



Policy:	Disciplinary Policy and Procedure
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1. 1. Introduction

- 1.1. This disciplinary procedure must be read and applied in conjunction with Eastern Multi-Academy Trust's Staffing Policy Statement.
- 1.2. The aim of this procedure is to help and encourage all employees to achieve and maintain standards of conduct and to ensure consistent and fair treatment for all employees in the Trust.
- 1.3. Examples of the type of conduct that is considered to be misconduct or gross misconduct, which could lead to action under this procedure, are set out in the Appendix 1 and should be read in conjunction with this procedure.
- 1.4. 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.
- 1.5. Where an employee discloses a mental health issue, which could be a disability, reasonable adjustments will be made to the procedure. Where it is clear the process is causing repeated signs of distress to someone involved in the procedure the Principal/ Investigating Officer will ensure the individual is aware of the support offered by the Trust's employee assistance partner or suggest the employee seeks advice from their GP. In some cases, help may need to be sought from Occupational Health, with the agreement of the employee, to determine how the procedure can continue fairly. Advice will be sought from HR in these situations.

2. Investigation

- 2.1. Disciplinary action must not be taken before there has been an investigation into the circumstances.
- 2.2. Investigations will be undertaken by an appropriately trained Investigating Officer, who will be supported by the Trust's HR function.
- 2.3. The employee may be required (and this would normally be the case) to attend a formal investigatory interview. The employee must receive at least five working days' notice, in



writing, of the requirement for them to attend. The letter should give them information about the allegations and their opportunity to be accompanied by a trade union representative or work colleague.

- 2.4. The investigation should be completed within a reasonable timescale, taking account of the individual nature of the allegations, complexity, etc.
- 2.5. On completion of the investigation, the Manager should review all the information available and decide which of the following is appropriate:
 - 2.5.1. no action*;
 - 2.5.2. informal advice and discussion (see 3 below);
 - 2.5.3. consideration under the formal disciplinary procedure (see 4 below).
- 2.6. the Manager should also decide that if an allegation is shown to be malicious or frivolous, whether any disciplinary action should be taken against the person who made it. If this person was not an employee (e.g. a pupil) the procedure for this is outside the scope of this policy.
- 2.7. *In some cases, specifically those where allegations are made by a pupil or relate to claimed abuse of a pupil, a “no action” decision is likely to be the outcome when the allegation was either substantiated but not serious enough to warrant disciplinary action, unsubstantiated or malicious. The child protection process overseen by the LADO will help in this determination and will ensure that a finding is made. The issue of whether an allegation is found to be unsubstantiated or even malicious is significant for the employee, particularly around what records are held on file and what is said in a reference.

3. Informal Procedure

- 3.1. Managers should seek to resolve minor misconduct informally and as soon as it occurs. Management advice may be given to the employee by their 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 proven allegation).
- 3.2. There is no right of appeal against management advice given, which will not be placed on the employee’s disciplinary record but should be confirmed in a written memorandum.
- 3.3. 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.



4. Formal Procedure - Disciplinary Hearing

- 4.1. If following appropriate investigation by the Investigating Officer, the Principal, Executive Principal, relevant Director of Education or Senior Manager considers based on the facts that formal disciplinary action for misconduct is necessary, they will write to the employee to inform them that a disciplinary hearing will take place.
- 4.2. A disciplinary hearing constitutes a formal meeting and should be arranged in conjunction with Eastern Multi-Academy Trust's Staffing Policy Statement.
- 4.3. The employee will be advised of their right to call witnesses on their behalf and will be required to provide name/s and make arrangements for their attendance.
- 4.4. At the disciplinary hearing before the Principal, Executive Principal, relevant Director of Education or Senior Manager, 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.
- 4.5. When confirming the outcome of the disciplinary hearing, the Principal, Executive Principal, relevant Director of Education or Senior Manager will include:
 - a) The sanction (if any) and the period this will remain current
 - b) The reasons for the decision
 - c) The change in behaviour required (if relevant) and the likely consequences of further misconduct
 - d) Right of appeal

5. Formal Procedure – Disciplinary Action

5.1. First Written Warning

5.1.1. The Principal, Executive Principal, relevant Director of Education or 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 warning unless there are mitigating circumstances.

5.2. Final Written Warning

5.2.1. If a further complaint is made about the employee's conduct before the first written warning has expired, the same procedure (as in 3 above) will be followed.

