



E07

ESTEEM MULTI-ACADEMY TRUST DISCIPLINARY POLICY

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1 Policy Statement

1.1 The Disciplinary Policy is intended to set out the standards of conduct and behaviour expected of all Esteem Multi-Academy Trust colleagues and to ensure that all disciplinary matters are dealt with fairly and consistently.

1.2 It is intended to help and encourage employees to achieve and maintain satisfactory standards of conduct and behaviour at work in line with Trust policies, rather than primarily as a way of imposing punishment.

1.3 The Trust aims to make sure employees are aware of the consequences of failure to meet the required standards of conduct both inside and outside of the workplace.

1.4 Minor conduct or performance issues can usually be resolved informally with the line manager. Please see Appendix 1: Professional Expectations Form.

1.5 This policy applies to all colleagues, regardless of length of service. However it does not apply to agency staff or self-employed contractors.

1.6 This policy does not form part of the contract of employment and can be varied from time to time.

1.7 This policy and procedure does not deal with capability, performance or sickness absence issues. These are dealt with via our E04 Capability Policy and/or E06 Staff Managing Attendance Policy.

1.8 The responsibility for managing the disciplinary process within the Trust will rest with the CEO, Executive Team, Local Governing Board or Trust Board who are the only employees empowered to issue warnings, deal with other associated action or take initial dismissal decisions in line with the DfE 'Staffing and employment advice for schools'. The CEO or the Trust Board may also take disciplinary action and in any case will always be responsible for disciplinary action involving a headteacher or member of the Executive Team.

2 Minor Conduct Issues and an Informal Approach

2.1 For minor conduct issues, the Trust will adopt an informal but confidential approach to help, guide or advise employees in improving their conduct or behaviour. The Trust will only consider dealing with minor disciplinary breaches through the formal stages of the policy if the misconduct continues or the misconduct is too serious to be dealt with informally.

2.2 Where there is a concern about an employee's conduct or behaviour, the headteacher will organise an informal meeting to discuss the concern. The purpose of any informal meeting is to improve the conduct, to identify and examine any areas of concern and to provide a reasonable opportunity for the employee to respond.

2.3 An action plan will be developed with an aim to support improvement to conduct. A Professional Expectations Form should be completed as part of this meeting (Appendix 1). In some cases, it may be decided that additional training, coaching, and advice are required.

2.4 Where the behaviour causing concern may be related to an underlying relationship issue, it may be appropriate to consider an independent third party, such as a mediator, to help resolve the situation rather than disciplinary action.

2.5 In the event that the matter cannot be resolved informally, or the matter is too serious for the informal approach to be applied, then the formal disciplinary process will follow.

2.6 No formal disciplinary action will be taken unless or until the allegations have been fully investigated.

3 Investigations

3.1 Informal Investigation

3.1.1 In some cases, but not all, an informal investigation should be undertaken to establish the grounds of the case and whether there is a case to answer.

3.1.2 This should be done by someone who has not been involved in the matter at this stage and should normally be the Line Manager or a member of the Senior Leadership Team. The informal investigator will report their findings to the person reviewing the case.

3.1.3 The aim of this is to avoid a lengthy disciplinary process being followed when there are no grounds for a disciplinary and the matter could be dealt with in an informal manner. There is no right to trade union representation at an informal stage. However, if you are a member of a Trade Union, it is advised that you contact them.

3.2 Formal Investigation

3.2.1 Where a matter cannot be resolved informally and/ or there is potentially a case to answer then a formal investigation should take place.

3.2.2 Before any disciplinary hearing is held, the matter will be investigated. Any meetings and discussions as part of an investigation are solely for the purpose of fact-finding and no disciplinary action will be taken without a disciplinary hearing.

