

This policy is part of the Ebor People Policy Suite

Please refer to Self Service HR for the latest version of this and other Ebor People Policies



Policy Number

22

## DISCIPLINARY POLICY

Ebor Academy Trust works closely with Trade Union Partners to develop and implement a fair and effective suite of people policies. Please seek advice from your trade union representative if you require support with this policy. If you are not a member of a trade union, please visit the Union tab or HR Self-service. Ebor Academy Trust welcomes Trade Unions to support staff throughout the processes associated with this policy.

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| <b>Related Policies:</b>           | <b>Supporting Staff Attendance, Grievance, Staff Code of Conduct, Staff Leave Policy</b> |

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### 1 Aims

This policy aims to:

- Help and encourage all employees to achieve and maintain satisfactory standards of conduct
- Set out the procedures for when an employee's conduct falls below the expected standard
- Ensure that employees are treated fairly and consistently when a disciplinary issue is being dealt with

### 2 Legislation and guidance

We are required to set out our disciplinary procedures under general employment law. This policy is non-contractual

These disciplinary procedures are based on the [Acas Code of Practice on disciplinary and grievance procedures](#).

Related Policies: Supporting Staff Attendance, Grievance, Staff Code of Conduct, Staff Leave

### 3 Definitions and scope

**A disciplinary issue** will arise when a staff member has not behaved to the expected standard. Appendix 1 sets out a non-exhaustive list of examples of what we define as **misconduct and gross misconduct**. For the purpose of this policy, misconduct does not cover staff capability or poor performance issues. These are addressed in the people capability policy. Confidentiality is essential to protect the integrity of this policy and all involved must not discuss cases (including via electronic and social media) with anyone who does not have reason to be involved.

### 4 Disciplinary procedures

Minor disciplinary issues will be dealt with informally at first, and will be escalated where:

- There has been no resolution
- The issue is more serious
- There are repeated or multiple instances of misconduct
- There is suspected gross misconduct

The Trust aims to resolve matters at the lowest appropriate level of the process. The process can be invoked at any stage based on the circumstances.

When dealing with an issue informally, the employee's line manager will organise a brief meeting with the employee and set out the concerns. They will remind the employee of the expected standard of behaviour and consider what support is needed to help them improve. Notes will be taken and retained.

If the issue cannot be dealt with informally, formal procedures will begin. The employee will be notified of this in a face-to-face meeting with a senior leader to be held in person or over video conferencing if necessary. This will be followed up in writing.

Trade union colleagues are welcome to attend meetings referred to in this policy in order to provide support and advice to their members.

#### 4.1 Suspension

In some circumstances it will be appropriate to suspend a member of staff temporarily, for example, where there is suspected gross misconduct. This in itself does not amount to guilt or constitute disciplinary action.

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Where this is necessary:

- The headteacher must authorise the suspension with the approval of the Chief Executive Officer. If it is the headteacher who is the subject of the disciplinary procedure, the Executive Head or Director of Education will authorise the suspension with the approval of the CEO.
- The Director of Education or Director of People & Culture or the HR Business Partner must be consulted for advice prior to suspension being considered.
- The suspension risk assessment must be completed to determine suitability for suspension or redeployment to another site: Appendix 2. Redeployment decisions will be made in consideration of the scope of the employment contract and any personal circumstances and known reasonable adjustments.
- The staff member will be informed of the suspension in a face-to-face meeting, held in person or over video conferencing if necessary, followed by a notification in writing at the earliest opportunity.
- The employee will be permitted to be accompanied to the meeting by a companion. This should be a colleague or trade union representative unless agreed reasonable adjustments are in place e.g. to support disability adjustments or to ensure understanding where English is not the employee's first language
- If staff return to work to attend a meeting, a decision should be made on whether the suspension should be continued. If it is continued, a re-suspension should be issued.
- The staff member will be suspended on full pay and a review should take place every 10 working days. A nominated contact should be assigned to staff who are suspended.
- In exceptional circumstances and only the agreement of the CEO, a decision may be made to grant exceptional leave to account for paid time away from work (see pay policy).

If a member of staff is to be suspended or redeployed, the decision must be taken by the Head Teacher or Executive Head, along with the approval of the Chief Executive Officer. In cases where there is a need for staff to be away from the workplace and suspension is not appropriate, the staff leave policy should be consulted.

