

DISCIPLINARY PROCEDURE

Approved by: The Trust Board

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Owner: Human Resources Manager, Cumbria Education Trust

Disciplinary Rules for all Cumbria Education Trust Employees

1. Gross Misconduct

Gross misconduct is the committing of an act which renders it inadvisable for the employee to be allowed to remain at work. Any employee suspected of committing an act of gross misconduct, as indicated in the list below, will be suspended with full pay pending investigation. If after proper investigation it is decided that the employee has committed an act of gross misconduct or if the act is admitted by the employee, s/he will be dismissed without further warning, unless there are mitigating circumstances. The Disciplinary Procedure must be followed in all cases. The list of examples below is not intended to be exclusive or exhaustive and offences of a similar gravity will receive the same treatment.

- 1.1 Dishonesty associated with place of work or job being undertaken.
 - a) Theft of property belonging to the academy, contractor, an employee or student/pupil, or member of the public.
 - (b) Deliberate falsification of timesheets, claim forms, sickness self-certification forms etc.
 - (c) Improper use of position for private gain or the private gain of some other person, including soliciting or accepting bribes.
 - (d) Misrepresentation as to status, qualification, experience and health.
 - (e) Failure to disclose criminal convictions, cautions, bindovers or warnings.
 - (f) Falsification of registration of pupils or students for pecuniary gain.
- 1.2 Deliberate refusal to carry out a reasonable, lawful and safe instruction or the normal agreed defined duties of the post.
- 1.3 Gross negligence in failing to attend to or carry out the agreed duties of the post.
- 1.4 Wilfully ignoring responsibilities/instructions thus placing other employees/pupils/students in danger, e.g. ignoring handling instructions/safety regulations in respect of radioactive materials.
- 1.5 Being unfit to perform duties associated with the post as a result of taking drugs, other than in accordance with medical advice, or taking alcohol.
- 1.6 Wilful unauthorised disclosure of information (classified as confidential), by employees who, in the course of their duties, have access to such information which, by its release, could be harmful to students, other employees, Board members or the reputation of the academy or Cumbria Education Trust.
- 1.7 Acts of violence or vandalism in the course of employment.

- (a) Malicious damage to academy/contractor/other employees/students/pupils' property.
 - (b) Physical violence towards members of the academy staff/Local Advisory Board members/parents/pupils/students/other members of the public.
- 1.8 Sexual misconduct at work.
- (a) Sexual misconduct whether criminal or not.
 - (b) Sexual behaviour towards or relations with students.
- 1.9 Off-duty misconduct.
- (a) An act of criminal sexual misconduct by an employee.
 - (b) Drug offences committed by employees whose job bring them into contact with young people.
 - (c) Sexual behaviour towards or relations with students, or young persons.
- 1.10 Misuse of the internet or email facilities of the academy
- (a) Using the internet to access unseemly or sexually explicit material.
 - (b) Using email for communicating unseemly or sexually explicit material
 - (c) Using phones for communicating unseemly or sexually explicit material

2. Misconduct

Misconduct is of a degree less serious than that which would warrant immediate suspension from duty for a first offence but which could nevertheless lead to dismissal if persistent. The Disciplinary Procedure must be followed when dealing with misconduct. Some more serious acts of misconduct might justify omitting the first stage of disciplinary procedures by issuing a final warning in the first instance, if there is no satisfactory explanation. Only when it can be shown that the warnings have not been heeded will misconduct lead to action being taken which will lead to an employee's dismissal. The list of examples below is not intended to be exclusive or exhaustive and offences of a similar gravity will receive the same treatment.

2.1 Absenteeism and lateness, for example:

- (a) failure to remain at the place of work during normal working hours without permission or sufficient cause for absence;
- (b) frequent failure to attend work punctually;
- (c) failure to comply with the sickness absence reporting procedure

2.2 Dishonesty - petty wrongs, for example:

- (a) making unauthorised private telephone calls and/or sending personal mail at the academy's expense;
- (b) failure to report any loss and/or damage to any property issued to or by the employee in connection with his/her employment.
- (c) using the academy's telephone, fax, email or internet for unauthorised personnel purposes.

2.3 Neglect of duty, for example:

- (a) failure to adopt safe working practices/use protective equipment where required by law or management;
- (b) negligent use of academy property in such a way as is likely to cause serious damage or loss;
- (c) failure to discharge without sufficient cause the obligations which statute or the contract of employment places on the employee,
- (d) insubordination in that the employee refused to carry out a reasonable request;
- (e) failure to exercise proper control or supervision of students/pupils.

