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ACADEMY TRUST  
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*Psalm 32:8- I will instruct you and teach you in the way you should go; I will counsel you with my loving eye on you.*

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<u>Policy Category</u>  (Please Indicate)	1	<b>Trust/Academies to use without amendment</b>
	2	Academy specific appendices
	3	Academy personalisation required (in highlighted fields)

### Summary of Changes from Previous Version

Version	Date	Author	Note/Summary of Revisions
V1	December 2023	Laura Lowe	Consulted on with Trade Union. No substantial changes made. Minor changes to wording.

## 1. Introduction

- 1.1 Our vision as a Trust, is to transform the lives of children across Lincolnshire and this can only be achieved if all our employees are working effectively. We also have an uncompromising belief that all children and staff within the Trust should thrive in their environment.
- 1.2 We recognise that from time to time, employees may struggle to achieve a satisfactory level of performance. This policy sets out how the Trust will manage and respond where an employee fails to meet the relevant standards. This policy provides details of the procedure for monitoring and support. This aim of this process is to enable employees to improve and maintain the required level of performance.
- 1.3 This policy has been designed to comply with current legislation, ACAS Code of Practice and in line with the Trust's ethos and values.
- 1.4 The Trust is committed to ensuring that no employee is treated in any way less favourably on the grounds of personal differences such as race; national, ethnic or social origin; gender (including reassigned gender); sexual orientation; religious belief; age; disability; marital status; caring responsibilities or political or other personal beliefs. This is in line with our legal duties and the Equality Act 2010.
- 1.5 All employees are required to undertake Equality and Diversity Training within the first 3 months of employment.
- 1.6 Regular reviews of the application of this policy will be undertaken to ensure that no groups or individuals with protected characteristics are unintentionally disadvantaged by the policy or practice.
- 1.7 The policy has been implemented following consultation with recognised trade unions.
- 1.8 This policy does not form part of any employee's contract of employment and may be amended at any time in consultation with trade unions as above.

## 2. Scope and purpose of this policy

- 2.1 This procedure provides a recognised process for dealing with capability (work performance) issues, i.e. where an employee's skills, ability and/or knowledge do not meet those required to carry out his/her job to the expected standard.
- 2.2 All employees will have support from their Line Manager in line with the Trust Growth and Development Policy. Any performance concerns discussed through check ins or Growth and Development meetings do not automatically come under the scope of this policy.
- 2.3 This policy should only be applied where employees fail to meet the relevant standards, fail to engage in professional growth and where matters are not resolved at check ins and through normal day to day line management meetings.

- 2.4 Employee will be made aware of any performance and any concerns in a timely manner and will be made aware of the stages of this policy applied.
- 2.5 At no stage should capability proceedings begin where an employee has no prior knowledge of concerns and appropriate support already been in place.
- 2.6 This policy applies to all employees, except for those on contracts of less than one term and Early Careers teachers on the Early Career Framework whose performance will be managed and supported via the induction process.
- 2.7 Lack of capability is defined as a situation in which an employee fails consistently over a period to perform his/her duties to a satisfactory standard of performance.
- 2.8 This policy is designed to help and support employees to maintain relevant performance by setting out expected standards. It aims to clarify the rights and responsibilities of the Trust, and all employees and to promote fairness and order in any formal action as well as for this to be applied in a consistent, constructive, and reasonable way.
- 2.9 There is a clear distinction between the capability and disciplinary policy, the latter being in place to deal with those who choose not to perform to the required standards. For example, if a manager believes that the poor performance is due to misconduct, e.g. carelessness, negligence or lack of effort, the issue will be dealt with in accordance with the disciplinary procedure.
- 2.10 Employees are expected to engage with the process in an open and co-operative way.
- 2.11 Employees will be offered support, assistance, and encouragement as part of a structured process to reach the required standards.
- 2.12 Line Managers are advised to seek support from the Trust's HR when considering implementing the policy and throughout its implementation.
- 2.13 Line managers will ensure that employees are always treated with courtesy and dignity in the process. Any judgements or discussions about performance will be framed objectively, based on evidence.
- 2.14 Regular reviews of this policies application will be undertaken to ensure that no groups or individuals with protected characteristics are unintentionally disadvantaged by the policy or practice.
- 2.15 At each stage of the policy 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.

