Leadership and Learning Partner (LLP). The appointed governors will be known as the Headteacher Performance Management Committee (HPMC).
- 3.3 Given the close working relationship between the Headteacher and the Chair of Governors, it would not normally be appropriate for the Chair of Governors to be part of the HPMC.
- 3.4 The Headteacher will decide who will review other teachers and support staff, however, this will normally be the employee's line manager. The Headteacher will determine whether the reviewer also makes a recommendation about pay progression, in accordance with the school's Pay Policy. The Headteacher has the discretion to delegate the review process to other employees who will normally be line managers. Reviewers will have the necessary knowledge and training in order to undertake this role.
- 3.5 Where performance concerns arise (see Section 6), the Headteacher may re-delegate the reviewer role to a senior manager or undertake the role of reviewer themselves.

4. Setting Objectives

- 4.1 The Headteacher's objectives will be set by the Governing Body after consultation with the external adviser. At least one of the targets for the Headteacher will relate to outcomes of pupils.
- 4.2 Objectives for each employee will be set before, or as soon as practicable after, the start of each performance management cycle. In setting objectives, reviewers will have regard to what can reasonably be expected given the employee's role and level of experience, as communicated in the school's Pay Policy. The level of expectation of an employee's performance must also be communicated at the outset of the performance management cycle. For example, where the School has been explicit that to achieve their improvement plans teaching needs to be good or above, this expectation must be clearly communicated to all staff through the school's ratings of performance as defined in the school's pay policy.
- 4.3 At Crestwood, prior to the setting of objectives, subject leaders will self review their departments including specific evaluation to role profiles, to be followed by a Scrutiny Panel led by a Senior Leader. The expectation is that teaching will be at least good or better as defined in the schools pay policy
- 4.4 The objectives set for each teacher will, if achieved, contribute to the school's plans for improving the school's educational provision and performance and improving the education of pupils at the school, and will take into account the

outcomes for pupils. Objectives will also take into account the professional aspirations of the employee.

- 4.5 Objective setting will have regard to a reasonable level of expectations of the employee in the context of work/life balance.
- 4.6 Before, or as soon as practicable after, the start of each performance management cycle, each teacher will be informed of the standards, objectives and success criteria against which that teacher's performance in that performance management cycle will be assessed. In addition, the reviewer and reviewee will agree the reviewee's development plan for that year.
- 4.7 Before, or as soon as practicable after, the start of each performance management cycle, each member of support staff will be informed of the key accountabilities against which that employee's performance in that performance management cycle will be assessed, for example those contained within the role profile applicable to that employee. In addition, the reviewer and reviewee will agree the reviewee's development plan for the year.

5. Reviewing Performance

5.1 Evidence

A number of methods will be used in order to obtain evidence by which to assess an employee's performance. These include those detailed below. Such evidence will be triangulated in order to undertake an overall assessment of the employee's performance. This will include their performance against their objectives and against the relevant standards/key accountabilities for their role.

5.1.1 Observation

At Crestwood we believe that observation of classroom practice and other responsibilities is important both as a way of assessing the performance of classroom-based employees, in order to identify any particular strengths and areas for development they may have, and of gaining useful information which can inform school improvement more generally. Therefore, feedback from lesson observations will be developmental and not simply a judgement. All observation will be carried out in a supportive manner.

At Crestwood, classroom-based employees' performance will be regularly observed but the amount and type of classroom observation will depend on the individual circumstances of the employee and the overall needs of the school at that time. Classroom observation of teachers will normally be carried out by those with QTS. In addition to formal observation, the Headteacher or other leaders with responsibility for standards in the classroom may "drop in" in order to evaluate the standards of teaching and to check that high standards of professional performance are established and maintained. The length and frequency of "drop in" observations will vary depending on specific circumstances.

Observations are a snapshot in time and reviewers will use the information gathered from these alongside other types of evidence to make judgements about performance.

Verbal feedback will normally be given within 24 hours to the member of staff, followed up by written feedback using QA lesson observation forms within three working days of the observation taking place. Where it is not reasonably practicable to provide feedback within these timescales, feedback will be provided at the earliest opportunity thereafter.

Teachers (including the Headteacher) who have responsibilities outside their classroom, and support staff who are not classroom-based will also have their performance of those responsibilities observed and assessed.

Observations undertaken by Ofsted inspectors or as a result of local authority monitoring, will not, in themselves, be used for performance management purposes. However, these observations may highlight the need for the school to undertake separate observations for performance management purposes, for example if a lesson is rated as inadequate by Ofsted. Observations undertaken by a local authority officer may be used in performance management where this has been planned and communicated to all parties in advance.

5.1.2 Pupil progress and attainment

Rates of pupil progress and levels of attainment as pertinent to the teacher's role will be used in assessing a teacher's performance against the Teachers' Standards and, where relevant, against objectives.

The HPMC, with advice from the External Adviser, will review levels of pupil attainment, rates of pupil progress and whole school performance in their assessment of a Headteacher's performance, in addition to other objectives that may have been set.

Where support staff are providing support to groups or individual pupils, the progress and attainment of those pupils may be taken into account in assessing the performance of the employee. This will only be used alongside other evidence which supports the level of contribution of the employee to the progress and attainment of pupils.

5.1.3 Work sampling

Work sampling may be used in assessing teacher performance against the standards for the role and, where relevant, against objectives.

5.1.4 Other evidence

Other evidence may be considered, where it is pertinent to the objectives set and the standards/accountabilities for the role.

Examples of such evidence may include (but are not limited to): -

Teachers

- Short, medium and long-term planning
- Effective deployment and management of classroom-based support staff

The Headteacher

- Evidence from reports from external sources such as Ofsted, the local authority, or other reviews.
- RAISEonline and other performance tables.

Support staff

- A sample of written correspondence produced (administrative staff).
- A sample of budget correspondence (finance staff).
- A sample of health and safety monitoring (site staff).
- Examples of displays and resources prepared (classroom-based support staff).

It may also be appropriate to consider evidence such as feedback from colleagues, including peers, and for line managers, their staff.

5.2 Feedback

- 5.2.1 Employees will receive constructive feedback on their performance throughout the year and as soon as practicable after observation has taken place or other evidence has come to light. Feedback will highlight particular areas of strength and celebrate success, as well as any areas that need development and support. Where there are any concerns about any aspects of an employee's performance, this will be managed in accordance with Section 6 of this policy.

5.3 Annual Assessment

- 5.3.1 Every employee's performance will be formally assessed in each performance management cycle. In assessing the performance of the Headteacher, the Governing Body will consult the external adviser.
- 5.3.2 The assessment is the end point to the annual performance management process but performance and development priorities will be reviewed and addressed on a regular basis in fortnightly line management meetings throughout the year, [via classroom SEF discussions](#) and a formal mid year interim review.
- 5.3.3 An employee will receive a written performance management statement as soon as practicable following the end of each performance management cycle. The employee will have the opportunity to comment on this. Teachers will receive their written performance management statement by 31 October (31 December for the Headteacher). Support staff will receive their performance management statement by January 15th. The performance management statement will include: -
- an assessment of the employee's performance of their role and responsibilities against their objectives in the last performance management cycle;
 - an assessment of the employee's performance of their role and responsibilities against the standards/accountabilities for their role in the last performance management cycle;
 - summary of the evidence considered to support the decisions made;
 - a recommendation on pay based on performance in the last performance management year (where this is relevant).
 - A recommendation on pay based on performance in the last performance management year (where staff are eligible for progression)

The employee will also receive a new performance management statement for the new performance management cycle. This will include:

-

- details of the employee's objectives for the new performance management cycle;
- an assessment of the employee's current training and development needs and identification of any action that should be taken to address them in the new performance management cycle;
- an indication of when monitoring will take place.

- 5.3.4 The assessment of performance against the objectives and standards will inform the planning process and training and development needs for the next performance management cycle.
- 5.3.5 All staff and reviewers are encouraged to also use performance management meetings to discuss other matters pertinent to their employment.
- 5.3.6 With the exception of the Headteacher pay recommendation, all pay recommendations arising out of the performance management process must be approved by the Headteacher before being shared with the individual member of staff to whom the recommendation relates, and referred to the governors' pay committee. The HPMC must also refer their recommendation to the governors' pay committee.
- 5.3.7 Pay progression for all staff will be set out in the school's Pay Policy.

5.4 Moderation of Performance Management Statements

- 5.4.1 The Headteacher will take responsibility, where the reviewer role has been delegated, for moderating a sample of performance management statements and pay recommendations to ensure consistency and equality of treatment.

6. Dealing with Performance Concerns

- 6.1 The majority of employees are competent in their role for the majority of the time. On occasions, however, an individual's performance can be deemed to be below accepted standards and support is needed to help them re-attain and sustain the required level of performance.
- 6.2 Concerns about performance will be addressed at the time they are identified and not left to the employee's next performance management meeting. This will assist the employee to recognise issues at an early stage.
- 6.3 Performance concerns may be identified by the reviewer or by a Senior Manager/Headteacher. Where a concern is identified that is likely to require structured managerial support, the Headteacher may re-delegate the reviewer role to a senior manager or undertake the role themselves. A reviewer must notify the Headteacher where they identify performance concerns and confirm how the Headteacher intends to proceed.
- 6.4 Concerns about the performance of the Headteacher may be identified by an individual or combination of sources. Where a concern is identified via the HPMC, the Chair of the HPMC must notify the Chair of Governors. Where the concern is notified by the Chair of Governors, the Chair of Governors must notify the Chair of the HPMC. In both circumstances, the Chair of the HPMC will review the evidence available with the School's School Improvement provider to determine how to proceed.
- 6.5 Where it is necessary to take forward a performance concern in respect of the Headteacher, this will be undertaken by the HPMC, with professional advice

from the School's School Improvement provider, and the Chair of Governors will be kept apprised of the situation.

6.6 When raising performance concerns with an individual, the Headteacher/Senior Manager/HPMC will take into account any factors which may be having an impact on the employee's ability to perform their duties. However, such factors in themselves do not negate the need to address performance concerns.

6.7 Whilst there are no formal rights of representation at this stage, employees are encouraged to contact their Professional Association or Trade Union Representative for advice and support.

