



Arun Court School: Policy Number 13B

Arun Court School – MISCONDUCT & GRIEVANCE – last updated January 2021

Ratified by main EMAT meeting:

Signature (+ date) Chair of EMAT: Mr Paul Phillips

Signature (+ date) Proprietor:Mrs Beverley-Sarah White

Signature (+ date) Principal of SchoolVicki Williams

Date of next review: January 2022 (Reviewed annually)

Context

It is important that staff recognise that they are working in a highly bespoke setting with very vulnerable young people. Our standards and expectations are very high. We recommend that you read this policy therefore in the context of ALL other policy documentation, routines and schedules either written or inferred.

Misconduct and grievance Policy

1.1 Purpose of this policy

This policy is designed to help employees and their representatives deal with disciplinary and grievance situations in the workplace.

Disciplinary situations include misconduct and/or poor performance. We have a separate capability procedure and we prefer to address performance issues under this procedure, however, the basic principles of fairness set out in the ACAS Code are still followed.

Grievances are concerns, problems or complaints that employees raise with their employers.

1.2 ACAS

This policy has been constructed by using the ACAS documentation and procedures. These are not statutory, however they represent an accepted high standard.

Please read this policy in conjunction with **Discipline and grievance - Acas Code of Practice /Discipline and grievances at work: The Acas guide / Advisory handbook - Discipline and grievances at work**

We use the ACAS forms for all disciplinary actions, which you can view at

<http://www.acas.org.uk/index.aspx?articleid=1439>

A sample of the correct page is displayed below:

Disciplining staff

The following documents are free and are here to help with disciplining staff. Others are available to help with **Hiring staff** and **Managing staff**.

Please also refer to the  **Acas Code of Practice on Discipline and Grievance [167kb]**

Letters for all the stages of a formal disciplinary procedure under the Acas Code of Practice on Discipline and Grievance

-  **Letter giving an employee notice of a disciplinary meeting [30kb]** - from a manager giving the reason they must attend, and the place, date and time.
-  **Letter giving an employee the decision of the disciplinary meeting [33kb]** - from a manager, giving the verdict - in this case a first written warning or a final written warning - and explaining what it means for the employee.
-  **Letter acknowledging the employee has appealed against the disciplinary meeting verdict of a warning [30kb]** - from a manager to the employee, saying who will hear the appeal, where and when.
-  **Letter giving the result of the appeal against the meeting's verdict [29kb]** - from a manager, giving the employee the decision of the appeal hearing.
-  **Letter arranging the meeting where disciplinary action will be considered [29kb]** - from a manager, informing the employee their employer is proposing to dismiss them, or take other disciplinary action short of dismissal, and giving the date, time and place for the meeting.

-  **Letter informing the employee what disciplinary action will be taken against them [35kb]** - from a manager, giving the employee the decision and reasons, but informing the employee they have the right to appeal.
-  **Letter acknowledging the employee has appealed against the disciplinary meeting verdict of dismissal [30kb]** - from a manager to the employee, saying who will hear the appeal against the disciplinary action, where and when.
-  **Letter giving the result of the appeal against the disciplinary action [30kb]** - from a manager, giving the employee the final decision in the disciplinary process.

Keeping a record

-  **Employee's disciplinary record [46kb]** - listing the type of disciplinary action taken, the reasons why, details of any appeal and key dates.

Conducting investigations

-  **Investigation Plan [17kb]**
-  **Investigation Report [20kb]**
-  **Letter informing employee they are subject of an investigation [29kb]**
-  **Letter inviting an employee to an investigation meeting [28kb]**

Note: The samples for letters, forms and checklists are here to help you, but users must take full responsibility for the content they send out.

Further guidance

If, after looking at these templates, you feel you need additional help on handling discipline, Acas has other free guidance you can download.

Topics include:

- **Discipline and grievance - Acas Code of Practice**
- **Discipline and grievances at work: The Acas guide**
- **Advisory handbook - Discipline and grievances at work**

Alternatively you can call the **Acas Helpline**.

2.3 Basic principles exist in which Big Bear Bespoke Education Ltd will carry out and deal with disciplinary and grievance matters. In turn employees are expected to act within these basic principles.

- Employers and employees should act consistently.
- Employers should carry out any necessary investigations, to establish the facts of the case.
- Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.
- Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.
- Employers should allow an employee to appeal against any formal decision made.

Misconduct

Stage 1 : Informal Chat

2.1 In most incidences a line manager or Director will discuss a minor issue of misconduct with a staff member. They will establish with the employee if they are currently well enough to carry out their duties to the best of their abilities, whether their actions are the result of simply an accidental slip in thought process, a result of stress or due to a mis-understanding or training issue.

Stage 2: Verbal Warnings

3.1 An official verbal warning will be used if the misconduct is felt to be of a higher level than warrants an informal chat, or if there has already been a informal chat about the same issue. Verbal warnings are recorded within personnel folders, dated and signed by both parties.

Stage 3: Misconduct hearings – Written Warnings and Dismissals

4.1 Where an employee has already been warned verbally, and evidence is brought forward which suggests the behaviour has been repeated or has continued, matter will immediately move to stage three. Where the incident reaches the company criteria for 'Gross Misconduct' the matter will also immediately move to stage three – even if previous verbal warnings have not been given.

