

EAST MIDLANDS
EDUCATION TRUST

HARASSMENT PROCEDURE

Summer 2021



East Midlands
Education Trust

East Midlands Education Trust

STAFF HARASSMENT PROCEDURE

1 Introduction

- 1.1 The East Midlands Education Trust (EMET) is committed to promoting equality of opportunity for all staff within the Trust. In doing so, Trustees will not tolerate any form of harassment, intimidation, adult bullying, unfair discrimination or victimisation by or against any staff employed by the Trust. Both sexual and racial harassment are unlawful and the Trust, in the exercise of its powers and responsibilities is determined to eliminate such harassment and other forms of unacceptable behaviour in order for all staff to work in a climate and culture which are supportive and non-threatening.
- 1.2 The aim of this harassment policy and procedure is to ensure that mechanisms exist within each school which:
- aim to prevent harassment by ensuring that all staff and governors understand their responsibilities in this respect.
 - enable staff to raise complaints in the knowledge that the Governing Body and senior management will take such complaints seriously, listen to the concerns and respond appropriately.
 - deal with the problem of harassment in a manner which respects the rights of the complainant to confidentiality and support in pursuing their complaint.
 - ensure there is no repetition of harassment and that appropriate action can be taken within the framework of the EMET disciplinary procedure if harassment has occurred.
- 1.3 The Trustees recognise that in some circumstances, thorough investigation of some complaints may be very time consuming. However, in most circumstances it is anticipated that, from the receipt of the complaint to the notification to the complainant of the action to be taken, the procedure should normally not exceed a period of 20 working days.
- 1.4 The procedure will apply to all Trust staff.
- 1.5 Whilst it is expected that other than in exceptional circumstances members of staff will attend meetings arranged as part of the procedures outlined in this policy, any reference to the right to be accompanied means:
- Where an employee has a right to be accompanied, they may be accompanied by a work colleague or trade union representative (the 'Companion').
 - Subject to the following paragraph, the Companion shall be entitled to address the hearing to put the employee's case; sum up that case; and respond on the employee's behalf to any view expressed at the hearing. The Companion may also confer with the employee during the hearing.
 - The Companion shall not be entitled to use the above entitlements in a way that prevents the employer from explaining its case or prevents any other person at the hearing from making their contribution to it.
 - The Companion shall not be entitled to address the hearing if the employee indicates during the hearing that they do not wish the companion to do so, or answer questions on behalf of the employee.

2 Scope and Definition

- 2.1 The Trust's Harassment Procedure is intended to address employee complaints about the conduct of a colleague where bullying, harassment or some other form of discriminatory behavior may be involved. The complaint of harassment will therefore normally be made against a named individual.
- 2.2 There is no simple definition of harassment. It can take many forms and may be directed at an individual or at groups of people. Trustees regard harassment as a form of misconduct which covers all unwanted action or conduct which affects the dignity of men and women at work. It is described by ACAS as *"unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment."* (Appendix 2 sets out the guidance framework for the scope of Harassment complaints)
- 2.3 Trustees recognise that harassment is unwanted behaviour which has the effect of diminishing a person's position, status or esteem. It can be imposed on an individual by another on the basis of perceived differences, particularly in respect of sex, race, sexual orientation, disability or medical condition, religion, cultural or language differences, age, physical attributes or trade union or political affiliation.
- 2.4 Such behaviour may range from physical contact and unwelcome sexual advances through to verbal abuse or non-verbal gestures, body language or offensive material.
- 2.5 Although this procedure concentrates on processes for dealing with the conduct of employees, Trustees expect that every individual within the Trust has the right to be treated fairly, equally and with respect. This includes all school staff, pupils, parents and governors, together with all external contractors working on site. Each individual in that community has a responsibility to treat other members of the community in such a manner.
- 2.6 The Trust's Grievance procedure should be used to cover all other complaints or where the member of staff believes that the school has failed to properly address their harassment complaints using the procedures set out in this document.

