

EAST SUSSEX COLLEGE GROUP

DISCIPLINARY PROCEDURE

1.0 Scope and Purpose

- 1.1 This policy applies to all members of staff other than “designated senior post holders” as defined in the Group’s Articles of Government or the Director of Governance to the Corporation whom the Group’s disciplinary procedure for senior postholders will apply.
- 1.2 The policy will be applied in accordance with the Articles of Government of the Corporation and in accordance with the Advisory, Conciliation and Arbitration Service’s (ACAS) Code of Practice 1, ‘Disciplinary and Grievance Procedures’ dated March 2015
- 1.3 The purpose of the policy is to help and encourage employees to achieve and maintain acceptable standards of conduct at work.
- 1.4 The policy is also intended to ensure consistent and fair treatment for all in relation to disciplinary action taken in response to misconduct.
- 1.5 This procedure applies to issues of alleged misconduct. A separate procedure will be used to address issues of professional capability and competence.

2.0 General Purpose

- 2.1 Managers are required to familiarise themselves with the disciplinary procedure.
- 2.2 An employee has the right to be accompanied by a representative of a trade union or workplace colleague at formal disciplinary meetings.
- 2.3 In the interest of ensuring that disciplinary matters are resolved promptly, time limits are given for appropriate stages in this procedure. These are for guidance. If it is not practicable to adhere to these time limits, they may be amended for good reasons, ideally by mutual agreement. Due regard will be given to the personal circumstances of all parties involved in the procedure.
- 2.4 It is recognised that disciplinary action against a trade union officer could be seen as an attack on the union’s functions. Although normal disciplinary standards will apply to their conduct as employees, no disciplinary action will be taken until the circumstances

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of the case have been discussed with a full-time official or the Branch Secretary of the union concerned.

- 2.5 Where appropriate, managers should consider alternative means of resolving problems, for example with training, counseling, mediation or use of other more suitable Group procedures, before implementing disciplinary action.
- 2.6 Informal action will be considered, where appropriate, to resolve problems before moving to the formal disciplinary procedure.
- 2.7 For formal action, the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case at a disciplinary meeting, following an investigation, before any decision is made.
- 2.8 Employees will be provided with any written copies of evidence and relevant witness statements in advance of a formal disciplinary meeting.
- 2.9 Normally, the formal disciplinary procedure will be followed in the order of the stages set out in Section 7 below. However, offences of a serious nature may be brought into the procedure at any stage, if any earlier stage would not be severe enough or appropriate to deal with it. For example, there may be occasions when misconduct is considered not to be so serious as to justify dismissal, but serious enough to warrant only one written warning which will be both the first and final written warning. At every stage of the procedure, the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.
- 2.10 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty may be summary dismissal without notice or payment in lieu of notice.
- 2.11 An employee will have the right to appeal against any formal disciplinary action.

3.0 Investigations

- 3.1 No disciplinary action will be taken against an employee until the Group has fully investigated the circumstances of the matter complained of, having regard to the employee's response to allegations.
- 3.2 The Group will inform the employee as soon as possible that an investigation is to be conducted and once the investigation has been concluded.

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- 3.3 The Group shall offer the employee the opportunity to be accompanied by a work place colleague or trade union representative at an investigation meeting.
- 3.4 Depending on the circumstances of the allegations, it may not always be necessary to conduct an investigation meeting with the employee. If a meeting is held, the Group will give the employee advance warning and reasonable time to prepare.
- 3.5 If appropriate, the Group may suspend an employee, in accordance with Section 4 below, whilst the investigation is carried out.
- 3.6 A member of the management will conduct the investigation. The person conducting the investigation will be different to the person chairing any subsequent disciplinary hearing.