### 4.2 Investigation

An initial fact-finding exercise should take place to determine whether or not there is a case to answer. This will determine whether a formal investigation is required. The fact finding should be documented locally with the details used to form the terms of reference for a formal investigation or to note that no further action was taken.

If the member of staff admits to the allegation, there may be an option to **fast track** directly to conclusion so long as all parties agree about the sanction and subject to the approval of the CEO. The Head or relevant Director will issue the sanction. This is an exceptional process which may not be suitable in all circumstances and requires a written admission from the member of staff. If agreement about the sanction cannot be reached, the matter will run through the full policy.

If the fact finding determines the need for investigation, an investigating officer will be appointed. To ensure independence, they will be from another school or from the Central Team. The Ebor standard investigation template should be used (Appendix 3).

The investigating officer will gather the facts and evidence. The investigating officer will, if necessary, hold investigatory meetings (in person or over video conferencing).

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The employee will be informed of the outcome of the investigation in writing. The outcomes will be either to close the process with no further action, to hold a meeting to agree informal action or to escalate to a formal disciplinary hearing.

If the investigating officer determines that the matter should move forward to a formal disciplinary hearing a disciplinary officer will be appointed. This will be a person independent from the investigating officer.

### 4.3 Notification

If it is decided that there is a disciplinary case to answer, the employee will receive a written notification 10 working days before the hearing. The meeting could be sooner if agreed by both parties. The notification will include:

- Details of the alleged misconduct
- Details of any written evidence, including named witness statements (which may be redacted for safeguarding reason)
- The time, date and location of the disciplinary meeting
- A statement that the employee has the right to be accompanied by a companion
- Notification that the employer intends to call witnesses (if relevant)

If the employee intends to call a witness, they should notify the employer prior to the hearing. The employee is responsible for arranging the attendance of their companion and any witnesses and the Trust will support this.

The disciplinary officer will conduct the hearing. This will usually be the Headteacher of the school or the relevant Director (for CST). Where the matter relates to the Head teacher, the Director of Education or an Executive Head will conduct the hearing.

### 4.4 Disciplinary hearing

The panel will consist of the HR Business Partner or the Director of People & Culture (who will provide advice), three senior leaders either from the same school, a different school (or from the Central Team) and a note taker who will usually have HR knowledge.

At the hearing, the person conducting the hearing will explain the case and go through the evidence that has been gathered. The person may choose to have witnesses and / or the investigating officer to present the management's case.

The employee or their representative will be allowed to set out their case and answer any allegations that have been made. The employee will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They will also be given an opportunity to raise points about any information provided by witnesses.

Employees have a statutory right to be accompanied at a meeting that may result in a formal warning being issued, disciplinary action being taken, or the confirmation of either of these.

The employee has the right to be accompanied by a trade union representative or colleague. Employees must make the request in advance of the meeting, to allow the school to prepare and to ensure the employer knows who the companion will be.

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If an employee's chosen companion will not be available to meet at the proposed time, the hearing will be postponed to an agreed time, as long as the alternative time is reasonable. Reasonable flexibility to reach a workable meeting date is expected from all parties.

The union representative or companion can address the hearing to put forward and sum up the employee's case and confer with the employee during the hearing. They do not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employee from explaining their case. The representative may present evidence and ask questions and call relevant witnesses but cannot answer on behalf of the employee.

### 4.5 Taking appropriate action

The hearing will be adjourned and a decision made about any action to be taken. The employee will be informed of the decision when the meeting is reconvened and in writing within 10 working days however this may be sooner by agreement.

Actions taken **may be**:

- That there is no case to answer
- **Management Advice and Guidance** where there is no formal action but there are learnings or opportunities for improved practice, guidance from line management or from a subject matter expert may be agreed as an outcome. This will not be formally recorded as a warning. There is no right to appeal management advice and guidance, but comments may be added.
- **A verbal or informal warning** where it is decided that the action was not serious enough to warrant a formal written warning. This may be accompanied by a notification that arrangements will be put in place to improve the staff members' behaviour, such as a training course or occupational health support
- **A first written warning** for a first instance of misconduct. A further instance may result in a final written warning. *A first written warning will remain on the employee's personnel file for 6 months.* The written warning will explain that a further instance of misconduct or no change in behaviour within a given timeframe will result in a final warning
- **A final written warning** where the employee has already received a first warning, or where the employee's misconduct was sufficiently serious. A further instance may result in demotion or dismissal. *The written warning will remain on the employee's record for a period of 12 months.*
- **Dismissal** where there has been gross misconduct or a final written warning has already been given. In cases of gross misconduct (see appendix 1), summary dismissal will apply, and employment will be terminated with immediate effect. In all other cases dismissal will be contractual and either notice will be given, or payment in lieu of notice will apply.