3 Responsibilities

- 3.1 Harassment may, under certain circumstances, constitute a criminal offence or may contravene other obligations imposed by the law, such as Health and Safety at Work etc., Act 1974, or a duty, contractual or otherwise to be a good employer. Where a criminal offence is suspected, the member of staff will be advised to contact the Police. In such cases, the perpetrator may subsequently face court action as well as disciplinary proceedings.
- 3.2 The Trust will take steps to prohibit discriminatory behaviour which is detrimental to the well-being of the employees affected and which destroys the trust and confidence within the workplace.
- 3.3 All staff have a duty and a responsibility to assist in the creation of a safe work environment where unacceptable behaviour is not tolerated. Therefore, they must ensure that the standard of conduct for themselves and for colleagues respects the dignity of others and does not cause offence.

- 3.4 Every member of staff has a duty to contribute to preventing and stopping harassment in the workplace by:
- challenging and helping to stop unacceptable behaviour in the workplace.
 - informing the appropriate manager of any incidents of harassment.
 - providing support to any colleague subjected to harassment.
 - ensuring that their conduct does not in any way contribute to incidents of harassment.
 - not colluding with any inappropriate behaviour.
 - co-operating fully in any investigation undertaken.
- 3.5 Victimisation of those making or supporting a harassment complaint is unlawful but may arise when:
- after having made a complaint the recipient of the harassment is treated unfavourably or detrimentally by their manager or colleagues, or
 - a member of staff who has supported a colleague or colleagues in challenging unacceptable behaviour finds that they are treated in an unfavourable or detrimental manner by their manager or colleagues.

The school will therefore ensure that this does not arise by monitoring the situation and taking the appropriate steps to prohibit it.

4 Harassment Procedure

Stage 1 - Informal

- 4.1 If a member of staff wishes to raise a complaint they should first of all make clear to the harasser that the behaviour is unacceptable. This may be difficult and the complainant may feel they would wish to be accompanied by a companion who may be a colleague or trade union representative. The approach should be clear and specific about the behaviour which is offensive and ask for it to be stopped. The objective at this stage is to secure the understanding of the individual that the complainant finds the behaviour unacceptable. It may be in securing that understanding from someone who is unaware of the effect of their actions, the matter is resolved.
- 4.2 Alternatively, the member of staff may raise the issue with the Head Teacher, either orally or in writing. Where the complaint is against the Head Teacher, the member of staff should in the first instance refer the matter to the Chair of Governors, who should seek advice from the HR Director. Where a Head Teacher wishes to raise a complaint under this procedure, the matter should in the first instance be referred to the Chair of the Trustees Board.
- 4.3 The Head Teacher or a nominated member of the senior management team will arrange to meet with the member of staff, usually within 5 working days of the receipt of the complaint. The member of staff will have the right to be accompanied by a companion. The purpose of the meeting will be to enable the manager to understand the nature of the incidents / behaviour and their effect on the member of staff and to ascertain whether or not the matter has already been brought to the attention of the alleged offender.
- 4.4 Following the meeting with the member of staff the senior manager will arrange to discuss the complaint with the alleged offender, and any other relevant persons as agreed with

the member of staff making the complaint. However, in more serious cases the matter may be investigated immediately under Stage 2 of the EMET Harassment Procedure.