4 Suspension

- 4.1. There may be circumstances during an investigation where suspension from duty pending the holding of a formal disciplinary meeting may be appropriate. Examples of circumstances in which suspension may be appropriate, depending on the facts of the situation, include some gross misconduct cases; situations where there are risks to an employee's or Group's property; on the grounds of ill health or injury which is classed as medical suspension or where there are reasonable grounds for concern that evidence has been tampered with, destroyed or witnesses pressurised.
- 4.2 The decision to suspend can only be made by a senior post holder¹. Suspension should only be imposed after careful consideration and it should be made clear to the employee that it is not considered a disciplinary act.
- 4.3 If the senior post holder decides to suspend an employee from duty, he/she shall:
 - Confirm the suspension in writing to the employee without unreasonable delay; and
 - Inform the employee in writing of the reasons for the suspension, without unreasonable delay,
- 4.4 A period of suspension pending a disciplinary meeting should be kept as brief as possible and will be kept under regular review.

¹ Senior post holders refers to Executive Director Resources & OD, Executive Director Strategic Partnerships, Chief Finance Officer or Principals (Hastings, Eastbourne or Lewes)

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- 4.5 An employee who is suspended from duty shall, throughout the period of suspension, continue to be entitled to his/her full pay, unless otherwise stated to the contrary in his/her terms and conditions.
- 4.6 If an employee is suspended without pay, then he/she shall have a right to appeal against that suspension, and the appeal shall be heard and action taken in a timely manner.

5 Informal procedure

- 5.1 Before taking formal disciplinary action, every effort will be made by the line manager to resolve the matter by informal discussions with the employee, if appropriate.
- 5.2 The Group recognises that cases of minor misconduct are often best dealt with informally. Therefore, minor lapses from acceptable standards of conduct will usually be dealt with by the employee's manager by giving informal warnings or reprimands; these will not be recorded on the HR records relating to the employee.
- 5.3 If, despite informal discussions (or if informal discussions are not appropriate), the employees conduct does not meet acceptable standards, the formal procedure, described below, should be used.

6 Formal procedure for disciplinary meetings

- 6.1 If, upon completion of an investigation, there are reasonable grounds to be believed that an employee has committed an act of misconduct, the Group will invite the employee to attend a disciplinary meeting. The employee will be advised in writing of the nature of the alleged misconduct, the possible consequences of the meeting and any relevant papers (such as written evidence and witness statements) to enable the employee to prepare for the meeting. The Group will write to the employee with all the information at least 5 working days before the meeting. The written notification will also detail the date and venue of the meeting and the employee's right to be accompanied.
- 6.2 If an employee wishes to call relevant witnesses to the meeting, he/she should advise the Group of this in advance of the meeting. The employee will be informed prior to the meeting if the Group intends to call relevant witnesses.
- 6.3 Before the meeting takes place, the employee should inform the Group who they are bringing as their work place colleague or trade union representative.

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- 6.4 At any disciplinary meeting, the employee will be given an opportunity to state his or her case and will have the right to be accompanied by the trade union representative or work place colleague of his or her choice, subject to a reasonable request being made. However, if the work place colleague or trade union representative is unavailable on the date of the initial meeting, the employee may delay the date of the meeting once by up to ten working days to enable the chosen work place colleague or trade union representative to attend. The timing of any alternative meeting should be convenient to both the employer and the employee, but should not unduly delay the process.
- 6.5 Representatives of the Group, the employee and the employee’s representative should make every effort to attend the meeting. If the employee fails persistently, without good reason, to attend a disciplinary meeting which the Group has instructed him or her to attend, the meeting will take place, and a decision will be made, in his or her absence. In other circumstances where it seems likely that for a lengthy period, the employee will be unable to attend a disciplinary meeting, the Group reserves the right to go ahead with that meeting, affording the employee the right to either submit written representations and/or be represented by a workplace colleague or trade union representative.
- 6.6 The disciplinary meeting will usually be chaired by an independent manager with no previous involvement in the case. This manager could be internal or external and (if internal) will usually be someone more senior than the person facing disciplinary action. Where dismissal is a possible outcome of the meeting, the meeting will always be chaired by a senior post holder.
- 6.7 The manager who conducted the investigation shall not be a member of the panel at the disciplinary meeting, but may attend in order to present the findings of the investigation and any supporting material.
- 6.8 The outcome of the disciplinary meeting will be confirmed in writing to the employee. Where disciplinary action is the outcome, the employee will be informed of the nature of the action and the right to appeal under this procedure.

