

# Eastwood Park Academy Trust

EPAT

Believe Succeed Together

## Disciplinary Misconduct Policy

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## 1.0 Introduction

Employees have an obligation to be aware of the standards required of them and should therefore be conversant with the Code of Conduct Policy.

An employee's conduct, in the context of the Disciplinary Misconduct Policy, can be classified into 4 broad areas:

Area	Detail
Misconduct	Refer to section 2.0.
Gross Misconduct	Refer to section 3.0.
Statutory Prohibition	Termination of a contract where a failure to do so would contravene an enactment i.e. a requirement cannot be met and it would be illegal to continue the employment e.g. <ul style="list-style-type: none"><li>• An overseas worker's work permit or leave to remain is revoked/expires.</li><li>• Being disqualified by virtue of the Childcare (Disqualification) Regulations 2009 (where a waiver has been refused).</li><li>• An employee being placed on the DBS Children's Barred List.</li><li>• A driver loses his/her licence (where driving is a requirement of the role).</li></ul>
Some other Substantial Reason (SOSR)	Termination of a contract as a result of: <ul style="list-style-type: none"><li>• Unsatisfactory pre-employment checks.</li><li>• Occasions where an employee's conduct outside of school may not in itself impact directly on the employment contract, but may nonetheless raise serious concerns about a their continued employment.</li><li>• An irreparable breach of the implied contractual term of trust and confidence in the employment relationship.</li></ul>

## 2.0 Misconduct

Examples of misconduct, where a form of warning may be issued, or where cumulative or repeated acts could lead to dismissal, are as follows:

- Continuing failure to comply with attendance and time-keeping requirements.
- Continuing failure to follow procedures for booking and returning from leave.
- Absenteeism and unauthorised absence from the workplace.
- Refusal or failure to follow a legitimate management instruction.
- Inappropriate behaviour or abuse of authority towards a colleague, member of the public or person in the care of Trust.
- Insubordination.
- Failure to comply with policies and procedures.
- Abuse of the policies and procedures.
- Conduct at work which is likely to offend decency.

- Conduct which could bring the Trust into disrepute.
- Negligence in the performance of duties.
- Misuse of facilities.
- Failure to maintain proper records
- Failure to follow procedures e.g. financial regulations, standing orders.
- Failure to comply with health and safety requirements.
- Misconduct in relation to official documents e.g. destroying or mutilating records kept or required or altering/erasing or adding to entries in any such document without legitimate reason.
- Neglect of health e.g. committing an act or adopting conduct which may impede recovery and return to work whilst absent from work due to sickness.
- Engaging in paid employment outside the hours contracted to work without the employer's express permission.
- Conduct outside of the workplace which impacts on the employer e.g. serious driving offences, particularly those involving alcohol and drugs, gambling etc.
- Any other act of misconduct of a similar gravity.

### **3.0 Gross Misconduct**

Examples of misconduct which will normally be regarded as gross misconduct are:

- Unauthorised removal of property.
- Stealing from the Trust and other offences of dishonesty.
- Sexual offences (including serious misuse of the internet).
- Serious acts of harassment, discrimination or verbal abuse against employees, clients or members of the public on grounds of race, sex, disability or religious belief or any other grounds.
- Fighting / physical assault.
- Harming pupils (as defined by the Children's Act 1989 as amended).
- Possession of prohibited firearms, knives or other weapons.
- Abuse of Position of Trust.
- Establishing inappropriate relationships with children or young people, including through social networking sites.
- Falsification of time sheets or subsistence and expenses claims, sickness self-certification etc.
- Other offences which seriously threaten the security of the pupils, members of the public, employees or property or which seriously damages public confidence in the Trust.
- Deliberate misuse of data protection information and/or deliberate interference with computerised information.
- Falsification of qualifications which are a stated requirement of employment and which result in financial gain.
- Malicious damage to property.
- Serious breaches of health and safety legislation e.g. intentional or reckless interference with or misuse of anything provided by the employer in the interests of health and safety.
- Serious drug/alcohol related offences.
- Serious breaches of the Staff Code of Conduct Policy.
- Failure to disclose any relevant criminal offences prior to employment and any criminal convictions which occur during employment.
- Any other act of misconduct of a similar gravity.

The above lists are neither exclusive nor exhaustive and there may be examples which do not appear above, but may nevertheless be the subject of disciplinary action.