6.8 Identifying when performance is deemed to be below accepted standards

6.8.1 The Headteacher/Senior Manager/HPMC may consider a member of staff to be underperforming where: -

- the standard of performance falls below that which is required to meet or make progress towards a specific performance management target; and/or
- the standard of performance falls below that which is required to meet the expectations of a particular role in their school; and/or
- the performance falls below the relevant standards/accountabilities for the role; and/or
- the overall school performance falls below that which is required (in the case of the Headteacher).

6.8.2 Post-Threshold, Excellent, Advanced Skills Teachers, and TLR holders are expected to meet the professional duties and standards relevant to their role as well as the core standards that apply to all teachers. If the Headteacher/Senior Manager has evidence to show that an employee is no longer meeting the expectations of their role, these concerns will be addressed with the individual promptly.

6.8.3 Where the school has clearly communicated a level of expectation, the Headteacher and senior managers may consider a member of staff to be underperforming if they are not reaching this level of expectation.

6.9 Determining possible initial courses of action

6.9.1 Depending on the severity of the under performance, the Headteacher/Senior Manager/HPMC need to take a view as to the proportionate response. This may include:

- an early conversation to confirm the expected standards of the role;
- coaching/mentoring support;
- structured managerial support;
- consideration of application of the Capability Procedure (exceptional circumstances or concerns).

An early conversation and coaching/mentoring support will only be used on their own to support low level or early stage concerns where these may be an effective measure. Where the performance concern is more

significant or continues, structured managerial support will normally be put in place.

6.10 Structured managerial support

6.10.1 Where a performance concern has been identified that requires additional support, a discussion will be held between the Headteacher/Senior Manager/HPMC and the employee. The outcome of the meeting will be to identify what steps will be taken to assist the employee to improve their performance and move to the required standard. (In cases involving the Headteacher, the HPMC will normally invite the School's School Improvement provider to provide support at this meeting.) The discussion will include: -

- what area(s) of performance is/are of concern;
- what improvement is required/the standard the employee needs to meet;
- the timescales in which this is to be achieved (these will vary depending on the issues identified);
- the support that will be provided to assist the employee;
- how frequently the performance/progress will be monitored and reviewed;
- the seriousness of the issue and potential consequences of improvement not being achieved including impact on pay progression.

6.10.2 The employee will be invited to provide his/her point of view on the shortfall in performance and whether they believe there is an underlying reason. The employee will also be asked to identify what support they feel they need in order to achieve the required improvement, and the Headteacher/Senior Manager/HPMC will indicate what support they intend to put in place.

6.10.3 The key outcomes of the discussion will be recorded in writing and shared with the individual. The written record of the discussion will be placed on the individual's personal file and a copy given to the employee.

6.10.4 Review meetings will be held at the agreed timescales to review progress towards targets set and the appropriateness of the support being given. At these meetings, any improvements will be communicated to the individual as well as the remaining gap between their current level of performance and the expectations set. The outcome of these meetings will also be recorded in writing and a copy shared with the individual.

6.10.5 The purpose of any structured managerial support programme is to assist the employee to achieve the necessary improvement within the agreed timescales. Where this is successful the Headteacher/Senior Manager/HPMC will confirm this at the relevant review meeting and record this in writing to the employee. The employee will be informed that the improvement in their performance must be sustained.

6.10.6 If the employee is not making the necessary progress towards the required improvement, the employee will be informed that failure to achieve this may lead to the Capability Procedure being applied (see Part 2 of this document) and there may be an impact on their pay progression. The Headteacher/Senior Manager/HPMC will make a judgement about when to communicate this given that it may not be appropriate to do so during the first discussion. However, if a move to the Capability

Procedure is a likely outcome, the potential for this must be communicated to the member of staff in good time. It must be recorded in writing that the employee has been informed of the potential consequences should their performance not meet the required standard. If the necessary improvement is then not achieved within the agreed timescales, the Headteacher/Senior Manager/HPMC will need to consider use of the Capability Procedure.

6.10.7 Where the employee has initially made the required improvement but this performance has not been sustained independently over a 6-month period, the Headteacher/Senior Manager/HPMC will need to consider use of the Capability Procedure.

6.11 By-passing structured managerial support

6.11.1 In most circumstances a structured managerial support programme will be put in place prior to the Capability Procedure being used. However, the Headteacher/Senior Manager/HPMC may determine that it is appropriate to move straight to the Capability Procedure, in the following circumstances:

- the employee's performance is putting the health and safety of pupils and/or staff at risk;
- the employee's performance is putting the education of pupils in serious jeopardy;
- the employee's performance has not been sustained independently for 6 months at an accepted level following an earlier managerial support programme.

6.12 Transition to the Capability Procedure

6.12.1 At any stage the Headteacher/Senior Manager/HPMC may consider a transition to the Capability Procedure (Part 2 of this document). The Headteacher/Senior Manager/HPMC will have specific regard to:

- the nature and severity of the under performance;
- the impact on pupils and colleagues both in the short and longer term;
- the likely and required timescale for improvements to be made;
- the engagement of the employee in the programme.

6.12.2 In a typical case, if a managerial support programme has been in place and the issues have not resolved after 4 school weeks/half a term then it would be appropriate to consider moving onto the Capability Procedure. However, when determining how long to wait before moving onto the Capability Procedure, the Headteacher/Senior Manager/HPMC will give consideration to the circumstances of the case, in particular the factors listed under paragraph 6.12.1 above. In such circumstances where the Headteacher/Senior Manager/HPMC determine a need to consider the application of the Capability Procedure, the employee will be invited to attend a meeting at which such a consideration will be undertaken. The individual will be given the opportunity to be accompanied at the meeting by a Professional Association/Trade Union Representative or work colleague and be provided with a copy of the Capability Procedure in advance. The meeting will be arranged in accordance with Section 3 of the Capability Procedure (Stage 1 – Formal Meeting).

- 6.12.3 At this meeting, depending on the level of concern, the responses of the employee, the progress so far, and whether the Headteacher/Senior Manager/HPMC feels improvement is likely to be seen in the necessary time frame, the Headteacher/Senior Manager/HPMC will decide either to continue to offer a further period of managerial support or to confirm that the employee will now be moved onto the Capability Procedure.
- 6.12.4 Should the Capability Procedure commence; performance management will be suspended.

Part 2 – Capability Procedure

1. Principles

- 1.1 This procedure will apply in circumstances where poor performance is assessed to be as a result of an employee's lack of skill, ability, knowledge, experience or aptitude. Where poor work performance is assessed to be due to a deliberate or wilful failure to fulfil the duties of an employee's role and/or a deliberate lack of care, the matter will be dealt with under the School's Disciplinary Procedure as this is a conduct concern.
- 1.2 Where an employee wilfully and unreasonably refuses to co-operate with the application of the Capability Procedure, the matter will be dealt with under the Disciplinary Procedure.
- 1.3 Poor performance due to health problems and/or sickness absence will normally be dealt with via the School's Sickness Absence Policy and Procedure. This is likely to lead to a referral to Occupational Health in order to assess the employee's fitness for work. In some cases, it may be appropriate for the Capability Procedure to continue during a period of sickness absence, however the Headteacher/Senior Manager/Headteacher Performance Management Committee (HPMC) will have regard to the views of Occupational Health.
- 1.4 Prior to the implementation of this procedure, the Headteacher/Senior Manager/ HPMC will normally need to be able to show that, through the performance review process, reasonable efforts have been made to identify any performance concerns, discuss them with the employee and, as appropriate, provide support designed to facilitate improvement.
- 1.5 This procedure aims, through advice and support, to improve to an acceptable level, as set by the school, the performance of an employee who is causing concern. Such advice and support may be provided:
 - from within the school;
 - through accessing expertise in another school;
 - via the local authority's advisory services;
 - from other expert sources external to the school;
 - through training courses or events.
- 1.6 The stages specified in this document must be dealt with on a professional and confidential basis. Governors will be notified in the event that the formal Capability Procedure is applied to a member of staff, but will not be provided with any other detail, as this may prejudice governors' involvement in a later stage if recourse to that stage eventually becomes necessary.
- 1.7 Employees are encouraged to be accompanied by a professional association or trade union representative or by a work colleague under

any stages of the Capability Procedure and to seek advice at the earliest opportunity where they are subject to formal action. The companion is allowed to make representations on behalf of the employee, submit papers, ask questions and address a meeting on behalf of the employee but is not allowed to answer questions on behalf of the employee. It is the employee's responsibility to arrange their own companion and advise management of this. If the employee, or their companion, is unable, for good reason, to attend a meeting, an alternative date will be arranged, once only, normally within 5 working days of the original meeting.

- 1.8 When the Capability Procedure has commenced, the employee will be provided with a copy of the Procedure.
- 1.9 All targets and support and review meetings will be recorded during the capability process.
- 1.10 The employee will not normally be permitted to raise a grievance related to any action taken, or contemplated, under this procedure. Such grievances will normally be managed within the hearing and appeal process detailed below.
- 1.11 If the employee has less than two years of continuous service with the employer (depending on the employee's start date), the procedure at Appendix 1 will be used.
- 1.12 The employee will have the right of appeal against any formal action taken against them in accordance with section 10 of this procedure.
- 1.13 The School will have the right to request that an officer from Education Personnel Services attends any meetings under Stages 1 or 2 of the Capability procedure, in order to provide support to the Senior Manager/Headteacher/HPMC. Education Personnel Services will have the right to attend a meeting held under Stage 3 of the Capability Procedure in Hampshire Maintained Schools (other than in Voluntary Aided or Foundation Schools unless such rights exist) on behalf of the Local Authority.
- 1.14 In the interests of fairness, both parties are expected to provide details of any significant issues and relevant papers in advance of meetings arranged under the formal procedure. Management documents will normally be supplied with the letter inviting the employee to the formal meeting. The employee, or their representative/colleague, must submit their information to arrive at least **3 working days** before the meeting.
- 1.15 Responsibility for decision-making within this procedure rests with the Headteacher/Senior Manager/HPMC, and the Headteacher/Governors' Committee where convened. If the governing body has delegated to the Headteacher the power to dismiss, the Headteacher will not normally be able to fulfil that role where he/she has had substantial