2.4 Abusive behaviour/offensive language which arises directly out of or in connection with work and which is directed at students/pupils, colleagues, Board members, contractors, volunteers or members of the public.

- 2.5 Bullying harassment or victimisation of students/pupils, other employees, volunteers, Board members or contractors in the course of duty.
- 2.6 Unlawful discrimination against students/pupils, other employees, volunteers, Board members or contractors in the course of duty.
- 2.7 Discrimination, whether unlawful or not, in the course of duty against students/pupils, other employees, volunteers, Board members or contractors on the grounds of age, sex, marital or civil partnership status, race, disability or sexual orientation, gender reassignment, pregnancy or maternity, religion, faith or belief.
- 2.8 Undertaking additional employment outside normal working hours which would have a detrimental effect on the work to be performed as a full time employee of the academy.

3. School Code of Conduct

The school Code of Conduct forms part of the academy's disciplinary rules for staff. A serious breach of the Code will be regarded as gross misconduct. A less serious breach may result in a disciplinary warning.

DISCIPLINARY PROCEDURES RELATING TO MISCONDUCT - ALL EMPLOYEES OTHER THAN EXECUTIVE HEADTEACHER & HEADTEACHER

Across Cumbria Education Trust the Executive Headteacher has delegated power of dismissal for all posts with the exception of the post of Headteacher.

1. Definitions

- 1.1 The term “Executive Headteacher” also refers to any other title used to identify the Executive Headteacher where appropriate.
- 1.2 The term “employee” refers to any member of the staff (with the exception of the Executive Headteacher and Headteacher), employed to work solely at the academy.
- 1.3 The term “senior manager” refers to any member of the senior Leadership Team, as defined by the School Teachers’ Pay and Conditions Document, a senior support member of staff in cases involving support staff or a member of the Cumbria Education Trust Central Team, delegated by the Executive Headteacher to deal with a disciplinary matter under these procedures. A senior manager may only make a decision to issue a warning up to and including a final written warning.
- 1.4 If the Executive Headteacher, following consultation with the Chair of the Trust Board, considers that there is no senior manager to whom s/he can reasonably delegate a specific disciplinary matter then the Executive Headteacher will take the role of the senior manager for that specific case and the role of the “Executive Headteacher” under this procedure will be performed by a “Staff Dismissal Committee” made up of members of the Trust Board consisting of not less than 3 members, (except in circumstances provided for in the Secretary of State’s guidance on the Staffing Regulations), none of whom will have had previous involvement in the case.
- 1.5 “Misconduct” is defined in the disciplinary rules which accompany the Disciplinary Procedure.

2. Oral Warning

- 2.1 The following procedure does not relate to informal oral warnings, which might be given to the employee by a member of the senior manager team. However, repeated misconduct after an oral warning would normally lead to more serious disciplinary action in accordance with the procedure.
- 2.2 There is no appeal against an oral warning, which will not be recorded on the employee’s personal record but should be confirmed in a written memorandum. The employee may make written comment on the memorandum if s/he has any objection to the issuing of an oral warning. The memorandum will be placed on the employees file.

3. First Written Warning

- 3.1 If the senior manager, having carried out appropriate investigation, considers on the facts that formal disciplinary action for misconduct is necessary, s/he will write to the employee to inform him/her, at least five working days in advance, setting out:
 - a) the date, time and place of the disciplinary hearing.
 - b) the nature of the complaint.
 - c) the employee’s right to be accompanied by a representative of his/her trade union or a workplace colleague.
 - d) the titles of enclosed copies of any documents to be used as evidence.
 - e) the names of any witnesses to be called by the senior manager.
 - f) his/her right to call witnesses on his/her behalf.
 - g) The name and office of any adviser who will accompany the senior manager at the hearing.

h) That the employee can request an additional copy of the notice, with enclosures can be provided for his/her representative.

3.2 If, following the investigations and professional advice, the senior manager considers that the facts of the case amount to a prima facie case of gross misconduct the matter will be referred to the Executive Headteacher.