7 Disciplinary action

- 7.1 Normally the stages described in Section 7 will be cumulative; however, the Group reserves the right to implement the procedure at stage 2 or 3 if the employee’s alleged misconduct warrants this. The right will also apply in circumstances where an employee commits a further act of alleged misconduct that is sufficiently serious, whilst a formal warning is in place.

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Stage 1 - Formal Written Warning

- 7.2 A formal written warning will usually be given to the employee by his or her manager if;
- The employee commits a serious act of misconduct or the standard of his or her work performance is seriously inadequate;
- 7.3 In misconduct cases the written warning will give details of the employee's misconduct, the improvement required and the time limit within which such improvement must be achieved. The warning will state that, if the employee commits a further offence of misconduct during the period specified in the warning, action under Stage 2 will be considered. The written warning will also advise the employee of the right of appeal in accordance with Section 9.
- 7.4 In performance cases the written warning will give details of the employee's unsatisfactory work performance, the improvement required and the time limit within which such improvement must be achieved. The warning will advise the employee as to what steps he or she should take to improve and will state that, unless such improvement is achieved within the period specified in the warning, action under Stage 2 will be considered. The written warning will also advise the employee of the right of appeal in accordance with Section 9.
- 7.5 A copy of the written warning will be placed on the employee's HR file. The warning will be spent, and will be disregarded for disciplinary purposes after 6 months, subject to the employee's conduct and work performance having been satisfactory throughout that period.

Stage 2 - Final Written Warning

- 7.6 A final written warning will normally be given to the employee if:
- i. the employee fails to comply with a formal written warning given under Stage 1;
 - ii. despite having been given, under Stage 1, a written warning as the result of misconduct or unsatisfactory work performance, the employee commits a further offence of misconduct, or his or her work performance continues to be unsatisfactory; or

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iii. the employee’s misconduct or unsatisfactory work performance, although not considered to be serious enough to justify summary dismissal, is sufficiently serious to warrant a final written warning.

7.7 In misconduct cases: the final written warning will give details of the employee’s misconduct, the improvement required and the time limit within which such improvement must be achieved. The warning will state that, if the employee commits a further offence of misconduct, during the time limit specified in the warning, his or her employment may be terminated. The final warning will advise the employee of the right of appeal in accordance with Section 9.

7.8 In performance cases: the final written warning will give details of the employee’s unsatisfactory work performance, the improvement required and the time limit within which such improvement must be achieved. The warning will advise the employee as to what steps he or she should take to improve and state that, if such improvement is not achieved within the period specified in the warning, his or her employment may be terminated. The final written warning will also advise the employee of the right of appeal in accordance with Section 9.

7.9 A copy of the written warning will be placed on the employee’s HR file. The warning will be spent, and will be disregarded for disciplinary purposes after 12 months (although, in exceptional cases, the period may be longer), subject to the employee’s conduct and work performance having been satisfactory throughout that period. Spent warnings should be removed from an employee’s HR file. Where the misconduct is of a similar nature to that of a live or lapsed previous warning, the final written warning may remain on file for 18 months.

Stage 3 - Dismissal

7.10 The senior post holder may, following a disciplinary meeting, give notice of dismissal to the employee if:

- (i) the employee has failed to comply with a final written warning given under Stage 2; or
- (ii) despite having been given, under Stage 2, a final written warning as the result of misconduct, or unsatisfactory work performance, the employee commits a further offence of misconduct or his or her work performance continues to be unsatisfactory.