- involvement in the earlier stages of the procedure.
- 1.16 Where this procedure is used in relation to Headteacher poor performance, the HPMC will undertake the role of Headteacher/Senior Manager. In such cases, an additional professional adviser from the School's School Improvement provider will be present, at any stage, to provide governors with professional advice.
 - 1.17 The time periods in this procedure will also apply to part-time employees.
 - 1.18 A first formal warning given as part of the application of this procedure will lapse at the point when the Headteacher/Senior Manager/HPMC decides that an acceptable level of performance has been reached. If performance concerns return within 12 months from the date of such a decision, the Headteacher/Senior Manager/HPMC, following consultation with Education Personnel Services (or HIAS in the case of the Headteacher), may re-enter the procedure at the appropriate point in Stage 1.
 - 1.19 Where a final warning has been issued, this will lapse at the point when the Headteacher/Senior Manager/HPMC decides that an acceptable level of performance has been reached. If performance concerns return within a period of two years (six terms) from the date of issue, the Headteacher/Senior Manager/HPMC, following consultation with Education Personnel Services (or HIAS in the case of the Headteacher), may re-enter the procedure at the appropriate point in Stage 2 at any time during this two-year period.
 - 1.20 Action involving use of a formal written warning and beyond will not be taken in respect of an accredited representative of a Trade Union unless the Headteacher or Education Personnel Services (as appropriate) has informed the relevant full-time official of the action that is being contemplated.
 - 1.21 The audio or video recording of any meetings or hearings held under this procedure is not permitted. Where an employee is unable to take his or her own notes of a meeting due to a physical, sensory or mental impairment, it is expected that the employee's representative will take notes on their behalf and/or alternative options will be considered to remove any potential disadvantage that an employee may have. Only in exceptional cases may an employee request an audio or video recording of the meeting as an alternative, in such cases, consideration will be given as to whether or not recording the meeting is appropriate in all the circumstances, including an assessment of whether other options have been considered as above.

2. Stages of the Procedure

2.1 There are three stages in the Capability Procedure, as follows:

- Stage 1 - Formal Meeting Stage
- Stage 2 – Formal Meeting Stage
- Stage 3 – Headteacher/Governors' Committee hearing

2.2 At every stage of the procedure the employee will be advised of the nature of the concern, be given an opportunity to provide their view, and have the right to be accompanied.

3. Stage 1 - Formal Meeting

3.1 Invitation to a Stage 1 Formal Meeting

3.1.1 The Headteacher/Senior Manager/HPMC will write to the employee to invite them to a Stage 1 Formal Meeting. The invitation letter will:

- inform the employee of the stage of the procedure being followed;
- provide the employee with a minimum of 5 working days' notice of the meeting;
- inform the employee of the right to be accompanied at the meeting;
- inform the employee of the requirement to confirm before the meeting whether they intend to be accompanied at the meeting, and, if so, by whom;
- inform the employee that, if they wish to refer to any written information at the meeting, this must be submitted to arrive 3 working days before the meeting;
- explain that if the employee needs special support or assistance during the meeting, they should notify the Headteacher/Senior Manager/HPMC in advance of the meeting;
- remind the employee of their access to the Council's Employee Support service;
- enclose a copy of the Capability Procedure (if they have not already been provided with a copy) and all written information the Headteacher/Senior Manager/HPMC wishes to rely upon during the meeting;

3.2 Conduct of the Stage 1 Formal Meeting

3.2.1 The Headteacher/Senior Manager/HPMC will:

- clearly set out the nature of the performance concerns, discuss the measures put in place during any period of structured managerial support and explain why progression to the Capability Procedure may be required;
- refer to any documents or evidence (for example, evidence of support provided, monitoring and training records and examples of the

employee's work) and clarify the requirements of the employee's role and the standards expected;

- ask the employee to account for their continued under-performance including any mitigation the employee feels is relevant;
- consider all the facts and, if necessary, adjourn the meeting to consider these further before making a decision about whether the employee will move onto the Capability Procedure;
- define success criteria and the evidence that will be used to assess whether or not the necessary improvement has been made;
- define the nature and frequency of any support to be provided, and of the monitoring process, and the dates of interim progress reports and formal reviews (noting section 9).

3.3 Outcomes of the Stage 1 Formal Meeting

3.3.1 Possible outcomes include:

- no formal action required (in which case it may be appropriate to continue to address the concerns through the performance management process and the Capability Procedure will not apply);
- a Formal Warning is issued;
- (in serious cases) a Final Warning is issued (see section 7);
- (in exceptional cases) a decision is made to suspend the employee pending an investigation into a concern of gross incapability (see section 8). In such circumstances, the Headteacher/Senior Manager/HPMC may refer the matter directly to a hearing under Stage 3.

An employee issued with a warning will be told the consequences of further poor performance or failure to improve within the set review period. The length of the review period will depend on the circumstances of the individual case but in most cases will be between four and ten weeks. Progress will be formally reviewed at the end of this period, however interim reviews will also be held to assess progress (noting section 9).

3.3.2 The outcome of the meeting will be confirmed in writing to the employee, normally within 5 working days. If it is necessary to vary this timescale the employee should be notified at the conclusion of the meeting. A copy of this letter will be placed on the employee's personal file.

4. **Stage 2 - Formal Meeting**

4.1 Invitation to a Stage 2 Formal Meeting

4.1.1 The Headteacher/Senior Manager/HPMC will write to the employee to invite them to a Stage 2 Formal Meeting. The invitation letter will be in accordance with paragraph 3.1.1.

4.2 Conduct of the Stage 2 Formal Meeting

4.2.1 The Headteacher/Senior Manager/HPMC will:

- clearly set out the nature of the performance concerns, discuss the measures put in place during any period of structured managerial support and explain why progression to the next stage of the Procedure may be required;
- refer to any documents or evidence (for example, evidence of support provided, monitoring and training records and examples of the employee's work) and clarify the requirements of the employee's role and the standards expected;
- ask the employee to account for their continued under-performance including any mitigation the employee feels is relevant;
- consider all the facts and, if necessary, adjourn the meeting to consider this further before making a decision about whether the next formal stage will be commenced or the current stage extended;
- define success criteria and the evidence that will be used to assess whether or not the necessary improvement has been made;
- define the nature and frequency of any support to be provided, and of the monitoring process, and the dates of interim progress reports and formal reviews.

4.3 Outcomes of the Stage 2 Formal Meeting

4.3.1 Possible outcomes include:

- no further action, in which case the Capability Procedure will cease (see section 6);
- the Formal Warning remains in place for a further specified period of time under Stage 1;
- a Final Warning is given.

The employee will be told the consequences of further poor performance or failure to improve within the set review period (as defined in section 4.5 and 5, below). In most cases, a review period will be set of no more than four weeks.

The outcome of the meeting will be confirmed in writing to the employee, normally within 5 working days. If it is necessary to vary this timescale the employee should be notified at the conclusion of the meeting. A copy of this letter will be placed on the employee's personal file.

4.4 Stage 2 Final Review Meeting

4.4.1 At the end of the review period in Stage 2, the employee will be invited to a Final Review Meeting. The invitation letter will be in accordance with paragraph 3.1.1. The conduct of the meeting will be in accordance with paragraph 4.2.

4.4.2 Possible outcomes include:

- a decision to refer the matter to a Headteacher/Governors' Committee Hearing to consider dismissal on the grounds of Capability;
- the Final Warning remains in place for a further specified period of time;
- no further action, in which case the Capability Procedure will cease (see section 6).

4.4.3 The Headteacher/Chair of the HPMC (in the case of a Headteacher) will inform the Chair of the Governing Body and Education Personnel Services (if not already involved) of the outcome of the Stage 2 Final Review Meeting.

4.4.4 The outcome of the meeting will be confirmed in writing to the employee, normally within 5 working days. If it is necessary to vary this timescale the employee should be notified at the conclusion of the meeting. A copy of this letter will be placed on the employee's personal file.

4.5 Consideration of alternative options

Before any meeting takes place under Stage 3 of this procedure (with the exception of potential gross incapability cases), Education Personnel Services and, where appropriate, a Local Authority Officer and/or, in the case of an Aided School, an officer of the Diocese, will meet with the employee and the Headteacher/Senior Manager/HPMC separately to examine any available alternatives which would obviate the need for the application of Stage 3 or beyond. This will include consideration of whether or not it is feasible to make any offer of alternative employment to the employee.

5. Stage 3 – Headteacher/Governors' Committee Hearing

5.1 Invitation to a Stage 3 Hearing

5.1.1 The Headteacher/Senior Manager/HPMC will write to the employee to invite them to a Stage 3 Hearing. The invitation letter will be in accordance with paragraph 3.1.1 and the employee must be advised that dismissal is a potential outcome. The employee must be advised of their right to be accompanied at the Hearing in accordance with paragraph 1.7.

5.2 Conduct of a Stage 3 Hearing

5.2.1 Where the Headteacher has formally delegated powers of dismissal and has not had substantial involvement in Stages 1 and/or 2 of the procedure, the Headteacher may hear the matter. Where this is not the case, the matter will be heard by a Governors' Committee.

5.2.2 The Hearing will be conducted in accordance with the procedure for Headteacher/Governor Committee Hearings.

5.2.3 In the case of the Headteacher, the Chair of the HPMC will commission an Advocate from the School Improvement Service and a senior officer from Education Personnel Services to present the management case. The Chair of the HPMC will normally be called as a witness.

5.3 Outcomes of the Stage 3 Hearing

5.3.1 Possible outcomes include:

- no further action, in which case the Capability Procedure will cease (see section 6);
- the previous Final Warning should remain in place for a further specified period of time (in which case the required improvement in performance will be identified as well as the support that will be provided to help the employee achieve this and the period of time in which the necessary improvement must be made);
- the employee is dismissed on the grounds of capability with the appropriate contractual notice;
- the employee is dismissed summarily (in gross incapability cases – see section 8).

5.3.2 The outcome of the meeting will be confirmed in writing to the employee, normally within 5 working days. If it is necessary to vary this timescale the employee should be notified at the conclusion of the meeting. If the decision is to dismiss the employee the letter will:

- specify the reason for the decision to dismiss;
- confirm that the dismissal will take place with notice (or without notice in the case of gross incapability);
- confirm that the employee has the right of appeal against the decision, and the mechanism for doing so.

