



Disciplinary Procedure and Rules Relating to Misconduct for all Employees

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1. Terms of Reference

1.1 This policy applies to all employees of the West Norfolk Academies Trust.

Definitions:

- **Executive Headteacher** also refers to any other title used to identify the Executive Headteacher, where appropriate The Executive Headteacher or other member of the Trust Senior Leadership Team (SLT) delegated to deal with the matter by the Executive headteacher, may deal with a case where the Headteacher considers that they must act in the role of the senior manager. In this event, substitute **Headteacher** with **Executive Headteacher** throughout the procedure.
- **Headteacher** also refers to any other title used to identify the Headteacher where appropriate. The Headteacher may only make a decision on matters of misconduct, unless expressly delegated to hear a case of potential gross misconduct by the Executive Headteacher.
- **Senior Manager** refers to a person from the Senior Leadership Team (SLT) delegated by the Headteacher to deal with a disciplinary matter under this procedure. The senior manager may only make a decision to issue up to and including a final written warning.
- **Employee** refers to any employee, teaching and support, employed to work for West Norfolk Academies Trust.
- **Investigating Officer** refers to a senior manager, Headteacher or an external person appointed by the Headteacher or Executive Headteacher.
- **Companion** refers to a person chosen by the employee to accompany them, who shall be a trade union representative or a workplace colleague.
- **Trustees Committee** may be convened to deal with a case where the Executive Headteacher considers that they must act in the role of the senior manager. In this event, substitute **Executive Headteacher** with **Trustees Committee** throughout the procedure.
- **Trustees Appeal Committee** may be convened to hear an appeal against a written warning or dismissal where the Executive Headteacher chaired the disciplinary hearing. Where possible the number of trustees on the committee will be 3.
- **WNAT or Trust** refers to West Norfolk Academies Trust.
- **School Days** refers to working days excluding school holidays.

2. Introduction

- 2.1 This Disciplinary Procedure is designed to help and encourage all employees to achieve and maintain standards of conduct. The aim is to ensure consistent and fair treatment for all in the organisation.
- 2.2 Examples of the type of conduct that are considered to be misconduct or gross misconduct, which could lead to action under this Disciplinary Procedure, are set out in the Disciplinary Rules in Part C which apply to all employees and should be read in conjunction with Part A and B of this procedure.
- 2.3 This procedure is non-contractual and for guidance only. This procedure applies to all employees. It does not apply to agency workers or contractors.
- 2.4 This procedure may be implemented at any stage, as set out below, taking into account the alleged misconduct of an employee. Employees will not normally be dismissed for a

first act of misconduct unless it is decided that it amounts to gross misconduct or the probationary period is not complete.

- 2.5. In cases against the Headteacher, the Executive Headteacher or a Committee of Trustees has the power to discipline or dismiss the Headteacher in accordance with the procedure set out below.
- 2.6 In cases against the Executive Headteacher, the Chair of Trustees or a Committee of Trustees has the power to discipline or dismiss the Executive Headteacher in accordance with the procedure set out below.

3. Equality and Diversity

- 3.1 The procedure will be operated in accordance with the Trust's Equality and Diversity Policy and Objectives. The Trust is committed to developing, maintaining and supporting a culture of equality and diversity in employment. The impact of the procedure will be monitored in accordance with the Equality Act 2010.

PART A – Informal Procedure

4. Informal Action

- 4.1 Managers should seek to resolve minor misconduct informally and as soon as it occurs. Management advice may be given to the employee by a senior manager or a line manager. Action will be taken under the formal procedure set out in Part B below if the matter is not resolved or, there is repeated minor misconduct or, where informal action is not appropriate, for example because of the seriousness of the allegation.
- 4.2 There is no appeal against management advice given, which will not be placed on the employee's disciplinary record but should be confirmed in a written memorandum.
- 4.3 The written memorandum will set out the misconduct, the improvement that is required and, if appropriate, how this will be reviewed and during what timeframe. The employee may make a written comment on the memorandum if they have any objection to the informal action taken. A copy of the memorandum or a note of any informal discussions may be placed on the employee's personnel file.

