



STAFF DISCIPLINARY POLICY

**To ensure all staff, Directors and Academy Council
Governors are aware of their responsibilities and outlines
how the Trust complies with the School Staffing (England)
Regulations 2009 and the Draft: Staffing and Employment
Advice for Schools January 2016**

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This procedure will apply to both teaching and non-teaching staff working in the Acorn Education Trust and has been agreed with the following recognised unions: ATL, NUT, NAHT, NASUWT, ASCL, Unison and GMB

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1. Policy Statement

Acorn Education Trust has a statutory obligation to adopt formal policies and procedures for dealing with staff conduct and discipline (School Staffing (England) Regulations 2009) and (DfE advice contained in the draft document: Staffing and Employment Advice for Schools January 2016). A sound standard of discipline is essential for the efficient and effective management of the Trust. This procedure is designed to help and encourage all employees to achieve and maintain satisfactory standards of behaviour and attendance and comply with the rules of the Trust. It provides a method of dealing with any apparent shortcomings in conduct and can help an employee to become effective again. It aims to ensure consistent and fair treatment for everyone and for matters to be dealt with speedily. This procedure has been adopted by Acorn Education Trust and the procedure is available to all staff via the Trust and Academy websites.

2. Who does this procedure apply to?

2.1 This procedure is based on Sections 35(8) and 36(8) of the Education Act 2002, and the ACAS Code of Practice on Disciplinary and Grievance Procedures 2009. It has been drawn up following consultation with the recognised Trade Unions and Teachers' Professional Associations. It applies to and is designed to help and encourage employees within the Trust.

2.2 This procedure does not apply where there are matters of:

- **minor misconduct** that can be settled informally by means of counselling or informal reprimand in order to improve conduct;
- **grievance** which is dealt with under a separate procedure adopted by Acorn Education Trust;
- **competency or capability** for which there is a separate procedure adopted by Acorn Education Trust, unless it is clear that the employee is capable of reaching the required standard and has actively not done so;
- **ill health** for which there is a separate procedure adopted by Acorn Education Trust, unless there is good reason to believe that the absence or ill health is not genuine;
- **bullying, harassment, discrimination and/or victimisation** which are dealt with in the first instance, under the Staff Well Being Policy.

3. Who is responsible for discipline and dismissal?

3.1 The Academy Council has the overall responsibility for dismissing staff, with powers to delegate to the headteacher responsibilities up to and including initial staff dismissal decisions. Under the Education Act 2002 School Staffing (England) Regulations 2003, the headteacher should be given the delegated responsibility to make decisions up to the initial dismissal decision, (except in certain circumstance,

see 3.2 below) following which there is an opportunity to appeal to a panel of the Academy Council. **Should an employee who is directly employed by Acorn Education Trust under the line management of the CEO need to be dismissed, then the Trust Board of Directors would have overall responsibility for the dismissal.** Dismissal and notice periods are effective from the initial dismissal decision. Should the appeal be successful, reinstatement will also be from the original date with no break in continuity.

3.2 Headteachers / **CEO** may therefore lead the process of making the initial dismissal decision unless the following circumstances apply:

- the headteacher / **CEO** is unwilling to perform these functions and their previous history at the school did not include any such responsibilities.
- the headteacher / **CEO** has been directly involved in disciplinary procedures leading to dismissal, has instigated a proposal to dismiss or is a witness of particular conduct giving grounds for the dismissal in question.

3.3 In situations where it is not appropriate for the headteacher/CEO to perform these functions (see paragraph 3.2 above), the Executive Headteacher / Directors will be responsible for the process of making such decisions. The Staffing Panel of the Academy Council / Directors will deal with cases of gross misconduct and headteachers / CEO are delegated the responsibility to deal with all other cases.

3.4 The Academy Council / **Board of Directors** should nominate three of its members, who are not staff members to form the staffing panel and a different three members, to form the appeals panel.

3.5 The HR Director/Executive headteacher will offer advice at all stages of these procedures to Trust academies. It is strongly recommended that headteachers seek advice from the HR Director/Executive Headteacher.

4. What are the principles?

4.1 This procedure is primarily concerned with improving discipline, not applying disciplinary penalties. It aims for an outcome which is fair and constructive. It is not intended that the procedure should replace normal communication between the headteacher and a member of staff in the day to day running of a school, whereby comments may be made informally. It is important that staff are made fully aware of the Trust's standards and expectations of conduct and behaviour and the possible consequences of falling below this.

