



Brambleside Primary School

Disciplinary

The Board of Governors at Brambleside Primary School

Formally adopted this Policy/Procedure/Guidance/Guidelines

on

Signed

Chair of Governors

Signed

Headteacher

Name	Disciplinary
Date	January 2020
Source	School
Review	Biennial
Audience	Staff
Situ	L - 28
Type	No Changes

Model Disciplinary Policy

This policy explains the process which management and Governors will follow in all cases of misconduct to ensure fairness and consistency of approach.

Contents

Policy Statement	2
Policy Scope.....	3
Responsibility for Managing this Procedure	3
Suspension	4
Investigations.....	7
Formal Disciplinary Procedure	10
Formal Disciplinary Hearing Meeting Format.....	12
Adjournment and deliberations to reach a decision	12
Outcome of Hearing	14
Appeal	15
Review of Warnings	17
Appendix 1 – matrix of delegated authority (disciplinary)	19
Appendix 2 – format of formal disciplinary and appeal hearings	20
Appendix 3- examples of misconduct and gross misconduct	21
Appendix 4 – Overview of the Formal Disciplinary Procedure.....	22

Policy Statement

1. It is the policy of Brambleside Academy Trust:
 - a. To seek to resolve matters of alleged misconduct informally wherever it is reasonable to do so by taking a supportive approach to ensure clarity of expectations of behaviours, actions and decisions, professional boundaries and standards of common decency.
 - b. To adopt good practice, consistent with Advisory Conciliation and Arbitration Services (ACAS) Code of Practice on Disciplinary (and Grievance) Procedures (available on line : <http://www.acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf>)
 - c. To have due regard to the dignity of all and any members of staff subject to allegations of misconduct.
 - d. For situations where it is reasonably considered inappropriate to deal with a matter informally, Brambleside Academy Trust, will adopt the formal disciplinary procedure.

Policy Scope

1. This document is drawn up in accordance with the current ACAS Code of Practice and with regard to relevant employment legislation.
2. This policy and the procedures referred to within it:
 - a. Apply to all staff who have completed their probationary period employed at Brambleside Academy Trust and are intended to provide a fair method of dealing with alleged failures to observe standards of conduct;
 - b. Do not apply to staff who are still in their probationary period who will be dealt with under probationary procedures;
 - c. Have been adopted by the Governing Body of the Brambleside Academy Trust
 - d. Do not apply to allegations of substandard work (for which the Capability Procedure should be used) unless it is clear that the member of staff is capable of reaching the required standard and is alleged not to have been willing to do so;
 - e. Do not apply in the event of redundancy, ill health, attendance (please refer to separate guidance on redundancies and absence management);
 - f. Shall not be used in respect of a trade union representative until the matter has been discussed with an appropriate regional/paid official of the union concerned.

Responsibility for Managing this Procedure

1. The Headteacher (Chair of Governors in the case of allegations against the Headteacher, is responsible for the overall management of standards of conduct within the Brambleside Academy Trust and holds the authority to take action under this Policy. The Headteacher will nominate those senior employees in Brambleside Academy Trust with delegated authority under this policy (see Appendix 1).
2. Definitions of Misconduct
 - a. Throughout this document where it states the Headteacher this shall be taken as meaning the Headteacher or Chair of Governors or their designated deputy in the case of allegations against the Headteacher.
 - b. All misconduct cases will be assessed with regard to seriousness and where possible the individual will be supported to improve or redress the situation on an informal basis.
 - c. **Minor Misconduct** - In minor cases of unsatisfactory conduct (where a formal procedure is inappropriate or unnecessary), the individual's manager will discuss the disciplinary problem with the member of staff concerned, with a view to securing an improvement in conduct through the offer of guidance or support and/or the giving of a management instruction. Such a step does not form part of the disciplinary record of the member of staff but will be recorded in writing where it is important to confirm agreement reached with regard to expected behaviour and any support offered to ensure that acceptable conduct is maintained. Where there is no improvement in conduct or where there is a succession of minor cases, the formal procedures outlined below, from which a sanction may arise, may be invoked.

- d. **Misconduct** - This is conduct which is serious and the range of possible outcomes include a written warning, final written warning and dismissal with notice. However, an isolated incident on its own would be unlikely to result in dismissal and would be likely to result in a written or final written warning should it be established following an investigation and a hearing that on the balance of probability the misconduct occurred. However, a further incident of misconduct whilst there is an unspent warning on file may result in dismissal. Examples of misconduct are given in Appendix 3.
- e. **Gross Misconduct** - Gross misconduct is regarded as misconduct of such a nature that it makes it unreasonable for that person to continue to be employed to perform those duties. Examples of such conduct are given in Appendix 3. Where an allegation is made which could be considered gross misconduct consideration will be given to the appropriateness of the individual remaining in school. Before suspension is imposed consideration will be given as to whether alternative action can be taken such as redeploying the member of staff into another area. Please see section 9.

