

Disciplinary Policy

Sept 2021

Version 4

1. Scope

This policy is applicable to all Expanse Learning employees. With the exception of the section entitled '**Alternative Disciplinary Sanction**', this policy is **entirely non-contractual** and does not form part of employees' terms and conditions of employment.

2. 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 all employees are treated fairly and consistently when a disciplinary issue is being dealt with
- Line Managers will be responsible for the application of the disciplinary policy for the employees under their leadership. They may be supported by Corporate Services where it is deemed appropriate. *Guidance should be sought before disciplinary process commences.*

3. Legislation and guidance

These disciplinary procedures are based on the Disciplinary and grievance code of practice from ACAS

4. Definitions

A disciplinary issue will arise when an employee has not behaved to the standard expected of them.

Appendix 1 sets out a non-exhaustive list of examples of what we define as **misconduct and gross misconduct**. For the avoidance of doubt, this policy does not apply to cases involving sickness absence, redundancy or poor performance. Please refer to the Absence Management Policy, Redundancy Policy and Capability Policy for further information in these circumstances.

4. Disciplinary procedures

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

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

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 their Line Manager. This will be followed up in writing.

5. Suspension

In some circumstances it will be appropriate to suspend an employee temporarily, for example, where there is suspected gross misconduct. This will be a neutral act in that, in itself, it does not amount to guilt or constitute disciplinary action. Where this is necessary:

- The Line Manager must authorise the suspension. If it is the Line Manager who is the subject of the disciplinary procedure, the Senior Leadership Team must authorise the suspension
- The staff member will be informed of the suspension in a face-to-face meeting, followed by a notification in writing within 3 working days
- During any suspension the employee will be paid in accordance with their terms and conditions.

6. Investigation

If it becomes necessary to formally address issues regarding an employee's conduct the matter will first be investigated by an appointed independent investigating officer. The purpose of this is to enable Expanse Learning to establish a fair and balanced view of the facts relating to the allegation against the employee before deciding whether or not to proceed to a disciplinary hearing.

This will be carried out thoroughly and as quickly as possible in all circumstances. Confidentiality will be maintained, as far as reasonably practicable, during the investigation and throughout the disciplinary process, should this be activated.

Employees do not have the right to bring a colleague or trade union representative to investigation interviews. The employee will be informed of the outcome of the investigation in writing. 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.

7. Notification

If after an investigation has been carried out, it is considered that there is a case to answer, the employee will be informed in writing, as early as possible of the allegations against them, the basis for those allegations and what the likely range of consequences will be if Expanse Learning decide after the hearing that the allegations are true.

The employee will receive written notice of the date, time and location for the disciplinary hearing. The hearing will be held as soon as reasonably practicable and the employee will be given reasonable time to prepare their case based on the information given to them. This will usually be between 2 and 5 working days however the meeting could be sooner if it is agreed by both parties.

The notification will include:

- Details of the alleged misconduct and its possible consequences
- Copies of any written evidence, including witness statements
- The time, date and location of the disciplinary meeting
- A statement that the employee has the right to be accompanied by a colleague or a trade union representative
- Notification that the employer intends to call witnesses (if relevant)
- If the employee intends to call a witness, they should notify the employer.
- Name of the disciplinary officer who will conduct the hearing.

8. Rearranging and adjourning hearings

If an employee or companion cannot attend a hearing, the employee should inform the hearing officer immediately. Expanse Learning will usually re-arrange the meeting. Employees must make every effort to attend a scheduled hearing and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason or are persistently unable to attend, Expanse Learning may need to make decision based on the available evidence including any written representations the employee may have made.

A hearing may be adjourned if Expanse Learning need to carry out further investigations such as re-interviewing witnesses in the light of any new information raised at the hearing. The employee will be given reasonable opportunity to consider any new information obtained before the hearing is reconvened.

9. Disciplinary hearing

At the hearing the person conducting the hearing will explain the case against the employee and go through the evidence that has been gathered. At the hearing an employee:

- Will be permitted to call witnesses who are willing to give evidence in support of their case and /or produce statements.
- Will be allowed to set out their case and answer any allegations that have been made. The employee will also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses.
- Will also be given an opportunity to raise points about any information provided by witnesses.

If an employee intends to call relevant witnesses to appear at the disciplinary hearing (or at an appeal hearing), the employee must give Expanse Learning sufficient advance notice to make arrangement for the witness's attendance. An employee will be given the opportunity to respond to any information given by a witness, however employees will not be permitted to cross-examine any witnesses unless, in exceptional circumstances, Expanse Learning decide a fair hearing could not be held otherwise.

In cases where an employee already has a live warning in place on their file, an independent manager, different to the one who heard the previous disciplinary (and where appropriate, appeal) will be appointed to conduct the disciplinary hearing.

If, after a disciplinary hearing, misconduct is considered to have taken place the outcome will be confirmed in writing as soon as is practicable.

