Disciplinary Procedure

EYFS: 3.80

At **Young England Kindergarten** we follow our legal obligations as an employer at all times including dealing with any disciplinary matter in a fair and consistent manner. We have the following policy and procedure that set out our process.

Legal obligations

Our legal obligations as an employer are detailed in the ACAS Code of Practice on disciplinary and grievance procedures (2015). This code of practice was introduced in April 2009 and updated in 2015. A full copy of the ACAS Code of Practice and the accompanying guidance can be obtained from the ACAS website www.acas.org.uk

We note that a failure to follow the code does not, in itself, make an organisation liable to formal proceedings at an employment tribunal, but failure to follow the code may result in any compensation award payable to be increased by up to 25% or reduced by 25% if the employee does not comply.

Objectives and guiding principles

The objective of this procedure is to set out the standards of conduct expected of all staff and to provide a framework within which our managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.

It is our policy to ensure that any disciplinary matter is dealt with fairly and consistently. We will take the necessary steps to establish the facts and to give employees the opportunity to respond before taking any formal action.

This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

The procedure applies to all employees regardless of length of service.

Minor conduct issues can often be resolved informally between the employee and their line manager. These discussions should be held in private and without undue delay whenever there is a cause for concern. Where appropriate a note of any such discussions may be held on the employee's personnel file, but will be ignored for the purpose of future disciplinary issues.

Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (due to the serious nature of the allegation against you).

The employee will not normally be dismissed for a first act of misconduct, unless it is decided it amounts to gross misconduct or the employee has not yet completed their probationary period.

The procedure
Our aim is to deal with disciplinary matters sensitively and fairly. All employees must treat all information in connection with the disciplinary procedure and its investigation as confidential.

Where there has been a serious allegation of misconduct or gross misconduct and/or there are serious concerns regarding the employee's capability, we aim to establish the facts quickly and no disciplinary action will be taken until the matter has been fully investigated. The employee will be informed if a formal complaint is made against them, and if necessary they may be suspended on full pay pending the outcome of the investigation and disciplinary procedure.

Stage 1: Investigation

- The nursery manager will investigate any allegations/concerns quickly and thoroughly to establish whether a disciplinary hearing should be held
- The purpose of the investigation is to establish a balanced view of the facts relating to the allegations against the employee. The amount of investigation will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents
- Investigation interviews are solely for the purpose of fact finding and no decision on the disciplinary procedure will be taken until after the disciplinary hearing
- The employee is not normally allowed to bring a companion to an investigatory interview. However, we may allow them to bring a work colleague or trade union representative in exceptional circumstances and if the employee wishes to be accompanied they should contact the nursery manager to discuss the reasons for their request
- If the investigations lead us to reasonably believe there are grounds for disciplinary action, with legal advice the nursery will write to the employee outlining the allegations against them, the basis of the allegations and the potential consequences. The employee will be invited to a disciplinary hearing to discuss the matter. They will be sent any copies of evidence which may be referred to in the hearing (e.g. witness statements, or a summary of the statements if the witness's identity is to remain confidential, and minutes of meetings).

Suspension

- *If the nursery believes that the employee may be guilty of misconduct, which is considered (at the settings absolute discretion) to be serious misconduct, where relationships have broken down, or where we have any grounds to consider that nursery property or responsibilities to other parties are at risk, or where we consider in the settings absolute discretion that the employees continued presence at the Company's premises would hinder an investigation, the nursery is entitled to suspend the employee on full pay*

- *Any such suspension will normally last only as long as required to enable an investigation into the circumstances giving rise to such belief of serious misconduct to be carried out and any disciplinary hearing to be convened*
- *Any such period of suspension is not a punishment, nor considered as disciplinary action against the employee, nor does it imply that any decision has been taken about the employee's case.*

Stage 2: Invite to disciplinary hearing

- The nursery will hold the disciplinary meeting to discuss the allegations. The employee will have the right to bring a companion to the meeting. A companion may be a work colleague or trade union representative. The employee must inform the nursery manager prior to the meeting who their chosen companion is. If their companion is unreasonable, for example, there may be a conflict of interest, the nursery manager may require the employee to choose someone else
- If the employee or their companion is unable to attend the meeting the employee should inform the nursery manager immediately and we will arrange an alternative time and date, where applicable will be arranged. The employee must make every effort to attend the meeting and failure to do so without good cause may be treated as misconduct in itself.

Disciplinary hearing

- During the meeting the nursery manager or designated person leading the meeting will go through the allegations against the employee and the evidence that has been collated. The employee will be able to state their case and call relevant witnesses (provided the employee gives advance notice and we agree to their attendance) to support the case
- The nursery may adjourn the disciplinary meeting if further investigations need to be carried out and the employee will be given reasonable opportunity to consider new information
- The employee will be notified of the decision in writing, usually within ***seven*** working days of the hearing
- If the employee persistently fails to reply to invitations, or persistently fails to attend the arranged hearing without good cause, it may be carried out in their absence and they will be notified of the decision in writing. The employee will retain the right to appeal.

