



The de Ferrers Trust

Discipline Policy and Procedure

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Whole Trust Discipline Policy and Procedure

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1. Purpose

- 1.1. The purpose of this policy and procedure is to designed to help and encourage all employees to achieve and maintain the standards of conduct expected of all colleagues and to ensure that all disciplinary matters are dealt with fairly and consistently. This procedure does not deal with performance or sickness absence issues. These are dealt with in our Capability/Performance Improvement and Managing Attendance at Work policies and procedures.
- 1.2. Any reference to ‘the employer’ refers to The de Ferrers Trust. The ‘appropriate level of authority’ should be determined according to the employer’s decision making structure, however, for the purposes of this policy, a Deciding Manager will usually be the Principal in an academy, or those who have delegated authority to carry out this role. This policy applies to employees of the employer, referred to in this policy as colleagues.
- 1.3. The policy and procedure applies to all colleagues, regardless of length of service, but does not form part of the contract of employment and can be varied from time to time and in consultation with the recognised trade unions.
- 1.4. The procedure does not apply once you have left the employer.

2. General Principles

- 2.1. All managers have a duty to ensure that they and all the colleagues they are responsible for are aware of, and comply with, the employer’s policies and procedures. Managers are also responsible for making sure that colleagues know when they are not achieving or maintaining the expected standards of conduct or behaviour.
- 2.2. All colleagues have a responsibility to be aware of and conduct themselves in line with the employer’s policies, the law and maintain acceptable standards of conduct and behaviour. Where relevant, colleagues must adhere to codes of practice or standards associated with their profession or trade must also be adhered to. Colleagues must also cooperate with disciplinary investigations as required.
- 2.3. The aim of the procedure is to set out and maintain the required standards of conduct and encourage improvement and where issues are identified, they are dealt with promptly without undue delay from the employer
- 2.4. We are committed to equality and diversity and will make reasonable adjustments to the application of this policy and procedure in line with our equal opportunities commitment.

- 2.5. At any stage through the disciplinary procedure, an employee is entitled to consult with and be represented by his/her Professional Association or Trade Union, or a colleague.

3. Acceptable Behaviour and Conduct

- 3.1. The relevant code of conduct provides colleagues of the employer with an effective ethical framework within which to work and it provides the public with confidence that you are working on their behalf in an appropriate manner.
- 3.2. The employer expects all colleagues to meet high standards of behaviour and conduct, including the relevant code of conduct. Examples of the types of expected standards of behaviour are detailed in this policy.

4. Minor Conduct Issues and an Informal Approach

- 4.1. For minor conduct issues, your manager will adopt an informal approach to help, guide or advise you in improving your conduct. Your manager will only consider dealing with minor disciplinary breaches through the formal stages of the procedure if your misconduct continues or the misconduct is too serious to be dealt with informally.
- 4.2. Cases of minor misconduct are usually best dealt with informally and confidentially. A conversation about the concerns and resolutions is often all that is required to improve your conduct. In some cases your manager may decide that additional training, coaching and advice may be what is needed.
- 4.3. Where a manager has a concern about your conduct they will organise an informal meeting to discuss the concern. The purpose of any informal meeting is to identify and examine any areas of concern and to provide a reasonable opportunity for you to respond and to improve your conduct. For example where it is appropriate to question the factual accuracy of any concern that has been identified. You and your manager must ensure that you understand any future expectations of your conduct and, where appropriate, to develop an action plan leading to improvements in your conduct. This action plan will be supportive, particularly if there are training implications, with due consideration to external factors such as difficult personal circumstances including health issues. Although this may result in a note of the discussion and any follow-up correspondence being kept by your manager on your personal file, there will be no note made on your disciplinary record. You will be asked to confirm that you agree that any action plan you

are signing up to is achievable and realistic and should raise any concerns that you have about the action plan with your manager.

