

## Capability of Staff Policy



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## **1. Introduction**

- 1.1 The Duston School (TDS) is committed to providing high quality teaching and learning. Through our workforce we aim to provide opportunities for all of our pupils, whatever their ability. Each employee will therefore be given support to help them continually improve their performance and develop to their full potential which will in turn help improve outcomes for our young people.
- 1.2 Having an effective performance management process in place is one of the ways we can support our employees and deal with performance matters as they arise. This is set out in our Performance Management Policy.
- 1.3 This policy sets out the arrangements that will apply if employees fall below the levels of competence and performance that are expected of them and serious concerns have been identified which the Performance Management Policy has been unable to address to a satisfactory standard.
- 1.4 This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.5 This policy does not form part of any employee's contract of employment, and it may be amended at any time following consultation. We may also vary any parts of this procedure, including any time limits, as appropriate in any case.

## **2. Scope and purpose**

- 2.1 The purpose of this policy is to provide a framework within which TDS can work with employees to improve and maintain satisfactory performance where serious concerns have been raised.
- 2.2 The policy will be applied where there is underperformance, and informal support as set out in the Performance Management Policy has been provided and the required improvement has not been made.
- 2.3 This policy applies to all employees of the School (including the Principal). It does not apply to agency workers or employees who are within their probationary period.

## **3. General principles**

- 3.1. "Senior manager" refers to any member of the Leadership Group, as defined by the School Teachers' Pay and Conditions Document, or a senior support employee in cases involving support staff, delegated by the Principal, to deal with a matter under this policy. A senior manager may only make a decision to issue a sanction up to and including a final written warning.
- 3.2. If the Principal, following consultation with the Chair of Governors, considers that there is no senior manager to whom they can reasonably delegate a specific capability matter, then the Principal will take the role of the senior manager for that specific case. The role of the "Principal", under this procedure, will be performed by a "Disciplinary Committee" of the Governing Body. The "Disciplinary Committee" will usually consist of a panel of three governors.

#### **4. Notification and procedure for formal meetings**

- 4.1. The person conducting the meeting will write to the employee at least 5 working days in advance of any formal meeting under this procedure, to inform them about:
- The date, time and place of the meeting
  - Sufficient information about the concerns about the employee's performance concerns and their possible consequences, including either issuing a warning or dismissal to enable the employee to prepare to answer the case
  - The employee's right to be accompanied by a representative of their trade union or a workplace colleague (see 4.2 below)
  - Copies of any documents to be used at the meeting, including written evidence and witness statements (if applicable)
  - Names of any relevant witnesses to be called
  - Their right to call relevant witnesses on their behalf
  - The name and office of any adviser who will accompany the senior manager at the meeting

An extra copy, together with any enclosures, will be provided for their companion.

- 4.2. An employee has the right to be accompanied to any formal meeting under this procedure by a companion, who may be a colleague or a trade union representative. Employees are entitled to request an alternative date which is within five days of the original date, if their representative is unable to attend the meeting.
- 4.3. Formal meetings will be conducted by the Principal or another senior manager delegated that responsibility by the Principal. The employee's line manager may attend the meeting to present the management case. Relevant witnesses may be called by the person conducting the meeting and an employee may request that relevant witnesses are called to any formal meeting.
- 4.4. A formal meeting under this procedure will:
- Identify the poor performance, including in the case of a teacher which of the Teachers' Standards is not being met
  - Ensure the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations. This may provide new information or a different context to the information/evidence already collected.
  - Identify what action (including support provided) has been taken to date and what the outcome was
  - Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures. This may include the setting of new objectives that are focused on the specific area/s of poor performance that need to be addressed. It will include any success criteria that are appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made