6. Improvement in performance achieved

6.1 If the employee's performance improves as required, the Headteacher/Senior Manager/HPMC will meet the employee to tell them this. This will be confirmed in writing to the employee and the letter will be placed on the employee's file. The Capability Procedure will cease at this point and Performance Management will re-start. If the employee was at Stage 1 of the Capability procedure, their improvement in performance will need to be sustained for at least 12 months, at Stage 2 the improvement would need to be sustained for at least 24 months. If the employee's performance declines during this period of time, the Headteacher/Senior Manager/HPMC will have the option to re-enter the procedure at the appropriate point.

7. Fast-track procedure

- 7.1 In very serious cases it may be necessary to issue a Final Warning at a Stage 1 meeting. In such cases, if the necessary improvement in performance is not achieved during the review period, the Headteacher/Senior Manager/HPMC will proceed to Stage 3 – a Headteacher/Governors' Committee Hearing.

8. Gross Incapability

- 8.1 When an employee's performance is regarded as gross incapability it would be inappropriate to take them through a staged procedure, particularly if the health and safety of pupils or other employees is in serious jeopardy or there are serious consequences for the school, to the extent that dismissal would be justified. In such cases, a full investigation must take place and the employee must be given the opportunity to respond. The matter would normally be referred straight to a Headteacher/Governors' Committee hearing and a potential outcome is that the employee is summarily dismissed on the grounds of gross incapability.

9. Failure to make progress during a review period

- 9.1 The review periods set at each stage of the Procedure are the maximum number of weeks in which an employee must make the necessary improvements in performance. However, where during a stage there is evidence to suggest a more serious problem or that progress is insufficient or the individual is unlikely to make the required improvements, the Headteacher/Senior Manager/HPMC may decide to move to the next Stage of the Procedure.

10. Right of Appeal

- 10.1 An employee may appeal against any warning issued to them through the Capability Procedure and/or against a decision to dismiss them. For appeals against warnings under this procedure, the employee must submit an appeal in writing to the Headteacher/Senior Manager who signed the letter confirming the action to be taken under the procedure. Appeals against dismissal under Stage 3 of this procedure must be addressed to the Clerk to Governors. In both instances, the appeal must be received within 10 working days of receipt of the letter confirming the warning/dismissal and the employee must state in full the reasons for their appeal.
- 10.2 The purpose of an appeal is to enable an impartial review to be carried out as to the 'reasonableness' of the previous decision. The appeal should not become another capability hearing but should focus on reviewing the process followed, and the reasonableness of the decision that was taken.

10.3 Invitation to Appeal Meeting

- 10.3.1 If the employee lodges an appeal in line with the procedure, they will be invited by letter to an appeal meeting and given at least 7 working days' notice of the meeting date. Any relevant documentation must also be included with the letter.
- 10.3.2 The letter inviting the employee to the appeal meeting must include their right to be accompanied at that meeting.
- 10.3.3 If the warnings have been issued by a Senior Manager during the formal stages, the appeal may be heard by the Headteacher. If the warnings have been issued by the Headteacher during the formal stages, the appeal will be heard by a governors' committee. Where the Headteacher has heard appeals under Stage 1 and/or Stage 2, this will preclude the Headteacher from forming the committee under Stage 3 of this procedure.
- 10.3.4 Any appeal against dismissal will be heard by a governors' committee. The Headteacher or Clerk to the Governors' Committee (depending on who is hearing the appeal), will issue documentation with the letter of invitation to the appeal meeting. This will consist of the documentation used at the original hearing, supplemented with the employee's letter of appeal. Where either party wishes to provide additional information, this must arrive at least 3 working days in advance of the meeting to allow time for the information to be considered.

10.4 Conduct of Appeal Meeting

- 10.4.1 The conduct of the meeting will be in accordance with the Procedure for a Governors' Appeal Committee Hearing in the case of all Hampshire Maintained schools. This procedure is commended for use to academies and other external schools.
- 10.4.2 The outcome should normally be confirmed to the employee in writing within 5 working days. If it is necessary to vary this timescale, the employee should be notified at the conclusion of the meeting.

11. Requirement for schools to pass on information about a teacher's capability to a new employer

- 11.1 The School Staffing (England) (Amendment) Regulations 2012 require maintained schools to pass on information to a prospective employer about any teacher or Headteacher who has been on the Capability Procedure in the last two years. Specifically, they will need to provide details of the duration of capability and an explanation of the outcome. Whilst the Regulations do not apply to Academies, Academies can also ask for the information as part of their recruitment processes.

12. Support

- 12.1 Employee Support is a confidential counselling and support service provided by trained, experienced counsellors, providing telephone and face-to-face counselling. This service is available to all staff in Hampshire maintained schools and more information can be found at **Error! Hyperlink reference not valid.** <http://www3.hants.gov.uk/occupational-health/employee-support.htm>, or by contacting the helpline on 0800 030 5182. Staff in Academies and other schools should contact their school's counselling service where provided.
- 12.2 Employees can also seek advice and support from their professional association or trade union. A list of teacher professional association contact details are available at <http://www3.hants.gov.uk/education/teachers-info/tlp.htm> Teachers can also seek support from the Teacher Support Line <http://teachersupport.info/>

Appendix 1 - Employees with less than two years of continuous service with the employer

This procedure applies to employees with less than two years of continuous service where performance is considered unacceptable.

It is expected that all new employees, during and after their induction, will have informal discussions with their line manager and that any concerns over the employee's performance are raised as early as possible.

Formal Meeting

There is only one formal meeting for employees in their second year of service (depending on the employee's start date). The Headteacher/Senior Manager will adopt the same approach as they would for a Stage 2 Formal Meeting (see Section 4 of the Capability procedure).

Possible outcomes include:

- no formal action required (in which case it may be appropriate to continue to address the concerns through the induction and/or performance management process and the Capability Procedure will cease);
- a Final Warning is given in which case the employee will be told the consequences of further poor performance or failure to improve within the set review period;
- the matter is referred to a Headteacher/Governors Committee Hearing in order to consider whether the employee should be dismissed.

The outcome of the meeting will be confirmed to the employee. If the decision is to issue a Final Warning, the letter will:

- specify the reasons for the Stage 2 Final Warning, including details of the performance problems;
- include details of how long the final warning will remain in place;
- identify the improvement in performance required;
- identify any additional support or training to help the employee achieve the performance standards required;
- specify the period of time allowed for the necessary improvement to be made;
- specify the review dates;
- remind the employee that failure to improve to the required standard may lead to dismissal;

The timescale for the set review period for employees in their second year of service will be shorter and will not result in the employment being extended beyond two years prior to a final decision being taken.

If the decision is to refer the matter to a Headteacher/Governors' Committee Hearing, the letter will confirm the arrangements for this in accordance with

the Procedure for Headteacher and Governors' Committee Hearings. The letter will confirm that a possible outcome of this hearing is that the employee could be dismissed on the grounds of capability.

This Procedure does not prevent a summary dismissal on the grounds of gross incapability in accordance with Section 8 of the Capability Procedure.

Right of Appeal against Dismissal

Under this procedure, an employee only has the right of appeal against a dismissal decision; there is no right of appeal against a warning.

The employee must lodge an appeal as set out in Section 10 of the Capability Procedure.

Disciplinary Procedure for Employees

1.0 Purpose

- 1.1 This procedure is designed to:
- i) Assist Headteacher/Governors and other managers with their responsibility to ensure consistent and fair treatment of all employees and comply with relevant legislation and the current ACAS Code of Practice
 - ii) Help and encourage all employees to achieve and maintain satisfactory standards of conduct.
 - iii) Provide opportunities, where appropriate, for assistance and support to be given to employees to avoid unacceptable conduct being repeated.

2.0 Legal Context

- 2.1 This guidance has been written to reflect the School Staffing (England) Regulations 2009, sections 35 and 36 of the Education Act 2002 (applicable to maintained schools only), the Employment Act 2008 and the ACAS Code of Practice for Discipline and Grievance.
- 2.2 Part 1 of the School Staffing (England) Regulations 2009 requires each maintained school to establish dismissal procedures for all school staff and permits delegation, by the full Governing Body, to Headteachers, the power to make staff dismissal decisions. Academy Governing Bodies have full discretion regarding delegation of staff dismissal decisions but must ensure that they clearly minute what powers have been delegated
- 2.3 This procedure does not form part of any employees's contractual terms and conditions and any links within this document to other document are for ease of use and do not form part of this procedure.

3.0 Scope

- 3.1 The Governing Body will need to decide which, if any, powers they wish to delegate to the Headteacher. In principle, all Governors are strongly advised to delegate the authority to dismiss to the Headteacher. The responsibility for dismissal cannot be delegated to any other employees in a maintained school.
- 3.2 In practice, the Headteacher will have to judge the extent to which they need to have an involvement in carrying out or overseeing the investigation of any disciplinary issue. If this is a significant involvement, then they should not normally be involved in decision making at any subsequent hearing. If there is any doubt the Headteacher should discuss with their Chair of Governors and EPS.
- 3.3 In general the investigation should be undertaken by a senior school manager other than the Headteacher thus enabling the Headteacher to conduct the disciplinary hearing and to make decisions.
- 3.4 The issue of the unsatisfactory performance of an employee should be dealt with through the relevant Capability Procedure. There may be occasions when the distinction is blurred and schools should take advice from EPS in these situations.
- 3.5 This procedure applies to all employees in schools for whom the Governing Body have delegated responsibility and who have two or more years' continuous service. For employees with less than one years' service schools should use the Procedure contained in Appendix One

4.0 Principles

- 4.1 The audio or video recording of any meetings or hearings held under this procedure is not permitted. Where an employee is unable to take his or her own notes of a meeting due to a physical, sensory, or mental impairment, it is expected that the employee's representative will take notes on their behalf and/or an alternative option will be considered to remove any disadvantage that an employee may have. Only in exceptional cases may an employer request an audio or video recording of the meeting as an alternative, in such cases, consideration will be given as to whether or not recording the meeting is appropriate in all the circumstances, including an assessment of whether other options have been considered as above.
- 4.1 No disciplinary action should be taken until the allegations have been as fully investigated as is practicable within a reasonable timescale.
 - 4.2 No first written, final written warning or dismissal decision will be issued without a disciplinary hearing.
 - 4.3 Other than in cases of gross misconduct, no employee will be dismissed for a first offence and in all cases, the nature of the sanction must be proportionate to the case including the nature of the misconduct.

