

**Community First Academy Trust
DISCIPLINARY PROCEDURE FOR
EMPLOYEES**



Community First
Academy Trust

ADOPTED AT THE MEETING OF DIRECTORS

HELD ON 15TH DECEMBER 2016

CHAIR OF BOARD: Mr J Pugh

This is a Trust-wide policy adopted and reviewed by either the Trust Board or Finance Committee and relates to all schools that are partners within the Trust.

Specific Academy policies, e.g. curriculum policies will be found on the individual school websites.

This policy was written in December 2016 and is to be reviewed every three years.

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This procedure has been adopted by the Board of Trustees of Community First Academy Trust. This procedure supersedes any procedure previously in place at any of our partner schools.

1. Introduction

1.1 The purpose of this disciplinary procedure is:

- To ensure that acceptable standards of professional conduct are maintained and to encourage improvements in individual conduct, where appropriate.
- To ensure order, fairness and good practice in the treatment of individual employees against whom allegations of misconduct are made.

1.2 Before initiating any action under this policy, the CEO, Headteacher, Head of School or Senior Manager will take full account of the circumstances.

1.1 Where an employee raises a grievance during the disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may however, be more appropriate to deal with both issues concurrently as part of the disciplinary process.

1.2 It is not intended that the procedures be only a means to impose sanctions on employees, but should also be a means of giving guidance and support. For example, the procedure would not normally be used where problems of minor misconduct can be resolved by informal discussion between an employee and management. It is recognised that from time to time employees may need advice about their conduct and that minor infringements of discipline should be drawn to an employee's attention with appropriate guidance on how improvements could be made. Following counselling, realistic objectives should be established and a reasonable time limit set for these to be achieved. This is commonly referred to in education as management instructions or advice.

1.3 The disciplinary procedure is separate from the grievance procedure whereby the employee is entitled to air a grievance relating to his/her employment. The grievance procedure should not be used as a means of imposing a disciplinary penalty on an employee. If, however, the question of disciplinary proceedings arises as a result of the hearing of a grievance it will be dealt with in accordance with the disciplinary procedure set out below.

1.4 Where an employee fails to reach satisfactory standards on his/her work as a result of lack of ability, this will be addressed through the Capability Procedure.

1.5 Where there is concern over an employee's attendance that is related to sickness absence, this will be addressed through the Absence Procedure.

1.6 Employees who are convicted of a criminal offence which is not work related may be subject to disciplinary action if the offence affects the performance of their duties in relation to trust, respect and professional standing. This may also apply where an employee is subject to a duty or restriction imposed by or under an enactment.

1.7 A decision to invoke criminal or civil proceedings against an individual employee will not necessarily delay any investigation or subsequent disciplinary hearing

under this procedure. Similarly, a decision of the Criminal or Civil Court will not necessarily affect or impact on an investigation or the outcome of a disciplinary hearing.

- 1.8 Other than in exceptional circumstances, the CEO, Headteacher or a Senior Manager will invoke the disciplinary procedure where appropriate. The Headteacher may need to inform the Trust Executive Team or the Chair of the Local Academy Board (LAB) when proposing to invoke the procedure and to take advice.
- 1.9 The disciplinary procedure in relation to the specific case of a Headteacher is explained in Section 8 of this document.
- 1.10 Before disciplinary action for alleged misconduct is taken against an accredited trade union representative, the circumstance of the case shall be discussed with a full-time official of the Union.
- 1.11 Proceedings in disciplinary interviews and hearings shall be confidential.
- 1.12 It is intended that this is a flexible procedure and that with the agreement of all parties, it may be varied in individual cases in order to settle matters quickly.

2. Suspension

- 2.1 The CEO, Headteacher, Head of School or Senior Manager, having consulted with the Executive Team or Chair of the LAB where practicable, shall suspend an employee from their duties where it is considered by the Headteacher, Head of School or Senior Manager that this is reasonable to do so. The Headteacher may also choose to seek advice from the CEO or Executive Headteacher before making a decision.
- 2.2 When exercising that power, the Trusts Executive team will also be informed.
- 2.3 When exercising the power of suspension, the Trust shall write to the employee within twenty-four hours or as soon as possible thereafter, confirming the decision to suspend and giving reasons for the suspension.
- 2.4 Suspension is not in itself a disciplinary sanction. No record shall be kept on the employees file(s).
- 2.5 Suspension shall normally be appropriate only in cases of alleged gross misconduct but may also be appropriate where the investigation may be impeded.
- 2.6 Following a suspension, an investigation shall be completed as soon as possible.
- 2.7 In cases where a period of suspension is considered necessary, this period should be as brief as possible and will be kept under review.
- 2.8 The lead, having sought the advice is also delegated the power by the Local Academy Board to lift the suspension if or when considered appropriate.