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7.11 The decision to dismiss will be communicated in writing to the employee and will specify the reasons for dismissal and the date on which the employment will terminate. The communication will also notify the employee of his/her right of appeal against the decision in accordance with Section 9.

8 Gross Misconduct

8.1 The senior post holder, may summarily dismiss the employee without notice or pay in lieu of notice, if on completion of an investigation and a disciplinary meeting, it is established that the employee has been guilty of gross misconduct.

8.2 In the event of a summary dismissal the senior post holder, shall, without reasonable delay, provide the dismissed employee with a written statement of the alleged misconduct which has led to the dismissal and the reasons why it is considered that the employee was guilty of such misconduct and notifying the employee of the right to appeal against the dismissal.

8.3 The following offences are examples of offences which are normally regarded as grounds for summary dismissal:

- Theft or unauthorised possession of any property or facilities belonging to the Group, or to any employee or student.
- Serious damage deliberately sustained to Group property.
- Deliberate falsification of Group registers, reports, accounts, expense claims or self-certification forms.
- Bribery, corruption or malpractice.
- Deliberate refusal to carry out duties or reasonable instructions or to comply with Group rules.
- Serious acts of insubordination.
- Serious negligence/incompetence which causes unacceptable loss, damage or injury.
- Serious incapability as a result of being intoxicated by reason of alcohol, illegal or prescription drugs.
- Violent, dangerous or intimidatory conduct.
- Bullying
- Violation of the Group's rules and procedures concerning prevent duty at work, safeguarding or equality.
- Violation of the Group's rules and procedures concerning health and safety at work.

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- Unlawful discrimination or harassment of another employee, student or a visitor to the Group.
- A criminal offence, which may (whether it is committed during or outside the employee’s hours of work for the Group) adversely affect the Group’s reputation, the employee’s suitability for the type of work he or she is employed by the Group to perform, or his or her acceptability to other employees or to students.
- Falsification or omission of any information used in support of an application for a post with the Group (unless under the terms of the Rehabilitation of Offenders Act 1974 the conviction is “spent”).
- Use of Group labour or other resources for private purposes without appropriate approval.
- Destruction or damage to or withholding any documents required for the purposes of the Group.
- Disclosure of confidential information relating to the business of the Group, the Corporation, employees, students or any other body with whom it has dealings, against known codes, standards or instructions.
- Serious misuse of the Group name or property
- Deliberately accessing internet sites containing pornographic, offensive or obscene material

The above examples are not exhaustive or exclusive and offences of a similar nature will be dealt with under this procedure.

9 Appeals

- 9.1 An employee who wishes to appeal against a disciplinary decision must do so within 10 working days of the date of the decision. To do so, the employee should inform the Director of Human Resources in writing, stating the grounds for appeal.
- 9.2 Where the appeal is against a written warning, it will be heard by a senior manager who has not been involved in the disciplinary process in question so far. Wherever possible, the manager hearing the appeal will be senior to the manager who chaired the original disciplinary meeting.
- 9.3 Where the appeal is against dismissal (including summary dismissal), it will be heard by:
- i. the CEO, with support from HR, where the decision to dismiss was made by a senior post holder;

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- 9.4 The appeal will be held as soon as reasonably practicable after the notice to appeal has been received. The employee will be given at least five days' notice of the meeting date to allow him or her to prepare for the meeting.
- 9.5 At the appeal meeting, the employee will be given the opportunity to state his or her case and has the right to be accompanied by a representative of a trade union or a work place colleague.
- 9.6 If the chosen representative of the employee is unavailable on the date of the initial meeting, the employee may delay the date of that meeting once by up to ten working days to enable the chosen representative to attend. The location and timing of any alternative meeting should be convenient to both the employer and the employee but should not unduly delay the process.
- 9.7 At the appeal, the disciplinary penalty imposed will be reviewed, but it cannot be increased. The appeal decision will be notified to the employee in writing without unreasonable delay following the appeal meeting. The appeal decision is final.

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