- Where appropriate, identify whether there are further measures which may improve performance and explain any support that will be considered and planned to help the employee, e.g. in-service training, visits to other Schools, discussion with appropriate colleagues or professionals
  - Where appropriate, warn an employee formally that failure to improve within the set period could lead to a warning or dismissal or other serious implications such as no pay progression
  - Set out the timetable for improvement and explain how performance will be monitored and reviewed during a review period, following a formal meeting where a warning is issued. The timetable for the review period will depend on the circumstances of the individual case but will be reasonable and proportionate, and will provide sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee and the nature of any support and training required. Formal monitoring, evaluation, guidance and support will continue during this period.
  - Agree with the employee and any companion the date of the formal review meeting
- 4.5 If at any stage the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.
- 4.6 The person conducting the meeting may adjourn the meeting if it is decided that further investigation is needed, or that more time is needed, in which to consider any additional information. In other cases, the meeting will continue.
- 4.6 The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end.
- 4.8 Following a formal meeting, the matters covered in 4.4 and any other relevant points, including the right of appeal if applicable, will be confirmed in writing. Where a warning has been issued the letter will set out the length of the monitoring and review period and the procedure and time limits for appealing against the warning. If under performance occurs again shortly after the end of the live period of the warning, we reserve the right to deal with the matter at the same stage of the procedure and not return to earlier stage (including not returning to the appraisal policy).
- 4.9 Notes will be taken of formal meetings and a copies sent to the employee

## **5. Formal capability meeting: stage 1**

- 5.1. If we consider that there are serious performance concerns you will be invited to a formal capability meeting to establish the facts.
- 5.2. Where a warning is issued, this will usually be a first written warning. However in very serious cases or in cases where performance issues have been dealt with previously under the formal

capability procedure, this could be a final written warning. The implications in relation to pay progression will be set out in writing.

5.3. The warning will normally remain active for 12 months from the end of the monitoring and review period. During this time any further performance concerns will be considered at the next stage of the process (stage 2). After the active period the warning will remain on your personnel file but will be disregarded in deciding the outcome of any future capability proceedings.

5.4. Monitoring & Review Period (1):

5.4.1. The standard set length of the monitoring and review period following the formal capability meeting is normally six weeks. However in some cases it may be appropriate for a shorter period of four weeks to be set. In exceptional circumstances, this period can be extended up to a maximum of 10 weeks.

5.4.2. At the end of the monitoring and review period you will be invited to a formal review meeting, unless you were issued with a final written warning in which case you will be invited to a decision meeting.

**6. Formal review meeting: stage 2**

6.1. If the person conducting the formal review meeting is satisfied that the employee has made sufficient improvement, the formal capability procedure will cease and the Performance Management process will restart.

6.2. In cases:

- Where some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period up to a maximum of 4 additional weeks;
- Where no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning. A further monitoring and review period will follow in accordance with paragraph 6.4.

6.3. Where a final written warning is issued, the warning will normally remain active for 12 months from the end of the further monitoring and review period. During this time any further performance concerns will be addressed at the next stage of the process (stage 3). After the active period the warning will remain on your personnel file but will be disregarded in deciding the outcome of any future capability proceedings.

6.4. Monitoring & Review Period (2):

6.4.1. At the end of the further monitoring and review period, you will be invited to a decision meeting.

6.4.2. At this stage and by agreement with the employee, rather than progressing to a decision meeting, consideration could be given to whether there is a vacant post and if so whether this may be more suited to the employee's capabilities. If there is a vacant post which we agree with you is suitable, this would be a permanent change in role and if this post is at a lower salary level, the substantive lower

salary would apply. The capability procedure would cease on commencing in the new post and the appraisal process would re-start.

## **7. Decision Meeting: stage 3**

- 7.1. The decision meeting will usually be conducted by the Principal if they have not previously been involved, or a Governor Panel for the Principal. Dismissal is a possible outcome of a decision meeting.
- 7.2. If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start under the Performance Management Policy.
- 7.3. If progress has been made but not reached the required standard, and there is confidence that wholly satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review period rather than to dismiss. The final written warning will be extended for a short specified assessment period. There will be a further decision meeting at the end of that extended monitoring and review period.
- 7.4. If performance has remained unsatisfactory, a decision will be made that the employee will be dismissed. The employee will be informed in writing 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 whether the notice is to be served or there will be pay in lieu of notice, and the right of appeal.