- 4.5 If the complainant decides not to proceed and the matter has been submitted to the Head Teacher in writing, the complainant may decide whether the letter should be retained or returned. The Head Teacher, however, will keep a note of the action taken.
- 4.6 The member of staff will be kept informed about the progress of any agreed action and will be advised of the outcome of the informal investigation and any proposed action. If difficulties occur which mean that the agreed timescales cannot be met, a new timescale will be agreed as appropriate with all parties.
- 4.7 The Trust recognises that in some circumstances, mediation through the involvement of an impartial third party may assist in dealing with the complaint. If this is deemed appropriate, the mediator will be agreed by all parties. Where mediation is agreed this will not prejudice the right of the member of staff to access the grievance procedure if a resolution is not achieved by this means and there are grounds to proceed.
- 4.8 The outcomes of the informal stage could include one or more of the following:
- an apology
 - greater awareness by the offender that the behaviour is unwelcome or upsetting
 - a better understanding by management and the offender of the complainant's position
 - an agreement is reached that the behaviour will cease
 - an understanding that, if any further incidents occur, disciplinary action may be taken
 - a conclusion that the complaint or allegation is unfounded
 - advice, guidance, training or counselling for either party
 - no further action
 - a decision to proceed with Stage Two formal procedures
- 4.9 If the member of staff is not satisfied with the outcome of the informal stage or if the harassment continues, they may request that the matter is taken to the next stage.

5 Suspension

- 5.1 In some cases it may be necessary for the Head Teacher to consider suspending the alleged offender. This will only usually be considered where there is a potential risk in allowing the alleged offender to remain in the workplace. The justification for this may include that there is:

- a possibility of intimidation of the complainant or any potential witnesses;
- a need to reduce tensions in the working environment;
- a need to facilitate a full investigation.

- 5.2 Suspension of a member of staff will be managed in accordance with the procedure set out in the Trust's Disciplinary Procedure paragraphs 6.2 and 7.4.

6 Harassment Procedure

Stage 2 - Formal

- 6.1 If, following the informal procedures set out in stage 1 above, a member of staff wishes to make a formal complaint under stage 2 of this procedure, they should do so in writing to the Head Teacher as appropriate. The written information must include:
- clear, specific, allegations against named people
 - dates, times and witnesses provided where these are known
 - factual descriptions of events rather than opinions or assumptions
 - direct quotes if these can be remembered
 - a brief description of the context of each incident
 - an indication of how each incident made the complainant feel and the effect it had
 - any documentary evidence
 - details of any action that has already been taken
- 6.2 On receipt of the formal complaint the Head Teacher will consider the following:
- suspension of the alleged offender if appropriate, where this has not previously been considered;
 - undertaking a formal investigation into the complaint.
- 6.3 Where a formal investigation is to be undertaken this will be investigated by an appropriate member of the senior leadership team. As far as possible the formal investigation will be completed within 20 working days.
- 6.4 The nominated investigating officer will be responsible for undertaking a full investigation which will include formal interviews with the complainant, the alleged offender(s) and any relevant witnesses identified by the complainant, alleged offender and/or as a result of the investigation. All parties interviewed as part of the formal investigation will have the opportunity to be accompanied by a companion if they so wish.
- 6.5 The investigating officer will ensure that formal notes of each investigation meeting will be taken and shared with the individual for comment and where possible agreement.
- 6.6 The member of staff making the complaint will be kept fully informed of progress as the matter progresses.
- 6.7 On completion of the investigation the investigating officer will produce an investigation report and discuss that with the Head Teacher to consider the necessary action to resolve the complaint which may include one or more of the following:
- an apology by the offender(s)
 - greater awareness by the offender that the behaviour is unwelcome or upsetting
 - a better understanding by management and the offender of the complainant's position
 - an agreement is reached that the behaviour will cease
 - an understanding that, if any further incidents occur, disciplinary action may be taken
 - a conclusion that the complaint or allegation is unfounded
 - advice, guidance, training or counselling for either party
 - no further action
 - a decision to proceed to Stage Three formal procedures - formal disciplinary hearing
- 6.8 The complainant and alleged offender will be told separately of the recommendations and be given the opportunity to comment within 5 working days on the investigation (process and recommendations) prior to the Head Teacher/investigating officer confirming the decision and putting any recommendations in writing. Formal written

notification of the decision will be sent to the complainant and the alleged offender(s) within 10 working days of the verbal notification of the outcome.

