



Disciplinary Policy and Procedure

November 2018

Signed (Chair of Trustees):	
Date:	November 2018
Date of Review:	November 2019

1. INTRODUCTION

The Arbor Academy Trust reviews this policy annually. The Trustees may, however, review the policy earlier than this, if the Government introduces new regulations, or if the Trust receives recommendations on how the policy might be improved. This document is also available in other formats e.g. e-mail and enlarged print version, on request to the School Offices and is displayed on the schools' websites.

- 1.1 The Arbor Academy Trust is required to establish disciplinary procedures that should be made known to all employees. To assist in this, the following model procedure has been produced. And is adapted from the London Borough of Waltham Forest [“The Council”] disciplinary policy which has been agreed with the recognised trade unions. Local Governing Bodies are required to follow this policy to promote a systematic, consistent and positive approach to disciplinary matters. The procedure relates only to employees for whom the Local Governing Body has responsibility in respect of discipline.
- 1.2 The model procedure takes account of previous good local practice, schools’ *Articles of Governance*, *National Conditions of Service*, ACAS advice, common law and relevant legislation, including the *Education Reform Act 1988*, the *Employment Rights Act 1996* and the *Education (School Government) Regulations*.
- 1.3 The procedures are intended to ensure, amongst other things, that no employee is subject to disciplinary action without:
 - a) management having attempted to resolve matters informally where appropriate;
 - b) having first been given details of the alleged complaint(s);
 - c) being given the opportunity to respond to that complaint and state his/her case before decisions are reached;
 - d) being afforded the opportunity of being accompanied by a trade union representative or another person (but not a legal representative) to speak on his/her behalf;
 - e) being afforded the right of appeal against proposed disciplinary action.

2. SCOPE OF PROCEDURES

- 2.1 The procedures are to be used in all cases of wilful misconduct or negligence where disciplinary action is to be considered.
- 2.2 In the following cases the use of this procedure would be inappropriate:
 - a) the end of a predetermined, limited or fixed term contract for which an employee has been specifically engaged;
 - b) redundancy;
 - c) failure to complete satisfactorily a period of probation;
 - d) capability;
 - e) ill-health;
 - f) where continuation of the employment would contravene a duty or restriction imposed by, or under any enactment in force for the time being (e.g. expiry of a work permit).

3. CHILD PROTECTION

- 3.1 For allegations of physical/sexual abuse by a school employee relating to a pupil, this procedure should be used in conjunction with the procedure for dealing with teachers or other school employees facing an allegation of physical/sexual abuse.
- 3.2 The LA Child Protection Officer must be informed of any possible alleged cases of physical/sexual abuse.

4. EXPECTATIONS IN RESPECT OF EMPLOYEES

- 4.1 It is the responsibility of management to maintain discipline. All employees are expected to observe the normally understood and accepted rules affecting work procedures, safety standards, performance, conduct and related matters, whether written or not, and which may be issued from time to time.
- 4.2 If an employee's misconduct is suspected to result from mental or physical illness, medical evidence may be produced and taken into account and appropriate advice taken, e.g. from Occupational Health Service or Human Resources.
- 4.3 In cases of possible alcohol or drug misuse, reference should be made to the guidelines issued by the Council for dealing with employees suffering from alcohol and drug misuse before any disciplinary action is instigated.

5. EMPLOYEE REPRESENTATION

- 5.1 An employee who is subject to disciplinary action must be informed that, at any stage during the disciplinary procedure, he/she may be accompanied by a trade union representative or another person (but not a paid legal representative).
- 5.2 Discussions with an employee should only take place on his/her own at the stage when investigations are being conducted. At this stage, employees should be advised of their right either to respond or to decline to respond. If, during the course of any interview with an unrepresented employee, it becomes evident that disciplinary action may be considered, he/she should be advised to seek advice from his/her trade union or another representative (see 5.1) and a further interview should be arranged in accordance with paragraph 8.1 – 8.5 or this document.
- 5.3 When an employee nominates a representative, from the date of notification copies of all relevant correspondence should be sent simultaneously to that person.