3. Investigations

- 3.1 No disciplinary action shall be taken against an employee until a case has been fully investigated.
- 3.2 The investigation shall be undertaken by a senior member of staff normally the schools Headteacher or Head of School or other Senior leader.
- 3.3 The employee shall normally be given reasonable notice of an investigatory interview.

4. Outcome of Investigation

- 4.1 Once the investigation has been completed the investigating officer must consider all the evidence available to her/him and reach a conclusion about the next step, as soon as possible but normally within 14 school working days.
- 4.2 On the balance of probabilities it may be decided that there is no case to answer. If this is the case the employee must be informed of this in writing and, if applicable, any suspension should be lifted immediately. If there is no case to answer, this will clearly be indicated in the kept records.
- 4.3 It may be decided that a formal verbal or written warning is the most appropriate sanction. If this is the investigating officer opinion, having considered all the information available to her/him, then, s/he shall have the power not to refer the matter further to a disciplinary hearing but to issue a formal verbal or written warning. The investigating officer can only exercise this power if the employee concerned is in agreement with this course of action and the sanction to be issued.
- 4.4 The investigating officer's decision would normally be conveyed to the employee in the presence of her/his representative (trade union official or work place colleague). The employee should be given the opportunity to consider this sanction in private with her/his representative. If the decision is to issue either warning, a letter confirming this should be given to the employee within 7 school working days.
- 4.5 Where the sanction proposed by the investigating officer is not accepted by the employee then the issue should be referred to a disciplinary hearing under section 6 below. This will also be the case where the investigating officer decides that there is a disciplinary case to answer that s/he feels should be referred to the disciplinary hearing in the first instance.

5. Disciplinary Sanctions

- 5.1 Possible disciplinary sanctions are:
 - Verbal warning
 - First or further written warning
 - Final written warning
 - Dismissal
- 5.2 In this document, any reference to a warning which does not specify the type shall

include all types of warning, i.e. verbal, written, further written and final. Any reference to a warning which does not specify the type shall include all types of written warning i.e. written, further written and final.

- 5.3 In normal circumstances should an employee have an outstanding appeal against a final warning, a further disciplinary hearing which could result in the dismissal of the individual will be postponed until the appeal against the final warning has been decided. Except for gross misconduct (see examples at Appendix 1) no employee shall be dismissed without first receiving a final warning.
- 5.4 A disciplinary warning shall remain in force and on the employee's file for the specified periods:
- Verbal warning – six months
 - First or further written warning – twelve months
 - Final warning – twelve months (or two years in exceptional circumstances)
- 5.5 All disciplinary warnings should state the nature of the conduct and confirm the type of improvement needed from the employee together with the potential consequences of failing to comply, such as further warnings or dismissal.
- 5.6 Should any disciplinary action be rescinded on appeal, all reference to it shall be removed from the employee's file and the employee notified accordingly.

6. Disciplinary Hearing

- 6.1 Following an investigation into any alleged offence(s), should it be considered by the investigating officer that there is a case to answer, the matter will be referred, and a disciplinary hearing shall be convened.
- 6.2 At least five school working days' notice of the disciplinary hearing shall be given and part-time employees shall normally only be called to a hearing on one of their contractual days of work.
- 6.3 The parties shall exchange copies of all documents to be referred to and a list of witnesses who will attend the hearing no later than five school working days prior to the hearing date.
- 6.4 The employee shall have the right to be accompanied to the disciplinary hearing by a work colleague or trade union representative of his/her choice.
- 6.5 A Trust representative may also attend the hearing to provide advice.
- 6.6 Disciplinary hearings will normally be heard by either the CEO and his/her representatives, a Trustee or Local Academy Board committee or mixture of Trustees and Local Academy Board member's committee.
- 6.7 The hearing shall be conducted in accordance with the procedure at Appendix 2.