The Trust will refer a case of teacher gross misconduct to the Teaching Regulation Agency (TRA) if we believe the case is so severe that the TRA should consider whether the teacher should be prevented from teaching. We will also refer cases to other relevant authorities where appropriate.

The power to dismiss staff in schools rests with the Head Teacher (with the approval of the Director of Education) and in the central team, with the Director of People & Culture or the Director of Education.

### 4.6 Appeals

Appeals will be heard in line with the standard Ebor appeals process (see appendix 4)

### 4.7 Special cases

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If the employee involved in a disciplinary procedure is also the trade union representative, we will notify the union and discuss the matter with an official employed by the union before action is taken and after obtaining the employee's agreement. The procedure will then continue as normal.

If the employee who is subject to disciplinary procedures raises a grievance about the disciplinary allegations or the procedure itself, the grievance procedure will run concurrently.

If the employee who is subject to disciplinary procedures raises a grievance about something unrelated to the disciplinary, consideration will be given to pausing the disciplinary while the grievance is addressed. The CEO's decision is final in the event of any disagreement.

If a member of staff is absent due to sickness, the process may be delayed however if the absence becomes long term, the processes may run concurrently. If necessary, an occupational health report may be requested to determine whether the employee engages in the process. In cases where they are unable to do so, the case may be heard in their absence, with their representative empowered to speak on their behalf.

In cases where a parallel police investigation is taking place, the internal disciplinary process may be paused to await the outcome of an investigation under Police and Criminal Evidence (PACE). In such cases, CEO authority to proceed will be required.

### **5 Record keeping**

Notes will be kept of interviews and meetings. Records of all materials relating to the disciplinary process will be kept securely, only for as long as necessary in line with Trust data protection policy.

If disciplinary action is taken, a record of this will be added to the employee's personnel file.

We will disclose any proven live disciplinary offences by a staff member if a reference is requested by a future employer. Informal action will not be disclosed unless the reference request specifically requests this.

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### Appendix 1: instances and behaviours classed as misconduct

The following lists are not exhaustive.

Instances of misconduct may include (but is not restricted to):

- Unauthorised absence or persistent lateness from work
- Using bad language in front of pupils
- Failure to follow the policies, practices and requirements of the trust
- Unsatisfactory standards of work (not related to capability)
- Inappropriate use of school facilities
- Failure to comply with reasonable instructions from senior staff

Instances of gross misconduct may include (but is not restricted to):

- Physical violence or assault
- Discrimination, harassment, victimisation and/or bullying of pupils, colleagues or visitors
- Theft
- Sexual offences or misconduct
- Inappropriate relationships with pupils or any other actions that would be classed as a serious safeguarding issue
- Serious breaches of confidentiality
- Deliberately acting in a way that will cause damage to the school's reputation
- Deliberately acting in an unprofessional way or one which may negatively impact professional reputation
- Deliberately damaging school property

[Teacher misconduct guidance](#) from the TRA explains that, among other things, the following offences will be serious enough to warrant prohibition of teaching:

- Serious departure from the personal and professional conduct elements of the Teachers' Standards
- Misconduct seriously affecting the education and/or wellbeing of pupils, and particularly where there is a continuing risk
- Actions or behaviours that undermine fundamental British values
- Abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils
- Sustained or serious bullying, or other deliberate behaviour that undermines pupils, the profession, the school or colleagues

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#### **Appendix 2 PRECAUTIONARY ACTION CHECKLIST**

[CLICK THIS LINK TO DOWNLOAD THE EBOR SUSPENSION AND REDEPLOYMENT CHECKLIST](#)

#### **Appendix 3 Ebor Investigation Template**

[CLICK THIS LINK TO DOWNLOAD THE EBOR STANDARD INVESTIGATION TEMPLATE](#)

#### **Appendix 4 Ebor Standard Appeal Process**

[CLICK THIS LINK TO DOWNLOAD THE EBOR STANDARD APPEAL PROCESS](#)