6. GENERAL PROVISIONS

The following general provisions should apply:

- 6.1 *For action beyond a formal oral warning:*
 - a) the Chief Executive or his/her representative should be given the opportunity to be present at the disciplinary proceedings in an advisory capacity;
 - b) Headteachers are strongly advised to seek advice from a Human Resources representative where the possibility of action beyond an oral warning arises.

- 6.2 *In the event of a recognised trade union or safety representative being the subject of formal disciplinary action:*
- a) the Chief Executive or his/her representative should be advised of the position, so that prior discussion can take place with an appropriate senior official of the union involved;
 - b) from the outset, it should be established that the action being taken is not an attack on the functions of a trade union.
- 6.3 *This disciplinary procedure is not an all embracing document:*
- a) where allegations against teachers or other school employees concerning physical/sexual abuse of children exist, they will be dealt with initially under *Child Protection Procedures*;
 - b) other situations may occur where an allegation by one employee against another purporting misconduct may more readily be considered under the *Model Grievance Procedure*. However, evidence presented may, on occasions, lead to subsequent disciplinary proceedings.

7. INFORMAL STAGE

- 7.1 Many potential disciplinary matters will be resolved outside the scope of these procedures through informal guidance, advice and counselling.
- 7.2 Employees should be advised of their right of union representation at this informal stage.
- 7.3 In these circumstances an employee will be given every opportunity to seek what help may be needed. If the discussions fail to resolve the problem, it will be made clear to the employee that the next step could be recourse to the formal procedure.

8. INVESTIGATION

8.1 (Version A) New Model

Where there is a possibility of the disciplinary procedure being applied an investigation should be undertaken by a deputy Headteacher or assistant Headteacher for cases that are likely to lead to dismissal.

8.1A (Version B) Current Model

Where there is a possibility of the disciplinary procedure being applied an investigation should be undertaken by a deputy Headteacher or assistant Headteacher for cases that are unlikely to lead to dismissal. The Headteacher should normally investigate serious cases where dismissal may be the outcome.

- 8.2 Alleged instances of ill-discipline involving misconduct shall be reported in the first instance to the appropriate supervising officer. The supervising officer (i.e. the Headteacher, deputy Headteacher or assistant Headteacher) together with any other officers whom he/she may feel may be able to assist, shall as soon as possible and without unreasonable delay, investigate the facts of the matter, including the employee's version of events. The purpose of the investigation is to accumulate sufficient information to determine whether or not the matter needs to be pursued more formally, i.e. to establish whether or not there is a disciplinary case to answer.

- 8.3 The employee has the right to be accompanied by a representative at the investigation stage but absence of a chosen representative shall not unreasonably impede investigations proceeding. The decision to proceed with any investigation without a representative's attendance will rest with the investigation officer, who should consult with the Human Resources Adviser as appropriate.
- 8.4 The investigating officer, having investigated all the facts (and in liaison with the HR Adviser, if appropriate), on the basis of the findings, will decide whether or not there is a case to answer and whether a formal disciplinary hearing should be convened. The recommendations should include whether or not the case is considered misconduct or gross misconduct.
- 8.5 If it is decided that no disciplinary action is appropriate, the employee should be notified in writing.

9. CRIMINAL OFFENCES

- 9.1 When an allegation of a criminal nature is made against an employee, the matter should normally be referred immediately to the Police for investigation.
- 9.2 The Police should be given every assistance with their enquiries.

10. SERIOUS AND GROSS MISCONDUCT

- 10.1 In serious cases there may be need to issue either a final warning (see par. 14.3) or to formulate proposals for dismissal without recourse to the preliminary stages of the procedure.
- 10.2 In cases of alleged gross misconduct, it may be necessary for an employee to be suspended while a thorough investigation is conducted (par. 11.1-11.9 refer). The headteacher will need to decide, bearing in mind the nature of the allegation, whether it will be in the interests of the employee and of the school that he/she be suspended.
- 10.3 Where the sub-committee finds that gross misconduct has been proven, the employee may be summarily dismissed.
- 10.4 A statement concerning gross misconduct is attached as Appendix 2.