5.2.2. The Principal, Executive Principal, relevant Director of Education or 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 twelve months that is found justified after a disciplinary hearing, will lead to dismissal unless there are mitigating circumstances.

5.2.3.If the complaint is considered serious enough, a final written warning may be issued without previous warning.

5.3. Dismissal

5.3.1.If a further complaint is received before the final written warning has expired, the complaint will be referred to a hearing before the Principal, Executive Principal, relevant Director of Education or Senior Manager following the same procedure as in paragraph 4 above.

5.3.2.If the Principal, Executive Principal, relevant Director of Education or Senior Manager decides the complaint is justified, they may decide to dismiss the employee.

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 disciplinary rules), the employee may be informed by the Principal, Executive Principal, relevant Director of Education or Senior Manager that they are suspended on full pay pending further investigation of the complaint. A decision to suspend will only be taken after full consideration of the facts and associated risks and consideration of alternative options.
- 6.2. When a decision to suspend is taken, it must be made clear that the suspension is neither a disciplinary penalty nor an assumption of guilt. The employee must be given the details of people or organisations they can contact for support whilst suspended (e.g. the Trust's Employee Assistance Partner) and an internal point of contact (who should not be involved in the disciplinary investigation in any way) who will keep the employee informed of everyday developments within the employee's individual academy in order to minimise any sense of isolation during the period of suspension and can be a conduit for the suspended employee's requests for information that fall outside the remit of the investigation (e.g. information relating to their normal terms and conditions of employment).
- 6.3. If a suspended employee is certificated by their GP as being unfit for work, they will be paid in accordance with their sick pay entitlement for that period of certification. This means that if a period of certificated sick leave continues beyond the employee's entitlement to full pay, they will receive pay in line with their sick pay entitlement which may be at half pay or no pay rate.
- 6.4. 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 Principal, Executive Principal, relevant Director of Education or Senior Manager,



- 6.5. Following the same procedure as in paragraph 4 above, if on conclusion of the disciplinary hearing the Principal, Executive Principal, relevant Director of Education or Senior Manager considers the complaint constitutes gross misconduct, they may decide to dismiss the employee without notice or pay in lieu of notice.
- 6.6. Where a suspension has taken place that suspension may only be lifted by the Principal, Executive Principal, relevant Director of Education or Senior Manager.
- 6.7. The suspension will be regularly reviewed and written confirmation provided to the employee with regards to the continuance or lifting of any suspension.

7. Right of Appeal

- 7.1. The employee has a right of appeal against a decision to issue a warning or to dismiss in line with the EMAT Staffing Procedure and ACAS best practice.
- 7.2. Appeals against formal written warnings or dismissal should be submitted to the Academy Council or the line manager of the person who confirmed the sanction
- 7.3. An appeal against a written warning will be heard by the Academy Council or the line manager of the person who confirmed the sanction. The outcome may be to confirm the written warning, reduce a final written warning to a first written warning, or cancel the written warning.
- 7.4. An appeal against dismissal will be to the line manager of the person who confirmed the sanction or the Academy Council. The outcome may be to confirm the dismissal, revoke the dismissal and issue a lesser sanction, or revoke the dismissal and issue no sanction.

8. Variation in Disciplinary Action

- 8.1. If appropriate, the Principal, Executive Principal, Director of Education or Senior Manager may decide to take informal action (as in Paragraph 2 above) instead of giving a first written warning.
- 8.2. The Principal, Executive Principal, Director of Education or Senior Manager may decide the misconduct is so serious that it justifies a final written warning, without any previous written warning having been given.
- 8.3. Rather than dismiss, the Principal, Executive Principal, Director of Education or Senior Manager may decide to issue no sanction or a lesser sanction.
- 8.4. In determining an appropriate sanction, consideration may be given to a change to role/duties which may impact on remuneration.



9. Disclosure and Barring Service (DBS)

9.1. The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This is when an employer has dismissed or removed a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.) because the person has:

9.1.1. Been cautioned or convicted for a relevant offence; or

9.1.2. Engaged in relevant conduct in relation to children and/or vulnerable adults [i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm]; or

9.1.3. Satisfied the Harm Test in relation to children and/or vulnerable adults. [i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists].