- 4.4 An employee shall be advised of the nature of the allegations against him/her and shall be given the opportunity to state his/her case during an investigation before any decision is made to proceed with a disciplinary hearing. Exceptionally, where the allegations include public interest disclosures, Child Protection issues or potential criminal matters, it may not be possible to disclose the full nature of the allegations in the early stages of an investigation.
- 4.5 Before a disciplinary hearing takes place, an employee shall be advised of the nature of the allegations against him/her. The employee shall be given the opportunity to state his/her case during a disciplinary hearing before any decision is made on the outcome of a such a hearing.
- 4.6 An employee has the right to be accompanied by his/her Trade Union representative or a work colleague at formal investigation meetings and hearings convened under this procedure.
- 4.7 An employee has the right to appeal against any disciplinary outcome.
- 4.8 Disciplinary and appeal hearings should normally take place within the working day of the employee.
- 4.9 Whilst Staff Governors may be a member of the disciplinary committee, it is on most occasions, not appropriate for them to do so and therefore normal for them to choose not be involved.
- 4.10 The employee will not normally be allowed to raise a separate formal grievance related to any action taken, or contemplated, under this procedure. Such concerns will usually be managed within the hearing or appeal process detailed within this procedure. The grievance procedure cannot be used to circumvent the consideration of legitimate management action on matters of conduct.

- 4.11 Where there is a requirement/determination to make a referral to the Disclosure and Barring Service (DBS) or the National college for Teaching and Leadership (NCTL) the employee should be notified that such a referral will take, or has, taken place.

5.0 Special Considerations

5.1 Safeguarding Children and Young People

- 5.1.1 Any allegations of misconduct involving allegations of a child protection nature against an employee must be dealt with in line with Hampshire's child protection procedures in order to avoid either putting a child at further risk or prejudicing a police or social care investigation.
- 5.1.2 This procedure will therefore not be used in cases of child protection allegations unless and until there is written confirmation from the Local Authority Designated Officer (LADO), or their representative that the school may proceed with an internal investigation.

5.2 Criminal Offences (other than safeguarding matters)

- 5.2.1 If a Headteacher/senior member of school staff becomes aware that an employee is subject to a criminal investigation, the Headteacher/senior member of staff must contact the Lead Investigation Officer within the police authority, at the earliest opportunity, to ensure that an internal investigation will not hamper any criminal investigation. Advice should always be sought from EPS in these circumstances.

5.3 Disciplinary action against a Trade Union Representative

- 5.3.1 The same disciplinary standards will apply to a Trade Union representative's conduct as an employee. However, no informal or formal disciplinary action should be taken in respect of a Trade Union representative, following the initial investigation of any allegation against the representative, until the circumstances of the case have been discussed confidentially and with the employee's knowledge, with a senior Trade Union representative or a full-time Officer of the Trade Union.

6.0 Roles and Responsibilities

6.1 Determination of roles and responsibilities

- 6.1.1 Upon receipt of an allegation, it will be important to establish who will undertake the necessary roles and responsibilities in relation to investigating an allegation of misconduct and carrying out any resulting disciplinary hearing following such an investigation.
- 6.1.2 In doing so it will be important to ensure that the investigating officer or any other individual who has taken part in the investigation should not be involved in making any decisions as part of subsequent hearing or appeals processes.

6.2 Investigating Officer

- 6.2.1 The Investigating Officer, with appropriate advice from EPS, will be responsible for conducting the investigation and presenting the findings to the Headteacher or Governors Disciplinary Committee.
- 6.2.2 It is not normally appropriate for the Headteacher to be the Investigating Officer as well as the person responsible for deciding whether or not to apply a disciplinary warning or dismiss the employee. Exceptionally the Headteacher could be the Investigating Officer, if no other senior member of school staff is available to carry out the investigation, or because of the serious nature of the allegations. Schools should seek advice from EPS in these cases.
- 6.2.3 Where the disciplinary decision is delegated to the Headteacher, another appropriate senior member of staff should, where possible, take on the role of Investigating Officer. In exceptional circumstances the Headteacher or Chair of Governors may request the services of the Local Authority to support or lead an investigation into the matter on behalf of the school.
- 6.2.4 It is strongly advised that the Investigating Officer seeks advice from EPS to ensure that the correct investigatory procedures are followed.

6.3 Governors' Disciplinary Committee/Headteacher Disciplinary Hearing

- 6.3.1 Following the investigation, a decision will need to be made as to whether the matter needs referral to a disciplinary hearing and where such a referral is being made, whether the case can be heard by the Headteacher or will need to be referred to the Governors' Disciplinary Committee.
- 6.3.2 Where dismissal is a potential outcome, this decision will take into account whether the authority to dismiss has been delegated to the Headteacher by the Governing Body, in accordance with paragraph 3.1.
- 6.3.3 The decision as to who should hear the case, will also take into account the nature of the Headteacher's involvement with both the allegations and the investigation.
- 6.3.4 Where dismissal is being considered by the Governors' Disciplinary Committee in maintained schools, the Committee would normally consist of 3 governors but, in exceptional circumstances, could proceed with 2 governors. For Academies, the constitution of the committee will depend on the agreed terms of reference.
- 6.3.5 The election of Governors for a disciplinary committee must be determined and minuted by the full Governing Body, and, in each case, Governors must ensure that there is no conflict of interest which may arise in them hearing the case and deciding the outcome.

6.4 Governors' Appeal Committee

- 6.4.1 All appeals against disciplinary outcomes including dismissal will be heard by a Governors' Appeal Committee in maintained schools, this Committee must consist of a minimum of 3 Governors. All appeals committees must consist of governors who have had no previous involvement in the case. For Academies, the constitution will reflect the agreed terms of reference.
- 6.4.2 The election of Governors for a Governors' Appeal Committee must be determined and minuted by the full Governing Body, and, in each case, Governors must ensure that there is no conflict of interest which may arise in them hearing the case and deciding the outcome.

7.0 The right to be accompanied

- 7.1 All employees have a statutory right to be accompanied at both disciplinary and appeal hearings as well as formal investigation meetings.
- 7.2 This representative may be:
- i) a work colleague
 - ii) a Trade Union representative

In exceptional circumstances, and with prior agreement of the hearing committee, the individual could bring a companion who is not a work colleague or their union representative.

- 7.3 The right to be accompanied is limited to one person only.
- 7.4 **If the representative is unable for good reason to attend a meeting, an alternative date will be arranged, once only, normally within 5 working days of the original meeting.** If the employee fails to attend the rearranged meeting this will normally go ahead in the employee's absence.
- 7.5 Before the hearing, the employee must notify the school who will be accompanying them at the hearing. In exceptional circumstances, where the employee is seeking to be accompanied by another representative in accordance with paragraph 7.2, the employee must make a written request to the Headteacher or Governors' Committee hearing the case, at the earliest opportunity, but no less than 3 clear working days before the hearing.
- 7.6 The school will encourage employees to use their right to be accompanied.

8.0 Suspension and requests to stay away from school

- 8.1 At any stage prior to, during or following an investigation, the employee may be required to stay away from school for a short period. The employee must receive confirmation of this request in writing.
- 8.2 Where a decision to suspend then becomes a possibility, a letter should be sent to the employee, requiring them to attend a meeting, alerting them to the possibility of suspension and advising them of their right to be represented.
- 8.3 An employee may be suspended when:

- i) The continued presence of the employee at work may be prejudicial to a fair disciplinary investigation
 - ii) There is prima facie evidence that the allegations are serious enough to warrant consideration of dismissal and/or may constitute gross misconduct. An outline of this evidence shall be made available to the employee and their representative. Where the matters relate to an on-going criminal and/or safeguarding investigation, permission will be sought from the LA Designated Officer regarding the evidence that can be made available.
 - iii) There are grounds to believe that there may be a health and safety risk or danger to themselves or others
- 8.4 The reason for the suspension shall be made clear to the employee in writing as soon as possible. Since suspension is a precautionary measure and not a disciplinary sanction, an employee has no right of appeal against the decision
- 8.5 The Headteacher should consult with the Chair of the Governing Body and inform the Governing Body as soon as possible of any cases of suspension. This should be limited to ensure that such information does not taint any members of the Governing Body and thus preclude them for subsequent involvement in the case if this becomes necessary. In the case of a suspension of a Headteacher, EPS will support the Chair of the Governing Body in making the necessary arrangements (involving the District Manager or Area Director as necessary in maintained schools).
- 8.6 In maintained school a suspension can only be lifted by the Governing Body (who may delegate the responsibility to a Committee or identified member). Academies can determine who should have the power to lift a suspension. Where a suspension is lifted a re-integration plan should be agreed for absences of more than 2 calendar weeks to ensure that the employee could be re-integrated with the minimum adverse effects.
- 8.7 An employee who is suspended from duty shall, throughout the period of suspension, continue to be entitled to their full pay unless they become sick in which case the employee's contractual sickness regulations will apply.
- 8.8 Support and Contact during suspension**
- 8.8.1 The terms of the suspension often involve the employee being instructed not to contact colleagues during the suspension.
- 8.8.2 It is important to identify one or more people they are able to communicate with, in order to ensure that contact can be maintained. Ideally this should be agreed with the employee and his/her representative.
- 8.8.3 The contact person should usually be a member of staff from the employee's school. It is essential that the contact shall have no part whatsoever to play in any subsequent investigation, nor any other connection with, or vested interest in, the outcome of the case. The contact person should also not be a member of the school's governing body.
- 8.8.4 The assignment or nomination of a contact will need to be dealt with sensitively as it is not intended to usurp the role of the employee's representative or line manager but rather to reinforce the support/contact

available for the employee concerned.