- 4.4. Where the behaviour causing concern may be related to an underlying relationship issue, it may be appropriate to consider an independent third party, such as a mediator, to help resolve the situation rather than disciplinary action.
- 4.5. In the event that the matter cannot be resolved informally or the matter is too serious for the informal approach to be applied, then the formal disciplinary process will follow.
- 4.6. No formal disciplinary action will be taken unless or until the allegations have been fully investigated.

5. Link with Other Policies and Procedures

5.1. Grievance Policy – Where you submit a complaint during disciplinary proceedings, this will not normally stop the proceedings from progressing. Where you raise a grievance during disciplinary proceedings:

- It may be appropriate to consider suspending the disciplinary procedure in order to deal with the grievance or
- The grievance and disciplinary may be run concurrently where the issues relate to the substance/context of the disciplinary matter or
- If the grievance is separate and unrelated to the matter in hand, this will be considered separately at the conclusion of the disciplinary process.

5.2. Where you assert that disciplinary proceedings being undertaken are unlawfully discriminatory or are motivated by reasons other than misconduct, you can raise a grievance.

6. Managing Attendance at Work Policy

6.1. Where you are absent due to sickness whilst a disciplinary matter is pending, the managing attendance at work procedure will apply as normal. However those responsible for keeping in touch would not normally be the same people involved in the handling of your case. Under these arrangements due regard will be had for what is said by Occupational Health and any information you may wish to provide from your GP. We will arrange for you to see Occupational Health as soon as possible for them to assess your health generally and whether or not you are fit to participate in these procedures. Being absent from work due to sickness will not automatically stop the disciplinary procedure progressing.

7. Formal Disciplinary Process

7.1. Prior to any formal disciplinary decision being made, the following steps will be taken:

- An investigation will be carried out in accordance with the Investigation Procedure. If allegations have been made against you, you will be notified of the nature of the allegations that are to be investigated prior to the investigation meeting. The amount of investigation involved will vary depending on the allegations in question and the circumstances of the case. Investigations will be dealt with as confidentially as is reasonably practicable and sensitively, in line with the Investigations Procedure.
- Having considered matters, the Deciding Manager will consider whether there is a case to answer or not. The Deciding Manager may conclude that there is insufficient evidence to proceed to a formal hearing or that an appropriate response would be the application of informal counselling or additional training or else may decide to progress the matter to a formal hearing.
- If following investigation it is reasonably believed that there are grounds for disciplinary action, you will be required to attend a disciplinary hearing.
- You will be invited to the hearing in writing in accordance with the Formal Meeting/Hearing Procedure.
- You will be provided with written details of the allegations against you to be presented to you at the hearing writing at least **10 working days** before the meeting/hearing.
- The Investigating Officer will supply copies of all documents to be relied upon at the hearing to the Deciding Manager/Panel, the employee and their named representative at least 5 working days prior to the date of the hearing. The Statement of Case shall not include allegations for which no substantiation was found nor recommendations for action.
- You must provide copies of any relevant evidence you intend to refer to, at least **3 working days** before the hearing.
- At the hearing the case against you will be explained and you will have the opportunity to respond to the allegations and for you or your representative to present your case.

8. Right to be Accompanied

- 8.1.** You have the statutory right to be accompanied by a companion at any meeting as part of the investigatory or formal disciplinary procedure. The companion may be a fellow colleague, a trade union representative (or an official employed by a trade union), Professional Association representative (and official employed by one).
- 8.2.** The companion is allowed to address the hearing, to put and sum up your case, respond on your behalf to any views expressed at the meeting and confer with you during the hearing. They may also request an adjournment and ask questions of anyone present. The companion does not, however, have the right to answer questions on your behalf, address the hearing if you do not wish it or prevent the employer from explaining their case. Other than confirming that all parties have the same documentation it would not normally be necessary to read out the content of the documentation.
- 8.3.** Under this procedure, you do not have the right to be accompanied by anyone else (such as a spouse, partner, other family member or legal representative).
- 8.4.** However, it would not normally be reasonable for you to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for you to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site.
- 8.5.** Where appropriate, eligible colleagues, for example those with disabilities or language difficulties, may have the attendance of a supporter or interpreter.