4.2 Employees should be encouraged to seek the advice of a trade union or

professional association at an early stage. At all stages of the procedure the employee will be informed of their right to be accompanied by a work colleague or trade union representative. The accompanying person can address the meeting but not answer questions on behalf of the employee.

- 4.3** If the subject of a disciplinary matter is an official representative of a trade union/professional association, no action must be taken within this procedure until the circumstances have been discussed with the relevant senior officer or full time official, after obtaining the employee's agreement.
- 4.4** No disciplinary action will be taken without a prompt and thorough investigation into the circumstances.
- 4.5** Employees will be informed of the nature of the complaint(s) against them and will be given the opportunity to state their case before any decision is made at a disciplinary investigation meeting.
- 4.6** Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary investigation meeting.
- 4.7** No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice (summary dismissal).
- 4.8** The employee will have the right of appeal against any formal disciplinary action under this procedure.
- 4.9** The procedure outlines what disciplinary action may be taken against an employee.
- 4.10** The procedure ensures that the employee is given an explanation for any sanction.
- 4.11** The procedure ensures that the employee will be heard in good faith and that there is no pre judgement of the issues. The procedure ensures that where the facts are in dispute, no disciplinary penalty is imposed until the case has been carefully investigated and a decision is taken looking at the balance of probability that events did or did not occur.
- 4.12** The procedure can be started at any stage. The first stage will depend on the nature of the alleged misconduct.
- 4.13** Where the headteacher is the subject of the procedure, the Executive Headteacher, will replace the headteacher in initiating any action, which has to be taken.
- 4.14** For the purposes of this procedure "headteacher" means the most senior member of staff who has management responsibility for the employee

concerned.

- 4.15** As an employee faced with possible disciplinary action is likely to find the situation stressful, the headteacher should make sure the employee has support.

5. Raising a Grievance

- 5.1** Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. A discussion will therefore take place between the academy/Trust, HR Director and the employee (normally through their trade union representative or directly if they are not represented) about whether or not the disciplinary procedure should be suspended so that the grievance issues can be dealt with separately under the grievance procedure or whether the grievance should be raised by the employee at relevant disciplinary interviews, hearing or appeal.

- 5.2** Suspending the disciplinary procedure would normally take place when:

- the grievance relates to a conflict of interest that the investigator is alleged to have
- bias is alleged in the conduct of the disciplinary meeting
- there is an allegation that management have been selective in the evidence they have supplied to the investigator
- there is possible discrimination.

6. What is misconduct?

- 6.1** Misconduct involves an employee breaking specific rules about behaviour or conduct. It is conduct that falls below expected standards and is usually wilful. There may be occasions when negligent conduct amounts to misconduct.

- 6.2** Examples of misconduct include the following. This list is not exhaustive:

- misuse of the academy/Trust facilities such as email and internet
- poor time keeping
- unauthorised absences
- failure to improve faults that build into a pattern of unacceptable behaviour, performance or attitude
- undermining the achievement of team, service or corporate goals
- wilful failure to adapt to changing technologies, methods and patterns of work (as distinct from inability to adapt which is dealt with under the capability procedure)
- insubordination
- any act or omission that might otherwise, in the context and impact were

judged to be more serious, be dealt with as a matter of gross misconduct.

6.3 Gross Misconduct is a term used to describe serious misconduct, which may destroy the employment contract between the employer and the employee and make further working relationships and trust impossible. Examples of the sort of conduct that could be regarded as gross misconduct, rendering the employee liable to dismissal without notice, or payment in lieu of notice are:

- dishonesty, including theft, fraud or deliberate falsification of records or acceptance of bribes
- physical violence or bullying against other employees, pupils or members of the public
- deliberate and serious damage to academy/Trust property
- misuse of the academy's/Trust property or name, or bringing the academy into disrepute
- serious abuse of the academy's/Trust computer equipment / software; including deliberately accessing internet sites containing pornographic, offensive or obscene material
- inappropriate use, or misuse of SIMS for purposes other than those designated
- serious insubordination, including serious act(s) or persistent repetition of a failure to comply with a reasonable instruction
- unlawful discrimination or harassment
- being under the influence of illegal drugs or alcohol whilst at work
- causing loss, damage or injury through serious negligence
- a serious breach of health and safety rules
- a serious breach of trust and/or confidence
- breach of any professional code of conduct applicable to the job, which could bring the profession or the academy or Acorn Education Trust into serious disrepute
- serious negligence which causes or might cause unacceptable loss, damage or injury
- a relevant criminal conviction that undermines the academy and/or Acorn Education Trust's confidence in the employee and/or undermines the employee's ability to undertake their work
- misuse of official position for personal gain