3.3 At the disciplinary hearing before the senior manager and his/her adviser, the employee (and his/her representative) will be given a reasonable opportunity to state his/her case and to question the senior manager and any witnesses. At the conclusion, following an adjournment for consideration of the facts, the senior manager will state his/her decision and his/her reasons and will soon afterwards confirm them in writing to the employee and his/her representative.

3.4 If the senior manager decides the complaint was justified, s/he may give the employee a first written warning which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to a final warning, unless there are mitigating circumstances.

3.5 If the employee is given no further written warning of misconduct within twelve months of the date of the first written warning, then this warning is disregarded and the warning letter will make this clear.

4. Final Written Warning

4.1 If a further complaint is made about the employee's conduct within twelve months of the date of the first written warning, the same procedure (as in **3** above) will be followed.

4.2 If the senior manager decides at the conclusion of the disciplinary hearing that this further complaint is justified, s/he may give the employee a final written warning, which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to dismissal, unless there are mitigating circumstances.

4.3 Again, this final warning, together with any previous warning, will be disregarded if there is no further complaint about misconduct within twelve months of the date of the final warning, and the warning letter will make this clear.

5. Dismissal

5.1 If a further complaint is received within twelve months from the date of the final warning, the complaint will be referred to a hearing before the Executive Headteacher, following a similar procedure to that in paragraphs **3** above. The Executive Headteacher, who shall be accompanied by an adviser, who will normally be a representative of the academies human resources consultants.

5.2 If the Executive Headteacher decides the complaint is justified, s/he may decide to dismiss the employee. They will state his/her decision and his/her reasons and inform the employee of his/her right to appeal to the Appeals Panel of the Trust Board. S/he will soon afterwards confirm the decision and right of appeal in writing to the employee (and his/her representative). The Executive Headteacher will record the outcome of his/her considerations and the names of persons present at the hearing.

5.3 The academy will give notice in writing to the employee that s/he is dismissed, whether the decision was with or without notice, or with pay in lieu of notice and the effective date of dismissal.

6. Gross Misconduct

- 6.1 If the complaint is considered so serious that it may amount to gross misconduct, justifying dismissal without previous warning and without notice (see the Disciplinary Rules), the employee will be informed by the Headteacher, on behalf of the Executive Headteacher, that s/he is suspended on full pay pending further investigation of the complaint before the Executive Headteacher, who, if s/he considers the complaint constitutes gross misconduct, may decide to dismiss the employee. The procedure to be followed will be as in paragraph 5 above.
- 6.2 Where a suspension has taken place, that suspension may only be lifted by the Chair of the Trust Board.

7. Right of Appeal

- 7.1 The employee has a right of appeal against a written warning issued by a senior manager (see paragraphs 3 and 4). The appeal will be heard by the Appeals Panel of the Local Advisory Board. The number of Board members on the Appeals Panel will not be less than two. The panel shall be advised by a person engaged for the purpose by the Local Advisory Board. The panel can confirm the warning, reduce a final warning to a warning or cancel the warning.
- 7.2 Appeals against formal warnings by the senior manager should be made in writing to the Clerk to the Local Advisory Board within 5 working days of the receipt of the written decision.
- 7.3 The employee has a right of appeal against a decision to issue a warning or to dismiss by the Executive Headteacher (see paragraph 5). An appeal against a warning by the Executive Headteacher will be to the Appeals Panel of the Trust Board.
- 7.4 An appeal against dismissal will be to the Appeals Panel of the Trust Board, which shall have a membership of not less than 3 Board Directors, none of whom shall have any previous involvement in the case. The Appeal Panel shall be advised in its deliberations. The adviser will normally be a representative of the school's independent human resources consultants.
- 7.5 Appeals against decisions by the Executive Headteacher should be made in writing to the Clerk to the Trust Board within 5 working days of the receipt of the written decision.
- 7.6 All appeal hearings will be held as soon as possible after receipt of the appeal.

8. Variation in Penalties

- 8.1 The outcome of the process may result in the senior manager or the Appeals Panel may decide to vary the penalty as follows:
- to give an oral warning instead of a written warning, or a written warning instead of a final written warning.
 - that the misconduct is so serious that it justifies a first and final written warning.
 - to issue a further final warning rather than refer the complaint to the Executive Headteacher.
 - to issue a warning or final warning rather than dismiss.
 - that any warning may last for a specified period longer than the original twelve months of any previous final warning, if appropriate. There is no right of appeal against such a decision of the Appeal Panel of the Trust Board.