Part B - Formal Procedure

5. Investigation

- 5.1 Prior to any disciplinary action, allegations shall be promptly dealt with and carefully investigated, including obtaining statements from witnesses where appropriate. HR advice must be obtained from WNAT's HR provider, which will include advice as to how to conduct an investigation.
- 5.2 Employees may be required to attend a formal investigation interview. The investigating officer will write to the employee to inform them as soon as practicably possible, at least 5 working days in advance (please also refer to paragraph 5.3), setting out:
 - The date, time and place of the investigation meeting
 - The allegation/s and their possible consequences
 - The employee's right to be accompanied by their companion

- 5.3** The notice period for the investigation interview can be reduced where all parties agree to such a reduction.
- 5.4** At the investigation interview the employee against whom allegations are made shall have the right to be informed of the nature of the allegations and to respond if they so choose. The investigation interview will be postponed once to allow for a trade union representative to attend and best endeavours will be made to agree a mutually agreeable time, date and location.
- 5.5** Investigation shall, where possible, be undertaken by a senior manager other than the Headteacher in order that the Headteacher is subsequently able to consider matters under informal action or formal disciplinary procedures without prior involvement.
- 5.6** Where there may be potential for a criminal investigation the schools investigation must only involve limited fact finding so as not to undermine any future police or Local Authority Designated Officer (LADO) investigation.

6. Disciplinary Hearing

- 6.1** If, following an appropriate investigation by the Investigating Officer, the senior manager considers on the facts that formal disciplinary action for misconduct is necessary, they will write to the employee to inform them as soon as practicably possible, at least 5 school days in advance, setting out:
- The date, time and place of the disciplinary hearing
 - The allegation/s and their possible consequences
 - The employee's right to be accompanied by their companion
 - The titles of enclosed copies of any documents to be used as evidence
 - The names of any witnesses to be called by the Senior Manager
 - The employee's right to call witnesses on their behalf
 - The name and position of any HR adviser who may accompany the senior manager at the hearing
 - The name and position of any note taker
- (At the employee's request, an extra copy of this notice, together with any enclosures, should be provided for their companion)
- 6.2** The employee must advise the senior manager of the following, at least three school days in advance of the hearing:
- The name and designation of their companion
 - Provide any written documentation to be considered
 - The names of any witnesses that they wish to call
 - Any special requirements (e.g. disability, language requirements)
- 6.3** At the disciplinary hearing, before the senior manager and their HR Adviser, the employee (and their companion) will be given a reasonable opportunity to state their case, to question the Investigating Officer where possible and any witnesses and to call any witnesses and raise points about any information provided by witnesses.
- 6.4** Following the hearing, the senior manager will consider the matter and confirm the decision in writing to the employee and their companion as soon as possible and usually within five school days of the hearing, to include:

- The sanction (if any) and the period this will remain current
- Their reasons for the decision
- The change in behaviour required (if relevant) and the likely consequences of further misconduct
- Right of appeal

7. Formal Disciplinary Action

First Written Warning

- 7.1** The senior manager 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 that is found justified after a disciplinary hearing, will lead to a final written warning unless there are mitigating circumstances.
- 7.2** If a further complaint is made about the employee's conduct before the first written warning has expired, the same procedure (as in section 6 above) will be followed.

Final Written Warning

- 7.3** The senior manager may give the employee a final written warning, which will include a statement that any further complaint of misconduct occurring within the next 12 months that is found justified after a disciplinary hearing, may lead to dismissal unless there are mitigating circumstances.

Dismissal

- 7.4** If a further complaint is received before the final written warning has expired, the complaint will be referred to a hearing before the Headteacher following the same procedure as in paragraph 6 above. The Headteacher may be accompanied by an HR Adviser. The Headteacher must make the Executive Headteacher aware of the matter. The Executive Headteacher may choose to chair, or ask a member of the Trust SLT to chair any disciplinary hearing in the place of the Headteacher.
- 7.5** If the Headteacher/Executive Headteacher/Trust SLT member decides the complaint is justified, they may decide to dismiss the employee. The Headteacher/Executive Headteacher/Trust SLT member will state the decision, the reasons and inform the employee of their right to appeal. Where the Headteacher has led the disciplinary hearing, the employee will have a right to appeal to the Executive Headteacher. Where the Executive Headteacher/Trust SLT member has led the disciplinary hearing, the employee will have a right to appeal to the Trustees' Appeal Committee. They will confirm the decision and right of appeal in writing to the employee (and their companion) as soon as possible and normally within five school days of the hearing. The Headteacher will record the outcome of their considerations and the names of persons present at the hearing.

8. Gross Misconduct

- 8.1** If the complaint is considered so serious that it may amount to gross misconduct, justifying dismissal without previous warning and without notice (see Disciplinary Rules, Part C of this procedure), the employee may be informed by the Headteacher, Executive Headteacher or the Chair of Trustees that they are suspended on full pay pending further investigation of the complaint.