3. Alleged misconduct of the Headteacher

- a. Where the Chair of Governors, or in their absence the Vice Chair, considers that it may be appropriate to investigate the conduct of the Headteacher, they should consult Brambleside Academy Trust's HR Provider. The process to be followed is same and roles and responsibilities are allocated in accordance with Appendix 1.
- b. For an Academy Trust – regardless of whether or not the Trust is the employer, the Trust must be notified of any investigation into the conduct of the Headteacher.
- c. For Community Schools – the Local Authority is the employer and must be notified of any investigation into the conduct of the Headteacher.

Suspension

1. Suspension of the Head Teacher/Executive Principal

- a. Where such action is taken the facts should be reported at the earliest practicable opportunity to the Chair of Governors, and advice sought from Brambleside Academy Trust's HR Provider; the fact of the suspension should also be reported to the Governing Body at their next meeting.
- b. The Chair of Governors (or in their absence, their designated deputy) may suspend the Headteacher for alleged misconduct or other good and urgent cause (see appendix 1).
- c. Where such action is proposed to be taken advice should be sought from Brambleside Academy Trust's HR Provider.
- d. For an Academy Trust – regardless of whether or not the Trust is the employer, the Trust must be notified of any suspension of the Headteacher.
- e. For Community Schools – the Local Authority is the employer and must be notified of any suspension of the Headteacher.
- f. Suspension of a Head Teacher/Principal can only be lifted by the Governing Body.

2. Suspension of other members of staff

- a. The Headteacher may suspend (and may lift the suspension of) any other member of staff for alleged misconduct or other good and urgent cause (see appendix 1).
- b. The Headteacher should consult the Chair of Governors (or in their absence, their designated deputy) prior to the lifting of any suspension of any member of the senior leadership team.

3. Suspension – general

- a. Suspension shall only be considered in extreme circumstances where the employee's presence on site:
 - b. Makes a fair investigation impossible;
 - c. Represents a serious risk to the safety of others or the employee themselves;
 - d. Has the potential to (or there is evidence that it has already) seriously undermine the reputation of Brambleside Academy Trust.
- e. Whenever reasonably practicable a member of staff should not be unreasonably refused a request to be accompanied by a Trades Union representative or work colleague, to a meeting concerning alleged misconduct (from which suspension may arise) but such a request may not unreasonably delay such a meeting.
- f. The reason for the suspension shall be confirmed in writing within 5 working days. Any member of staff who is suspended will be provided with a nominated contact. The role of the contact will be to provide them with support during their suspension and act as a link with Brambleside Academy Trust over any queries they might have concerning their suspension or other aspects of the disciplinary process, and/or contacting work colleagues on their behalf. The nominated contact will not be able to discuss the actual allegations nor provide advice or guidance on the process. The use of this service is voluntary and therefore is for the individual to decide whether they wish to make use of this or not. If the nominated officer is not available, the individual will normally be advised to contact a named senior manager.
- g. If you suspend the employee but they are still able to work (i.e. they have not been remanded in custody) they should continue to receive their pay as normal. Suspension should not be regarded in any sense as a disciplinary measure but as a neutral act to enable a proper investigation to take place. Suspension should be used sparingly and only after most careful consideration of all circumstances. Any suspension should be lifted as soon as reasonably practicable where there will not be a disciplinary hearing.
- h. Once suspension is lifted to enable the individual to return to work, support will be offered to help them reintegrate into the workplace.

4. Notes on situations where a member of staff is remanded into custody

- a. However, if the employee is remanded in custody pending a criminal trial (and you have not dismissed them) you do not need to pay them. Where the period of time elapsed in custody becomes protracted (usually meaning more than 6 months) it may be reasonable for Brambleside Academy Trust to consider the ability of the organisation to continue to hold the post open for the return of the employee. Brambleside Academy Trust must seek advice from their HR provider should they consider it appropriate to conduct such a review because the employee's perspective and facts relating to the likely timescales before resolution of the matter, must be considered in any such review, one possible outcome of which could be dismissal for another substantial reason.

5. Notes on prolonged period of suspension

- a. In some situations, usually associated with criminal charges, there can be a prolonged period of suspension arising from the timescales for conclusion of the judicial process or other factors outside of the control of the employer. A reasonable balance must be struck between the rights of the individual (innocent until proven guilty) and the burden of costs to the employer (full pay during suspension, cover costs and lack of continuity in service delivery associated with the post).
- b. Where such a period exceeds 6 months Brambleside Academy Trust reasonably serves the right to review the situation on an informal basis, in the first instance, taking all reasonable steps to enable the employee to contribute to such a review (attendance in person, in writing, sending a trades union representative or work colleague).
- c. There are two possible outcomes from such an informal review, either to continue to monitor the situation (a review again) or to convene a formal meeting from which dismissal for another substantial reason may arise (due to it being unreasonable for the employer to continue to hold the post vacant for the post holder's return if there is no prospect of a conclusion to the process, and therefore potential for a return to work, in the foreseeable future).
 - i. Any formal review must be conducted such that the employee has not less than 5 working days' notice of such a review, the right to accompanied by a trades union representative or work colleague (or represented), must be advised of the range of possible outcomes and the right to appeal against any decision to terminate employment for another substantial reason.