4.2 An investigation into the allegations will take place. The employee will be notified of a formal meeting. The meeting will take place. If there is no resulting action this will be recorded as the outcome. If a written warning is issued this will be given to the employee in a timely manner and they will have the right to appeal the decision. If dismissal is the decided action the employee will be notified immediately in writing and will have the right to appeal.

4.3 The following ACAS suggested procedures will be followed:

4.3.1 It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.

4.3.2. In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing. This will be facilitated when possible, however we are constrained by being a very small company.

4.3.3 If there is an investigatory meeting this should not by itself result in any disciplinary action. Although there is no statutory right for an employee to be accompanied at a formal investigatory meeting, such a right will be allowed under our procedure.

4.3.4 In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action.

4.3.5 Inform the employee of the problem. If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to

enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.

4.3.6. The notification should also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting.

5. What happens at the meeting?

5.1 The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.

5.2 Employers and employees (and their companions) should make every effort to attend the meeting. At the meeting we will explain the complaint against the employee and go through the evidence that has been gathered. The employee 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. They will also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witnesses they should give advance notice that they intend to do this.

5.3 Minutes will be taken at the meeting and/or the meeting will be filmed or audio recorded

6. Companions

6.1 Workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- a formal warning being issued; or
- the taking of some other disciplinary action; or
- the confirmation of a warning or some other disciplinary action (appeal hearings).

6.2 The statutory right is to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Employers must agree to a worker's request to be accompanied by any companion from one of these categories. Workers may also alter their choice of companion if they wish. As a matter of good practice, in making their choice workers should bear in mind the practicalities of the arrangements. For instance, a worker may choose to be accompanied by a companion who is suitable, willing and available on site rather than someone from a geographically remote location.

6.3 To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain timeframe. However, a

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worker should provide enough time for the employer to deal with the companion's attendance at the meeting. Workers should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.

6.4 If a worker's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

6.5 The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

7. Outcomes

7.1 After the meeting we will decide whether or not disciplinary or any other action is justified and inform the employee accordingly in writing.

7.2 Where misconduct is confirmed or the employee is found to be performing unsatisfactorily it is usual to give the employee a **written warning**. A further act of misconduct or failure to improve performance within a set period would normally result in a **final written warning**.

7.3 If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, **a serious or harmful impact on the organisation**.

7.4 A first or final written warning will set out the nature of the misconduct or poor performance and the change in behaviour or improvement in performance required (with timescale). The employee will be told how long the warning will remain current. The employee will be informed of the consequences of further misconduct, or failure to improve performance, within the set period following a final written warning. For instance that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority.

7.5 A decision to dismiss will only be taken by a manager who has the authority to do so. The employee will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

7.6 Where an employee persistently does not attend or refuses to attend a meeting, without good reason, we will invoke our right to make a decision based on the evidence presented in their absence

8. Gross Misconduct

8.1 Some acts, termed Gross Misconduct, are so serious in themselves or have such serious consequences that they call for dismissal without notice for a first offence. Examples of these are clearly marked on the 'rules for employees' document which employees sign as part of their contract. However the list is not exhaustive and the company in all reasonableness cannot be expected to foresee and specify every eventuality. The key to Gross Misconduct is that it will meet the threshold for one or more of the following:

- The actions did, or had the potential to, put students, parents, staff in danger or at risk of danger either immediately or longer term
- The actions did, or had the potential to, damage the reputation of the Directors, the company or its employees

- The actions did, or had the potential to, break the law or the high standards expected within the education industry including breaking rules associated with Ofsted registration, the National Schools and Colleges Contract, National Teaching Standards, Safeguarding recommendations from a Local Education Authority, and other LEA or national educational guidance
- The actions are, or have the potential to become, acts of theft, fraud, physical violence, gross insubordination or serious negligence

9. Appeal Process

9.1 Where an employee has been subject to disciplinary action that they feel is unjust and they disagree with the outcome they should appeal. They should notify us in writing that they would like to appeal and clearly set out their grounds for appeal within the same letter. The right to appeal should be acted upon in a prompt fashion.

9.2 The appeal will be dealt with impartially and where ever possible by a manger or Director who has not been involved in the case . Minutes will be taken at the meeting and an audio or visual recording will also be made.

9.3 Workers have a statutory right to be accompanied to any appeal hearing

9.3 The employee will be informed of the decision of the appeal hearing within 10 days of the meeting

Grievance

10. For grievance cases we also follow the guidance from ACAS. The basic structure for any grievance is to:

10.1 inform your line manager of your grievance informally. Your line manager, and any relevant parties, will meet with you to discuss the issues you have raised. Hopefully they can be resolved informally for all parties.

10.2 If the matter can't be dealt with informally, then the grievance should be raised in writing in a timely manner. The letter must set out the grievance clearly.

10.3 A meeting will take place and your grievance will be heard. The meeting may be needed to be suspended to allow an investigation to take place. Minutes will be taken at the meeting and an audio or visual recording will also be made.

10.4 Following the meeting, we will write to you informing you of actions that will be taken, if any, to help resolve the situation. You will have a right to appeal.

10.5 You have the right to be accompanied at the appeals meeting. Where possible the appeal will be heard by someone who was not directly involved in the initial grievance meeting. Minutes will be taken at the meeting and an audio or visual recording will also be made.

10.6 You will be informed in writing of the result of the appeal.