Having considered the case, the committee or chair shall invite both parties to return to the meeting and may:

- (a) Where the employee has no previous warning on file:

- (i) Dismiss the allegation and determine that no further action be taken against the employee arising out of matters heard; or
 - (ii) Issue a verbal warning; or
 - (iii) Issue a first written warning; or
 - (iv) Issue a first and final written warning where serious or repeated misconduct is established
- (b) Where the employee has a verbal or written warning other than a final warning on file:
- (i) Dismiss the allegation and determine that no further action be taken against the employee arising out of the matters heard; or
 - (ii) Find the allegation to be substantiated and issue the employee with first or further written warning or a final warning
- (c) Where the employee has a final warning on file:
- (i) Dismiss the allegation and determine that no further action be taken against the employee arising out of matters heard; or
 - (ii) Find the allegation to be substantiated and determine that the employee's contract of employment be terminated with the appropriate notice as laid down in the Employment Rights Act 1996.
- (d) Where there has been an allegation of gross misconduct on the part of the employee:
- (i) Dismiss the allegation and determine that no further action be taken against the employee arising out of the matters heard; or
 - (ii) Dismiss the allegation of gross misconduct but determine misconduct is proven and, therefore, that either an appropriate warning will be issued or, if a final warning is on file, the contract of employment be terminated;
 - (iii) Find the allegation of gross misconduct to be substantiated and determine that the employee's contract of employment be terminated.

6.8 The CEO or Committee conducting the hearing shall confirm its decision in writing to the employee and the reasons for it. The employee shall also be advised of the right of appeal.

7. Right of Appeal

7.1 An employee wishing to exercise the right of appeal must submit a written appeal to the Clerk for Directors within five school working days' of receiving written notification of the determination to dismiss and should state the grounds on which the appeal is to be made. The employee must indicate which of the original

documents used at the first hearing will be re-submitted.

- 7.2 The appeal will be heard by a different committee and usually with at least ten school working days' notice. Part-time employees shall normally only be called to a hearing on one of their contractual days of work.
- 7.3 The investigating officer will indicate which of the original documents used at the first hearing are to be re-submitted.
- 7.4 If either party wish to deal with some aspect that was not included in the original hearing any documentation relating to this aspect must be submitted to the Appeal Committee Clerk at least five school working days in advance of the hearing.
- 7.5 The employee shall have the right to be accompanied to the appeal hearing by a work colleague of his/her choice who may be a trade union representative.
- 7.6 A Trust representative may attend the hearing to provide advice.
- 7.7 The conduct of the appeal hearing shall be in accordance with Appendix 2 to this procedure.
- 7.8 Where there has been no finding of gross misconduct but where the employee has received a warning or it has been determined that the employee shall cease to work at the school, the Appeal Committee may decide that:
- (i) The employee's appeal be upheld and no further action be taken against the employee arising out of matters heard; or
 - (ii) The decision is upheld; or
 - (v) The allegation is substantiated but a lesser penalty will be issued.
- 7.9 Where there has been a finding of gross misconduct at the first hearing, the Appeal Committee may decide that:
- (i) The employee's appeal be upheld and no further action be taken against the employee arising out of matters heard; or
 - (ii) The allegation of gross misconduct be dismissed but misconduct proven and, therefore, that either an appropriate warning will be issued or, if a final warning is on file, that a final warning be re-issued or the contract of employment be terminated;
 - (iii) The decision of the Appeal Committee is upheld; or
 - (iv) The allegation of gross misconduct is substantiated but a lesser penalty than dismissal will be issued.
- 7.10 The decision of the Appeal Committee will be confirmed to the employee in writing.
- 7.11 In the case of dismissals, if the appeal is upheld, termination of contract and any notice period will be rescinded.

8. Initiation of the Disciplinary Procedure against a Headteacher

- 8.1 Where it is alleged that a Headteacher has committed an offence of misconduct, a member from the Board of Trustees, in consultation with the CEO or Executive Headteacher, shall usually ensure that an investigation is undertaken to establish whether there is a case to answer. The Trust will nominate a senior officer to undertake this investigation on the behalf of the Board.
- 7.2 Where it is considered necessary the Chair of the LAB, in agreement with the Trust, may suspend the Headteacher from duty pending the completion of the investigation.
- 7.3 The provisions in Section 2 above will apply to any suspension.
- 7.4 Following the investigation, the nominated investigating officer will decide as to whether there is, in his/her opinion, a case for the Headteacher to answer. If that opinion is that there is a case to answer, the matter shall be referred to a committee of the Board of Directors.