9. Suspension

- 9.1.** Suspension should not be automatic and is reserved as a last resort where other more proportionate measures are not appropriate. Examples where this may be considered in full or in part are:-
 - 9.1.1. Where there is a risk of the fairness of the investigation being jeopardised;
 - 9.1.2. Where the employee's presence could pose a potential threat to the organisation or other employees or students.
- 9.2.** Depending on the circumstances, you may be suspended from work on full pay during the investigation. Suspension on full pay is not an assumption of guilt and is not considered disciplinary action. Suspensions will be carried out in accordance with the Suspension Procedure (See Appendix)

10. Action against Trade Union Representatives

10.1. Disciplinary action against a TU representative can lead to a serious dispute if it is seen as an attack on their functions. Whilst normal disciplinary standards apply to a TU representative's conduct as a colleague, the relevant official should be notified of any action (including suspension) that the employer proposes to take. All reasonable efforts must be taken to ensure that disciplinary action is not taken against a TU representative until the relevant full-time official has had an opportunity to be present at any stage of the formal procedure.

11. Criminal Offences

11.1. Certain criminal offences may affect your suitability to continue in your role with the employer or damage their reputation. If you are charged with a relevant criminal offence you must inform your manager as soon as possible. We will not treat notification about criminal proceedings, or a conviction (including bind-over's and cautions), as an automatic reason for dismissal or for any other form of disciplinary action being taken. We will decide what action to take, if any, after we have reviewed the matter. The main consideration should be whether the conviction is one that makes you unsuitable for your job or affects the employer's reputation.

11.2. If you are subject to a criminal investigation, the employer will determine to what extent it needs to conduct its own investigation before deciding whether to proceed to formal disciplinary action. The employer will not usually wait for the outcome of any prosecution before deciding what action to take however it is common that instructions from the police, prevent the employer to carry out a school-based investigation until they have completed their investigation. No decision to impose a disciplinary sanction or dismiss will be taken prior to giving you the opportunity to make representations.

11.3. If we have reasonable grounds to suspect that the potential misconduct involves fraud, systems abuse, theft, or any financial irregularity, we will notify the internal auditors and/or the police as soon as possible.

12. The Disciplinary Hearing

12.1. Formal hearings will be conducted in line with the Formal Meeting/Hearing Procedure. You must make all reasonable efforts to attend a disciplinary hearing. If you or your companion is unable to attend a hearing you may propose a new date of no more than **5 working days** from the date of the original date.

12.2. The manager will respond sensitively when a delay is required, for example, it may arise for a reason related to a disability or emergency

involving dependants. We may arrange another hearing date if you fail to attend through circumstances outside of your control.

- 12.3. If you do not attend the hearing without good reason, it should be re-arranged but if you do not attend the rearranged meeting/hearing, a decision may be made in your absence. You may submit a written statement to be taken into consideration.
- 12.4. Where you are persistently unable or unwilling to attend the hearing without good cause the manager should make a decision on the evidence available.
- 12.5. The disciplinary hearing will be conducted by the Deciding Manager¹ who will be an appropriate level of management or authority. A representative from HR may also be present and will always be present at hearings that may result in dismissal or an alternative to dismissal.
- 12.6. The Deciding Manager will explain the allegations against you and the evidence in support of those allegations and to call witnesses. You will have the opportunity to ask questions of the Investigating Officer on the evidence presented and any witnesses called. The Deciding Manager will then have the opportunity to ask questions of the Investigating Manager and any witnesses. You will then to respond to the allegations, which will include the presentation of your own evidence if you wish. You may request that a witness(s) attend the hearing except that where you rely on character witnesses we would ask that witness statements be provided. However, witnesses whose evidence is not challenged will not be called by the Deciding Manager unless at the request of the employee. Where a witness is required to attend the Deciding Manager will invite them in writing.
- 12.7. Notes of formal meetings will be given to you for your information and copies of notes, letters and action plans should be retained by the line manager.