8.2 In the event that the Appeal Panel decides not to uphold the Executive Headteacher's decision to dismiss, the notice of dismissal shall be immediately withdrawn.

9. Trade Union Officials

9.1 Although normal disciplinary standards must apply to the conduct of a trade union official as an employee, no disciplinary action beyond an oral warning should be taken until the circumstances of the case have been discussed with the relevant full time trade union officer.

10. Confidentiality

10.1 The proceedings of this disciplinary procedure shall remain confidential to the parties concerned. Only the decision of a disciplinary hearing may be reported.

DISCIPLINARY PROCEDURE RELATING TO MISCONDUCT – HEADTEACHER/EXECUTIVE HEADTEACHER ONLY

1. Definitions

- 1.1 The term “Executive Headteacher” or “Headteacher” also refers to any other title used to identify the Executive Headteacher or Headteacher where appropriate.
- 1.2 The term “Designated Board Director/Member” refers to the Chair of the Trust Board or another member of the Boards.
- 1.3 The “Dismissal Panel” of the Trust Board shall consist of 3 members, (except in circumstances provided for in the Secretary of State’s guidance on the Staffing Regulations), none of whom will have had previous involvement in the case.
- 1.4 “Misconduct” is defined in the Disciplinary Rules which accompany the Disciplinary Procedure.

2. Oral Warning

- 2.1 Misconduct is defined in the Disciplinary Rules, to which reference should be made. The following procedure does not relate to informal oral warnings, which might be given to the Executive Headteacher/Headteacher by the Designated Board Director/Member. However, repeated misconduct after an oral warning would normally lead to more serious disciplinary action in accordance with the procedure.
- 2.2 There is no appeal against an oral warning, which will not be recorded on the Executive Headteacher/Headteacher’s personal record but should be confirmed in a written memorandum. The Executive Headteacher /Headteacher may make written comment on the memorandum if s/he has any objection to the issuing of an oral warning.

3. First Written Warning

- 3.1 If the Line Manager, having carried out appropriate investigation, considers on the facts that formal disciplinary action for misconduct is necessary, s/he will write to the Executive Headteacher/Headteacher to inform him/her, at least five working days in advance, setting out:
 - a) the date, time and place of the disciplinary hearing.
 - b) the nature of the complaint.
 - c) the right to be accompanied by his/her representative of an independent trade union or a workplace colleague.
 - d) the titles of enclosed copies of any documents to be used as evidence.
 - e) the names of any witnesses to be called by the Line Manager.
 - f) his/her right to call witnesses on his/her behalf.
 - g) The name and office of any adviser who will accompany the Line Manager at the hearing.(At the Executive Headteacher/Headteacher’s request, an extra copy of this notice, together with any enclosures, should be provided for his/her representative).
- 3.2 If, following the investigations and professional advice, the Designated Board Director/Member considers that the facts of the case amount to a prima facie case of gross misconduct the matter will be referred to the Dismissal Panel.
- 3.3 At the disciplinary hearing before the Designated Board Director/Member and his/her adviser, the Executive Headteacher/Headteacher (and his/her representative) will be given a reasonable opportunity to state his/her case and to question the Designated Board Director/Member and any witnesses. At the conclusion, following an adjournment for consideration of the facts, the Designated Board Director/Member will state his/her

decision and his/her reasons and will soon afterwards confirm them in writing to the Headteacher and his/her representative.

- 3.4 If the Line Manager decides the complaint was justified, s/he may give the Executive Headteacher/Headteacher a first written warning which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to a final warning, unless there are mitigating circumstances.
- 3.5 If the Executive Headteacher/Headteacher is given no further written warning of misconduct within twelve months of the date of the first written warning, then this warning is disregarded and the warning letter will make this clear.

4. Final Written Warning

- 4.1 If a further complaint is made about the Executive Headteacher/Headteacher's conduct within twelve months of the date of the first written warning, the same procedure (as in **3** above) will be followed.
- 4.2 If the Designated Board Director/Member decides at the conclusion of the disciplinary hearing that this further complaint is justified, s/he may give the Executive Headteacher/Headteacher a final written warning, which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to dismissal, unless there are mitigating circumstances.
- 4.3 Again this final warning, together with any previous warning, will be disregarded if there is no further complaint about misconduct within twelve months of the date of the final warning, and the warning letter will make this clear.