- 8.8.5 The primary role of the contact will be to act as a point of reference for the suspended employee particularly in regard to updating as to the progress of the investigation. Such updating must be limited, however, to issues such as timescales and cannot involve communication about substantive aspects of the case such as evidence. Particular care needs to be exercised where the case involves, or is likely to involve, criminal proceedings. In these circumstances liaison with the police will be necessary via Education Personnel Services and/or the Local Authority Delegated Officer and it will be appropriate for the named contact to be briefed about their role by EPS.
- 8.8.6 Where an investigation is likely to involve a lengthy process, it is important that the employee is contacted on a regular basis. The frequency of such contacts will depend on the particular circumstances of the case, but should not normally be at longer intervals than fortnightly and in some instances, contact on a weekly basis may be appropriate. It may also be appropriate to provide the suspended employee with details of the County's Employee Support Line (<http://www3.hants.gov.uk/employeesupport.htm>) (where purchased) or consider other additional support.
- 8.8.7 The Headteacher or the Chair of Governors in the case of a Headteacher suspension must monitor the contact arrangements during the period of suspension to ensure they remain regular and effective.

9.0 Investigations

9.1 Preliminary Enquiries

9.11 When a concern first arises about a person's conduct at work, the appropriate manager will establish the initial facts of the matter by carrying out a brief preliminary enquiry. This enquiry should be carried out as quickly as possible.

9.12 The purpose of the preliminary enquiry is firstly to establish whether a potential disciplinary matter could have occurred. establish that the alleged parties involved were present, and secondly to make an initial assessment about the potential seriousness of the alleged conduct

- 9.1.3 In cases of alleged serious misconduct, the employee will normally be asked to stay away from work by the manager for a short period while the preliminary enquiry is carried out to establish whether there may be a case to answer or whether further investigation is necessary.
- 9.1.4 Subject to the allegations not involving safeguarding or an ongoing criminal investigation the Headteacher or a senior member of school staff should have an initial discussion with the employee involved to ascertain their immediate response to the allegation(s) and asked to provide and sign a full written statement within 5 working days of this initial interview. The employee will be advised to seek advice from their professional association or trade union. If it is possible to identify an Investigation Officer at this early stage, then the Investigating Officer should undertake the initial discussion with the employee.

9.1.4 The purpose of this preliminary enquiry is to determine whether any further action, (e.g. a further investigation or suspension) may be required.

9.1.5 On the basis of the initial discussion the Headteacher will need to decide whether:

- i) no further action is necessary and to confirm this outcome to the employee in writing (In the case of safeguarding related allegations, where no further action is required due to an unfounded or malicious allegation, a record must still be kept (see Managing Allegations Guidance on record keeping)
- ii) it is sufficient for the Headteacher to discuss the matter with the employee concerned and issue managerial guidance
- iii) to refer the matter for further investigation (and identify an Investigating Officer if not already identified)
- iv) the employee should be required to remain away from school
- v) consideration should be given to the suspension of the employee. In line with 8.0 of this procedure.
- vi) to refer the matter to a disciplinary hearing on the basis of the enquires undertaken so far.

9.1.6 Where an Investigating Officer is not the Headteacher, he/she will need to refer the matter to the Headteacher for a decision on whether or how to proceed.

9.2 Investigatory meeting

9.2.1 Following the initial discussion if it appears further investigation is needed this will be conducted to establish the facts of the case. This will normally involve holding an investigatory meeting with the employee.

9.2.2 The Investigating Officer should review any documentary evidence available in relation to the allegations.

9.2.3 The Investigating Officer should interview any witnesses and take statements from them, or ask them to give their own statements, at the earliest opportunity. These statements should be signed and dated by the witnesses. A copy of the statement should be retained by the witness. The witnesses should be advised that they may be required to support their statements orally at any subsequent disciplinary hearing.

9.2.4 Where children are to be interviewed as part of the investigation appropriate arrangements for their support during the process must be made. Particular care must be taken in securing evidence from children. Advice must be sought from EPS.

9.2.5 appropriate arrangements for their support during the process must be made, with parental consent obtained prior to any interview taking place. Particular care must be taken in securing evidence from children. Advice must be sought from EPS Children will never be called as a witness to a hearing /meeting convened under this procedure.

9.2.6 At the meeting the Investigating Officer will make clear to the employee

exactly what is being alleged. They must also advise the employee that the matter may result in a formal disciplinary hearing.

- 9.2.7 Once the Investigating Officer has determined that the investigation has concluded, the Headteacher will need, on the basis of the information available, to decide whether:
- i) no further action is necessary
 - ii) it is sufficient for the Headteacher to discuss the matter with employee concerned and issue managerial guidance
 - iii) to refer the matter to a formal disciplinary hearing.
 - iv) Take appropriate action in the case of an employee who has been asked to stay away from the school and/or suspended.
- 9.2.8 It is important that the decision about how the case will progress is confirmed as soon as possible following the investigatory meeting. Where any delay occurs in relation to concluding the matter or moving forward, the employee must be informed.

10.0 Disciplinary Hearing

10.1 Convening a Disciplinary Hearing

- 10.1.1 Where the decision is taken to hold a formal disciplinary hearing, the employee will be given written notification of the hearing as soon as possible. Employees will be given a minimum of **7 working days'** notice of a hearing. The written notification will include:
- i) the date, time and place of the hearing
 - ii) who will be present at the hearing
 - iii) statement of case outlining the specific allegation and details of the investigation and findings
 - iv) copies of any documents, to be used in evidence
 - v) the right to be accompanied by a Trade Union representative or a work colleague and the requirement to notify of the name of representative prior to the hearing. Where the employee wishes to have another representative in accordance with paragraph 7.2, this must be requested no less than **3 clear working days** before the hearing
 - vi) the names of witnesses, if any, to be called
 - vii) their right to call witnesses on their behalf
 - viii) the opportunity to send any written submission or evidence to the committee up to 3 days prior to the hearing. A copy of any such submission should also be made available to the senior member of school staff presenting the case (which should, where possible, be the Investigating Officer)
 - ix) a copy of this disciplinary procedure
- 10.1.2 The date of the hearing should always be set in consultation with both the employee's representative, where applicable, and EPS, to avoid any unnecessary delays.
- 10.1.3 The employee or their representative must submit any written documentation, names of witnesses and the detail of their representative in accordance with 10.1.1 v, vii and viii to arrive no less than **3 clear working days** before the

hearing.

- 10.1.4 Where HCC is the employer of the school's staff and dismissal is a possible outcome, the LA has a statutory right to attend and offer advice. EPS must be invited to attend any hearing where dismissal is a possible outcome to advise either the Governors' Disciplinary Committee or Headteacher hearing the case on procedural aspects and matters of employment law.
- 10.1.5 Where HCC is not the employer of a maintained school's staff and dismissal is a possible outcome, the LA may still have a right to attend dependent upon agreements between the LA and the maintained school's governing body. In the absence of an agreement EPS should still be invited to attend any hearing where dismissal is a possible outcome to advise on procedural aspects and matters of employment law.
- 10.1.6 In both voluntary controlled and voluntary aided schools, the diocese may also have the same advisory rights as the Local Authority, where dismissal is a possibility. This will depend upon whether the Governing Body of the school has made such an agreement in writing.
- 10.1.7 EPS should be invited to attend any hearing in an academy where dismissal is a possible outcome to advise on procedural aspects and matters of employment law. Academies may also choose to clarify whether their legal provider wishes to attend.
- 10.1.8 If the employee or their representative is unable, for good reason, to attend the hearing, an alternative date will be arranged, once only normally within **5 working days** of the original meeting date. If the employee fails to attend without notice, consideration can be given to proceeding and making a decision, in their absence.
- 10.1.9 The school should arrange for the Clerk to Governors or another appropriately experienced clerk to take notes at all disciplinary hearings.

10.2 Conduct of the Disciplinary Hearing

- 10.2.1 At any disciplinary hearing the Investigating Officer will normally explain the allegations against the employee and present the evidence that has been gathered. The employee or their representative will be entitled to set out their case and respond to the allegations. The employee or their representative will be entitled to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses. At any point during the disciplinary hearing an adjournment can be requested by any of the parties. The hearing will follow the Procedure for Headteacher & Governor Committee Hearings.
- 10.2.2 After an adjournment has taken place to allow the Disciplinary Committee/Headteacher to consider all the information presented to them, the Disciplinary Committee/Headteacher will, where possible, announce the decision to the employee, representative and senior member of school staff presenting the case (normally the Investigating Officer). The right of appeal against the decision will also be explained. The decision will be confirmed in writing to the employee within **3 working days** and giving details of their right of appeal.

11.0 Disciplinary Action

11.1 On the basis of all available information the Disciplinary Committee/Headteacher will need to consider whether each allegation is substantiated or unsubstantiated. The Committee must then consider the appropriate action, either:

- i) a decision that no further action is necessary
- ii) a decision to issue a disciplinary warning or to dismiss the employee

11.2 Disciplinary warnings will normally be issued sequentially. However, offences of a serious nature may be brought into the procedure at either final written warning or dismissal stage, if the disciplinary committee/Headteacher hearing the case feels that is justified.

11.3 To ensure the decision of the disciplinary committee or Headteacher is reasonable in all the circumstances of the case, account should be taken of:

- i) the employee's previous disciplinary record
- ii) the employee's general record, position and length of service
- iii) the disciplinary sanction imposed in similar cases in the past
- iv) any mitigating circumstances which might make it appropriate to lessen the severity of the sanction
- v) any advice given by EPS

11.4 Disciplinary Warnings

11.4.1 Where, following a disciplinary hearing, the Governors' Disciplinary Committee or Headteacher hearing the case determines that the employee has committed an act of misconduct, the Governors' Disciplinary Committee/Headteacher may issue either a first written warning or final written warning or dismiss the employee, dependent upon the seriousness of the misconduct or whether it is an act of gross misconduct and dependent upon whether the employee is subject to a live disciplinary warning at the time of the hearing.

11.4.2 First written warnings will normally remain live for a period of 12 months unless the Governors' Disciplinary Committee or Headteacher determine that a longer period is justified.

11.4.3 Final written warnings will normally remain live for a period of 24 months unless the Governors' Disciplinary Committee or Headteacher determine that a longer period is justified.