13. Disciplinary Outcomes

- 13.1. Following the hearing, the Deciding Manager/Panel will make a decision as to whether the case has been proven (on the balance of probabilities) and whether a sanction needs to be imposed, or whether the employee is exonerated. This will be communicated in writing to the employee with a copy to their representative if agreed.

14. Referral to DBS and the Teaching Regulation Agency (TRA)

- 14.1. A referral to DBS must be made if the criteria is met as detailed in the Managing Allegations against Staff Procedure. Schools and colleges have a legal duty to refer anyone who has met the criteria,

¹ In schools and Academies the disciplinary hearing may be conducted by a Panel

and who has been removed from working in a regulated activity, or who would have been removed if they had not left.

- 14.2.** A referral to the Teaching Regulation Agency should be made when the dismissal is of, or resignation in relation to allegations of abuse is against, a member of teaching staff.

15. Disciplinary Penalties

15.1. Stage 1 – First written warning

A first written warning may be issued by the Deciding Manager (per the scheme of delegation) and will usually be appropriate for a first act of misconduct where there are no previous warnings and where any agreed adjustments and other support has been made or provided. The warning will remain active for 6 months and it should be disregarded for disciplinary purposes after this period.

15.2. Stage 2 – Final written warning

A final written warning may be issued by the Deciding Manager (per the Scheme of Delegation) in the following circumstances:

- where there has been a further act of misconduct while an existing warning is in effect, or
- the seriousness of the misconduct is sufficient to warrant such a warning, even though no previous warning may have been issued.

The warning will remain active for 12 months and it should be disregarded for disciplinary purposes after this period.

15.3. Stage 3 – Dismissal

Only an appropriate level of authority in line with the Trust's Scheme of Delegation can take a decision to dismiss and where any agreed adjustments and other support has been made or provided. You may be dismissed in the following circumstances:

- where, within the duration of the final written warning, the necessary improvement in behaviour has not been achieved and any agreed adjustment and other support has been made or provided. This would be with notice or payment in lieu of notice; or
- where there has been a further act of misconduct while an existing warning is in effect
- where it is reasonably believed that you have committed an act of gross misconduct. Gross misconduct will usually result in summary dismissal without notice and without pay in lieu of notice. Examples of gross misconduct are detailed in the policy.

The Deciding Manager may at their discretion consider alternatives to dismissal. Examples of such alternatives include demotion, loss of seniority, reduction in pay, compulsory training. If such an alternative is applied, it may also be accompanied by a final written warning.

16. Warnings

16.1. Where a warning is issued, this will be confirmed to you in writing within **10 working days** of the hearing. The warning will state the misconduct that led to the warning, the action or improvement required by you, the duration of the warning and the likely consequences of the action of improvement not being taken and/or any further misconduct. You will also be advised of the right of appeal and the person to whom an appeal should be made.

17. Appeals

17.1. Where disciplinary action has been taken, if you are dissatisfied with that decision, you can appeal. Your appeal must be in writing and set out the grounds of your appeal in line with the list below and include all the information you wish to rely on at the appeal hearing. You must send your appeal to the Appeal Deciding Manager (per the Scheme of Delegation) within **5 working days** of the date you received the letter notifying you of the disciplinary decision. The action taken at the disciplinary hearing will remain in force pending the outcome of the appeal. You must be appealing against either:

- the finding that you were guilty of committing the alleged act (or acts) of misconduct where the evidence did not support this finding
- the severity of the disciplinary sanction imposed taking into account the nature of the misconduct and the mitigating circumstances
- the fact that you don't feel the correct procedure was followed
- the fact the new evidence that was not considered in the disciplinary hearing has come to light that would change the outcome
- the sanction is inconsistent with how others have been treated
- there was unlawful discrimination in the handling of the disciplinary.