5. Dismissal

- 5.1 If a further complaint is received within twelve months from the date of the final warning, the complaint will be referred to a hearing before the Dismissal Panel, following a similar procedure to that in paragraphs **3** above. The Dismissal Panel shall have an adviser appointed for that purpose by the Trust Board.
- 5.2 If the Dismissal Panel decides the complaint is justified, it may decide to dismiss the Executive Headteacher/Headteacher. The Dismissal Panel will state its decision and its reasons and inform the Executive Headteacher/Headteacher of his/her right to appeal to the Appeals Panel of the Trust Board. The Dismissal Panel will soon afterwards confirm the decision and right of appeal in writing to the Executive Headteacher/Headteacher (and his/her representative). The Dismissal Panel will record the outcome of its considerations and the names of persons present at the hearing.
- 5.3 The Trust Board will notify the Executive Headteacher/Headteacher in writing of the decision to dismiss, whether the decision was with notice, or with pay in lieu of notice. The written notice of dismissal shall include notifying him/her of the right of appeal.

6. Gross Misconduct

- 6.1 If the complaint is considered so serious that it may amount to gross misconduct, justifying dismissal without previous warning and without notice (see the Disciplinary Rules), the Executive Headteacher/Headteacher will be informed by the Designated Board Director that s/he is suspended on full pay pending further investigation of the complaint before the Dismissal Panel which, if it considers the complaint constitutes gross misconduct, may decide to dismiss the employee. The procedure to be followed will be as in paragraph **5** above.

- 6.2 Where a suspension has taken place that suspension may only be lifted by the Chair of the Trust Board.

7. Right of Appeal

- 7.1 The Executive Headteacher/Headteacher has a right of appeal against a written warning issued by a Designated Board Director/Member (see paragraphs **3** and **4**). The appeal will be heard by the Appeal Panel of the Trust Board. The number of board Directors on the Appeal Panel will not be less than three. The panel shall be advised by a person engaged for the purpose by the Board. The panel can either confirm the warning, reduce a final warning to a warning or cancel the warning.
- 7.2 Appeals against formal warnings issued by the Designated Board Director/Member should be made in writing to the Clerk to the Trust Board within 5 working days of the receipt of the written decision.
- 7.3 The Executive Headteacher/Headteacher has a right of appeal against a decision to issue a warning or to dismiss by the Dismissal Panel (see paragraph **5**). An appeal against a warning by the Dismissal Panel will be heard by the Appeals Panel of the Trust Board..
- 7.4 An appeal against dismissal will be to the Appeal Panel of the Trust Board, which shall have a membership of not less than 3 Directors, none of whom shall have any previous involvement in the case. The Appeal Panel shall be advised in its deliberations by an adviser appointed for that purpose by the Board. The Adviser will normally be a representative of the schools independent human resources consultants.
- 7.5 Appeals against decisions by the Dismissal Panel should be made in writing to the Clerk to the Trust Board within 5 working days of the receipt of the written decision.
- 7.6 All appeal hearings will be held as soon as possible after receipt of the appeal.

8. Variation in Penalties

- 8.1 The Designated Board Director/Member or the Appeals Panel of the Trust Board may decide to give an oral warning instead of a written warning, or a written warning instead of a final written warning.
- 8.2 The Designated Board Director/Member may decide that the misconduct is so serious that it justifies a first and final written warning.
- 8.3 The Designated Board Director/Member may decide to issue a further final warning rather than refer the complaint to the Dismissal Panel.
- 8.4 The Dismissal Panel may decide to issue a warning or final warning rather than dismiss.
- 8.5 The Appeal Panel may decide to issue a warning or a final warning rather than dismiss, and that any warning may last for a specified period longer than the original twelve months of any previous final warning, if appropriate. There is no right of appeal against such a decision of the Appeal Panel of the Trust Board.
- 8.6 In the event that the Appeal Panel of the Trust Board decides not to uphold the Dismissal Panel's decision to dismiss, the notice of dismissal shall be immediately withdrawn.

9. Trade Union Officials

- 9.1 Although normal disciplinary standards must apply to the conduct of a trade union official as an employee, no disciplinary action beyond an oral warning should be taken until the circumstances of the case have been discussed with the relevant full time trade union officer.

10. Confidentiality

10.1 The proceedings of this disciplinary procedure shall remain confidential to the parties concerned. Only the decision of a disciplinary hearing may be reported.