

## The Whitby Secondary Partnership

# Schools' Hearings & Appeals Procedure

### Federation Governance Status

This policy was updated by NYCC in October 2016 and was adopted by the Governing Body. It will be reviewed every two years or when new guidance is received from NYCC.

Review dates	By Whom	Approval date
January 2020	Staff and Governors	21 January 2020
January 2022		

Signed by the Chair:



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The following procedures will apply when cases are referred to Hearings and Appeals;

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### **Schools' Hearings:**

The Governing Body may choose to delegate authority to take disciplinary, capability and attendance action up to and including dismissal to the Headteacher; the Headteacher and one or more Governors; one or more Governors.

Where a panel is involved, they will appoint a Chairperson. This person should be qualified by training or experience to fulfil this role (see below for role details).

Where authority is delegated to one or more Governors, the Headteacher may attend to offer advice at all relevant proceedings (unless he/she presents the case or is a witness) and such advice must be considered by the Governor(s) to whom the delegation has been made.

In maintained schools, the Director of CYPS (or a representative) is entitled to attend and offer advice at all proceedings relating to the possible dismissal of any employee and schools must consider such advice when reaching a decision (this also applies to appeal hearings).

In Aided/Foundation schools the Director of CYPS (or a representative) may be invited to attend and offer advice at all proceedings relating to the possible dismissal of any employee and, if they do so, schools must consider such advice when reaching a decision (this also applies to appeal hearings).

NYCC recommends that where dismissal is a possible outcome, schools arrange for a panel of non-staff governors to hear the case. Ideally, the panel should be constituted of three governors, although two is permissible.

### **Schools' Appeals**

Appeals must be heard by a panel of governors. These should be constituted of at least two non-staff governors but be not fewer in number than the number of governors on the Hearing panel.

Appeals are not normally intended to be a rehearing of the case presented at the first Hearing. Where it is not a re-hearing it may not be necessary to call witnesses, other than the Chair of the first Hearing. The process outlined below relates to a full re-hearing of the case and may therefore be adjusted, dependent upon the format of each particular Appeal Hearing. If an amended process is agreed by all parties, the order of proceedings should normally follow that outlined here but omitting aspects which are not required and focussing on aspects which are felt to be key to the grounds for appeal.

### **What is the role of HR in Hearings and Appeals?**

A Human Resources adviser will normally be present at Hearings & Appeals. Their role is to advise panels on Procedure/employment law. The Human Resources Adviser will normally be present during panel deliberations in an advisory capacity but will not take part in decision making.

## **What is the role of the Chair?**

The Chair is responsible for ensuring the hearing or appeal follows the correct process (see section on Hearing/Appeal sequence), and for ensuring that all parties are able to put their case forward, ask appropriate questions and respond to questions asked of them, whilst bearing in mind that the employee's knowledge of proceedings may not be as comprehensive as the other parties involved.

The Chair should cover the following during their introduction:

- Ask all of those present to introduce themselves and explain their roles in the Hearing/Appeal
- Explain that the Hearing/Appeal will be carried out in accordance with this procedure and confirm that everyone present is aware of the process to be followed
- Check that the employee was informed of the right to be accompanied by a work colleague or recognised Trade Union / Professional Association representative.
- Explain that the accompanying representative has a statutory right to address the Hearing/Appeal but no statutory right to answer questions on the employee's behalf.
- If the employee is unaccompanied pay particular attention to ensuring that the employee is given every opportunity to state their case and ask and answer questions, bearing in mind their likely inexperience of formal hearings.
- Explain that an adjournment can be requested at any point during the Hearing/Appeal.
- Indicate that witnesses will only be present when giving evidence and answering questions.
- Confirm how the Hearing/Appeal will be recorded. It should be noted that no individual participant may make a voice recording of the hearing, though they may make their own notes.

## **When and how are Hearings and Appeals recorded?**

It is strongly recommended to have a note taker present at employee hearings. It is also recommended that the Chair of the Panel should produce a summary Action Note of the outcome of any hearing. This summary Action Note can be hand written or typed and should be completed using the template Action Note (LINK). Action notes should be saved with the case file along with any other papers associated with the hearing.

Voice recordings will not normally be made of Hearings and Appeals but may, exceptionally, be agreed by the parties involved and Chair of the proceedings. Such recordings will be made on school or NYCC provided equipment. Where a recording is made, copies of discs will not be produced as standard but will be given to the employee if requested. A copy of the recording will be retained by the management side. The recording will not usually be transcribed but will be relied upon should there be a need to clarify exactly what was said on particular points. It is the presenting/investigating manager's responsibility to organise the transcribing of the audio recordings if a transcript/part of transcript is required at the appeal stage. No other voice recording is permitted.

If the hearing is sound recorded a summary action note is still required.

## **What is the sequence of the Hearing or Appeal?**

For an Appeal Hearing only, the first step is for the Employee or representative to briefly explain the grounds on which the appeal has been submitted i.e. whether;

- on the facts of the case and/or;
- on the decision taken/sanction imposed and/or;
- due to procedural fault(s) and/or;
- new evidence has emerged and/or;
- alleged unfair selection (in a Redundancy Dismissal Appeal) or;
- a proposed resolution of an issue (in a Resolving Issues at Work Appeal)

From there, all hearings follow the same process:

1. Management present their case including a description of the issue(s) and details of any investigation, referring to supporting evidence. *In Appeal Hearings, the Management case will focus on the basis for the original decision and the grounds of appeal.* Witnesses can be

called as appropriate; however a written statement may be sufficient. A written statement should support witness testimony. Consideration will be given by the panel to the need for witnesses to remain available (but outside the Hearing) for possible recall.