APPENDIX 1

GROSS MISCONDUCT

Certain acts of misconduct are so serious that the first occurrence is likely to lead to dismissal. Misconduct of this type is termed gross misconduct. Such misconduct would include:

- Dishonesty, in any capacity also for reasons such as theft of property, falsifications of expenses claims, fraudulent overtime claims etc.
- A duty or restriction imposed on an individual that prohibits an individual working within an education environment.
- Exam or professional malpractice.
- Being unfit to perform duties associated with the post as a result of taking alcohol or illegal or banned substances, unless this accords medical advice.
- Physical acts of violence or verbal abuse of colleagues, children, parents or visitors to the school.
- Wilful abuse or destruction of the School's property.
- Sexual misconduct.
- Repeated and serious failure to follow reasonable instructions.
- Any actions that intentionally place others in danger.
- Sexual, racial or other forms of harassment.

*This is not an exhausted list.

APPENDIX 2

Conduct of a Disciplinary Hearing

1. The Headteacher, Senior Manager or Chair of the committee conducting the hearing will invite all parties into the room and introduce all persons present.
2. The purpose of the meeting and the order of proceedings will be explained.
3. Presentation of case against the employee by the manager, including the calling of witnesses. Witnesses should attend only for that part of the hearing to give witness (Witnesses will only attend where it is deemed appropriate for them to do so). Questions should be asked of witnesses before they leave.
4. The Headteacher, Senior Manager or Committee will be given the opportunity to ask questions.
5. The employee and/or their companion will be given the opportunity to ask questions.
6. Statements by the employee or their companion, including the calling of witnesses. Witnesses should only attend for that part of the hearing to give witness (Witnesses will only attend where it is deemed appropriate for them to do so). Questions should be asked of the witness before they leave.
7. e Headteacher, Senior Manager or Chair of the committee will be given the opportunity to ask questions.
8. Management will be given the opportunity to ask questions.
9. The manager will be given an opportunity to sum up his/her case.
10. The employee or their companion will be given an opportunity to sum up his/her case.
11. Both parties will then leave the room to allow the committee conducting the hearing to give proper consideration to all matters raised.
12. e Headteacher, Senior Manager or Chair of the committee conducting the hearing may recall either party to clear points of uncertainty on representation already given. Should this occur, both parties will be present.
13. When a decision has been made, both parties shall be recalled and the employee informed of the action (if any) that will be taken.
14. The outcome of the hearing will be confirmed in writing with information about any right of appeal.

APPENDIX 3

MODEL FOR THE CONDUCT OF A SUSPENSION INTERVIEW

If the reason for suspension is not suspected gross misconduct, but the Headteacher or Senior Manager is exercising her/his powers under Paragraph 2.1 of this Procedure, the following format should be amended appropriately.

The meeting will be conducted by the Headteacher, Head of School or Senior Manager.

The Headteacher or Senior Manager should inform the employee that the meeting is not a formal disciplinary hearing but has been called to put to her/him a serious disciplinary matter, which could potentially lead to a charge of gross misconduct and dismissal.

The Headteacher or Senior Manager should inform the employee that any response s/he wishes to make will be considered, but her/his immediate suspension on full pay is a possible outcome of the meeting. The employee should also be warned that any response s/he makes will be recorded and may be used in evidence if disciplinary action becomes necessary.

In considering the options in cases involving safeguarding issues, the Headteacher should consider paragraphs 141-147 of "Keeping children safe in education", the statutory guidance for schools and colleges issued by the Department for Education.

The employee should be made aware that suspension shall not be regarded as an indication of guilt and is not in itself a disciplinary sanction and that no decision will be made as to the validity of the allegations until the investigation is complete.

The employee should be informed that s/he will have to attend an Investigatory Interview, when s/he will be given the opportunity to respond fully to the allegations against her/him.

The employee should be asked to return any school property, such as keys, and s/he should be given a named person in the School whom s/he may contact during the period of suspension. This named employee should be a member of the School Senior Leadership Team. The employee should be informed that the purpose of having a named contact in School is to allow for information sharing on School issues – it is not to discuss any aspect of the suspension and/or disciplinary investigation. S/he should be instructed not to discuss the investigation with any other member of the school staff; any governor of the school and any parent/guardian of any children who attend the school and not to re-enter the school premises without the prior permission of the Headteacher.

The employee should be informed that a conclusion as to the need for further formal action would be reached as soon as possible and that if, at the end of the investigation, it is found that there is no case to answer, this will clearly be indicated in the kept records.