In determining the seriousness of the misconduct, particular regard will be given to the circumstances of the individual case. Factors which can influence a decision as to the seriousness of the offence may include:

- The type, degree and frequency of the misconduct.
- The consequences arising from the misconduct.
- The level of responsibility of the employee concerned

Careful consideration will be given to the above factors in each case. What is regarded as misconduct in some cases may, in others, depending on the circumstances, be regarded as gross misconduct.

### **3.1 Investigations**

In all disciplinary and dismissal cases, an investigation, undertaken by a nominated **Investigating Officer**, will be conducted to gather sufficient information and evidence to make a reasoned determination about whether or not the matter needs to be pursued formally at a disciplinary/dismissal hearing.

Employees will be informed of concerns or allegations as soon as possible and given an explanation of the likely course of action, unless there is an objection from Children's Services or the Police.

The investigation may involve interviewing the employee, witnesses and other relevant parties and taking statements.

Requests to be accompanied at investigation meetings by a companion or representative are entirely at the discretion of the employer.

All reasonable effort will be made to begin and complete the investigation without delay.

Where an employee's conduct is subject to a criminal investigation, charge or conviction the facts will be investigated. It will not normally be necessary to wait for the outcome of any prosecution before deciding what action, if any, to take.

In certain circumstances, the Investigating Officer may conclude that formal disciplinary action is not necessary but that professional advice should be given to the employee. This will be in the form of a **Letter of Expectations** which will be placed on the employee's file for the duration of their employment and thereafter held in accordance with the Trust's Retention Policy. Such advice does not constitute a disciplinary sanction.

Following the conclusion of an investigatory process, an employee, with advice from their companion/representative, may accept a disciplinary sanction without being subject to the full normal procedure. This is called an '**Agreed Outcome**'. In accepting an Agreed Outcome, an employee will forego their right of appeal.

If, following the investigation, it is considered that a **Formal Hearing** is necessary, this will be arranged, except where, by agreement between the parties, the matter is dealt with by other means.

### 3.2 Suspension

Suspension is when an employee is directed not to attend their place of work or engage in any work at all (such as working from home).

Suspension will usually only be invoked when:

- The allegations are so serious that dismissal for gross misconduct could be a possible outcome.
- There is a risk of re-occurrence of the misconduct.
- There is a tangible risk to property or person.
- Allowing the member of staff to remain at work could hinder the investigatory process.
- There is a statutory prohibition in effect which renders employment unlawful.

In appropriate cases, the following options will be considered prior to or as an alternative to consideration of suspension:

- Reallocation of duties;
- Relocation to another workplace or work area or work from home; or
- Increased supervision in the workplace.

In some cases where an allegation is made but information is limited, the employee may be given a few days paid leave to allow further time to consider the appropriate next steps. If this is the case, this should be communicated to the employee and the relevant arrangements should be confirmed in writing.

Prior to any decision regarding suspension or alternative options to suspension, a detailed risk assessment will be completed to ensure the employer has reasonable and proper cause to suspend the employee, taking into account all the relevant risks. Where alternative options are not viable, and removal from the workplace is considered necessary, the employee may be suspended. The employee will be notified of the reason for their suspension, the initial duration of the suspension and any specific arrangements that apply e.g. regarding contact and access to school systems. The duration of any period of suspension will be kept to a minimum and will be reviewed regularly. If alternative arrangements to suspension are considered appropriate this will be notified to the employee and confirmed in writing.

A member of staff will be assigned as a point of contact to keep the employee up to date with work-related issues.

During a period of suspension, the employee will receive their contractual pay. Where an employee becomes unwell during a period of suspension, the normal certification requirements and reporting and contractual sick pay entitlements will apply. If an employee is off sick at the point when the allegations arise, a risk assessment will be carried out to assess whether suspension or alternate arrangements with conditions are necessary during the period of sickness absence.

Where, at any stage (following the investigation or a hearing), it becomes apparent that the suspension/alternative work arrangements are no longer appropriate and/or necessary, the employee must return to work as soon as possible. Depending on the circumstances, it may be necessary to meet with the employee and make appropriate arrangements to manage their return.

Only the Principal, CEO and Chair of Trustees have the power to suspend an employee.

Suspension can only be ended by the Chair of Trustees.

The Trust will be notified of any suspension but not of the details of the case. In certain circumstances it may also be necessary to inform parents of an employee's absence, although details will not be shared.

### **3.3 Formal Hearing**

If, after investigation, it is determined that a formal disciplinary sanction or dismissal is appropriate, the matter will be referred to a Formal Hearing. The Investigating Officer makes a recommendation of a sanction or dismissal, but the decision rests with the Trust's Disciplinary/Dismissal Committee.