7. Misconduct - Formal Procedure

7.1 Investigation

Where there is a complaint of misconduct that warrants formal investigation, the headteacher should arrange for a full investigation, as soon as possible after the allegations have been made. It is not usually appropriate for the headteacher to carry out the investigation as they may be required to deal with the matter formally at any stage up to and including dismissal. The headteacher should therefore wherever possible nominate a senior member of staff to conduct the

investigation. If the complaint is against the headteacher or the headteacher has been involved in the complaint, then the Executive Headteacher will undertake the investigation themselves or appoint someone else as appropriate.

Managing Child Protection allegations

- Where the allegations involve Child Protection and the alleged behaviour might be criminal, involve harm to a child or put a child at risk of harm, the relevant area LADO (Local Authority Designated Officer for Allegations) at Wiltshire Council must be notified immediately. Where appropriate a strategy meeting attended by appropriate Council officers, the Police, Social Care and the headteacher (or Executive Headteacher where the allegation is against the headteacher) will be convened.

Conducting the Investigation

- The aim of the investigation is to establish the facts of the case as quickly and thoroughly as possible.
- The employee must be informed in writing:
 - that an investigation is taking place and that they will be given the opportunity to respond to the allegation(s) – date and time of meeting;
 - of the details of the complaint/allegation(s);
 - that they may be accompanied by a work colleague or trade union official to any meetings.

Suspension

- Where there appears to be serious misconduct or risk to property or other people, a period of suspension with pay should be considered while the case is being investigated. In accordance with the Education Act, either the headteacher/ CEO or the Academy Council (normally the Chair) can suspend an employee at the academy, but only the Academy Council/ TRsut Directors can lift the suspension. Both the headteacher/CEO and the Academy Council/ Trust Directors must keep each other informed of any action they may take in relation to suspension. Advice should always be sought from HR before taking such action and in any event Acorn Education Trust must be notified of any suspension from duty.
- Suspension with pay should only be imposed after careful consideration and should be reviewed to ensure it is not unnecessarily protracted. Suspension should not be regarded in any sense as a disciplinary measure or implying guilt, but as an exceptional measure to enable a proper investigation to take place.
- The employee will normally be invited to a meeting at which they will be informed of their suspension. The Trust will try to secure the attendance of the trade union representative at the suspension meeting. However, if the

representative is unable to attend, the meeting will take place and the trade union representative will be briefed about the details of the suspension as soon as possible. If circumstances do not allow for a suspension meeting to be arranged, or if the employee is unwilling or unable to attend, the Trust will attempt to make contact by phone. In any event the employee will be informed by letter of the suspension and the reasons for this.

- If an employee to be suspended is a trade union official, no steps in the procedure may be started until the circumstances have been discussed with a senior representative or paid official of the trade union/professional association after obtaining the employee's agreement.
- Suspension will always be on full pay.
- The decision to suspend and the reasons will be confirmed to the employee in writing by the Trust within one working day.

Concluding the Investigation

- After the investigation is complete the person who conducted it will produce a report and decide whether or not there is a case to answer. The outcome of the investigation will be notified to the employee. If there is no case to answer, or the matter is regarded as trivial, then the matter will be closed and the employee informed in writing. The headteacher/ CEO may arrange support or take informal action.
- If there is a case of misconduct to answer which will require more than informal measures the matter will be referred to a formal disciplinary hearing before the headteacher/ CEO or the staffing panel of the Academy Council/ Trust Directors. The employee will be notified in writing.

7.2 The Disciplinary Hearing

- **Notification of a Disciplinary Hearing**
 - The headteacher/CEO is normally responsible for the arrangements for a disciplinary hearing conducted by the headteacher/CEO, and the Trust's Governance Adviser is normally responsible for the arrangements for formal hearings before the staffing panel/Trust Directors. This includes notifying employees in writing of such hearings, giving at least 10 working day's notice.
 - The employee should be given details of the specific complaint/allegations and should be informed that either party can produce witnesses and/or written statements and relevant supporting documents at the hearing, should they so wish. An exchange of all documents expected to be referred to at the hearing should take place at least 5 working days before the hearing.
 - The Trust will make provision for any reasonable adjustments to accommodate the needs of a person with disabilities at the meeting.