6. Notes on situations where the allegations include safeguarding concerns

- i. Before reaching a decision to suspend Brambleside Academy Trust should seek advice from Local Authority Designated Officer (LADO) who will advise if, on the basis of the information provided, the threshold for the LADO to have oversight is met or exceeded and therefore falls within the LADO remit but also they will inform the school where they consider suspension from duty must be applied.

Investigations

1. Where a member of staff's conduct appears to be such as to warrant formal disciplinary action, the manager (in accordance with Appendix 1) will: -
 - a. Ask the member of staff for an explanation before deciding whether to implement formal disciplinary action; and if appropriate. If the manager is satisfied with the explanation under (a) or feels that there is no case to answer under (b) then no further action will be taken and the matter will be disregarded in any subsequent disciplinary proceedings.
 - b. Subject to the outcome of (a) above arrange for a formal investigation if appropriate.
2. The level of investigation will depend on the extent of the allegation, for example continual lateness may only involve collating data about times the member of staff was late and meeting with them to enable them to challenge the data and/or explain the reason/mitigation for their lateness. A more in depth investigation may be required where there are witnesses to an event for example insubordination.
3. The investigator will be commissioned in accordance with Appendix 1.

4. Notes on Investigation Process where there are Safeguarding concerns

- a. If the alleged misconduct concerns a safeguarding matter, the Headteacher (or member of the Governing Body where the allegations have been made against the Headteacher) should immediately consult with their Local Authority Designated Officer (LADO) who will advise if, on the basis of the information provided, the threshold for the LADO to have oversight is met or exceeded and therefore falls within the LADO remit.
- b. For cases falling within the LADO remit:
 - i. The LADO officer will liaise with other agencies, including the Police, to determine whether or not the matter can be investigated on a single agency basis.
 - ii. Single Agency Basis:
 1. Where it is confirmed that the matter will be investigated on a single agency basis, subject to the caveat that if other concerns came to light or the aggrieved indicates a wish to make a complaint to the police, the matter would be referred by the LADO back to the police, the LADO would then discuss with the Headteacher if there is justification for suspension.
 2. The threshold to recommend suspension is usually that if the allegation is founded dismissal could fall within the range of possible outcomes.
 3. There are usually a series of LADO strategy meetings (in person or by telephone) at key points during the process the Headteacher and their HR advisor will be invited or required to join. The LADO officer would usually contribute a statement to the investigator for inclusion in the investigation report. A target date for the completion of the investigation is usually agreed between the LADO and the Headteacher.
 4. The facts determined by the investigation would be shared with the LADO who would usually express a view as to their

expectations of the range of possible outcomes from a formal disciplinary hearing given the findings of the investigation not so as to prejudice the outcome of any disciplinary hearing but to provide an independent expert external perspective as to the relative seriousness of the allegations in the context of the facts that have been established at the investigation stage. The outcome itself can only be determined through the School's disciplinary process under its policy (and any associated relevant policies such as "safeguarding" or "restraint" or similar).

5. On conclusion of the disciplinary process, the LADO reserves the right if they believe the outcome of the disciplinary process leaves pupils at Brambleside Academy Trust unsafe, to report this to Ofsted as a safeguarding concern.

iii. Non-single agency basis:

1. Where it is confirmed that the matter will be investigated on a multi-agency basis the school may be required to await the outcome of the police investigation before commencing or completing their investigation.
2. The formal disciplinary investigation will be undertaken by a person appointed in accordance with Appendix 1.

5. Notes on Investigation Process where there may have been a Criminal Offence(s)

- a. If the alleged misconduct appears to involve the possibility of a criminal offence having been committed, the Headteacher (or member of the Governing Body where the allegations have been made against the Headteacher) should immediately consult with their HR service provider and take no action to investigate further before their HR Provider has provided further advice.
- b. If it is considered that a criminal offence has been committed the HR provider is likely to advise the Headteacher to refer the matter to the police (and Trust where the school is part of an academy trust or local authority for a community school).
- c. If the allegation is potentially a safeguarding issue the allegation will be reported to the Local Area Designated Officer whose advice will be taken prior to taking any action from within Brambleside Academy Trust.
- d. Where the alleged misconduct appears to involve irregularities of money, stores, property or false claims the Headteacher should immediately contact their HR Service Provider who will give advice on which authorities need to be informed for a full investigation to take place.
- e. The Chair of Governors and (and Trust where the school is part of an academy trust or local authority for a community school) must be kept informed of all developments.
- f. Disciplinary proceedings may in some circumstances await the outcome of the investigations or a prosecution.
- g. Where a member of staff confesses to or is convicted of a serious criminal offence whether or not in connection with employment disciplinary action is probable.