10. Right to be accompanied

Employees have the statutory right to be accompanied to any formal disciplinary hearing (including appeals hearings) by a colleague or trade union representative. The employee must tell the manager conducting the hearing who the companion is in good time before the hearing.

If the companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days Expanse Learning may require the employee to choose someone else. The companion can address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. A companion may make representations, ask questions and sum up an employee's case, however, does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case. Employee's may confer privately with their companion at any time during the hearing.

11. Taking appropriate action

The hearing will be adjourned and a decision about whether further disciplinary action is necessary will be taken.

The employee will be informed of the decision in writing within five working days.

Actions taken may be:

- **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. 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
- **Dismissal** where there has been gross misconduct, or a final written warning has already been given.

We will refer a case of teacher gross misconduct to the Department of Education (DfE) if we believe the case is so severe that they should consider whether the teacher should be prevented from teaching. We will also refer cases to other relevant authorities where appropriate such as the Local Authority.

As a general rule, the duration of warnings are as follows:

Level of warning	Timescale
A verbal or informal	6 months
A first written	6 months
A final written	12 months
Dismissal	N/A

12. Dismissal

Once the decision to dismiss has been taken, the disciplinary hearing manager will dismiss the staff member with notice. Please refer to appendix 4.

13. Appeals process

- The employee has the right to appeal any sanction. Appeals must be made in writing within five working days of the decision, setting out at the same time the grounds for appeal. A disciplinary appeals officer/panel will be appointed.
- Appeals will be heard without unreasonable delay and at an agreed time and place. Employees' statutory right to be accompanied by a companion will apply as with formal disciplinary hearings. Notes will be taken, and a copy sent to the employee.
- The appeal will be dealt with impartially and by senior leaders or governors who have not previously been involved in the case.
- The employee will be informed in writing of the results of the appeal hearing within 5 working days.

14. Special cases

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, after obtaining the employee's agreement. The procedure will continue as normal.
- Who is subject to disciplinary procedures raises a grievance about the disciplinary allegations or the procedure itself, the grievance procedure will run concurrently.
- 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.

15. Alternative Disciplinary action

As an alternative to issuing a final warning or as an alternative to dismissal, Expanse Learning reserves the right to demote an employee for a fixed period, but for no longer than three months. This will be done by notice in writing to the employee. Expanse Learning also reserves the right to impose a reduction in the employee's salary for the period of the demotion and the written notice will detail any changes to the employee's terms and conditions of employment arising from such demotion. In particular, the notice will give details of any reduction to salary and/or loss of benefits arising from the demotion. Where demotion is used as an alternative to summary dismissal for gross misconduct, Expanse Learning may also issue the employee with a final written warning.

16. Employees with short service

This disciplinary policy does not apply to any employee who has been employed by the company less than two years

17. Record keeping

Minutes will be kept of all interviews and meetings. Where possible, these will be confirmed as an accurate reflection of what was discussed during the meeting. Records of all materials relating to the disciplinary process will be kept securely, only for as long as necessary and in line with data protection law, our privacy notices and retention policy.

If disciplinary action is taken, a record of this will be added to the employee's personnel file. We will disclose any proven disciplinary offences by an employee if a reference is requested by a future employer.

18. Monitoring arrangements

This policy will be reviewed every 12 months but can be revised as needed. It will be reviewed by the governing body

19. Links with other policies

This policy links with our policies on:

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| ○ Staff code of conduct Policy | ○ Safeguarding policy |
| ○ Capability policy | ○ ICT Acceptable Use policy |
| ○ Grievance procedures | ○ Data protection and Privacy notice policy |
| ○ Equality policy | |

Impact of non-compliance

Staff: Disciplinary action, Support, Action Plan
Student: Not applicable
Legislation/organisational: statutory and non-regulated compliance. Prosecution, Staff Retention, Poor employee performance etc
Compliance lead: Corporate Services
Policy Reference: EGL-POL-HRM-006
Version: 4
Agreed policy location: DatabridgeMIS
Does the policy require Governor approval? No

Approval

<p>Prepared by Scott Roberts 31/08/2021</p>  <p>Head of Corporate Services</p>	<p>Approved by Tony Brown 31/08/2021</p>  <p>CEO</p>	<p>Counter Signatory Karl Wane 31/08/2021</p>  <p>Director of college</p>
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Version Control

Version	Date	Revision	Review Date
1	27/03/2019	First Issue	26/03/2020
2	01/09/2019	Policy review in line with strategic changes and transfer onto 2019/20 policy template.	31/08/2020
3	01/09/2020	Reviewed	31/08/2021
4	01/09/2021	Policy Reviewed	31/08/2022
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Appendix 1 - Instances and behaviours classed as misconduct

Instances of misconduct include (*The following lists are not exhaustive*):

- Unauthorised absence or persistent lateness from work
- Minor breach in Expanse Learning policies and procedures
- Using bad language in front of students
- Unruly behaviour
- Failure to report any accident or personal injury in which the employee is involved, or which occurred during the course of employment
- Unsatisfactory standards of work (not related to capability)
- Inappropriate or unauthorised use of Expanse Learning's facilities, property or equipment
- Failure to comply with reasonable instructions from senior staff
- Any other behaviour which Expanse Learning considers to be unacceptable or which brings Expanse Learning into disrepute.