Appeal

- The employee will be given the opportunity to appeal the decision. If they wish to appeal, the employee should state their full grounds in writing and the letter should be sent to **Henry King** within five working days from the date the decision was communicated to them
- The appeal meeting will be conducted impartially by a senior member of staff, where possible, who has not previously been involved in the case
- The employee will be able to bring a companion to the meeting and the companion may be a work colleague or trade union representative (as stated above)

- The nursery may adjourn the appeal hearing if further investigations need to be carried out and the employee will be given reasonable opportunity to consider any new information before the hearing is reconvened
- The nursery will inform the employee in writing of the final decision as soon as possible, usually within ***five*** working days of the appeal hearing.

There is no legal right to appeal beyond this stage.

Disciplinary penalties
In the first instance, where less serious offences are concerned, the nursery are most likely to give the employee a verbal warning. This warning will be recorded and a copy maintained in the employee's personnel file with a time scale for improvement or to not re-offend.

[Note: the right to a verbal warning is not part of the ACAS code. Many employers use verbal warnings as a first stage but you may prefer to use a written warning as the first stage depending on the circumstances.]

The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. We aim to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

The employee will not normally be dismissed for a first act of misconduct, unless it is decided it amounts to gross misconduct or the employee has not yet completed their probationary period.

First written warning
A first written warning may be authorised by the Principal. It will usually be appropriate for a first act of misconduct where there are no other active written warnings on the employee disciplinary record.

Final written warning
A final written warning may be authorised by the Principal. It will usually be appropriate for:

a. misconduct where there is already an active written warning on the employee record,
b. misconduct that we consider is sufficiently serious, to warrant a final written warning even though there are no active warnings on the employee record.

Dismissal
Dismissal may be authorised by the Nominated Person. It will usually only be appropriate for:

a) any misconduct during the employee probationary period;
b) further misconduct where there is an active final written warning on the employee record; or
c) any gross misconduct regardless of whether there are active warnings on the employee record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are set out below.

Levels of authority
Nursery Managers (including officer in charge) have the authority to suspend an employee pending investigation. Only the nursery manager (including officer in charge) and higher management has the authority to dismiss an employee as set out above.

Gross misconduct
In the case of gross misconduct, the nursery reserves the right to dismiss an employee without notice (or payment in lieu of notice) if, after investigation and a hearing, the management are satisfied that there is sufficient justification for so doing.

Duration of warnings
Under normal circumstances warnings will be valid for the following time periods, although these may vary according to the nature of the occurrence and may therefore be determined by mutual agreement at the time of issue:

- Verbal warning - six months
- First written warning - six months
- Final written warning - 12 months.

On expiry, warnings will be disregarded for future disciplinary purposes.

Alternatives to dismissal
In some cases the nursery may, at the setting's discretion, consider alternatives to dismissal. These must be authorised by the Nominated Person and will usually be accompanied by a final written warning. Examples include:

- Demotion/loss of seniority
- Change to job role
- A period of suspension without pay
- Loss of seniority
- Loss of additional hours/ overtime.

Examples of gross misconduct
Examples of what would constitute a gross misconduct offence include:

- Failure to inform the employer of a disqualification, either personally or a person living in the same household as the registered provider, or a person employed in that household
- Theft or the unauthorised possession of property belonging to the nursery, its employees or customers
- Assault on any employee or persons associated with the nursery
- Breach of confidence i.e. the divulging of confidential information relating to the nursery, its employees or clients
- Dishonesty, including the use of any funds, expenses or allowances for any other purpose than that for which they have been delegated by the nursery
- Being under the influence of drugs or alcohol whilst on duty
- Serious or persistent breaches of safety rules
- Fraud including falsification of work records and expense claims
- Signing/clocking in or out for another employee

- Physical assault/punishment or abuse towards a child e.g. hitting a child in chastisement or harsh disciplinary actions and/or threatening the use of corporal punishment which could adversely affect a child's well-being
- Discrimination/harassment in any way against a child/person
- Persistent failure to follow nursery documentary systems and procedures
- Unauthorised absence from work/unacceptable attendance levels
- Obscene language or other offensive behaviour
- Negligence in the performance of the employee duties.

Further behaviour that could constitute gross misconduct is not limited by the above list.

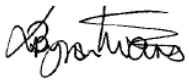
Examples of misconduct

Examples of what would constitute a misconduct offence include:

- Minor breaches of our policies including the Absence management procedure, Mobile Phone, Smartwatches and Social Networking Policy, and Health and Safety policies
- Minor breaches of the employee contract
- Minor damage to, or unauthorised use of nursery property
- Poor timekeeping
- Time-wasting
- Refusal to follow instructions
- Excessive use of our telephones for personal calls
- Excessive personal email or internet usage
- Smoking in no smoking areas.

N.B. Some of the misconduct offences above may, dependent on the circumstances and having followed a detailed investigation, also be classed as gross misconduct offences.

As an organisation we take the health and wellbeing of staff and children seriously. As such, we would expect all members of staff working within the setting to abide by any government recommendations, laws and guidelines set for example rules on social distancing whether at work or in their private lives. Any breaches of government guidelines will be dealt with in accordance with our disciplinary procedures and may also be treated as misconduct.

This policy was adopted on	**Signed on behalf of the nursery**	**Date for review**
January 2026	 *Lucinda Byron Evans (Principal)*	*January 2027*