- h. The formal disciplinary investigation will be undertaken by a person appointed in accordance with Appendix 1.

6. Investigations into Serious Misconduct Other Than Possible Criminal Liability

- a. In all other matters, the formal disciplinary investigation will be undertaken by a person appointed in accordance with Appendix 1.
- b. The investigation will be thorough and conducted in a timely manner interviewing all relevant parties and collecting the relevant documentation.
- c. A written report will be produced which will contain signed written statements from all and any witnesses to events. This written report will form the management case at any hearing which may be arranged following the investigation.
- d. Following the investigation, a decision maker (see appendix 1) will determine whether or not the matter should be addressed at a formal disciplinary hearing.
- e. If at any stage during the investigation, it appears that a criminal offence may have been committed the matter should be dealt with in accordance with the paragraph above titled "Criminal Offences".
- f. If at any stage during the investigation it appears that a safeguarding issue arises as an additional matter to be investigated, the matter should be dealt with in accordance with the paragraph above titled "Safeguarding".

7. General notes on investigations

- a. A member of staff who is interviewed as part of an investigation into an allegation made against them must not be unreasonably refused a request to be accompanied to such a meeting by trades union representative or work colleague.
- b. A member of staff will be given reasonably notice, usually 5 working days¹, of an investigation meeting but this notice period may be reduced with the agreement of the employee (or their trades union representative) and the investigator where the scope of the investigation is small and or the range of possible outcomes is considered to be very unlikely to include dismissal. Where a request to be accompanied has been agreed, and the trades union representative or work colleague is unavailable for the meeting, an alternative date should be within 5 working days of the original meeting date, however, the meeting may not be unreasonably delayed further due to the non-availability of their companion or representative.
- c. Action following any such investigation shall be in accordance with section 8. A member of staff who is suspended may with prior agreement in writing of the Headteacher and in company with their trade union representative or colleague return to their place of work for the purpose of carrying out their own investigation. In the event of a dispute as to whether the return of a member of staff shall be permitted or as to the conditions appertaining the decision of the Headteacher should be final except that the trade union representative or colleague will not be denied reasonable access.

Formal Disciplinary Procedure

1. An overview of the formal disciplinary process is shown at Appendix 4.
2. The Head Teacher/Principle is advised to consult the Brambleside Academy Trust's HR Provider throughout the process at all key decision making points (including but not limited to any decision to suspend, any decision to formally investigate, any decision to go to a formal meeting from which a sanction may arise, a decision to dismiss or to uphold a decision to dismiss; advice should be sought before each and any key decision is communicated to the employee verbally and at the drafting stage of any written communication of the same).
3. Once the investigator has completed their written report they will meet with the appropriate decision maker (see appendix 1) to enable the decision maker to decide whether the matter(s) should be addressed at a formal disciplinary meeting.
4. If the matter(s) are to be addressed at a formal disciplinary hearing, the decision maker (appendix 1) has to make a reasonable judgement as to the range of possible outcomes, taking into account the fact of any unspent warnings on file for the employee which may aggravate the outcome investigation not so as to prejudice the outcome of the formal disciplinary hearing but to ensure the formal disciplinary hearing decision maker(s) have sufficient delegated authority for the possible range of outcomes (see appendix 1). It is also important for the employee facing allegations to fully understand the range of possible outcomes so that they are prompted to seek assistance and support of a trade's union representative, should they wish to do so, in good time.
5. In general, the composition of the decision making body at a formal disciplinary hearing will be as follows:

Range of possible outcomes	Formal Disciplinary decision making body	Formal Disciplinary Appeal decision making body
A written or final written (but not dismissal with notice of summary dismissal) reasonably falls within the range of possible outcomes	At least one person (subject to Appendix 1)	At least one person (subject to Appendix 1) but more commonly a panel of three.
Dismissal with notice or summary dismissal reasonably falls within the range of possible outcomes	At least one person or a panel of three (subject to Appendix 1)	A panel of three (subject to Appendix 1).