- 6.9 If the decision does not result in disciplinary action and if either the complainant or alleged offender is not satisfied with this outcome, they will have recourse to the Trust's Grievance Procedure. In such cases the specific grounds for raising the grievance must be stated in writing to the Head Teacher or Chair of Governors as appropriate.
- 6.10 If the outcome of the investigation is to convene a governors' disciplinary hearing (Stage 3 of the Formal Harassment Procedures) this will be held in line with the Trust's Disciplinary Procedures – Section 8. Any concerns raised by the alleged offender will be considered as part of that process.
- 6.11 However, regardless of whether the complaint is upheld or not, consideration will be given to what steps need to be taken to restore good working relationships between the respective parties.

7 Harassment Procedure

Stage 3 – Formal Disciplinary Hearing

- 7.1 Complaints raised formally through the Harassment Procedure may, subject to the findings of a full investigation, result in a formal disciplinary hearing. This hearing will be conducted in line with the Trust's Disciplinary procedures - Section 8
- 7.2 The formal disciplinary panel will comprise three governors, with no previous involvement in the case. The panel may include the Head Teacher where they have not previously been involved in the case.
- 7.3 In the first instance the panel should be made up of Governors of the school. However, it is recognised that at times it can be difficult to secure three independent Governors, due to HR processes with multiple steps or in schools that have a small number of Governors. In these cases, it would be acceptable to invite Governors from another school within the Trust to complete the panel.
- 7.4 In some circumstances, such as the need to bring in additional expertise, the school may seek to include a trustee on a panel. Trustees reserve the right to place a trustee on a governor panel if they wish to do so.
- 7.5 In all cases, schools must strive to include at least one member of their Governing Body on panels to share local knowledge of their school with other panel members, where possible.
- 7.6 The panel will be as representative as possible according to the circumstances of the complaint. Due to the sensitive nature of harassment it is acknowledged that the panel may wish to make revisions to the formal conduct of the hearing. However, the rules of natural justice will be applied by the disciplinary panel in affording both sides the opportunity of a thorough exploration of the issues.
- 7.7 Appendix 1 sets out the procedure for the formal disciplinary hearing.

8 Rights of Appeal

- 8.1 Following the completion of Stage 3 - Formal Disciplinary Hearing, there is no further right of appeal by the person who has raised the harassment complaint.
- 8.2 The member of staff making the complaint has the right to raise a grievance if they have grounds for complaint about the Trust's implementation of the harassment procedures. However, there is no recourse to an appeal or grievance procedure if they are dissatisfied with the outcome of the disciplinary hearing held to consider the conduct of the member of staff, against whom their harassment complaint was raised.
- 8.3 The member of staff against whom the harassment complaint has been made has the right to appeal against a decision of the disciplinary panel. A formal appeal should be submitted to the Head Teacher in writing within 5 working days of receipt of the outcome letter. Arrangements for the appeal to be heard will be made in line with the Trust's Disciplinary Procedures.

9 Managing Future Working Arrangements

- 9.1 The Trust recognises that it is likely that during the management of the harassment complaint procedures, issues will arise that, following resolution of the complaint, will require careful support both for the complainant and the alleged offender.
- 9.2 The Trust will seek to ensure it maintains a harassment free and fair workplace and that where there are potential long term damaged or difficult working relationships for the immediate future, all parties will be supported to address those effectively.
- 9.3 At the conclusion of the process, the Head Teacher will be responsible to ensure proper integration of the complainant back into the workplace. This may involve discussions with staff, changed working arrangements or initial support. In some cases, the same may apply to the alleged harasser and similar arrangements may need to be initiated to secure appropriate working relationships generally.
- 9.4 Where it is considered appropriate, the school will provide access to a counseling service for individuals or groups or offer training and support where teams have become dysfunctional. This and other sources of support can be accessed in consultation with the Trust's HR team and trade union representatives as appropriate.