The Trust needs to be informed of requirements at least 48 hours before the hearing.

- If their chosen companion cannot attend, an employee may offer a reasonable alternative time within five working days of the original date, unless mutually agreed otherwise.

- **Witnesses**

- If witnesses are called to give evidence, their identity will be disclosed to the other party in advance, unless exceptional circumstances prevent this e.g. where anonymity is to be preserved.
- The other party will receive advance copies of written witness statements to which reference will be made at the hearing. It is preferable that the authors of statements attend the hearings as witnesses, although in certain circumstances e.g. in the case of juveniles, or where anonymity is to be preserved, it is acknowledged that this should not be a requirement.

- **Failure by the Employee to Attend**

- An employee who cannot attend a meeting should inform the Head Teacher / CEO in advance whenever possible.
- If the employee fails to attend through circumstances beyond their control e.g. illness, the headteacher/ CEO should rearrange the meeting to another date taking into account the reason. Sickness absence must be supported by a medical certificate.
- A decision to proceed may be taken in the employee's absence if they fail to attend the rearranged meeting without good reason. The employee should be notified of this possibility in advance.

7.3 Procedure to be followed at the hearing

- **Minutes**

- notes of the hearing should be taken by the Trust's Governance Adviser or another suitable person as arranged by the Trust and copies of the notes circulated to all parties as soon after the meeting as practicable. The Governance Adviser does not take any other part in the formal process.

- **Agenda**

- An agenda should be produced

- **Making the Decision**

- The headteacher/ CEO or the staffing panel/ Trust Directors will deliberate in private, only recalling the parties to clear points of

uncertainty on evidence already given. If a recall is necessary both parties are to return even if only one is concerned with the point giving rise to doubt.

- The decision will be announced at the close of the hearing whenever possible. The headteacher/ CEO or chair of the staffing panel/ Trust Directors will confirm the decision in writing within 24 hours of the hearing.
- **Case not Substantiated**
 - If the headteacher/CEO or staffing panel/ Trust Directors considers that the case against the employee is unfounded, the employee wherever possible will be informed of this at the close of the meeting and the decision will be confirmed in writing.
- **Case Substantiated - Formal action**
 - If the headteacher/CEO or staffing panel/ Trust Directors believes on the balance of probabilities that the alleged misconduct is substantiated, the appropriate disciplinary action will be determined, having regard to all the circumstances. Wherever possible, the employee will be informed of this at the hearing and the decision will be confirmed in writing.

7.4 Disciplinary action

Stage 1 - Written warning

- For a serious breach of conduct, a written warning will be given with the reasons for the warning and any change in behaviour or improvements required. An action plan may be used to clarify. It will also advise that further action under the procedure will be considered if the change in behaviour or improvements required are not met and inform the employee of the right of appeal. A copy of the warning will be kept but will be disregarded for disciplinary purposes after 12 months, subject to continuous satisfactory conduct during this period.

Stage 2 - Final written warning

- A final written warning, with the reasons for the warning and any change in behaviour or improvements required (an action plan maybe used to clarify), will be given:
 - for a very serious offence which would be insufficient to justify dismissal but would warrant only one written warning;
 - For a very serious offence which would justify summary dismissal for gross misconduct, but a lesser penalty is appropriate in the circumstances; or

- Where there is still a failure to improve conduct following previous written warning(s).
- A final written warning will give the reason for the warning, advise that dismissal will result if there is no satisfactory improvement and state the right of appeal. A copy of the warning will be kept, but will be disregarded for disciplinary purposes after 18 months, subject to continuous satisfactory conduct during this period.

Stage 3 - Dismissal

- For failure to improve or for act(s) of further misconduct after a final written warning has been given and remains live. Dismissal will be with notice or pay in lieu of notice.
- For act(s) of gross misconduct, dismissal will be without notice (summary dismissal). The decision to dismiss can only be taken after a hearing before the headteacher/CEO or the staffing panel of the Academy Council/ Trust Directors, but may be taken before an appeal hearing takes place. In such cases pay will cease when the decision to dismiss is made and reinstated in full if an appeal is subsequently successful.
- In both cases above, the employee will be provided as soon as reasonably possible with written notice of dismissal, the date on which the contract is to end, the appropriate period of notice (if notice is to be given), the reason for dismissal and the right of appeal.