6. Before issuing a letter of invitation to a disciplinary hearing, if dismissal or summary dismissal fall within the range of possible outcomes:
 - a. All schools and academies and Trusts are advised to ensure the presence of an HR advisor at any Disciplinary Hearing/Disciplinary Appeal hearing where the sanction of dismissal or summary dismissal may arise.
 - b. All schools and academies and Trusts should seek the advice of their HR services

- c. For an Academy Trust – the Trust, where the Trust is the employer, must be notified of this hearing and given the opportunity to be represented at the hearing.
- d. For Community Schools – the Local Authority is the employer and must be notified of this hearing and given the opportunity to be represented at the hearing.
- e. The decision maker/panel must be convened in accordance with Appendix 1 with particular care being taken to:
 - i. Ensure the roles of investigating manager and Chair of the Disciplinary hearing are not fulfilled by the same person
 - ii. Where an independent external investigator has been used to ensure they attend to put forward, or provide clarification about, and to be able to respond to questions about, their investigative report and findings as a support to the person making the management case (see appendix 1).
- f. A member of staff must be informed of their right to be accompanied by a Trades Union representative or a work colleague to a formal disciplinary (or disciplinary appeal) hearing. Where the union representative or work colleague is unavailable, meetings/hearings will be reasonably rearranged once within 5 working days of the original meeting/hearing date, except in the case of suspension where the need to suspend may be immediate. The formal disciplinary meeting and the notice must include:
 - g. The date, time and place of the hearing;
 - h. The names of the decision maker and or panel members and any other attendees at the hearing e.g. HR Adviser, note taker etc.;
 - i. The specific nature of the allegations;
 - j. The right to produce written statements and call witnesses;
 - k. The right to be accompanied by a Trades Union representative or work colleague;
 - l. Confirmation of any management witnesses;
 - m. Copies of all and any supporting documents to be relied on by the management case (including investigative report, witness statements etc.).
 - n. The range of possible outcomes from the formal disciplinary meeting.
 - o. A copy of the (Insert School/Academy/Trust)'s disciplinary procedure should also be provided.
 - p. Inform the member of staff of their right to submit to the Panel any additional document(s) which they wish to be considered at the formal disciplinary meeting; such documents must be submitted not less than 3 working days in advance of the hearing to the Panel and the investigating manager or, where this is an external person, to the person who will put the management case.
 - q. Inform the member of staff of their right to call witnesses to their case; they must inform the Chair of the Panel of the names of witnesses not less than

3 working days in advance of the hearing and inform the investigating manager or, where this is an external person, the person who will put the management case.

Formal Disciplinary Hearing Meeting Format

1. The meeting format to be used for a Formal Disciplinary hearing is that set out at Appendix 2. Where the decision making body is a panel, the members of the panel shall not discuss the case before the formal disciplinary hearing.
2. Once both sides have had the opportunity to put forward their case at the formal disciplinary hearing, and questions asked and responded to, the decision maker/panel adjourn to reach a decision.

Adjournment and deliberations to reach a decision

1. In reaching a decision the decision maker/panel must be mindful of ensuring their decision meets the threshold of a reasonable decision by a reasonable employer taking into account all of the facts, evidence and that due consideration is given to all and any mitigating or aggravating factors.
2. There are two steps in reaching the final decision as to the outcome of the disciplinary hearing:
3. A decision in principle simply on the merits of the case (the threshold being on the balance of probability)
4. Consideration of mitigating and aggravating factors.
- 5. Step 1 Decision in principle**
 - a. All of the evidence provided to the formal disciplinary hearing must be considered by the decision maker(s) in reaching their decision in principle as to the disciplinary sanction, if any, to be applied.
 - b. The range of possible outcomes (before consideration of any mitigation, see step 2 below) are:
 - c. To dismiss the allegations;
 - d. Written warning (which will remain on file for a period of 12 months' subject to section 12 below.
 - e. Any written warning must specify the complaint, the improvements in conduct which are required, the period within which any review of required improvements will be undertaken and the likely consequences of any further offences whilst the warning remains unspent on file.
 - f. Final written warning (which will remain on file for a period of 12 months' subject to section 12 below).
 - g. When a warning is a final one, the member of staff's attention must be drawn to this fact, together with the possible consequences, that the any future disciplinary decision maker (s) may determine that the member of staff should cease to be employed at Brambleside Academy Trust upon any further offence whilst the warning remains unspent on file.
 - h. Dismissal with notice due to the employer that is the better of (1) the notice due to them under their contract of employment OR (2) statutory notice;

- i. Summary dismissal (for gross misconduct only) where the employee has no entitlement to notice (contractual or statutory)

6. Step 2 Consideration of any mitigating and aggravating factors

- j. Once a decision in principle has been reached as to the outcome based on the facts and evidence of the specific case only, the decision maker/panel must then consider all and any relevant mitigating and aggravating factors.
- k. If an HR advisor has been in attendance to support the decision maker/panel at the disciplinary hearing that advisor should also support the deliberations process taking notes as to the rationale for and outcomes of step 1 and step 2 and clearly recording the mitigating (if any) and aggravating (if any) factors considered during step 2.