11. SUSPENSION

- 11.1 Suspension should be considered where there are reasonable grounds to believe that:
- a) an alleged breach of the rules amounts to gross misconduct; *OR*
 - b) the employee's presence in the workplace may hinder an investigation.
- 11.2 The Headteacher may suspend a member of staff after consultation with the Chief Executive or his/her representative. However, suspension may only be ended by an appropriate member of the Trust Board.

- 11.3 The suspension of a Headteacher should be undertaken by the Chief Executive or a member of the Trust Board.
- 11.4 Suspension is a neutral act; it is not a form of disciplinary action and will be on full pay and/or allowances, where appropriate, but not non-contractual overtime. Suspension should be for as brief a period as possible and it will normally take place pending investigation and disciplinary action where appropriate.
- 11.5 The employee should be offered the opportunity to be represented at all stages. However, suspension should not be delayed because of the unavailability of a particular representative.
- 11.6 Within four calendar days, the employee shall be sent, by recorded delivery or by hand, a formal letter of suspension from the Headteacher, which shall include:
- a) the reason for the suspension – confirming that it is a neutral act, not a disciplinary sanction;
 - b) the date and time from which the suspension took effect;
 - c) the duration of the suspension;
 - d) the rules of suspension, e.g. the employee should not return to the place of work without prior permission from the Headteacher (but such action must not prejudice the preparation of the employee's case);
 - e) notification that a mentor will be appointed as a contact for the employee at the school.
- 11.7 A suspension should be reviewed after 20 (twenty) days if it has not already been reconsidered and regularly thereafter if it is decided to continue with the suspension. If during the course of the investigation it appears that suspension is no longer appropriate, it should be rescinded immediately.
- 11.8 During an investigation it may be necessary to suspend an employee not previously suspended, because of evidence becoming available to believe that the reasons outlined above apply.
- 11.9 Other staff should be told briefly that the member of staff has been suspended pending investigation.

12. Trust Board Sub-Committee

- 12.1 It is necessary for the Trust Board to establish sub-committees to consider:
- a) disciplinary warnings for Headteachers;
 - b) any cases that may lead to dismissal;
 - c) appeals against warnings and dismissal.

Arrangements concerning the delegation and scope of Local Governing Body disciplinary powers are set out in *Appendix 1*.

- 12.2 Where the possibility of the dismissal of the Headteacher arises, arrangements for the hearing should be determined by the Trust Board, on behalf of the Local Governing Body.

13. HEARINGS

13.1 The following outlines the procedure that should be used in case of formal disciplinary hearings. This will apply where either the headteacher is the Hearing Officer or for a trust board sub-committee:

- a) Prior to the hearing, the Investigation Officer should:
 - i) prepare a written report on the facts of the case and previous disciplinary action, which is relevant and not out of time;
 - ii) obtain relevant written evidence which may include his/her own report, written statements from complainants, reports of pupil interviews and such other written statements as may be required for compilation of case papers.
- b) At least 10 (TEN) working days before the date of the hearing, the employee and his/her representative (if known) shall be:
 - i) notified in writing of the date, time and place of the hearing and receive a copy of the disciplinary procedure;
 - ii) supplied with a written statement of the alleged misconduct resulting in the disciplinary proceedings;
 - iii) notified in writing of the purpose of the hearing and of his/her right to be represented by a trade union representative or another person, but not a legal representative. The employee is entitled to offer an alternative date, within 5 (FIVE) working days or the original date, if his/her representative is not available at the proposed time;
 - iv) notified in writing of his/her right to call witnesses and to submit written statements for circulation to the Hearing Officer or the Disciplinary Sub-Committee prior to the date of the hearing;
 - v) supplied with copies of all written evidence circulated to the Hearing Officer or members of the sub-committee;
- c) 10 (TEN) working days before the date of the hearing, the employee shall:
 - i) advise the Investigation Officer whether he/she intends to be present at the hearing and be accompanied, and, if so, by whom;
 - ii) advise the Investigating Officer how many witnesses he/she is intending to call;
 - iii) supply the Investigating Officer with copies of any written statements of documents to be distributed to the Hearing Officer or sub-committee members prior to the date of the hearing;