3.2.3 If allegations have been made against an employee, they will be notified of the nature of the allegations that are to be investigated prior to the formal investigation meeting. There will be 5 working days' notice of any formal investigation meeting, employees may be accompanied at the formal investigation meeting by a trade union representative, if a member or a work colleague, who will be allowed reasonable paid time off to act as your companion. The companion does not, however, have the right to answer questions on the employees behalf or prevent the employer from asking questions as part of the investigation process.

3.2.4 The amount of investigation involved will vary depending on the allegations in question and the circumstances of the case.

3.2.5 Investigations will be dealt with as confidentially as is reasonably practicable and sensitively. If an employee is found to be discussing the case with other colleagues beyond their companion this may constitute separate disciplinary action.

3.2.6 The formal investigating officer should be a person with no prior involvement in the matter under investigation (this includes informal investigation) and should normally be the Line Manager, a member of the Senior Leadership Team or Executive Team unless they have prior involvement in the case.

3.3 Informal/Formal Investigation Outcomes

3.3.1 At each stage of the investigation process the investigating officer will consider one of the following outcomes:

- Complete exoneration from the allegations made, where a no further action letter can be sent to conclude the process.

- Where an informal improvement process has not already been applied and the nature of the allegation does not prohibit this, an informal/formal improvement process may be utilised.
- A recommendation that there are sufficient grounds for a potential case for misconduct or gross misconduct to be made. If at the informal stage, this would progress to a formal investigation. If at the formal investigation stage, this would progress to a disciplinary hearing.

4 Suspension

4.1 Alternative working arrangements should be considered as an alternative to suspension.

4.2 Depending on the circumstances, an employee may be suspended from work on full pay during the investigation; However, if the employee is prevented from doing their job because a third party imposes criminal, legal or any other restrictions then this would be without pay.

4.3 It is the responsibility of the Headteacher or CEO to suspend employees and then lift the suspension. In both cases this would be confirmed in writing, stating the reasons why the employee has been suspended.

4.4 During a period of suspension an employee should be assigned a wellbeing support person, who is neutral from the investigation/ disciplinary process, to ensure they feel supported.

4.5 Whilst on suspension the Headteacher or CEO will review, as appropriate, the suspension to check the progress and decide if the suspension needs to continue. Suspension or alternative arrangements should be for as short a time as possible. If a formal suspension review meeting is required, the employee and their Trade Union representative will be invited to attend a review with 5 working days' notice. Following the suspension review, the outcome will be confirmed to the employee in writing. The employee and or their representative can request a review of suspension meeting and/or provide written representation in advance to inform the next review, or in response to the review outcome.

4.6 In some cases of alleged misconduct / gross misconduct, we may need to suspend employees from work while we carry out the investigation or disciplinary procedure (or both).

4.7 While suspended, employees should not visit any Esteem Multi-Academy Trust premises or contact any colleagues, students or parents, unless authorised to do so. Authorisation must be gained from the named person on the suspension letter, usually the Headteacher.

4.8 During a period of suspension, the employee should remain available to attend requested meetings in relation to the investigation, disciplinary or other work related meetings as requested.

4.9 Suspension is not considered to be disciplinary action or a presumption of guilt and is intended as a neutral act, for the purpose of protecting all parties during the process.

5 The Hearing

5.1 Employees will be given 5 working days' written notice of the hearing, when an allegation is related to misconduct, where the available sanction being considered is up to and including a final written warning.

5.2 Employees will be given 10 working days' written notice of the hearing, when an allegation is related to misconduct or gross misconduct, where the available sanction being considered is up to and including dismissal.

5.3 The written notice of the hearing will include sufficient information about the conduct which appears to justify disciplinary action and its possible consequences to enable preparation. Copies of

relevant documents and witness statements will be provided to all parties at least 5 working days prior to the date of the hearing.

5.4 The hearing will be chaired by the headteacher or if the headteacher has been involved in the investigation process, a nominated Governor/ Trustee/ Executive Team member/ Trust Senior Team member will take their place.