Policy Review By: Trustees
Review Date: Summer 2021
Next review due: Summer 2024

Stage Three Governors' Disciplinary Hearing

Order of Events

1. Investigating Officer present the case including witnesses
2. Questions from employee and/or employee representative
3. Questions from the Disciplinary Panel
4. Employee (or representative) presents their case including witnesses
5. Questions from the Investigating Officer
6. Questions from the Disciplinary Panel
7. Investigating Officer sums up
8. Employee (or representative) sums up
9. Both parties withdraw
10. Panel decision
11. All parties reconvene. Decision given.
12. Decision confirmed in writing by the Head Teacher within 3 working days – including notice of right to lodge an appeal within 5 working days of the hearing.

There is no simple definition of harassment. It can take many forms and may be directed at an individual or at specific groups of people. As an employer, the school regards harassment as a form of misconduct which covers all unwanted action or conduct which affects the dignity of men and women at work.

Harassment is behaviour which has the effect of diminishing a person's position, status or esteem. It is described by ACAS as *"unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment."* It can be imposed on an individual by another on the basis of perceived differences, particularly in respect of sex, race, sexual orientation, disability or medical condition, religion, cultural or language differences, age, physical attributes or trade union or political affiliation. Such behaviour may range from physical contact such as unnecessary touching and unwelcome sexual advances through to physical abuse or assault. It can be verbal, ranging from suggestive remarks, inappropriate 'jokes' and e-mails, verbal abuse, name calling or persistent denigration. It can be non-verbal, through gestures and body language or by the display of offensive material.

A common feature of harassment is that it is unwanted. Whether or not the behaviour was meant to be offensive, it is the complainant's perception of the behaviour which is important and must be taken seriously. Unwelcome behaviour becomes harassment if it is repeated once it has been made clear by the recipient that it is offensive or unwanted. One incident alone may constitute harassment if it is sufficiently serious. Experience shows that for those who are harassed, the consequences can be that the individual may suffer stress, anxiety, feelings of guilt or depressive illness. It can therefore affect work performance and attendance as well as relationships within the workplace.

Another common feature of harassment is that it is often hidden, as incidents occur in situations where there are no witnesses. However, the absence of direct corroboration should not in itself determine whether the matter should be formally investigated nor whether the matter should be heard by members of the governing body. If presented with such a complaint, the Head Teacher and governors will need to determine what action should be taken on the balance of probability, based on the evidence available to them.

Within the work situation, harassment may also take the form of adult bullying i.e. the unjust exercise of power of one individual over another by use of means intended to humiliate, frighten, denigrate or injure. Such means could include:

- berating or reprimanding in the presence of others
- the setting of unreasonable work allocations or unjustified changes in such allocations
- the inappropriate use of discipline and competence procedures,
- overbearing supervision,
- continual and unnecessary criticism, both verbal and / or written
- malicious isolation.
- unfair application of school policies and procedures
- setting unreasonable or unfair deadlines
- scheduling meetings at unreasonable times or venues

Dictatorial and authoritarian styles of management can inhibit productive working and act as a barrier to employees reaching their full potential. The Trust will therefore seek to establish a management culture which recognises the dignity of employees and helps managers to acquire and develop the necessary interpersonal skills to carry out their responsibilities in a supportive, fair and non-threatening manner.

As it is difficult to outline and define all types of bullying action, it can be helpful to consider it in terms of its effects on an individual or group of individuals. The physical and emotional effects of bullying are very similar and common to many victims. They can include:

- low self-esteem and / or lack of confidence;
- physical ill-health
- mental distress
- fear of the workplace or people in the workplace
- feeling intimidated
- impaired performance
- high absenteeism
- relationship difficulties

Harassment is sometimes characterised by a series of relatively minor incidents which, in isolation, may appear trivial to an onlooker. Where such behaviour becomes frequent, repetitive or part of a recognised pattern it can have a significant impact on the recipient, affecting their morale and perceived status within the workplace.