l. Mitigating

- i. Self-reporting and/or acceptances of conduct issues
- ii. Prompt rectification
- iii. Personal mitigation: ill health, personal and or financial circumstances, clear conduct record (no unspent warnings on file)
- iv. Age of issues under consideration
- v. Single isolated issue

m. Aggravating

- i. The conduct was dishonest, deliberate or reckless
 - ii. The conduct was intentional
 - iii. Concealment of wrongdoing
 - iv. Lack of cooperation with investigator
 - v. The presence of an unspent disciplinary warning
 - vi. The conduct has caused or is likely to cause the financial and or reputational loss for the organisation
 - vii. Lack of understanding or acceptance of wrong doing
- n. The decision maker/panel must determine if any of the above are sufficient for the decision in principle to be changed to an alternative outcome keeping in mind the range of possible outcomes that were identified in the letter of invite.

o. Notes on mitigating summary dismissal to dismissal:

- i. Mitigating an outcome of summary dismissal to dismissal with notice, there would be mitigating circumstances of substance and the lesser outcome of dismissal with notice would be for the purposes of mitigating the financial hardship of both loss of livelihood and loss of notice payment. There would not usually be any aggravating factors where such a decision is reached.

p. Notes on mitigating summary dismissal/dismissal to a final written warning:

- i. Mitigating an outcome of summary dismissal or dismissal with notice to one of a final written warning should apply only where there are multiple mitigating circumstances of substance and no aggravating factors. The panel must give due consideration also to how the continued employment of the employee might affect the reputation of the organisation from an internal and external (community) perspective.

q. Notes on aggravating factors raising the sanction to be applied

- i. Where there is an unspent warning already on file in relation to conduct the panel may wish to increase the sanction that may otherwise have been applied had this been an isolated incident. For example, a written warning might be raised to a final written warning, or a final written warning might be raised to dismissal with notice.
- r. Any decision to increase the sanction that would otherwise have been applied must be undertaken with caution to ensure the test of "a reasonable decision by a reasonable employer" is met.

Outcome of Hearing

1. The decision maker/chair of the panel should notify the member of staff in writing of the decision (on conclusion of step 2 of the decision making process) within 5 working days after the hearing. The letter should be delivered by hand with a copy posted to the home address held on file with proof of postage and proof of delivery. The letter should set out where appropriate the reasons for the warning or the determination.
2. The member of staff shall be informed of the right of appeal against sanction (a written, warning, final written warning, dismissal or summary dismissal). Appeals must be in writing and be submitted to the Clerk to the Governing Body within a reasonable period, typically within 5 working days of receipt of the letter of outcome.
3. If a member of staff does not appeal, where appropriate the Headteacher shall as appropriate:
4. For an Academy Trust – inform the Trust of the outcome.
5. For Community Schools – inform the Local Authority of the outcome.

Appeal

1. A member of staff has the right to appeal against a sanction arising from a formal disciplinary hearing.
2. A disciplinary appeal hearing will be convened in accordance with Appendix 1. Ideally no person who has had previous material involvement in the case should be a decision maker on appeal. However, for smaller schools and academies, particularly those located in remote areas, it may be unavoidable in which case overlap between panel members from the original hearing and an appeal hearing should be kept to an absolute minimum.

3. Grounds of Appeal

- a. It is not reasonable for an employer to refuse an appeal. Individuals are not always able to clearly articulate the grounds for their appeal. Examples of grounds for appeal include:
 - i. Procedural/Technical (failure to follow policy, code of practice, natural rules of justice)
 - ii. An allegation of bias (the outcome was reached in relation to one or more protected characteristics or personal favour/disfavour)
 - iii. An unfair sanction (the sanction is considered to be too severe) but the facts of the case are not disputed and the wrong doing admitted
 - iv. An unfair sanction (the sanction is considered to be too severe) but the outcome rested on a "on the balance of probabilities" and the decision is disputed
 - v. A miscarriage of justice (where it is alleged the evidence is incomplete or inaccurate, new evidence has come to light, evidence has been misinterpreted or an allegation of false evidence or testimony)
- b. Generally speaking, the format of the Appeal will be as follows, but if in doubt agreement should be reached with the individual or their representative as to the most appropriate format:

Grounds of Appeal	Re-hearing New Panel, Management case presented by original presenting/investigating manager plus any supporting external investigator (all and any original witnesses will be required again)	Technical Appeal New Panel, original Hearing Decision Maker presents their case for the management side may call fellow panel members as witnesses
Procedural/Technical (failure to follow policy, code of practice, natural rules of justice).	NO	YES
An allegation of bias (the outcome was reached in relation to one or more protected characteristics or personal favour/disfavour) but the facts of the case are not disputed and the wrong doing admitted/accepted/not disputed.	NO	YES
An unfair sanction (the sanction is considered to be too severe) but the facts of the case are not disputed and the wrong doing admitted/accepted/not disputed.	NO	YES
An unfair sanction (the sanction is considered to be too severe) but the outcome rested on a "on the balance of probabilities" and/or bias is alleged and the decision is disputed.	YES	NO
A miscarriage of justice (where it is alleged the evidence is incomplete or inaccurate, new evidence has come to light, evidence has been misinterpreted or an allegation of false evidence or testimony).	YES	NO
OTHER	Generally, if in doubt a full re-hearing is recommended.	NO

4. Range of possible outcomes on Appeal

- a. A disciplinary sanction cannot be increased on appeal, the original decision can only be upheld, reduced or dismissed.