5.5 Where an allegation is related to misconduct and the available sanction is up to an including a final written warning one other Governor/Trustee/Executive Team member /Trust Senior Team member, will join the chair to make up the panel and they will make the decision on the outcome.

5.6 Where the allegation is related to misconduct or gross misconduct and dismissal is an outcome being considered, the case will be heard by a panel of up to 3 of those listed above including the Chair of the Panel.

5.7 Employees may be accompanied at the hearing by a trade union representative, if a member or a work colleague, who will be allowed reasonable paid time off to act as your companion. The companion is allowed to address the hearing, to put and sum up to the case. They may also request an adjournment and ask questions of anyone present. The companion does not, however, have the right to answer questions on the employees behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

5.8 Other than confirming that all parties have the same documentation it would not normally be necessary to read out the content of the documentation in full.

5.9 Employees should inform the Trust as early as possible if there are any relevant witnesses they would like to attend the hearing or any documents or other evidence they wish to be considered. Copies of any relevant evidence intended to be referred to must be submitted, at least 5 working days before the hearing.

5.10 Employees should make every effort and take all reasonable steps to attend hearings as arranged. The Trust or the employee may offer a reasonable alternative time within 5 working days of the original date if the employee or their trade union representative or work colleague cannot attend.

5.11 If an employee does not attend a hearing without good reason, it should be re-arranged, within 5 working days of the original date, but if they do not attend the rearranged meeting/hearing, it may take place in their absence and a decision may be made. Employees may submit a written statement to be taken into consideration in their absence.

5.12 Where employees are absent due to sickness whilst a disciplinary matter is pending, the E06 Staff Managing Attendance Policy will apply as normal. Being absent from work due to sickness will not automatically stop the disciplinary procedure progressing.

5.13 An outcome letter will be submitted in writing within 5 working days of the disciplinary hearing, fully outlining how a decision has been made.

6 Disciplinary action and dismissal

6.1 The usual penalties for misconduct or poor behaviours are:

- Written Warning: Where there are no other active written warnings on the employees disciplinary record, you will usually receive a written warning. It will usually remain active for twelve months at which time it will be reviewed and become spent or extended for a further six months.

- **Final Written Warning:** In cases of further misconduct or failure to improve where there is an active written warning on your record, you will usually receive a final written warning. This may also be used without a written warning for serious cases of misconduct/ gross misconduct or poor performance. The warning will usually remain active for twelve months at which it will be reviewed and become spent or extended for a further six months.
- **Dismissal or other action:** An employee may be dismissed for further misconduct or failure to improve where there is an active final written warning on their record, or for any act of gross misconduct.

6.2 The Trust may consider other sanctions short of dismissal, including demotion or redeployment to another role (where permitted by your contract), and/or extension of a final written warning with a further review period.

6.3 Where an employee is absent from work for 20 days or more, regardless of the reason for absence(s), whilst a Written Warning or Final Written Warning is in force, that warning will be suspended for the period of absence. Once the employee returns, the warning will recommence and continue for the remaining active period.

6.4 Details of spent warnings shall remain in personal files but shall be disregarded for the purpose of any future disciplinary proceedings, except in exceptional circumstances e.g., where they demonstrate patterns of behaviour which give rise for concern.

6.5 Substantiated allegations of harm to the safety and wellbeing of children must be kept in a confidential personnel file. The record should be retained until the individual has reached normal retirement age or for a period 10 years from the date of the allegation, if that is longer. The record will comprise a comprehensive summary of the allegation, details of how the allegation was followed up and resolved, including a note of any action taken and decisions reached. The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS checks reveal information about an allegation that did not result in criminal conviction and will help to prevent unnecessary re-investigation, if an allegation re-surfaces.

7 Appeals

7.1 A decision may be appealed in writing within 10 working days of receipt of the written outcome.

7.2 Where disciplinary action has been taken, if dissatisfied with that decision, employees can appeal. Appeals must be in writing and set out the grounds including all the information to rely on at the appeal hearing.