13.2 The Hearing Officer or Panel should, after following the procedure outlined below, decide:

- a) to take no further disciplinary action; *OR*
- b) to reprimand the employee and to determine upon a form of disciplinary action, other than dismissal. This to be subject to appeal rights: *OR*

- c) in the case of a Disciplinary sub-committee of local Governors - ask the Trust Board to terminate the appointment of the employee concerned; This is to be subject to appeal rights.

13.3 *Procedure for Appeal:*

Appeals against decisions by a Headteacher or sub-committee of local governors, should specify the grounds for appeal and be submitted in writing within 10 (TEN) working days from the date of the written decision to the chair of the trust board, which should set out details of these appeal rights. Unless both parties agree to a variation, and Appeal Hearing shall be held within 20 (TWENTY) working days of receipt of the notice of appeal.

- 13.4 A Headteacher, member of the Trust Board or Local Governing Body has no power to transfer an employee to a post in another school or to an unattached post. However, such power rests with the Chief Executive under powers delegated to him/her by the Trust Board.

- 13.5 The conduct of all hearing should be in accordance with a defined procedure, a model of which is set out in *Appendix 3*.

14 DISCIPLINARY WARNINGS / SANCTIONS

14.1 *Formal Oral Warning:*

- a) If it is established that the employee has breached disciplinary expectations, a formal oral warning will normally be given by the Headteacher.
- b) The decision should be confirmed in writing and the employee should be advised that any recurrence of misconduct may lead to further disciplinary action.
- c) Copies of the formal oral warning should be sent to the chair of the trust board. A Formal oral warning will remain on file for 6 (SIX) months.

14.2 *Formal Written Warning:*

- a) If there are further allegations of misconduct, or if the alleged misconduct is considered sufficiently serious and if the offence is established, the employee should be formally warned in writing and informed that the recurrence of misconduct may lead to further disciplinary action.
- b) Copies of the formal written warning should be sent to the chair of the trust board. A formal written warning will remain on file for 12 (TWELVE) months.
- c) In some situations a second formal written warning may be issued, if the misconduct is of a radically different nature from a previous offence.

14.3 *Final Written Warning:*

- a) Any further case of alleged misconduct or a first occurrence of alleged misconduct that is considered sufficiently serious, may warrant consideration of a final warning.

- b) If the offence is established, the employee should be given a final written warning, a copy of which should be forwarded to the Chair of the Trust Board. The employee should be advised that a recurrence of misconduct may lead to his/her case being referred to a disciplinary sub-committee of the Local Governing Body, where the question of his/her continued employment will be considered

14.4 All warnings should state the nature of the offence committed, the reason for the disciplinary action, and should indicate where an improvement in conduct is expected. The right of appeal should be described.

15 DISCIPLINARY WARNINGS TO A HEADTEACHER

The issue of formal disciplinary warnings to a Headteacher will be the function of the Chief Executive of the Trust under powers delegated to him/her by the Trust Board. The decision of should be notified to the Headteacher in writing. Any appeal against such a warning should be consistent with the principles of paragraph 17 below.

16 DISMISSAL OR OTHER DISCIPLINARY SANCTIONS

Other disciplinary sanctions including dismissals are set out in Appendix 1.

17 APPEALS

17.1 An appeal against any formal warning, including a final warning or dismissal issued by the Headteacher, will be to an Appeal Sub-Committee appointed by the Trust Board which has delegated authority in accordance with Appendix 1, paragraph 2. Any appeal against a formal warning or dismissal should be lodged, in writing, within 10 working days, stating the grounds for the appeal. The decision of the Trust Board sub-committee shall be final and will be notified to the employee in writing.