2. The Employee or representative can then question (or seek clarification) of Management and any witnesses called by Management.
3. The Chair or Panel can ask questions (or seek clarification) of Management and/or any management witnesses.
4. Management has the opportunity of clarifying any points that have arisen in the questions raised by the Employee or representative or the Chair/Panel.
5. The Employee or representative presents their case following the same procedure as in paragraph 1. *In Appeal Hearings they should cover the grounds for their appeal by elaborating on the facts of the case which are in dispute, and/or reasons for challenging the sanction/decision, and/or procedural fault(s).* Witnesses can be called as appropriate, but written statements may be sufficient. A written statement should support witness testimony. Consideration will be given to the need for witnesses to remain available (but outside the Hearing) for possible recall.
6. Management can then question (or seek clarification of) the Employee or representative and any witnesses.
7. The Chair, or Panel, can ask questions (or seek clarification) of the Employee or representative and any witnesses.
8. The Employee or representative then has the opportunity of clarifying anything that has arisen in the questions raised by Management or the Chair/Panel.
9. Management should then be asked if they wish to briefly summarise their case.
10. The Employee or representative should then be asked if they wish to briefly summarise their case.
11. The Chairperson should then ask that both parties are satisfied with the conduct of the Hearing/ Appeal.
12. Both parties will then be asked to withdraw to allow the Chair/Panel to consider the evidence presented to them. Should the Chair or Panel wish to recall one of the parties (to seek clarification or additional information) both parties must be called back into the Hearing/Appeal.

#### **How and when is the decision communicated and recorded?**

The final decision may be delivered on the day and where that is the case both parties should be called back into the room and the Chair will announce the decision. This must also be confirmed in writing, normally within 5 working days of the date of the Hearing/Appeal.

Alternatively the Chair may wish to write to the respective parties to outline the panel's decision, normally within 5 working days of the date of the Hearing/Appeal.

The Chair of the Panel will produce and send the outcome letter to the employee, with support from the Human Resources Adviser to the panel. A copy of the letter should be forwarded to the Investigating Officer who must ensure it is placed on the employee's personal file.

#### **What other actions are taken after the Hearing or Appeal and who is responsible for this?**

**Record of Hearing (Template Action Note) should be used to record the outcome of Hearings and Appeals – To be completed by the Chair of the Panel**

<p><b>Type of Hearing (<i>which procedure</i>):</b></p> <p><b>Hearing/Appeal (<i>Please delete</i>)</b></p> <p><b>Date of the Hearing:</b></p>	<p><b>Name of employee:</b></p>	<p><b>Name of manager presenting case:</b></p>
<p><b>Summary of Manager's Case:</b>          (To include key points made by the presenting manager, could include reference to policy, decisions taken and reasons for bringing the case to a hearing)</p>		
<p><b>Summary of Employee's Case:</b>          (To include key points made by the employees, could include reference to mitigation, issues with managers case and/or explanations given)</p>		
<p><b>Summary of Decision taken by panel:</b>          (This should include a summary of the reasons for making a decision and any points of mitigation taken into consideration)</p>		
<p><b>Recorded outcome of hearing:</b> (e.g. level of warning)</p>		
<p><b>Signed:</b></p> <p><b>Date:</b></p>		

### Safeguarding Disciplinary Cases – Record of Hearing

To be completed by the Chair of the Panel to support decision making process and on-going risk management

<b>Type of Hearing:</b>	<b>Name of Employee:</b>	<b>Panel members:</b>
<b>Date of Hearing:</b>		
<b>Allegation(s):</b>		
<b>Seriousness of allegation(s):</b> <ul style="list-style-type: none"><li>• vulnerability of the individual</li><li>• nature and extent of the abuse</li><li>• length of time over which the abuse occurred</li><li>• impact on the individual / others</li><li>• can the situation be monitored</li></ul>		
<b>Likelihood of re-occurrence:</b> <ul style="list-style-type: none"><li>• what is the history</li><li>• intent – deliberate / lack of awareness</li><li>• pre-disposing factors or triggers</li><li>• possibility of supportive measures</li><li>• can the situation be monitored</li></ul>		
<b>Assessing overall risk:</b> <ul style="list-style-type: none"><li>• evidence provided</li><li>• identified risks</li><li>• what is required as follow up to mitigate any further risk</li></ul>		

<p><b>Sanction and next steps:</b></p> <ul style="list-style-type: none"> <li>• Dismissal – Chair to: <ul style="list-style-type: none"> <li>○ complete written instruction stating who is responsible for completing the employment reference</li> <li>○ complete written instruction clearly stating who is responsible for making required referrals to regulatory / professional bodies. This is typically the Line Manager with support from HR.</li> </ul> </li> <li>• Warning with redeployment – Chair to: <ul style="list-style-type: none"> <li>○ liaise with Headteacher re possible roles</li> <li>○ prepare written instruction regarding detailed handover to receiving manager</li> <li>○ include written instructions clearly stating follow up required by receiving manager</li> </ul> </li> <li>• Warning with follow up – Chair to: <ul style="list-style-type: none"> <li>○ Prepare written instruction and liaise with Headteacher to ensure implementation</li> </ul> </li> </ul>	
<p><b>Confirming sanction:</b></p> <ul style="list-style-type: none"> <li>• Chair to: <ul style="list-style-type: none"> <li>○ confirm in writing within 5 working days of the Hearing to the employee</li> <li>○ Copy manager with instruction to file in personal file</li> <li>○ Ensure <b>all</b> written instructions detailed above are filed in the school case file</li> <li>○ Where appeal received, inform supporting HR Adviser</li> </ul> </li> </ul>	