11.4.4 Disciplinary warnings will state:

- i) the nature, level and duration of the warning
- ii) the specific misconduct committed
- iii) the standard of conduct required in future
- iv) the likely consequences of any further misconduct
- v) details of the right of appeal

11.4.5 If an employee has been found to have committed a further act of misconduct whilst a written warning remains live under this procedure or where a formal warning remains live under the Procedure contained in Appendix One, the

Governors' Disciplinary Committee/Headteacher may determine that either a final written warning or dismissal will apply. This will be dependent upon the seriousness of the misconduct.

- 11.4.6 Where the Governors' Disciplinary Committee/Headteacher determines that an employee has committed a further act of misconduct whilst a final written warning remains live under this procedure, the Governors Disciplinary Committee/Headteacher will normally determine that dismissal will apply.
- 11.4.7 Where in paragraphs 11.4.5 and 11.4.6, the decision of the Governors' Disciplinary Committee/Headteacher is to dismiss the employee, this dismissal will be with notice unless the act of misconduct is serious enough to be considered by the Governors' Disciplinary Committee/Headteacher as an act of gross misconduct. (see 11.4.8)
- 11.4.8 Where the Governors' Disciplinary Committee/Headteacher determines that a serious offence amounting to gross misconduct has been committed, an employee will be summarily dismissed i.e. without notice

11.5 Communicating and recording the outcome

- 11.5.1 Any decision of a disciplinary hearing must be confirmed to the employee in writing within **3 working days**. If it is necessary to vary this timescale the employee will be notified at the conclusion of the hearing.
- 11.5.2 Action taken by the Headteacher or Governors' Disciplinary Committee to issue a disciplinary warning within this procedure should not be reported to the full governing body in a way allowing the employee to be identified. Actions undertaken in respect of dismissal must be reported to the full governing body meeting.
- 11.5.3 The requirements of safeguarding children legislation mean that for investigations and /or warnings arising from the allegations of abuse, the school should retain records indefinitely. Reference should not be made to spent warnings when producing employment references unless they are related to safeguarding issues.
- 11.5.4 If the outcome of a hearing is to dismiss the employee, the employee's contract will be terminated with due notice or immediately with no notice in the case of gross misconduct. Where HCC is the employer of the staff, this will be undertaken by EPS following instruction from the Chair of Governors. Where the Governing Body is the employer of the staff, this will be undertaken by the Chair of Governors.

12.0 Governors' Appeals Committee

- 12.1 An employee has a right to appeal against any decision to issue a first written or final written warning or any decision to dismiss. The employee will be advised of this right in the conveying of any such decision by a Headteacher or Governors' Disciplinary Committee. This will also be confirmed in writing as part of the outcome letter. The employee will also be advised that he/she has **10 working days**, from the date of the letter confirming the outcome, to lodge an appeal via the Clerk to Governors at the school.
- 12.2 When lodging an appeal, the employee, or their representative, must state

both the grounds of the appeal in full and whether he/she is appealing against the finding that he/she has committed an act or acts of misconduct or gross misconduct and/or if he/she is appealing against the level of disciplinary sanction that has been applied.

- 12.3 The purpose of an Appeal is to enable an impartial review to be carried out as to the 'reasonableness' of the previous decision. The appeal should not become another disciplinary hearing but should focus on reviewing the process followed and the reasonableness of the decision that was taken.
- 12.4 An appeal will be heard by a Committee of Governors who have played no part in the disciplinary hearing itself. In the case of an appeal against a decision taken by a Disciplinary Committee of Governors, the appeal must be heard by a minimum of 3 Governors for maintained school, and in accordance with the constitution for Academy schools.
- 12.5 The appeal hearing will take place as soon as possible. The employee will be given at least **6 working days'** notice of the date, time and place fixed for the appeal hearing. At the hearing of the appeal, the employee will be given an opportunity to state their case and will be entitled to be accompanied by the Trade Union representative, or work colleague. The Hearing will follow the Procedure for a Headteacher or Governors Committee Hearing.
- 12.6 If the employee, or their representative or companion, is unable, for good reason, to attend the appeal hearing, an alternative date will be arranged, once only, normally within 5 working days of the original hearing date. If the employee fails to attend the rearranged meeting this will normally go ahead in the employee's absence.

12.7 Conduct of the Appeal Hearing

- 12.7.1 The conduct of the appeal hearing will depend upon the grounds of appeal submitted in accordance with 12.2.
- 12.7.2 The Governors' Appeal Committee will consider the information presented by all parties. The employee or their representative will present their appeal and may call witnesses who will be open to questions from management or from the Governors' Appeal Committee. The Headteacher or a member of the Senior Leadership team will present the management response and may call witnesses who will be open to questions from the employee and/or their representative or companion or from the Governor's Appeal Committee. Both parties will be permitted to put further questions to their own witnesses before summarising their cases. The employee will normally summarise first. Any requests to deviate from this sequence of events will be subject to agreement from the Governors' Appeal Committee. No new information should be introduced during the summing up. At any point during the appeal hearing, an adjournment can be requested by any of the parties.
- 12.7.3 After an adjournment has taken place to allow the Governors' Appeal Committee to deliberate and consider all the information presented to them, the Governors' Appeal Committee will, where possible, announce the decision to the employee, representative and management representative presenting the case. . If further clarification is required from either party or the witnesses during the deliberations, all parties will be recalled

12.8 At the appeal, the disciplinary sanction imposed will be reviewed, but it cannot be increased. The decision of the appeal committee, as appropriate, will be sent to the employee in writing within **3 working days** of the appeal hearing and will be final.

13.0 Referrals to relevant bodies

13.1 Where the dismissal (or resignation in circumstances where a disciplinary process has not concluded and the potential outcome may have resulted in dismissal) is related to a child protection matter, the employer is required to make a referral to the Disclosure and Barring Service The DBS may take action under their statutory powers or refer the case to the National College for Teaching and Leadership (NCSL) for consideration where the matter concerns a teacher

13.2 Where the dismissal (or resignation in circumstances where a disciplinary process has not concluded and the potential outcome may have resulted in dismissal) is not related to a child protection matter, and it concerns a teacher, the employer may make a referral to the NCTL. The National College for Teaching and Leadership may take action under their statutory powers.

13.3 Where there is a requirement or determination to make a referral to the DBS or NCTL, the employee should be notified that such a referral has taken place.

14.0 Headteachers

14.1 Action in relation to Headteachers shall be initiated by the Chair of Governors in consultation with Education Personnel Services (and the Area Director in respect of maintained schools).

14.2 The procedure for Headteachers will be the same as for other school employees who are not Headteachers, with the variations outlined below.

14.3 Investigations

14.3.1 The Chair of the Governing Body in consultation with EPS (and the Area Director/District Manager if appropriate) as necessary, will identify a Governor to lead the investigation into the disciplinary issue. The investigating Governor will be supported by an EPS Adviser.

14.3.2 The Chair of Governors will make the determination following discussion with EPS and involving (the Area Director/District Manager as appropriate), as to whether:

- i) no further action is necessary
- ii) to refer the matter to a formal disciplinary hearing

14.4 Disciplinary Hearing

14.4.1 A disciplinary hearing will be conducted by a committee of 3 governors appointed by the Governing Body, with Education Personnel Services acting in an advisory capacity. In maintained schools, the committee will also be supported by the Area Director.

Appendix One

Disciplinary Procedure for Employees in Educational Establishments with less than 2 years' continuous service.

This procedure will be used for handling misconduct issues concerning employees with less than two years' continuous service. This applies irrespective of whether the employee is on a permanent or temporary/fixed term contract of employment. It should be noted that continuous service may be accrued from a succession of contracts in different schools where the Local Authority is the employer.

It is expected that all new employees, during and after their induction, will have regular one-to-one meetings with their manager and that any concerns about the employee's conduct are raised as soon as possible.

The same obligations arise where allegations of misconduct involve allegations of a child protection or criminal nature or the matter concerns a trade union representative (see section 5 of the main procedure).

The relevant manager will conduct an investigation appropriate to the allegation which has been made and in reference to sections 6.2 and 9 of the main procedure.

Employees still have the right to be accompanied as outlined in section 7 of the main procedure and where required, the Headteacher may still consider requesting that the employee stays away from school and/or determines suspension is necessary (as outlined in section 8 of the main procedure).

Stage 1: Formal hearing

It will be the norm for the Stage 1 Formal Hearing to be heard by the Headteacher unless there are specific circumstances which make it necessary to refer the case to a Governors Disciplinary Committee.

The Headteacher will adopt the same approach as set out in Section 10, following the process for potential dismissal. There is only **one** formal warning for employees with less than two years of continuous service. Where a formal warning is issued the Headteacher or Governors' Committee should indicate whether or not the warning should be treated as a **first** or **final** in the event of further misconduct occurring after the employee has been employed for more than two years.

Outcomes from this can include:

- i) no further action being necessary and confirming this outcome

to the employee in writing (In the case of safeguarding related allegations, where no further action is required due to an unfounded or malicious allegation, a record must still be kept (see Managing Allegations Guidance on record keeping)

- ii) a determination that it is sufficient to issue managerial guidance
- iii) a formal written warning
- iv) Dismissal with notice
- v) Dismissal without notice (gross misconduct)

Where considering the action to be taken, the Headteacher (or Governors Disciplinary Committee) must take account of the detail contained in section 11 of the main procedure. Where a warning is issued, it will be for the Headteacher (or Governors Disciplinary Committee) to determine whether it should remain live for a period of 12, 18 or 24 months.

The employee will have the decision of the Headteacher/Governors Disciplinary Committee confirmed to them in accordance with section 11.5 of the main procedure and section 11.4.4 where a warning is issued.

The same obligations apply in relation to reporting to the DBS or the NCTL (see section 13 of the main procedure).

If any misconduct occurs following the issue of a formal written warning that continues to be live, there will need to be a further formal meeting to consider dismissal. This may be dismissal with or without notice if the subsequent allegation is founded, depending on whether the subsequent allegation is determined to be misconduct or gross misconduct.

Stage 2: Right of Appeal against Dismissal

Where dismissal occurs under this procedure, the employee has the right of appeal against the dismissal decision. There is no right of appeal under this procedure against a warning.