17.2 The purpose of the Appeal is to consider the evidence presented by the appellant together with the management response and to decide whether in light of these the decision is fair.

17.3 Any warning on file is time limited in accordance with paragraphs 14.1 – 14.3.

18 REPORT TO SECRETARY OF STATE

Where a teacher is dismissed on grounds of misconduct, or dismissal would have been considered but for resignation, there is a requirement that the facts of the case be reported to the Secretary of State for Education and Employment. (Part Three Section 11 of the Education (Teachers) Regulations 1989.)

19 EMPLOYMENT TRIBUNAL

19.1 The operation of these procedures is without prejudice to the right of an employee to make a claim to an employment tribunal, at which the Trust Board or Local Governing Body may be named as a respondent.

19.2 Members of the Trust Board and Local Governors are reminded that the Trust is the employer of staff and has, therefore, statutory responsibilities in managing employment law matters related to conditions of service and the contractual rights of employees. In order to determine whether or not governors or trust board have acted fairly and reasonably (especially where dismissals and subsequent claims of unfair dismissal and discrimination are concerned), the appropriate officers will need to be kept informed of the progress of proceedings and invited to attend any hearings where dismissal is a potential outcome. Similarly, where the Trust Board choose to defend or settle claims of public or employer liability the Trust will need to be satisfied that any payment in damages is reasonable.

APPENDIX 1

LOCAL GOVERNING BODY ARRANGEMENTS UNDER DELEGATION AND SCOPE OF DISCIPLINARY POWERS

Version A

- 1 **Where the possibility of dismissal arises, the Local Governing Body has delegated dismissal decisions to the Headteacher who shall hold a hearing as outlined in section 13 before reaching a decision to dismiss an employee. The employee shall have the right of Appeal to the Trust Board Appeal Committee. In cases where the Headteacher has been directly involved in the events leading to dismissal or is the subject of disciplinary proceedings the Local Governing Body Disciplinary Committee will hear the case.**

Version B

The Local Governing Body has not delegated dismissal decisions to the Headteacher but will appoint a panel of at least two local governors and one member of the Trust Board who will hear the case for dismissal. The employee shall have the right of appeal to the Trust Board Appeals Committee consisting of three trust board members. When the Headteacher is the subject of the disciplinary proceedings the case will usually be presented by the Local Governing Body at the original hearing and heard by the trust Board Disciplinary Committee.

- 2 A Disciplinary Sub-Committee will comprise of one member of the Trust Board and two members of the Local Governing Body and the Appeal Sub-committee will comprise of three members appointed by the Trust Board.
- 3 Local Governing Bodies and the Trust Board should ensure that no one who takes part in an initial disciplinary decision also hears the appeal. Furthermore, the Local Governing Body and Trust Board remains responsible for any decisions taken under delegated authority. Formal minutes of a meeting must be taken and decisions of a sub-committee must be reported to the trust board at the next meeting following the exhaustion of the local disciplinary appeals procedure.
- 4 A Disciplinary Sub-Committee of the Local Governing Body including one trust board member has delegated authority to decide whether or not to take disciplinary action. Disciplinary action could include:
 - a) a recorded warning;
 - b) work/attendance monitoring for a specified period;
 - c) final warning;
 - d) any combination of these actions, (a) to (c);
 - e) dismissal with appropriate notice.
 - f) dismissal without notice for cases of gross misconduct.

Once such actions have been taken and any appeal rights have been exhausted (or not exercised), no additional sanctions shall be applied retrospectively in respect of the same offence.