- 8.2** If, following an investigation, the Investigating Officer considers that the facts of the case amount to a prima facie case of gross misconduct, the matter will be referred to the Headteacher. The Headteacher must make the Executive Headteacher aware of the matter.

The Executive Headteacher may choose to chair or ask a member of the Trust SLT to chair any disciplinary hearing in the place of the Headteacher.

- 8.3** Following the same procedure as in paragraph 5 above, if on the conclusion of the disciplinary hearing the Headteacher/Executive Headteacher/member of Trust SLT considers the complaint constitutes gross misconduct, they may decide to dismiss the employee without notice, or pay in lieu of notice.
- 8.4** Where a suspension has taken place that suspension may only be lifted by the Executive Headteacher or the Chair of Trustees, acting on behalf of the Trustees.

9. Right of Appeal

- 9.1** The employee has a right of appeal against a decision to issue a warning or to dismiss.
- 9.2** Where the Executive Headteacher has not been involved with the disciplinary hearing, they may hear an appeal against a written warning or dismissal. Where the Executive Headteacher has been involved then a "Trustees Appeal Committee" will be convened to hear an appeal against a written warning or dismissal.
- 9.3** Appeals against a written warning, or dismissal should be made in writing to the Executive Headteacher or Clerk to the Trustees as appropriate (see paragraph 9.2), stating the grounds for appeal in full, within 5 school days of the date of the written decision.
- 9.4** An appeal against a written warning (see paragraph 7.1 and 7.2) will be heard by the Executive Headteacher or the Trustees Appeal Committee if the Executive Headteacher was involved in the Hearing, they may have an HR adviser present. The person/s hearing the appeal may confirm the written warning, reduce a final written warning to a first written warning, or cancel the written warning.
- 9.5** An appeal against dismissal (see paragraph 7.4 and 7.5) will be to either the Executive Headteacher or the Trustees Appeal Committee none of whom shall have any previous involvement in the case. They may have an HR adviser present.
- 9.6** All appeal hearings will be held as soon as possible and, in normal circumstances, within 10 school days after receipt of the appeal. The Clerk to Trustees will usually undertake administrative arrangements for any required hearing or meeting. The outcome will be confirmed in writing as soon as possible and usually within five school days of the hearing. There will be no further right of appeal.

10. Variation in Disciplinary Action

- 10.1** If appropriate, the senior manager may decide to take informal action (as in Part A above) instead of giving a first written warning.
- 10.2** The senior manager may decide the misconduct is so serious that it justifies a final written warning, without any previous written warning having been given.
- 10.3** Rather than dismiss, the Headteacher may decide to issue no sanction or a lesser sanction.

- 10.4** In determining an appropriate sanction, consideration may be given to a change to role/duties, which may impact on remuneration.
- 10.5** Where the Executive Headteacher or Trustee's Appeal Committee (as relevant) overturns a decision to dismiss or to issue a written warning, they may substitute a lesser sanction. There is no right of appeal against such a decision.
- 10.6** In the event that the Executive Headteacher or Trustee's Appeal Committee (as relevant) decides not to uphold the decision to dismiss, the employee will be reinstated without loss of pay.

11. Trade Union Representative

- 11.1** Where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

12. Confidentiality

- 12.1** All employees subject to disciplinary investigations or proceedings must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

PART C – Disciplinary Rules

These disciplinary rules are intended to give examples of the type of conduct that is considered to be misconduct or gross misconduct, and which could lead to action under this disciplinary procedure.

13. Gross Misconduct

- 13.1** Gross misconduct is a serious breach of contract and includes misconduct that is likely to prejudice the Trust, its reputation or irreparably damage the working relationship between WNAT and its employee/s, resulting in a loss of trust and confidence. Employees suspected of committing an act of gross misconduct, may be suspended with full pay, pending investigation. Allegations of Gross misconduct will be dealt with under this disciplinary procedure and, if upheld will normally lead to dismissal without notice or pay in lieu of notice (summary dismissal). The following are examples of matters that are normally regarded as gross misconduct. This list is intended as a guide and is not exhaustive:

- Behaviour that has or may have harmed a child* or, behaviour towards a child or children that indicates an employee would pose a risk of harm to children, for example:
 - Sexual behaviour towards or relations with a pupil
 - Physically harming a pupil
 - Criminal offences related to or against a child
- Criminal activities or offences, whether committed at work or not, that may affect the Trust's reputation or otherwise affects the employee's suitability and/or ability to continue in employment.
- Sexual misconduct, whether at work or not and whether criminal or not.