10. Teacher Regulation Agency

10.1. Whether or not a teacher who has been dismissed for misconduct is referred to the DBS, they must be referred to the Teacher Regulation Agency,

10.2. Statutory guidance exists which requires employers to see through to a conclusion disciplinary cases linked to child safeguarding. Even in situations where an employee resigns from the school when they could have been dismissed, the case should be heard in accordance with this procedure so that a decision is reached and referral made to the DBS and/or Teacher Regulation Agency can be made as appropriate.

10.3. There is a requirement for any post-dismissal referrals (DBS and/or Teacher Regulation Agency) to be completed within one month of employment ending. These will be supported by the Trust's HR function.



Appendix 1

Guidelines for identifying behaviour which constitutes misconduct and gross misconduct

1. General

- 1.1 These guidelines, with examples, set out the types of conduct which would be considered unacceptable by employees. These relate to particular Academy rules such as reporting sickness, attendance and timekeeping etc. All staff should be clear on these rules.
- 1.2 There are two categories of misconduct – gross misconduct and general misconduct. The lists provided are not exhaustive and acts not listed should be considered if they are of similar seriousness and therefore warrant being treated as gross or general misconduct.

2. Gross Misconduct

Gross misconduct is generally defined as misconduct serious enough to fundamentally undermine (i.e. damage beyond repair) or breach the employment contract between the employer and the employee and to make any future working relationship and trust impossible. A proven case of gross misconduct would result in summary dismissal unless there were exceptional mitigating circumstances.

- Bullying, harassment or victimization
- Serious breach of child protection/safeguarding guidance and policies such as assault, abusing a position of trust, sexual contact
- Dishonesty such as
 - theft of property belonging to the Academy, pupils, other employees, contractors etc
 - deliberate falsification of timesheets, expense claims etc for financial gain
 - demanding or accepting monies or other consideration as an inducement for the use of the Academy's property
 - unauthorised acceptance of gifts
 - false statements made when applying for appointment, eg in respect of qualifications which are a requirement
 - failure to disclose relevant criminal convictions either spent or unspent.
- Deliberate and significant refusal to carry out a reasonable, lawful and safe instruction or the normal duties of the post which constitute a fundamental feature of the job particularly, but not exclusively, which causes a risk to others
- Gross negligence – a serious failure to exercise properly skill and/or care eg committing an act indifferent to an obvious risk bordering on recklessness.
- Infringements safety rules or other negligent actions which place the health and safety of others at risk eg smoking in high risk areas, driving an Academy vehicle recklessly,
- Being unfit to perform duties satisfactorily as a result of taking alcohol or drugs (illegally or not in accordance with medical advice)
- Willful unauthorised disclosure of information or misuse of a position of trust in a manner which could be harmful to the Academy, its pupils or employees or for financial or other gain.



- Serious misuse of Academy property including infringements of the Academy's policies on social media or internet and email use eg downloading pornography or other unsuitable material.
- Acts of violence or vandalism in the course of employment including physical, verbal abuse, assault or threatening behavior, use of offensive or discriminatory language
- Sexual misconduct at work
- Unlawful acts of discrimination
- Misconduct off duty which fundamentally undermines the confidence and trust in the employee or where there is a real risk of the Academy being brought into disrepute eg convictions for drugs, sex, theft if relevant to the employee's role, violent behavior.
- Breaching the Data Protection Act or confidentiality

3. Misconduct

Most instances of misconduct will result in action short of dismissal especially for a first offence. More serious acts of misconduct or repeated instances of misconduct may result in a final written warning being awarded. Dismissal would then only occur if further substantial misconduct occurs.

- Less significant breaches of the child protection/safeguarding guidelines and policies such as physical contact which is non-sexual and non-violent but unnecessary or inappropriate dress and appearance
- Absenteeism and lateness eg leaving early or arriving late, failure to attend and failure to comply with sickness reporting procedures
- Dishonesty – making private phone calls, sending emails or personal mail via the Academy's systems, using the printers or photocopiers for personal use
- Failure to report loss or damage to Academy property
- Failure to report conflict of interest eg a personal relationship between a manager and an employee who sits below them in the structure
- Failure to wear protective clothing or adopt safe working practices where this impacts on the employee only
- Negligent use of Academy property which is likely to cause serious damage or loss
- Insubordination or failure to carry out reasonable, lawful and safe instructions where the impact is relatively minor
- Inappropriate behaviour towards others such as rudeness, being unhelpful or uncooperative or offensive language
- Undertaking additional employment without authorisation.