5. Appeal process

- a. Appeals must be in writing and be submitted to the Clerk to the Governing Body within a reasonable period, typically within 5 working days of receipt of the letter of outcome.
- b. Re-Hearing Format Appeal:

- i. The appellant should be given at least 5 working days' notice in writing of the time and date of the appeal hearing. The original investigative report and supporting evidence, note of the original hearing and outcome letter, together with all and any new material submitted for the appeal, must be provided to the decision maker/panel members, and the person who originally presented the management case) in advance and a copy should be sent not less than 5 days in advance to the employee themselves. The purpose of the appeal is NOT to scrutinise the original decision maker/panel but to provide a second opportunity for the case to be heard and an independent decision reached. Only in cases of an appeal that includes specific technical or procedural grounds of appeal might it be appropriate for the decision maker/chair of the original panel to be asked to attend as a witness on these points.
- c. The appellant has the right to be accompanied to the disciplinary appeal hearing by a trades union representative or work colleague. They shall also have the right to submit not less than 3 working days in advance to the decision maker/Chair of the panel any document(s) they wish to be considered provided that a copy is similarly submitted not less than 3 working days in advance to the person presenting the management case.
- d. The procedure followed at appeal will be as in Appendix 2:
 - i. Rehearing Format Appeal: same as Appendix 2
 - ii. Technical/Procedural format Appeal: as Appendix 2 except that the appellant will present their case first.
- e. Where the upholding of a decision to dismiss falls within the range of possible outcomes, an HR advisor would usually support the decision maker/appeal panel.
- f. The deliberations and communication of outcome steps are the same as for the original hearing.

Review of Warnings

1. The period during which a warning (written or final written) shall remain unspent is 12 months' subject to any reasonable decision by Brambleside Academy Trust to extend this period should a further act of misconduct for the employee become subject to investigation whilst an unspent warning is on file that might expire before the completion of any formal disciplinary process in relation to that new allegation of misconduct.
2. Once a disciplinary warning has expired it may not serve any purposes within any future disciplinary procedure save for confirmation of the employee being informed about what constitutes acceptable actions/behaviour. This means that whilst the warning is retained as a matter of fact for the purposes of confirming that an employee knows what is acceptable it may not be used in a disciplinary procedure for the purposes of increasing the disciplinary sanction applied to the individual in any future disciplinary situation (see section 6).
3. Employees working within schools are deemed to be working within a regulated activity and as such all and any safeguarding matter raised in relation to an employee must be disclosed in any reference e provided by Brambleside Academy

Trust about an employee against whom safeguarding concerns have been raised regardless of the outcome of the investigation; the outcome should be confirmed within the reference.

Appendix 1 – matrix of delegated authority (disciplinary)

Stage	Stage outcomes	Posts with delegated authority relating to all staff except head teacher/principal	Matters relating to Head Teacher/Principal delegated authority
Informal conversations (disciplinary)	Conversation and file note/action plan	Line Manager	Chair or their nominated representative Governing Body member
Informal conversations (disciplinary)	Management instruction	Senior Leadership Team Member	Chair or their nominated representative Governing Body member
Investigation (formal disciplinary)	Conduct investigation	Line manager or Senior Leadership Team Member depending on seriousness and complexity of allegations	Chair or their nominated representative Governing Body member
Investigation & any decision to suspend or to lift a suspension	Commission independent investigator Suspend Lift suspension	Head Teacher or Principal or person designated by the Governing Body to cover their roles & responsibilities	Chair or their nominated representative Governing Body member
Case to answer	Decision to arrange a disciplinary hearing and invite to meeting from which a sanction may arise	Head Teacher or Principal or person designated by the Governing Body to cover their roles & responsibilities (but may not have also been the investigator)	Chair or their nominated representative Governing Body member (in conjunction with Local Authority where LA is the employer)
Meeting (formal meeting where a sanction may arise; the right to be accompanied applies)	Chair/decision maker	Head Teacher or Principal or person designated by the Governing Body to cover their roles & responsibilities(but may not have also been the investigator)	Three members of the Governing Body usually including one of the Chair or Vice Chair. A Governor from a neighbouring school can be used where resources are limited.
Appeal meeting	Chair/decision maker	Three members of the Governing Body. A Governor from a neighbouring school can be used where resources are limited.	Three members of the Governing Body usually including one of the Chair or Vice Chair. A Governor from a neighbouring school can be used where resources are limited. Preferably not more than 1 person overlap with any previous meeting panel to which the appeal relates.