### 3. Policy Principles and stages

- 3.1 Initially, employees who are failing to meet the required standards will normally be placed on an informal support plan (ISP).

- 3.2 Where there is evidence that the employee has not met the required level of performance following the ISP, then they will move to the formal capability stage of this process. There will be clear and triangulated evidence available.
- 3.3 Occasionally and in exceptional circumstances, where it is deemed that the level of underperformance poses a serious threat to students' education or in the case of support staff, their continued underperformance carries a reputational/operational risk to the Trust or the impact of the underperformance has severe consequences for the Trust, employees may be placed straight onto formal capability.
- 3.4 At all stages throughout this policy, employees will be provided with information and a programme of support. Employees will also be encouraged to communicate with their trade union representative.

#### 4. Informal Support Plan (ISP)

- 4.1 Where concerns are not addressed through normal line management meetings or through the G&D Processes and concerns remain about aspects of an employee's performance, the Line Manager will arrange to meet with the employee to agree a more structured approach to improvement. Employees are encouraged to contact their trade union representatives for support.
- 4.2 The meeting will set out the below:
  - a) Give clear feedback about the nature and seriousness of the concerns.
  - b) Give the employee the opportunity to comment and discuss the concerns.
  - c) Find out if there are any issues (both in or outside of work) that are affecting their performance that the Line Manager can assist with or provide support.
  - d) Make clear what improvements need to be made and how this can be achieved.
  - e) Agree any support (for example coaching, mentoring, training, structured observations, observing others in a similar role etc), that will be provided to help address those specific concerns.
  - f) Make clear how, and by when, how the Line Manager will review progress by setting clear objectives, which will be assessed during the review period, allowing sufficient time for improvement.
  - g) Explain the implications and process if no – or insufficient – improvement is made during the informal review period i.e. the application of formal capability processes.
  - h) The employee and the Line Manager will seek to agree any informal support plan and the timescales involved.

- 4.3 The outcome of this meeting and associated informal support plan will be communicated in writing, usually within 5 working days.
- 4.4 Progress towards the plan will be reviewed and discussed with the employee regularly, ideally in weekly meetings. The frequency of meetings will be agreed between the Line Manager and employee during the initial planning meeting.
- 4.5 The ISP will normally last between 6-10 weeks, depending on the circumstances.
- 4.6 At the end of this ISP when progress is reviewed, if the Line Manager is satisfied that the employee has made, or is making sufficient improvement, the ISP will end.
- 4.7 If performance is improving and the Line Manager feels that further time is required to monitor improving performance, they can decide to extend the informal review period, but it should not be unduly long.
- 4.8 If there is evidence of insufficient progress, then the employee will be moved to the formal capability part of this process.

## 5. Stage 1: Formal Capability meeting

- 5.1 If after the above process, an employee's performance does not meet the required standards, the Senior Manager, Executive Head/Headteacher, or other person delegated by the Headteacher to hold the meeting, will invite the employee to a formal capability meeting to discuss the identified poor performance. A Colleague Services adviser from the Trust must be present at this meeting. In every case, the employee will receive a minimum of 5 working days written notice of the meeting in order to give them time to prepare and/or arrange for a workplace colleague or trade union representative to attend.
- 5.2 The notice of the meeting will set out the following:
  - a) The date, time and place of the meeting.
  - b) The basic details of the concerns about the employee's performance.
  - c) The employee's right to be accompanied by a representative of his/her trade union or a workplace colleague of his/her choice.
  - d) The documents, if any, that will be used at the meeting.
  - e) The name of any other people, including advisers, who will be attending the meeting.
  - f) An extra copy of the letter, together with any enclosures, will be provided for the employee's companion or representative.