The employee will be given at least 7 school days' notice, in writing, of the date, time and place of any hearing. When given this notice, the employee will be:

- Informed of the nature and details of the alleged misconduct/reason for proposed dismissal.
- Informed of their right to be accompanied at the hearing by a representative and of their right to call relevant witnesses.
- Supplied with a copy of the evidence which is to be considered at the hearing, including any witness statements.
- Given an indication of the possible penalty which could be imposed if the allegations were found to be substantiated, e.g. a formal warning or termination of employment by dismissal.
- Informed who will conduct the hearing and, where appropriate, the name of the presenting officer, including any advisers and the names of any witnesses.

No later than 3 school days before the hearing, the employee:

- Must supply the name and status of his/her companion/representative.
- Must supply the names of any witnesses they intend to call and an outline the evidence they will give.
- May submit a written statement or other supporting written evidence if they wish, either direct or through their representative.

At the hearing both parties may:

- Present their case.
- Be questioned on the statements made by them and on any evidence they have submitted.
- Ask questions on any relevant aspect of the evidence presented by the other party.
- Question witnesses.

Employees are required to take all reasonable steps to attend hearings (refer to section 3.35).

Where a criminal matter is pending and an employee is unable or is advised not to attend a disciplinary hearing or say anything about a pending criminal matter, a decision may be made based on the available evidence.

In safeguarding/child protection cases, if an employee resigns prior to a formal disciplinary hearing, the evidence will still need to be assessed through the formal hearing process to determine an appropriate sanction and a referral will be made to the Disclosure and Barring Service (DBS). As this is not a disciplinary hearing, as the employment has ended, there is no right of appeal.

### **3.31 Possible Outcomes of the Formal Hearing**

Any decision will be on the balance of probabilities. Where an allegation is proven, any sanction will satisfy the test of reasonableness in all the circumstances and will be proportionate. The following will be considered in determining an appropriate sanction:

- The employee's disciplinary and general record, position and length of service.
- Any explanation or mitigation put forward by the employee.
- Any action taken in similar situations.
- Any relevant unexpired warnings.
- Any other relevant factors.

Depending on the circumstances, disciplinary action could take the following forms:

- Written warning e.g. where there has been a failure to conform to standards.
- Final written warning e.g. where there is further misconduct or the misconduct is considered to be sufficiently serious.
- Dismissal with notice e.g. where misconduct is sufficiently serious or where conduct has failed to improve following previous warning(s).
- Summary dismissal e.g. where an act of gross misconduct has been committed.

Warnings will set out the:

- Nature of the misconduct and expectations of future conduct.
- Length of the warning.
- Consequences of any future misconduct.

Normally, the validity of disciplinary warnings will be considered to have expired after one year provided that no further warnings have been issued and no disciplinary action has been taken against the employee during that period. Expired warnings will be disregarded in the event of any future disciplinary action (although a record of the warning will not be removed from the personal file) but the fact that there is an expired warning may explain why the employer does not substitute a lesser sanction.

There may be occasions, however, where the nature or pattern of misconduct and the post concerned do not make it desirable and appropriate for the one year time limit to apply. In these circumstances the employee will be notified, in writing, of the period applicable to the warning, which will not normally exceed 5 years. Exceptionally, there may be circumstances where the misconduct is so serious e.g. safeguarding, that it cannot be disregarded for future disciplinary purposes. In such circumstances, the written warning can never be disregarded and any recurrence may lead to dismissal.

### **3.32 Notification of Outcome of Formal Hearing**

Where possible, the decision will be notified verbally to the employee at the end of the hearing. In any case, the employee will be issued with a written notification of the outcome within 5 school days of the hearing.



Where appropriate, this letter will contain notice of dismissal. This may be rescinded subsequently on appeal.

Employees will be asked to sign and return a copy of such notifications to confirm that they have received and understood them.

Employers are required to refer appropriate safeguarding matters, including where a decision to dismiss is made, to the Disclosure and Barring Service (DBS) which will consider the employee's suitability to work with children. Where an employee is undertaking teaching work and is dismissed (or would have been dismissed had they not resigned) for other disciplinary matters, a referral will be made to the Teaching Regulation Agency (TRA), as appropriate. The employee should be informed of any referral.

### **3.33 Appeals**

An employee has a right of appeal against any disciplinary sanction/dismissal. An employee may forego his/her right to appeal.