7.3 Employees must send appeals to the Headteacher or named individual within 10 working days of receiving the written outcome. The action taken at the disciplinary hearing will remain in force pending the outcome of the appeal.

7.4 The appeal hearing will, where possible, be held by a panel of up to 3 senior colleagues not previously involved. Employees may bring a work colleague or trade union representative, if a member with them to the appeal hearing.

7.5 The appeal hearing will be held within 15 working days of the receipt of the formal notice of appeal (or as soon as practicable thereafter).

7.6 The appeal hearing is not a re-hearing of the disciplinary, the purpose is for the appeal the employee makes to be heard and where applicable any questions of the original disciplinary chair to be made.

7.7 Potential appeal hearing outcomes are:

- Uphold the appeal and exonerate.
- Confirm the original decision but apply a lesser sanction.
- Confirm the original decision and apply the same sanction.

7.8 Employees will be informed in writing of the panel's final decision as soon as possible, usually within 5 working days of the appeal hearing. There is no further right of appeal and the decision is final.

8 Misconduct

8.1 The following are examples of matters that will normally be regarded as misconduct and will be dealt with under the disciplinary policy and procedure, including conduct at work, whilst working from home or outside of work:

8.1.1 Minor breaches of the Trust's policies not previously made;

8.1.2 Minor breaches of an employee's contract of employment;

8.1.3 Damage to, or unauthorised use of, the Trust's property;

8.1.4 Poor timekeeping or time wasting;

8.1.5 Unauthorised absence from work;

8.1.6 Refusal to follow instructions;

8.1.7 Excessive or unauthorised use of our Trust's telephones, email or internet usage for personal reasons;

8.1.8 Inappropriate or other offensive behaviour, including using obscene language, victimisation or harassment of other members of staff or pupils;

8.1.9 Negligence in the performance of duties;

8.1.10 Smoking in no-smoking areas, which applies to anything that can be smoked and includes, but is not limited to, cigarettes, electronic cigarettes, pipes (including water pipes such as shisha and hookah pipes), cigars and herbal cigarettes;

8.1.11 or Poor attendance.

8.2 This list is intended as a guide and is not exhaustive.

9 Gross misconduct

9.1 Gross misconduct is a serious breach of contract and includes misconduct which, in the opinion of our Trust, is likely to prejudice its business or reputation or irreparably damage the working relationship and trust between our Trust and the employee. Gross misconduct will be dealt with under the Disciplinary Procedure and may lead to dismissal without notice or pay in lieu of notice (summary dismissal).

9.2 The following are examples of matters that are normally regarded as gross misconduct and apply whilst in work, working from home or outside of work:

- 9.2.1 Theft or unauthorised removal of property from the school or its stakeholders a colleague, contractor, pupil or member of the public;
- 9.2.2 Fraud, forgery or other dishonesty, including but not limited to fabrication of expense claims and time sheets, misrepresentation of sickness absence including fit notes from the GP, pupil's work, examinations or assessments;
- 9.2.3 Actual or threatened violence, or behaviour which provokes violence;
- 9.2.4 Deliberate damage to the buildings, fittings, property or equipment of the Trust, or the property of a colleague, contractor, pupil or member of the public;
- 9.2.5 Inappropriate conduct with children or young people, including failing to maintain appropriate professional boundaries;
- 9.2.6 Serious failure to follow our Trust's child protection procedures;
- 9.2.7 Behaving in a way, either inside or outside of work, which could cause harm to a child, or could indicate that you pose a risk of harm to children/may not be suitable to work with children;
- 9.2.8 Making a false declaration or failing to disclose information in relation to the disqualification from childcare requirements, or becoming disqualified from providing childcare (Primary only);
- 9.2.9 Serious misuse of the Trust's property or name;
- 9.2.10 Deliberately accessing internet sites at work or at home, using School equipment, which contain pornographic, offensive or obscene material;
- 9.2.11 Repeated or serious failure to obey instructions, or any other serious act of insubordination;
- 9.2.12 Bringing the Trust into serious disrepute; Being under the influence of alcohol, illegal drugs or other substances during working hours or not being capable of fulfilling your duties because of the effects of alcohol or illegal drugs or other substances;
- 9.2.13 Causing loss, damage or injury through serious negligence;
- 9.2.14 Serious or repeated breach of health and safety rules or serious misuse of safety equipment;
- 9.2.15 Unauthorised access, use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure;
- 9.2.16 Acceptance of bribes or other secret payments;
- 9.2.17 Conviction or caution for a criminal offence that in the opinion of the Trust may affect our reputation or our relationships with our staff, pupils, parents or the public, or otherwise affects your suitability to continue to work for us;
- 9.2.18 Possession, use, supply or attempted supply of illegal drugs;