- 5 **Version B**
Whilst Headteachers may have delegated authority in connection with 4(a) to (d) above, only the Local Governing Body or a Trust Board Sub-Committee with delegated authority has the power to dismiss employees who form part of the school's staffing complement. In exceptional circumstances the Headteacher may delegate functions for which he/she is

responsible to his/her Deputy. Where a Headteacher or his/her Deputy has acted under such delegated authority, the employee shall have the same right of appeal as set out in paragraph 2 of this Appendix

Following the initial dismissal decision, if the employee is successful at appeal he/she will be reinstated.

- 7 Any action or decision of a Disciplinary Sub-Committee appointed by the Local Governing Body or Trust Board must be reported to the next full meeting of Local Governing Body members, once the matter has been completed.
- 8 These arrangements are consistent with the School Staffing Regulations (England) 2003 Education (School Government) Regulations.

APPENDIX 2

STATEMENT CONCERNING GROSS MISCONDUCT

Gross misconduct has been defined as conduct of such a nature that the local Governing Body and the trust board is justified in no longer tolerating the continued presence at the place of work of the employee concerned.

Examples of offences which in extreme cases have led to the dismissal of a school employees, and which, if committed by an employee, could be regarded as gross misconduct, include:

- Gross negligence in failing to attend to carry out the agreed duties of the post.
- Deliberate and continued refusal to carry out a reasonably, lawful and safe instruction or the normal agreed defined duties of the post.
- Sexual offences.
- Sexual misconduct at work.
- Serious instances of racial harassment or victimisation.
- Fighting, threatening physical violence or physical assault.
- Stealing or other offences of dishonesty.
- Falsification of qualifications which are a stated requirement of employment or which result in financial gain.
- Falsification (knowingly) of information as to incapacity under the self-certification of sickness procedures.
- Malicious damage to property.
- Deliberate falsification of timesheets or expense claims for pecuniary advantage.
- Failure to disclose, if asked, criminal convictions not exempt under the terms of the Rehabilitation of Offenders Act 1975.
- Falsification of registration of pupils or students for pecuniary gain.
- Being unfit to perform duties associated with the post as a result of taking alcohol or drugs other than in accordance with medical advice.
- Wilful unauthorised disclosure of information classified as confidential by staff who, in due course of their duties, have access to such information which, by its release, could be harmful to the Authority, other staff or pupils.
- Undertaking private work when required to be at work.
- Breaches of safety regulations endangering other people, including deliberate damage to, neglect of, or misappropriation of safety equipment.

This list is neither exclusive nor exhaustive, and there may be other offences of a similar gravity, which would constitute gross misconduct.

APPENDIX 3

MODEL OUTLINE OF HEARING PROCEDURE

(subject to agreement by the parties in each individual case)

1 Preliminaries

- a) Introductions, identification of representative(s), of the clerk. Where witnesses are called they will only be present for the period of questioning.

2 Case of the Head of School: (or, where appropriate, their representative)

- a) Presentation of case, calling and questioning of witnesses, where appropriate, and identification of documents.
- b) Questions from employee (and representative, if present).
- c) Questions from the Sub-Committee.
- d) Further questions from Head of School arising from answers given.
- e) Further questions from employee and representative arising from answers given.

3 The Employee's Case:

- a) Presentation of case, calling and questioning of witnesses, where appropriate, and identification of documents.
- b) Questions from the Headteacher
- c) Questions from the Sub-Committee.
- d) Further questions from the employee or his/her representative arising from answers given.
- e) Further questions from Headteacher arising from answers already given by witness(es).

4 After suitable adjournment, (if requested by either party,) both parties shall:

- a) sum up, if they wish, the Headteacher to be followed by the employee (or his/her representative);
- b) withdraw during consideration of the case by the Sub-Committee.

5 Any witness or representative may be recalled to clear up points of uncertainty, but only in the presence of a representative of both parties.

6 The Sub-Committee shall determine its decision, which shall be conveyed in writing to both parties as soon as practicable, normally within 10 working days.

7 The conduct of hearings is a matter for the Governing Body Sub-Committee. Variations to the hearing procedure may also be made by agreement, where circumstances warrant this.