Notice of any appeal must be given in writing to Chair of the Trust within 5 school days of receipt of the written notification by the employee of the outcome of the hearing, clearly stating the grounds upon which the appeal is made. Valid grounds for appeal may be:

- There was a flaw or error in the procedure.
- The penalty was unduly severe.
- The original finding was against the weight of evidence.
- There is evidence not taken into account which could affect the original decision.
- There has been an error of judgement on a point of fact.

Employees may be asked for clarification of the grounds for their appeal where this is not clear.

All appeals will be heard by the Trust's Disciplinary/Dismissal Appeal Committee. The decision of this committee is final, subject to the employee's rights at law.

The employee will be given at least 5 school days' notice of the appeal hearing in writing.

A Disciplinary Appeal Hearing may be a full rehearing of the original case or a consideration of particular matter where the appeal is on a specific and narrow point(s). An appeal will not normally hear matters which were not upheld at the original hearing. The format for the Disciplinary Appeal Hearing will be determined, upon receipt of the letter of appeal, and communicated to all parties.

New evidence, provided it is relevant to the original allegation(s), can be introduced at the appeal stage by either party. All parties' papers, including any new evidence relevant to the appeal, must be submitted to the other party and the Governors' Disciplinary Appeals Committee at least 3 school days before the appeal hearing.

The employee will present evidence to support their appeal point(s) and the original decision maker will respond to these as part of the appeal process. The Disciplinary/Dismissal Appeal Committee will then consider these submissions, together with the outcome letter and notes from the original hearing.

The outcome of the appeal will be notified as per the original hearing, except that there is no further right of appeal within these procedures.

### **3.34 Records**

Notes of hearings and meetings with the employee will be taken and shared with them as soon as possible after the hearing. The employee has the right to challenge the accuracy of any minutes and to have these recorded.

No-one may record meetings or hearings, except for the Clerk, to assist with producing the minutes, where permission is given by all parties. A request from a disabled employee/companion to record the hearing will normally be considered as a reasonable adjustment in appropriate circumstances, but will be subject to agreement by all parties. Any recording made will be destroyed once minutes/notes are completed. If an unauthorised recording is made by the employee this may result in disciplinary action. If an unauthorised recording is made by the companion this may result in the employer refusing to allow the companion to attend further meetings.

Details of any formal action, including any warnings, will be retained on the employee's file.

Letters of expectation are not disciplinary sanctions and will remain on the employee's personal file in line with the Trust's Records Retention Policy.

If an investigation or hearing concludes that an allegation is totally unsubstantiated, unfounded or malicious, all records will be removed from the employee's personal file on the conclusion of the case.

Details of any ongoing disciplinary action and/or sanctions, and in the case of safeguarding matters and expired warnings, will be referred to when responding to an employee reference request.

The Trust processes personal data collected during the investigation stage and any subsequent stages of the disciplinary procedure (including any appeal) in accordance with its Data Protection Policy. In particular, data collected as part of the investigation stage, and any subsequent stages of the disciplinary procedure, is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. On the conclusion of the procedure, data collected will be held in accordance with the Trust's Retention Policy. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Trust's Data Protection Policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the Trust's Disciplinary Misconduct Policy.

### **3.35 Timing/Location of Meetings/Hearings**

Employers are obliged to deal with disciplinary and dismissal matters without undue delay. It is expected that employees and their representatives will assist in this aim.

Where possible, timings of meetings and hearings will be agreed with the employee and his/her representative and will normally take place during the working day.

Employees and their representatives should make themselves available to attend meetings within a reasonable period of time. If the employee's companion is not available, for a reason that was not reasonably foreseeable, at the time proposed, one alternative date will be set, normally within 5 working days from the original date.

Where possible meetings and hearings will be held at a mutually convenient location, which meet any special needs of attendees and which may sometimes be away from the normal place of work where this is considered to be appropriate.

Reasonable time off with pay will be granted to employees who are acting as a witness or companion for an employee who is subject to the disciplinary process.

#### **4.0 Grievances raised during Disciplinary Procedures**

If an employee raises a grievance during the course of the disciplinary/dismissal procedure, related to the case, the grievance will normally be dealt with as part of the formal disciplinary hearing/appeal process. If appropriate, given the nature of the grievance, the disciplinary/dismissal process may be temporarily suspended in order to deal with the grievance.

## Appendix 1 – Overview of Dismissal Procedure