9.2.19 Serious neglect of duties, or a serious or deliberate breach of your contract or operating procedures;

9.2.20 Unauthorised use, processing or disclosure of personal data contrary to our Data Protection Policy;

9.2.21 Harassment of, or discrimination against, employees, pupils, parents or members of the public, related to any of the protected characteristics contrary to our Equality, Diversity and Inclusion Policy or our Dignity at Work, Protection from Harassment, Bullying and Victimisation Policy;

9.2.22 Refusal to disclose any of the information required by your employment or any other information that may have a bearing on the performance of your duties;

9.2.23 Giving false information as to qualifications or entitlement to work (including immigration status);

9.2.24 Making a disclosure of false or misleading information under our Whistleblowing Policy maliciously, for personal gain, or otherwise in bad faith;

9.2.25 Making untrue allegations in bad faith;

9.2.26 Victimising a colleague who has raised concerns, made a complaint or given evidence information under the Whistleblowing policy, Dignity at work, protection from harassment, bullying and victimisation policy, Grievance Policy, Disciplinary Policy or otherwise;

9.2.27 Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of email and the internet) contrary to our ICT fair use policy;

9.2.28 Undertaking unauthorised paid or unpaid employment during your working hours;

9.2.29 Making covert recordings of colleagues or managers.

9.3 This list is intended as a guide and is not exhaustive.

9.4 In some instances, offences which would normally constitute gross misconduct may be considered as misconduct because of mitigating circumstances. Similarly, issues which would normally be treated as misconduct may, in certain circumstances, be considered so serious that they constitute gross misconduct.

10 Action against Trade Union Representatives

10.1 Disciplinary action against a Trade Union representative can lead to a serious dispute if it is seen as an attack on their functions. Whilst normal disciplinary standards apply to a Trade Union representative's conduct as a colleague, a full-time official should be notified of any action (including suspension) that the Trust takes or proposes to take.

10.2 All reasonable efforts must be taken to ensure that disciplinary action is not taken against a Trade Union representative until a full-time official has had an opportunity to be present at any stage of the formal procedure.

11 Criminal Offences

11.1 Certain criminal offences may affect your suitability to continue in your role with the Trust or damage reputation. If an employee is charged with a relevant criminal offence, they must inform their headteacher as soon as possible.

11.2 The Trust will not treat notification about criminal proceedings, or a conviction (including bind-over's and cautions), as an automatic reason for dismissal or for any other form of disciplinary action being taken. The Trust will decide what action to take, if any, after we have reviewed the matter. The main consideration should be whether the conviction is one that makes an employee unsuitable for their job within the education sector or may affect the Trusts' reputation.

11.3 If an employee is subject to criminal investigation, the Trust will determine to what extent it needs to conduct its own investigation before deciding whether to proceed to formal disciplinary action. The Trust will not usually wait for the outcome of any prosecution before deciding what action to take (unless specifically advised otherwise by the police). No decision to impose a disciplinary sanction or dismiss will be taken prior to giving you the opportunity to make representations.