Appendix 2 - Instances and behaviours classed as gross misconduct

Instances of gross misconduct include (*The following lists are not exhaustive*):

- Physical violence, fighting, assault, or attempting to cause, or threatening injury to another while at work or on Expanse Learning property.
- Discrimination, harassment, victimisation and/or bullying of students, colleagues or visitors
- Sexual offences or misconduct
- Causing damage to Expanse Learning, its clients or employees' property intentionally, recklessly or through negligence or bad workmanship
- Inappropriate relationships with students or any other actions that would be classed as a serious safeguarding issue
- Any actions of bribery, including both the offering and accepting of bribes.
- Conviction of a criminal offense, in the reasonable opinion of Expanse Learning, may affect Expanse Learning's reputation or relationships with employees, customers or the public, or otherwise, in the reasonable opinion of Expanse Learning, renders the employee unsuitable to continue the duties for which the employee was engaged.
- Unauthorized disclosure of confidential Expanse Learning information.
- Deliberately acting in a way that will cause damage to Expanse Learning's reputation. For example, posting derogatory, offensive, discriminatory or defamatory comments about the company on social media or other online platforms.
- Disregard of any aspect of the Health and Safety Policy. This will include the failure to report any incidents which may endanger the health of others.
- Serious disregard for Expanse Learning policies and procedures.
- Making untrue allegations in bad faith against a colleague
- Misuse of benefits, such as improper use of a staff discount card etc.
- Dereliction of duty, including sleeping whilst at work and undertaking unauthorized activities during normal working hours.
- Wilful refusal to obey a reasonable management instruction or serious insubordination
- Using Expanse Learning property, materials or equipment to carry out work for a third party without permission.
- Vandalism of, or otherwise intentionally interfering with, Expanse Learning's ICT equipment, software, structure and networks
- Dishonesty or suspicion of dishonesty in the performance of duties including, but not limited to theft, misappropriation, or conversion of Expanse Learning or client property, cash, falsifying documents, false declarations in connection with employment or applications for employment.
- Serious incapacity at work through an excess of alcohol or illegal drugs, whether consumed on or off Expanse Learning premises but which affects the employee's ability to carry out their job duties
- Bringing illegal drugs or other illegal substances or items or weapons on to Expanse Learning premises.
- Smoking on company premises.
- Logging onto sexually explicit websites, downloading or circulating pornographic or other offensive, illegal or obscene material or using the internet or e-mail for gambling, illegal activities or the sending of offensive emails to work colleagues (in the latter case, including from the employee's home computer outside of normal working hours)
- Engaging in sexual activity on company premises at any time
- A serious breach of security rules
- Working for a competitor without permission
- Knowingly breaking a legal requirement in connection with employment
- Bringing the company into serious disrepute, even if done in the employee's own time
- Unauthorised absence, including failure to return from a period of annual leave or other approved leave of absence
- Breaching copyright or any other proprietary interest belonging to the company.

Appendix 3 - Teacher misconduct guidance

Teacher misconduct guidance from the Department of Education (DfE) 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 students, and particularly where there is a continuing risk
- Actions or behaviours that undermine fundamental British values
- Abuse of position or trust (particularly involving vulnerable students) or violation of the rights of students
- Sustained or serious bullying, or other deliberate behaviour that undermines students, the profession, the school or colleagues

Appendix 4 – Authority to take action under the disciplinary procedures is in accordance with the following table:

Disciplinary stage	Nature	Conducted by
Stage 1 – Formal verbal warning	Unsatisfactory conduct where there are no previous active warnings	Line manager or alternative appointed manager
Stage 2 – First written warning	Misconduct which warrants a written warning even though there are no previous active formal verbal warning or Repeated misconduct/no improvement where a previous active formal warning has been issued	Line manager or alternative appointed manager
Stage 3 – Final written warning	Serious misconduct which warrants a final warning even though there are no previous active warnings or Repeated misconduct/no improvement where a previous active written warning has been issued	Line manager or alternative appointed manager
Stage 4 – Dismissal	Gross misconduct or Repeated misconduct/no improvement where a previous active final written warning has been issued	Line manager / alternative appointed manager / Senior Leadership Team member / Governor
Appeal	Next level of manager to that taking the original disciplinary decision (and where possible one who has not been previously involved in the process) or Senior Leadership Team or governor, and a Human Resources representative. Both the manager and HR representative should ideally be independent of the earlier investigation and decision. Where they are not, an alternative manager/senior leadership team member or governor should be sought.	

The table will apply in normal circumstances however, there may be circumstances where alternative Expansive Learning representation can be called upon to perform the task. These may include:

- Senior Leadership Team
- Governors
- External resources