Appendix 2 – format of formal disciplinary and appeal hearings

- A member of staff has the right to conduct their case personally, be represented, or be accompanied by a trade union official or colleague;
- In hearings before the Disciplinary Panel or Governing Body, reference to the Headteacher below shall include references to their representative;
- In any hearings to which paragraph 7 concerning Conduct of the Headteacher apply, the chair or Vice Chair of Governors may be represented and any reference to the Headteacher below shall include reference to the Chair or Vice Chair or their representative;

Procedure

- The chair of the panel will introduce all present, outline the reasons for the hearing and confirm the procedure.
- The investigator/management representative will be asked to present their case which may be read or otherwise in the presence of the member of staff and their representative or colleague and may call witnesses who may read their evidence;
- The member of staff or their representative may ask questions of the investigator or witnesses;
- The panel may ask questions of the investigator/management representative or their witnesses;
- The investigator/management representative should have the opportunity to re-examine their witnesses on any matter referred to in the examination by the panel, the member of staff or their representative;
- The member of staff or their representative will be asked to put their case which may be read or otherwise in the presence of the investigator and may call witnesses who may read their evidence;
- The investigator/management representative shall have the opportunity to ask questions of the member of staff, their representative or witnesses;
- The panel may ask questions of the member of staff, their representative or witnesses;
- The member of staff or their representative shall have the right to re-examine the witnesses on any matter referred to in the examination by the panel or Investigator;
- Firstly, the investigator/management representative and then the member of staff or their representative shall have the opportunity to sum up their cases if they so wish. The summing up shall not introduce any new matter;
- The investigator/management representative, the member of staff, their representative and all witnesses shall withdraw;
- The Disciplinary Panel shall deliberate in private. Any persons present as a clerk or as an adviser may remain but solely for the purpose for which they are present at the hearing. Should it be necessary to clear any point of uncertainty about the evidence given, both parties shall return notwithstanding one only is concerned with the point giving rise to doubt;
- The Disciplinary Panel shall announce their decision to the member of staff, their representative and to the investigator. The clerk of the hearing will confirm this decision in writing within 5 working days.

The appeal hearing follows the same procedure except the person appealing presents their case first for the investigator to respond. The Chair of the Disciplinary panel may attend with the management representative to respond to the appeal.

Appendix 3- examples of misconduct and gross misconduct

Please note this is not exhaustive but provides examples of the types of conduct where formal action will be taken.

- Failure to comply with a reasonable management instruction;
- Failure to observe Brambleside Academy Trust's Standing Orders, financial or other operational regulations;
- Failure to observe Brambleside Academy Trust policy;
- Negligence in the performance of duties;
- Failure to provide a duty of care in the performance of role;
- Breach of Health & Safety rules and requirements including any act or omission;
- Poor-time keeping;
- Misuse of Brambleside Academy Trust's property and equipment including misuse of email, fax or internet facilities;
- Failure to follow the Brambleside Academy Trust's sickness notification procedures and certification requirements;
- Failure to comply with the Brambleside Academy Trust's medical referrals procedure;
- Actions during a period of sick leave likely to inhibit recovery or a return to health
- Being under the influence of alcohol or drugs;
- Improper use of information obtained in the Brambleside Academy Trust's employment;
- Abusive or inappropriate behaviour toward pupils, parents, fellow employees or members of the public.

Examples of Gross Misconduct

Please note this list is not exhaustive but provides you with example of the types of conduct which will be considered gross misconduct and if substantiated will lead to dismissal without notice or pay in lieu of notice:

- Serious acts of insubordination;
- Serious breaches of Financial regulations or other operational regulations;
- Gross negligence in the performance of duties;
- Theft from Brambleside Academy Trust, its employees or members of the public or other acts of dishonesty;
- Serious breach of duty concerning the handling of confidential information;
- Serious breach of health and safety rules;
- Failure to provide safe working environment for children and young people;
- Taking drugs on Brambleside Academy Trust's premises for other than medical reasons;
- Buying, selling or offering drugs on Brambleside Academy Trust's premises;
- Offering alcohol to students;
- Fraud;
- Falsification of information, for example, qualifications or other relevant personal details in seeking and obtaining employment or promotion; information contained in time sheets, overtime claims, invoices, accounts, records or medical certificates;
- Fighting, violent, offensive, abusive or indecent behaviour;
- Unlawful acts of discrimination within the workplace;
- Bullying and/or Harassment;
- Unauthorised removal of and/or serious misuse of and/or deliberate damage to Brambleside Academy Trust's property and equipment including misuse of email, fax or internet facilities;
- Sexual misconduct at work;
- Aiding and abetting any of the above;
- Other actions which fundamentally breach the relationship of trust and confidence which exists between employer and employee;
- Criminal offences and cautions outside of work, including reprimands, final warnings or penalty notices.

Appendix 4 – Overview of the Formal Disciplinary Procedure