11.4 If the Trust have reasonable grounds to suspect that the potential misconduct involves fraud, systems abuse, theft, or any financial irregularity, we will notify the internal auditors and/or the police as soon as possible.

11.5 Where there are allegations that appear to involve criminal responsibility or financial irregularities affecting Trust resources, the Chair of Trustees and CEO must be notified and will decide whether to refer the matter to the police or take other action in accordance with the Academies Financial Regulations procedure rules (as appropriate). The exception to this is in allegations involving Safeguarding Children and Safeguarding Adults, where separate procedures apply.

APPENDIX 1 – PROFESSIONAL EXPECTATIONS FORM

Member of Staff being Interviewed:			
Name			
Position			
Interviewing Officer:			
Name			
Position			
Purpose of confirming Professional Expectation:			
Reason for discussing professional expectation e.g. Performance/professional or event-orientated discussion. Include leaders' facts and observations prior to this meeting.			
Comments:			
Confidentiality Clause:			
The content of this meeting is to be kept confidential and not to be discussed with other colleagues. You are free to discuss this meeting content with recognised trade union representatives, for the purpose of support relating to the content of the professional expectations discussed and documented herein.			
Action to be taken:			
Interviewing Officer:			
Signature		Date	
Interviewee:			
Signature		Date	

APPENDIX 2 – DISCIPLINARY HEARING AGENDA

1. The Investigation Officer, to put the case in the presence of the employee and may call witnesses, if prior agreed.
2. The employee or their representative, to have the opportunity to ask questions of the Investigation Officer, on the case presented and any witness if they have been called.
3. The Panel to have the opportunity to ask questions of the Investigation Officer and witnesses.
4. The employee or their representative, to put their case in the presence of the Investigation Officer and to call such witnesses if prior agreed.
5. The Investigation Officer to have the opportunity to ask questions of the employee and their witnesses.
6. The Panel to have the opportunity to ask questions of the employee and their witnesses.
7. The Investigation Officer and then the employee to have the opportunity to sum up their case if they so wish.
8. The Investigation Officer and the employee to withdraw.
9. The Panel to deliberate.
10. The Panel will announce its decision to the employee personally and to their representative (where possible) it may be decided that due to the complexity of the case the decision will only be made in writing. This will be confirmed in writing within 5 working days along with meeting minutes.
11. Employee has the right to appeal the outcome and this should be done in writing to the Headteacher or named person, within 10 working days of receipt of the outcome letter.

APPENDIX 3 – APPEAL HEARING AGENDA

1. The employee, to present their appeal under one of more of the following reasons:
 - a) the finding that you committed the alleged act (or acts) of misconduct where the evidence did not support this finding.
 - b) the severity of the disciplinary sanction imposed taking into account the nature of the misconduct and the mitigating circumstances.
 - c) If there are facts to support the correct procedure was followed.
 - d) the fact the new evidence that was not considered in the disciplinary hearing has come to light that would change the outcome.
 - e) there was unlawful discrimination in the handling of the disciplinary.
2. The Employee will have their opportunity to present their appeal of their disciplinary outcome, this should be in relation the facts of the original case and no new evidence should be bought.
3. The original chair of the disciplinary panel may be required to attend to answer any questions of the appeal panel and/ or the employee on how they came to the decision of the outcome to the disciplinary hearing.
4. The Appeal Panel to have the opportunity to ask questions of the employee and their appeal.
5. If in attendance the Appeal Panel may have the opportunity to ask questions of the original disciplinary chair, relating to how they came to their decision and outcome.
6. If in attendance the employee will have the opportunity to ask questions of the original disciplinary chair, relating to how they came to their decision and outcome.
7. The employee will have the opportunity to sum up.
8. The appeal hearing will be adjourned.
9. The Panel to deliberate.
10. The Panel's outcome will be confirmed in writing, explaining how they came to their decision, within five working days along with meeting minutes.
11. There is no further right of appeal.