- Acts of physical or threatened violence, vandalism, bullying or behaviour which provokes violence.
 - Possession, use, supply or attempted supply of illegal drugs or any other inappropriate substances, whether illegal or not.
 - Being under the influence of alcohol or other substances that make you unfit to perform your duties during working time, or illegal use of drugs at any time.
 - Deliberately accessing internet sites containing pornographic, offensive or obscene material on Trust equipment or during working time.
 - Communicating offensive, obscene or unauthorised sexually explicit material whether verbally, written, in electronic communication, or by social media.
- *Child/children relates to anyone under the age of 18.
- Serious negligence, serious neglect of duties or, a serious or deliberate breach of the employee's conditions of employment, operating procedures, public examination rules, DfE statutory requirements, statutory rules affecting an employee's work or, Health and Safety rules, for example:
 - Failure to comply with the Prevent Duty
 - Failure to report safeguarding concerns
 - Failure to exercise proper control or supervision of pupils
 - Disclosure of restricted public examination material or content
 - Falsifying sickness absence
 - Taking leave when permission has been denied
 - Job Abandonment (two days)
 - Ignoring handling instructions/responsibilities/safety regulations to include those in relation to chemicals, machinery, equipment or food.
 - A serious breach of the Trust's Code of Conduct.
 - A serious act of insubordination.
 - Dishonesty associated with place of work or job being undertaken, for example:
 - Theft, or unauthorised removal, or misuse of property.
 - Fraud, forgery or other dishonesty, including fabrication of expense claims, time sheets, qualifications, application forms, public examination forms and any other forms or records in use, falsification of any information given on the employee's application form for a post, entitlement to work (including immigration status) in order to gain employment or other benefits or falsification of registration of pupils.
 - Demanding or accepting monies or other considerations as a bribe for the use of Trust property or provision of Trust services.
 - Failure to disclose criminal convictions, cautions, bindover orders reprimands or warnings (except those which are 'protected' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended from time to time) or, failure to disclose during the course of employment an arrest or summons for an offence, a conviction, a bindover order, a reprimand or a warning given by a police force.
 - Undertaking unauthorised paid or unpaid employment during working hours, including during periods of sickness absence.
 - Unauthorised use, or disclosure of, confidential information (or information which is of a confidential nature) or failure to ensure that such information in an employee's possession is kept secure.

- Making statements that are or could be damaging, slanderous or libellous whether verbally, written, in electronic communication or by social media, which could be harmful to a pupil, employee, a governor, a Trustee, a member of the public, or to the Trust's reputation.
- Unlawful harassment or victimisation of, or unlawful discrimination against, a pupil, an employee or other worker, a governor, a Trustee or a member of the public.
- Victimising a person who has raised concerns, made a complaint, given evidence or information under Trust policies, e.g., grievance procedure, disciplinary procedure or otherwise.
- Making a disclosure of false or misleading information under the Trust's Whistleblowing policy maliciously, for personal gain, or otherwise in bad faith against a person or, making untrue allegations in bad faith against a person.
- Bringing the Trust into serious disrepute.

14. Misconduct

14.1 The following are examples of matters that will normally be regarded as misconduct and will be dealt with under the Trust's disciplinary procedure. This list is intended as a guide and is not exhaustive.

- Absenteeism and lateness, for example:
 - Unauthorised absence, including the employee leaving their job during working hours without permission, or sufficient cause for absence
 - Frequent failure to attend work punctually
 - Failure to comply with our sickness absence reporting procedure
- Neglect of duty, for example:
 - Failure to adopt safe working practices/use protective equipment where required by law or management
 - Damage to, or unauthorised use of Trust property or contractor's property
 - Insubordination
- Obscene language or other offensive behaviour.
- Undertaking additional employment outside normal working hours without authorisation.
- Breaches of Trust policies.
- Breaches of the employee's contract.

PART D – Referrals to External Bodies

15. Referrals to External Bodies

Where any referral is made and meets the threshold, the employee will be informed in writing as soon as possible either before or following the referral, unless informing the employee of the referral could jeopardise an investigation. This decision will be made in conjunction with the relevant external body.

External bodies include; The Local Authority Designated Officer (LADO), Disclosure and Barring Service (DBS), Teaching Regulation Agency (TRA)