## **8. Right of Appeal**

- 8.1. If an employee feels that a decision to issue a first written warning, a final written warning or dismissal, is wrong or unjust, they may appeal in writing against the decision
- 8.2. Appeals against a written warning shall be restricted to considering the reasonableness of the decision made by the person who conducted the meeting, any relevant new evidence not previously available to them or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Clerk to the Governors within 5 working days of the formal written warning having been received.
- 8.3. All appeal hearings will be held as soon as possible after receipt of the appeal and where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as set out in paragraph 4.
- 8.4. Pending any appeal (except against dismissal) the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and their progress towards the achievement of these targets may be monitored during this period.
- 8.5. The appeal will be dealt with impartially and heard by the Appeal Committee of Governors. The number of governors on the Appeal Committee of Governors will not be less than three. The panel may be advised by a person engaged for the purpose by the Governing Body. The panel can either confirm the warning, reduce a final written warning to a written warning, or overturn the warning or dismissal. The employee will be informed in writing of the results of the appeal hearing as soon as possible. In the event that the Appeal Committee of the

Governors decides not to uphold the decision to dismiss, the employee shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

- 8.6. There is no further right of appeal against the sanction or dismissal within the Academy.

## **9. Sickness Absence and the use of this Procedure**

- 9.1. If long term sickness absence appears to have been triggered at any stage of this procedure, the case will be dealt with in accordance with the School's management of sickness absence policy. It is important that sickness absence should not delay or avoid the use of formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay. Immediate arrangements will normally be made to seek medical advice from an Occupational Health Adviser to assess the employee's health and fitness for continued employment at the School, and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence. The Occupational Health Adviser will normally be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure. In the event that the employee is deemed not fit to attend a formal capability meeting they may present a written submission for consideration and/or be represented by a companion in their absence.
- 9.2. Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing the employees duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases e.g. moving from this procedure to procedures used by the School to terminate the employment of the employee on the grounds of ill health.

## **10. Review of policy**

This policy is reviewed and where appropriate amended annually by the School in consultation with the recognised trade unions. We will monitor the application and outcomes of this policy to ensure it is working effectively.

## **11. General principles underlying this policy**

### **Consistency of treatment and fairness**

TDS and the governing body are committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled employees. The Governing Body is aware of the guidance on the Equality Act 2010 issued by the Department for Education.

### **Grievances Arising During the Capability Process**

Where an employee raises a grievance during the capability procedure and the grievance and capability cases are related, this will normally be dealt with under the appeals process set out above and at the same meeting. However, in very exceptional circumstances, it may be appropriate to temporarily suspend this procedure for a short period in order to deal with the grievance.

### **Confidentiality**

Our aim is to deal with any capability procedure sensitively and with due respect for the privacy of any individuals involved. However, it needs to be recognised that, in supporting employees through this process, some degree of information sharing is likely to be necessary to quality-assure the operation and effectiveness of the process.

The employee, and anyone accompanying the employee where applicable (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure. Failure to observe confidentiality could be a reason for disciplinary action under the School's disciplinary procedure.

### **Retention and data protection**

The governing body and Principal will ensure that all written appraisal records are retained in a secure place. [It is the appraiser's responsibility to ensure HR has a copy of all relevant documents]. As part of the application of this policy, the School may collect, process and store personal data in accordance with our data protection policy. We will comply with the requirements of Data Protection Legislation (being (i) the General Data Protection Regulation ((EU) 2016/679) (unless and until the GDPR is no longer directly applicable in the UK) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998, including the Data Protection Act 2018). Records will be kept in accordance with our Workforce Privacy Notice, our Retention and Destruction Policy and in line with the requirements of Data Protection Legislation.