The employee must lodge an appeal as set out in Section 12. All appeal meetings will be set out in accordance with Section 12 of the main procedure.

Appendix Two

Model disciplinary rules

- 1.0 The governing body of this school is committed to ensuring that all staff at the school should be treated in a consistent, fair and sensitive manner. This approach requires that the governing body should specify those aspects of misconduct which may warrant consideration under the terms of the school's disciplinary procedure. The following disciplinary rules have been drawn up in consultation with the Hampshire trade unions and professional associates. It is expected that, wherever possible, problems of misconduct will initially be dealt with informally through managerial advice. Where such advice has not led to the desired improvement, or the matter is sufficiently serious to warrant immediate formal action, the disciplinary procedure will be operated.
- 2.0 The lists below are not exclusive or exhaustive and there may be other matters which are sufficiently serious to warrant categorisation and consideration as either 'misconduct' or 'gross misconduct'. Gross misconduct occurs when the actions complained of are sufficiently serious to destroy the relationship between the employee and employer and in particular the trust and confidence that the employer holds in the employee.
- 3.0 In cases of alleged gross misconduct it is likely that it will not be feasible to permit the continued presence of the employee at the place of work while the matter is being investigated leading to suspension. Suspension on full pay is a neutral act and this period should be as brief as possible, kept under review and made clear that the suspension itself is not disciplinary action.
- 4.0 For the purposes of the disciplinary procedure, the terms 'misconduct' and 'gross misconduct' are also taken to include 'negligence' and 'gross negligence' where the occurrence amounts to a breach of duty.
- 5.0 Misconduct** is defined as wilful or negligent misconduct or omission. Wilful misconduct can be summarised as lapses of conduct or unacceptable behaviour. It can also include unacceptable work performance if it is believed to be a wilful act. Negligent misconduct, or misconduct by omission, can be summarised as careless or reckless behaviour, or a failure to act which has a significant adverse impact on a service or an individual.

Examples of misconduct which may warrant action under the appropriate stage of the disciplinary procedure include (but is not restricted to):

- poor timekeeping or persistent lateness
- unauthorised absence from work
- unauthorised or inappropriate use of school facilities and resources (including the internet, e-mail, IT hardware or software), action contravening the school's acceptable use policy or action leading to the loss of data or contravention of the Data Protection Act or any damage to the school's IT resources
- inappropriate use of personal IT facilities and resources (including internet, email, social networking sites and IT hardware and software) where this use is not compatible with the expectations of adults working with children
- Other actions inconsistent with the school's Acceptable Use of ICT Policy

- wilful failure to comply with a reasonable instruction from a member of senior management
- persistent minor breaches of health and safety requirements
- foul or abusive language
- unauthorised disclosure of examination material or unauthorised assistance to pupils prior to or during examinations
- discrimination, harassment, victimisation or bullying on any grounds which are not sufficiently serious to fall into the category of 'gross misconduct'
- actions inconsistent with the Professional Standards for Teachers.

6.0 Gross misconduct is an act of misconduct or indiscipline which is so serious in nature that it will fundamentally damage the employment relationship and may therefore justify dismissal without notice. Each case has to be considered in the light of all the circumstances, including the nature of the job role and the details of the misconduct. Gross misconduct which, due to its nature is incompatible with the expectations of staff working with children and young people and may lead to a suspension from post prior to consideration of dismissal.

Examples of gross misconduct which may lead to disciplinary action under the appropriate stage of the procedure include (but are not restricted to):

- unauthorised removal of the school's property
- serious discrimination, harassment, victimisation or bullying on any grounds
- offences of dishonesty
- serious breaches of health and safety requirements
- sexual offences
- serious criminal offences which undermine the employee's ability to perform his/her job
- serious breach of the school's policies and procedures and/or code of conduct
- sexual misconduct at work
- Failure to self-disclose a criminal offence, conviction or caution
- persistent wilful failure to comply with a reasonable instruction from a member of senior management
- fighting and/or physical assault
- repeated unauthorised absences from work
- actions which bring the school into serious disrepute
- drunkenness or serious misconduct at work brought on by misuse of alcohol, drugs or any other substance misuse
- falsification of timesheets, subsistence and expenses claims, accounts, budgets, self-certification forms whether or not for personal gain
- theft
- malicious damage to the school's property
- serious breach of confidentiality.
- causing loss, damage or injury through serious negligence
- accessing and/or downloading (via school resources) and/or possession at school of inappropriate material (i.e. pornographic, offensive or obscene material)
- engaging in inappropriate online contact and/or relationships with pupils, young people or vulnerable adults through social networking sites, text n=messaging, instant messaging or other IT media.

- deliberately accessing and/or downloading via personal, school or other resources, and/or possession of obscene material containing images of children
- inappropriate relationships with pupils, young people or vulnerable adults
- other serious actions inconsistent with the School's Policy on Acceptable Use of ICT
- other actions and personal behaviour which are incompatible and/ or inconsistent with the expectations of staff working with children and young people
- other actions and personal behaviour which are incompatible and/or inconsistent with the expectations of staff working with children and young people.
- serious actions inconsistent with the Professional Standards for Teachers

- Failure to disclose any serious misconduct or alleged misconduct arising from alternative or additional employment outside the school.
- deliberately aiding or encouraging another individual to undertake any of the above actions

Appendix Three

Procedure for a Headteacher or Governors' Committee Hearing

The following procedure will apply to any formal Headteacher or governors' committee hearing or appeal committee hearing or any other governors' committee convened to consider an appeal against a decision of the Headteacher, a pay review matter or an employee's grievance. Any variation to this procedure will be agreed by the parties to the hearing, including the employee/their representative.

The governors committee and headteacher is entitled, where they have a full SLA with EPS to have an advisor from EPS to support the governors or Headteacher in ensuring a fair, appropriate and legally compliant process.

The Local Authority has a right to attend, in an advisory capacity, any hearing where the dismissal of a member of staff is to be contemplated. For foundation, voluntary aided and foundation special schools, the LA shall have a right to attend where that school has granted such advisory rights.

In a voluntary aided school an officer nominated by the diocesan authority will have the same attendance and advisory rights as are exercisable by the LA in relation to such hearings. In voluntary controlled and foundation (Church of England or Roman Catholic Church) schools, the diocesan officer will have such attendance and advisory rights as the governing body of that school has determined.

As a matter of good practice, and in order to ensure that natural justice is observed, prior to hearings the two parties, together with their respective representatives/witnesses, should wait in separate rooms to be summoned to the hearing. At the commencement of the hearing, the management representative, the manager and the employee and his/her representative will be summoned to the hearing. Witnesses will be required to wait in their respective waiting rooms until called to give evidence.

During a hearing

The employee concerned, any representative of the employee, the manager, the manager's representative, the Headteacher or committee members, the adviser and, where appropriate, the clerk to the committee will assemble together.

- 1a The manager will explain the details of the case and may call witnesses
- 1b The employee concerned or his/her representative may question each witness about the detail of the case
- 1c Following questioning under 1b, the witness may be re-examined on the matters covered during that questioning.
- 1d The Headteacher/committee members may question each witness to clarify details of the case.
- 2a The employee concerned and his/her representative may explain his/her views on the case and may call witnesses.

- 2b The manager may question the employee and each witness about the detail of the case.
- 2c Following questioning under 2b, the witnesses may be re-examined on matters covered during that questioning.
- 2d The Headteacher/committee members may question each witness to clarify details of the case
- 3 The manager will be invited sum up his/her case.
- 4 The employee or his/her representative will be invited to sum up his/her case,
- 5 The employee concerned, the employee's representative, any witnesses and the manager and his/her representative will withdraw to another room
- 6 The Headteacher/committee members together with the adviser will deliberate in private. A clerk will have no voting rights and will be present for minuting purposes only. The adviser will also have no voting rights and will be present to advise on procedural points and matters of employment law/contracts etc. If the Headteacher/committee wishes to clear any points of uncertainty they will recall all of the persons involved, notwithstanding that only one person may be concerned with the point of uncertainty. They may also recall witnesses for further clarification on the same basis where appropriate.
- 7 When the Headteacher/ committee has concluded their deliberations, the Clerk will recall the employee, the manager and their respective representatives, and the Headteacher/chair of the committee will announce the decision, explaining the right of appeal if appropriate.

NB:

- Reference to the manager(above) in the context of the advocacy role should be understood to mean either the relevant manager or, in the case of governor committee hearings, the Headteacher. Alternatively, this role may be conducted by an officer of the County Council or EPS acting on the manager's behalf. It will be appropriate for the manager to consider this form of support, particularly where he/she is a main witness in the case. Where the manager is represented by an officer of the County Council or EPS, the manager and that representative shall be entitled to attend the entire proceedings with the exception of the deliberations (see 7 above).
- Where the headteacher is the subject of the hearing, the case against the headteacher will be put by the Chair of Governors or another nominated member of the governing body or a 'management representative' acting on behalf of the governing body. This 'management representative' should normally be an officer of the County Council or EPS. Where the chair of governors is represented by an appropriate 'management representative', the chair of governors and that representative shall be entitled to attend the entire proceedings with the exception of the deliberations (see 7 above).
- After each witness has given evidence and been questioned by the other party and by the Headteacher/members of the committee, he/she will be informed whether or not he/she will need to wait in case he/she is required to give further information. In the event of the witness being required to wait, he/she will return

to the room set aside as the waiting room.

- Where an appeal committee is hearing the final stage of an employee's grievance, it is permissible for the committee, acting collectively or through any adviser, to see **separately** the aggrieved employee (together with his/her representative) and/ or one or more of the other parties, in order to explore the extent to which common ground can be found on the way of resolving the grievance. At the conclusion of the hearing the committee may recall the parties involved and:
 - discuss with them ways in which the grievance may be resolved and/or
 - announce their views on the way in which the grievance should be resolved and/or
 - adjourn to allow time for reconciliation between the parties or for more information to be obtained.

Signed Headteacher: - _____ *Krista Dawkins* _____

Print Name: - KRISTA DAWKINS

Signed Chair of Governors: - _____ *Angela Wright* _____

Print Name: - ANGELA WRIGHT

Date: - 4 July 2016

Updated: - July 2016

Review Date: - September 2017