7.5 The Appeal Process

- **Right of Appeal**
 - An employee may lodge an appeal in writing against any formal disciplinary action taken against them under this procedure to the Trust's Governance Adviser within 5 working days of the date on which they receive the confirmation of the disciplinary action.
 - The letter of appeal from the employee should state the reasons for appealing from one of the three below:
 - the employee disagrees with the disciplinary sanction;
 - it is alleged that the disciplinary procedure has been applied defectively or unfairly;
 - new evidence has come to light which was not available at the disciplinary hearing and which may make a difference to the original decision;
 - The appeal will be heard by the appeals committee of the Academy Council/ Trust Directors as soon as possible after receipt of the request. The Academy Council / Trust Directors may call upon the Trust's HR Director to be in attendance in an advisory capacity only;

- Evidence presented to the appeals panel must relate to any of the three reasons stated above and must enable the assessment of whether or not the allegations against the employee were accurate, justified and substantiated and whether the disciplinary action was appropriate in all the circumstances. The appeal may either be a review of the disciplinary sanction or a re-hearing depending on the grounds of the appeal.
- **Notification of Appeal Hearing**
 - The Trust's Governance Adviser is normally responsible for the arrangements for formal hearings before the appeals panel. This includes notifying employees in writing of such hearings, giving at least 5 working days' notice, and informing them in writing of their statutory right to be accompanied at the meeting by a workplace colleague or trade union representative.
 - An exchange of all documents expected to be referred to at the hearing should take place at least 48 hours before the hearing, paying particular attention to any new evidence that is going to be introduced.
 - The academy will make provision for any reasonable adjustments to accommodate the needs of a person with disabilities at the meeting. The academy needs to be informed of requirements at least 48 hours before the hearing.
 - If their chosen companion cannot attend, an employee may offer a reasonable alternative time within 5 days of the original date, unless mutually agreed otherwise.
- **Procedure to be followed at the Appeal Hearing**
 - **Minutes**
 - Notes of the hearing should be taken by the Trust's Governance Adviser or another suitable person as arranged by the Trust and copies of the notes circulated to all parties as soon after the meeting as practicable. The Governance Adviser does not take any other part in the formal process.
 - **Agenda**
 - An agenda for the hearing needs to be set
 - **Making the Decision**
 - The appeals committee will deliberate in private, *with the HR Director*, only recalling the parties to clear points of uncertainty on evidence already given. If a recall is necessary both parties are to return even if only one is concerned with the point giving rise to doubt.
 - The decision will be announced at the close of the hearing whenever possible. The chair of the appeals panel will confirm the decision, with reasons, in writing within 24 hours of the hearing.

- The decision can be confirmation or overturning of the original decision, or the issue of a lesser penalty. The decision at appeal is final.

8. Written Records

- A record of the documentation relating to the case will be retained and will include:
 - the complaint / problem against the employee
 - the employee's views / defence
 - any grievances raised during the disciplinary process
 - findings made and actions taken
 - the reason for actions taken
 - whether an appeal was lodged
 - the outcome of the appeal
 - subsequent relevant developments
 - notes of any formal meetings

- Records will be treated as confidential and be kept in accordance with the Data Protection Act 1998 so that an employee has the right to request and have access to relevant information but, in certain circumstances (for example to protect a witness) the academy may consider it appropriate to withhold some information.

- A warning will be disregarded for disciplinary purposes after the following periods from the date of the hearing when the warning was issued, providing there has been satisfactory conduct and unless a headteacher / manager / Governor(s) decide(s) to increase these time limits (see paragraph below):
 - Written warning – 12 months
 - Final written warning – 18 months
 - There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long any warning should last.
 - No disciplinary records relating to the safety and welfare of children and young people will be withdrawn from an employee's personal file for holders of posts covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Whilst the warning will remain on file, it is not 'live' and will only be taken into account if it is relevant and reasonable to do so in the context of the responsibility for the protection of children.

- An employee who works in the provision of services to children and is dismissed, or who resigns in circumstances relating to the safety and welfare of children and young people which may have led to dismissal, will be referred to the Vetting and Barring Scheme (VBS) of the Independent Safeguarding Authority (ISA) by the HR Director
- On behalf of the Trust, HR will also refer on to the National College for Teaching and Leadership (NCTL), those misconduct cases relating to registered teachers, which do not raise issues relating to the safety and welfare of children and young people.