17.2. You will be invited to the hearing in writing in accordance with the Formal Meeting/Hearing Procedure. You will be given at least 10 working day's notice of the appeal hearing. You have the right to be accompanied at the appeal hearing by your companion.

17.3. You must provide copies of any relevant evidence you intend to refer to, at least **3 working days** before the hearing.

17.4. The outcome of the appeal may be to overturn or confirm the original decision or apply a different, but not more serious, sanction. You will be

advised of the appeal outcome, which will be confirmed in writing within **10 working days** of the appeal hearing. There is no further right of appeal.

- 17.5.** You are not entitled to raise a further complaint under the employer's Grievance Policy (or any of the employer's complaints procedures) in relation to the same grounds of appeal.

18. Examples of Standards of Behaviour

- 18.1.** The following are examples of the behaviour expected the Trust of all its colleagues, although the list is not exhaustive:

- You should attend work punctually and regularly, in line with operational requirements
- You should carry out reasonable requests/instructions from your managers promptly and efficiently, and to the required standard
- Time off must be approved in advance by the appropriate level of authority, usually your manager and be in line with your contract of employment
- You must follow the procedures outlined in the Sickness Absence Policy and Managing Attendance at Work procedure when notifying the employer of your sickness absence
- You must comply with all of the employer's policies and procedures, including but not limited to the Bullying and Harassment Policy, the relevant Code of Conduct, the ICT Acceptable Use Policy or the Health and Safety Policy
- You must adhere to professional body and statutory guidelines, as appropriate, and act professionally at all times
- In your own interests, and in the interests of the employer as a whole, you should bring serious breaches of the employer's policies or procedures to the attention of management.

19. Examples of Gross Misconduct

- 19.1.** The following are examples of gross misconduct but this list is not exhaustive:

- Theft or unauthorised removal of property, fraud, falsification of the employer's records or any other dishonesty
- Actual or threatened violence or bullying behaviour
- Deliberate or serious damage to the employer's property or that of a colleague, customer, contractor or authorised visitor
- Serious negligence which does or could result in loss, damage or injury
- Deliberately accessing, copying or distributing pornographic, offensive, obscene or inappropriate material on the internet or paper media

- Being under the influence of alcohol, drugs or other similar substances at work which may give reasonable grounds to suspect your ability to undertake your duties or being in possession of illegal or intoxicating drugs on site
- Refusal to obey reasonable instructions or any other act of serious insubordination
- Any action or behaviour which brings the employer into serious disrepute
- Serious breach of health and safety rules
- Unauthorised disclosure of confidential information
- Acceptance of bribes or other secret payments
- Harassment or any act of discrimination towards any one you come into contact with because of your work.
- Convictions relating to activities outside work but which have a significant and direct bearing on your employment and duties with the employer and its reputation.
- Misrepresenting at any time, including at your appointment with the employer, any previous positions you have held, your qualifications, date of birth, declaration of health, or a failure to disclose a criminal offence or pending criminal action subject to the provisions of the Rehabilitation of Offenders Act 1974.

Appendix A

Suspension Procedure

Introduction

In order to give effect to the Trust's policies and procedures there needs to be a manager in a deciding role. Such a manager is to be known as the 'Deciding Manager' to differentiate this role from that of the 'Investigating Manager'. The Deciding Manager may consider that a matter cannot be dealt with informally and so requires a formal investigation. The purpose of an investigation is to enable the Deciding Manager to establish, as far as possible, the facts behind any grievance, bullying and harassment complaint or disciplinary allegations in order to decide how to progress any issues through the relevant procedures. This procedure applies to employees of the Trust, referred to in this guidance as colleagues.

