**Some Other Substantial Reason (SOSR) Dismissal**

 **Policy and Procedure for Schools**

**Adopted by**

**Langley Fitzurse CE Primary School**

**On**

**Xx / xxx / xx**

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| This model procedure has been agreed with the following recognised unions: ATL, NUT, NAHT, NASUWT, ASCL, Unison, Unite and GMB |

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**Who is responsible for dismissal?**

1. The Governing Body has the overall responsibility for dismissing staff, with powers to delegate to the Headteacher responsibilities up to and including initial staff dismissal decisions. Under the Education Act 2002 School Staffing (England) Regulations 2003, the Headteacher should be given the delegated responsibility to make decisions up to the initial dismissal decision, (except in certain circumstance, see below) following which there is an opportunity to appeal to a panel of Governors.
2. Headteachers may therefore lead the process of making the initial dismissal decision unless the following circumstances apply:
	1. the Headteacher is unwilling to perform these functions and their previous history at the school did not include any such responsibilities.
	2. the Headteacher has been directly involved, has instigated a proposal to dismiss or is a witness in any of any case related to the grounds for the dismissal in question.
3. In situations where it is not appropriate for the Headteacher to perform these functions, the Governing Body should nominate three of its members, who are not staff members to form a panel with a different three Governors to form the appeals panel.

**Voluntary Aided Schools**

The governing bodies of Voluntary Aided schools are the employers of the school’s teaching and support staff. The Governing Body of a Voluntary Aided School therefore has the power to dismiss a member of staff at the school.

The Local Authority does not have an automatic statutory right of attendance at dismissal proceedings, but the governing body may accord the Local Authority rights to attend and give advice. Where the Local Authority is accorded such advisory rights, any advice given must be considered by those concerned before making a decision. Such an agreement must be given in writing and may only be withdrawn by notice in writing to the Local Authority.

Where such rights are accorded the Local Authority through a representative (usually an HR Advisor), has an entitlement to attend (which it may decide not to exercise), for the purposes of giving advice at all proceedings relating to any decision that someone working at the school should be dismissed. Any advice given by the HR Advisor must be considered by those concerned before a decision is made.

Where advisory rights are accorded to the Local Authority and the Local Authority decides that a Voluntary Aided school has acted unreasonably and/or unfairly in relation to an employee dismissal it reserves the right to pass on the related costs, including litigation, to the Governing Body concerned. This could include failing to take appropriate professional advice or failing to adhere to Wiltshire Council’s minimum HR procedures.

What is it?

1. This policy and procedure details the processes for SOSR for dismissal of an employee which is not covered by a separate policy and procedure.

When does it apply?

1. This policy applies where a dismissal does not fall under another school policy and procedure but does fall under a fair reason for dismissal under the statutory notification. These include (but are not limited to):
* re-organisation
	+ - where there are no redundancies and the narrow legal definition of redundancy is not met (redundancy is covered by the redundancy policy and procedure)
* refusal to accept changes to working practices or terms and conditions of employment
* protection from competition
	+ - where the employee acts in a way that falls short of a breach of duty or there is a situation which creates a potential conflict of interest
* breakdown of trust and confidence
	+ - where a situation falls short of a gross misconduct and a major breakdown of trust and confidence
* an economic, technical or organisational reason following TUPE transfer in line with TUPE regulations and guidance
* some other substantial reason not specified above
	+ - where an employee has a prison sentence imposed upon them and falls outside of the disciplinary procedure
		- where the employee’s continued employment contravenes a statutory enactment such as a driving ban
1. The SOSR reasons for dismissal stated above may be considered independently under this procedure or may follow on from another school policy and procedure that involves dismissal, at the discretion of the Headteacher in conjunction with advice from the School HR advisory team.

Data Protection Act 2018 and General Data Protection Regulations (GDPR) 2016

1. Records will be treated as confidential in accordance with the General Data Protection Regulations (GDPR) 2016 and the Data Protection Act 2018. Information and data collected in line with this policy is held securely and accessed and disclosed only for the purpose of managing a SOSR process. Further details on how data is used and processed is provided in the school’s privacy notice

What are the main points?

The informal stage

1. The Headteacher (following consultation with a member of the Schools HR advisory team) will invite the employee to meet with them to outline the reasons for their potential dismissal and provide them with all relevant information in relation to the employee’s case.
2. In cases where an investigation is required (that is not covered by any other academy policy and procedure) the Headteacher will inform the employee of the reasons for this and that the outcome of the investigation may lead to dismissal.
3. The employee will have the opportunity to respond to the intention to dismiss them on an informal basis either in writing or by attending a meeting with the Headteacher.
4. The Headteacher will outline the timescales for the employee to response to the reasons for their dismissal and arrange for a further meeting if required.
5. The Headteacher will consider the response from the employee to the intention to dismiss and if appropriate commence the formal consultation process.
6. The Headteacher will maintain an accurate record of the meeting.
7. In cases where the employee is unable to attend the meeting with the Headteacher, a written submission may be acceptable from the employee and the meeting will be held in the employee’s absence.

The formal stage

1. The employee will be invited to attend a hearing to consider the dismissal.
2. The employee will be given 10 working days written notice of this meeting and will have the right to be accompanied by a work colleague or trade union representative.
3. The Headteacher will present the case for the intention to dismiss the employee outlining the reasons.
4. The employee will be able to respond in relation to the case to dismiss them.
5. The hearing panel will determine whether or not the employee should be dismissed based upon the evidence.
6. If the employee is unable to attend the hearing, in some circumstances the dismissal panel may accept a written submission from the employee and the hearing will be held in the employee’s absence.
7. If the employee is unable to attend the meeting they should inform the Headteacher as soon as possible. If the employee is unable to attend due to reasonable circumstances outside of their control, the hearing may be re-arranged.
8. If the employee is unable to attend the re-arranged hearing, the hearing will be held in their absence.
9. If the employee does not wish to attend the hearing or does not attend the hearing having made no attempt to inform the Headteacher of the reasons for this, the hearing will go ahead in their absence.
10. The employee will be informed of the outcome of the hearing in writing by the panel responsible for hearing their case within 5 working days of the hearing.
11. If the employee is dismissed, the outcome letter will set out the reasons for the dismissal, the date of which the employment will terminate, any period of notice and the right of appeal.
12. If the employee is dismissed, they will be entitled to a notice period in accordance with the terms and conditions of their employment. The employee may or may not be required to work some or all of their notice period. This will be determined on a case by case basis.
13. If there are other employees that are involved in the same case (e.g. where a breakdown in relationship has occurred) each case will be heard separately.
14. The employee has the right of appeal against their dismissal in line with the schools appeals policy and procedure.

Roles and responsibilities

Employee responsibilities

1. A responsibility to co-operate with the stages within this policy and procedure and to engage with the procedure at all times.
2. To make every effort to attend meetings set up under this policy and procedure and to notify the Headteacher if they are unable to attend and the reasons for this.

Headteacher responsibilities

1. To apply this policy and procedure in a fair and consistent way following advice from the School HR advisory team.
2. To liaise with HR at all key stages or where there is a need for clarification to ensure consistency of application.
3. To understand and manage this policy and procedure and ensure that the processes are clearly communicated to the employee.

**Toolkits**

* Frequently asked questions
* Template invite letter
* Template outcome letter

**Equality Impact Assessment**

1. This policy has had an equality impact assessment conducted by a joint equality impact assessment panel and the results of these assessments are published on the Wiltshire Council website. If on reading this procedure you feel there are any equality and diversity issues, please contact a Schools HR Advisor who will, if necessary, ensure the policy/procedure is reviewed.