Whilst the law states that it cannot be assumed that suspension will be viewed as a neutral act, its intention from the Trust is that it is not a presumption of guilt nor a disciplinary sanction. Suspension should not be automatic and is reserved as a last resort where other more proportionate measures are not appropriate such as:-

- Where it would not be possible to carry out a thorough or impartial investigation with the colleague still at work and therefore the of the investigation may be jeopardised
- Where the employees presence or continuance of role (in part or in full) could pose a potential risk to the organisation or other employees/students
- Where there is a concern that instances of misconduct may occur.

This list is not exhaustive.

The decision to suspend a colleague from duty should not be taken lightly or without careful consideration of all the circumstances and the nature of the complaint or allegation made against them. The colleague should have a meeting as soon as possible to inform them of the nature of the complaint and to give them initial opportunity to respond informally. If available, representation at this meeting will be agreeable however, will not hold up the process if not.

Consideration should also be given to all alternatives to suspension such as temporary redeployment or alternative duties. This guide applies to employees, referred to in this guide as colleagues.

Whenever possible, an appropriate manager, in line with the employer's decision making structure, will hold a meeting with you to advise you of the decision to suspend you from duty. This will usually be the Principal, HR or a more senior leader in the Trust. If you are not available and you cannot be

contacted by all reasonable enquiries, we will inform you in writing not to attend work and to contact a named manager. Whilst attempts will be made to gain the presence of a union representative to attend, a colleague can be suspended in the absence of a TU representative or work colleague.

If the appropriate manager considers that it would be appropriate to suspend you, they must do the following:

- Get appropriate authority to suspend you if they are not authorised to make the decision. This will usually be restricted when there is an absence of the Principal.

In the absence of appropriate authorisation to suspend, if your line manager considers you to be unfit and/or, it is inappropriate for you to carry out your duties, they can send you home until an appropriate person is available to provide the relevant authorisation.

If you are suspended, you will receive your normal pay in line with your planned working arrangement.

Should alternatives to suspension be considered inappropriate, and you are suspended, you will also be informed:

- why you are being suspended from duty, and that this will be confirmed in writing;
- that your suspension is not an assumption of guilt and is not considered a disciplinary action;
- to contact your TU representative (if you have one) or a work colleague, if you have not already done so;
- that you will be provided with a key contact outside of the case, who is preferably agreed by all parties. He/she will be available to offer confidential help and support particularly in relation to your health and well-being.
- you remain a colleague and therefore are bound by your contract of employment
- to remain contactable and available during normal working hours so that you can attend meetings as required and answer any work related queries;
- to inform us of any change in your contact details immediately while you are suspended;
- to book any annual leave or report sickness absence in line with normal procedure;

- under no circumstances to approach, or try to influence, anyone associated with the complaint / allegation against you about the complaint / allegation, or enter any of our office / work premises without authorisation from the Investigating Manager. Failure to comply may result in disciplinary action being taken against you;
- that an initial suspension review meeting will take place within the next 5 days (or longer by mutual consent), with the aim of minimizing the suspension. This meeting will provide you, or your representative, with an opportunity to ask questions and/or raise concerns or challenges to the process.
- that your suspension will be reviewed at least every **15 working days** by the Investigating Manager, in consultation with the appropriate HR representative if necessary; and any decision as to whether a suspension should remain in place will be taken by the Deciding Manager.
- That the employee and their representative will have the option to request a review of suspension meeting and/or provide written representation to inform the review meeting or in response to a review meeting.

If, at any stage in the procedure, it appears that there is a significant medical factor involved, you can be referred to Occupational Health. In addition, the Trust provides access to various support services as detailed in the Stress Policy. Support services will be offered to employees as a duty of care.

Your suspension will end in one of the following circumstances:

- the Deciding Manager decides that there is no case for you to answer and that you do not need to attend a disciplinary hearing;
- if the investigation can continue without you needing to be suspended;
- if the investigation has been concluded and the allegations against you are less serious than originally thought; or
- if the disciplinary procedure has been completed.

Confidentiality

Throughout the suspension, it will be important for all parties to maintain confidentiality. It will be necessary to agree what information can be made available to staff, parents and the wider school community, without breaching this confidentiality.