- 5.3 The purpose of the meeting is intended to establish the facts and review any evidence. The line manager will present the case, explaining how the employee is not meeting the relevant standard and explain what support/actions have been taken at the informal stage of the procedure.
- 5.4 The meeting will give the employee chance to respond to concerns about their performance and to make any relevant representations. They may provide new information or a different context to the information/evidence already collected.
- 5.5 The Senior Manager, or other person delegated by the Executive Head/Headteacher 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 in informal processes, such as check ins and line management meetings in line with the Growth and Development Policy. In such cases, the capability procedure will come to an end and the employee will receive a letter to confirm.
- 5.6 The Senior Manager, or other person delegated by the Executive Head/Headteacher may also 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.
- 5.7 During the meeting, the Senior Manager, or other person delegated by the Executive Head/Headteacher will:
- a) Identify the aspects of poor performance and the evidence on which this is based, including relevant professional standards that are not being met.
  - b) Ensure the employee is given an opportunity to ask questions, present evidence, respond to evidence and make representations.
  - c) Establish the likely causes of poor performance including any external reasons and consider any reasons why any measures taken so far have not led to the required improvement.
  - d) Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures.
  - e) This may include setting new objectives 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 the necessary improvement has been made. This will be discussed with the employee and their trade union representative.
  - f) Identify whether there are further measures which could improve performance and explain any support that can be provided to help, e.g. in-service training,

visits to other schools, discussion with appropriate colleagues or professionals.

- g) Set out the timetable for improvement and explain how performance will be monitored and reviewed.
- h) The timetable will depend on the circumstances of each individual case but will be reasonable and proportionate.
- i) Under normal circumstances, improvement will be expected between 6 and 10 weeks, but this may be increased at the senior manager's discretion as the intention is to provide sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of any support and training required, and sufficient time to establish whether performance has improved.
- j) Warn the employee formally that failure to improve within the set period could lead to a final written warning which could then lead to their dismissal.
- k) Agree with the employee and any companion/representative the date of the formal review meeting, the support plan and objectives.
- l) This meeting constitutes a **first warning** under the procedure; in exceptional circumstances where the employee's performance warrants accelerated action a final warning may be issued at this stage.
- m) Inform the employee of the right of appeal.

5.8 Notes will be taken at the meeting and a copy sent to the employee and any companion to be agreed. If the notes of the meeting cannot be agreed, the employees' comments will be added to the notes as a separate appendix.

5.9 Where a first warning is issued, the employee will receive a letter setting out:

- a) The areas of concern.
- b) The standards of performance they are expected to achieve.
- c) The agreed support to be made available.
- d) The arrangements for reviewing performance and the agreed timescale for improvement.
- e) The right to appeal.

5.10 The employee will also be advised that failure to achieve an acceptable standard of performance within the set time scale may result in a final written warning which could then lead to dismissal if satisfactory performance is not achieved.



## 6. Monitoring and review period following a formal capability meeting

- 6.1 As indicated above, a performance monitoring and review period will follow the formal capability meeting.
- 6.2 Formal monitoring, evaluation, guidance and support will continue during this period. This remains part of the capability process.

## 7. Stage 2: Formal review meeting

- 7.1 Following the monitoring and review period, the employee will be invited to a formal review meeting (unless a final written warning was issued on an exceptional basis as described above, in which case they will be invited to a decision meeting).
- 7.2 At least 10 working days before the date for the formal review meeting, a written reminder will be given to the employee together with details of the meeting as set out above. The formal review meeting will follow a similar process to that identified for the formal capability meeting (see 5.7 above) and includes employees right to be accompanied.
- 7.3 If the senior manager is satisfied that the employee has made sufficient improvement, the formal capability procedure will cease. The employee will receive a letter acknowledging their efforts to improve and confirming that the capability procedure no longer applies in their case.
- 7.4 In cases where some progress has been made and there is confidence that satisfactory performance can be achieved within a further short period, it may be appropriate to extend the monitoring and review period. The employee will receive a letter confirming the details of the improvements still required, any further support to be provided and the time scale for the extended review period. This will be agreed where appropriate.
- 7.5 Where no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a **final written warning**. The senior manager will set a further timescale for improvement, following which a decision will be made on whether the employee should be dismissed.
- 7.6 As before, notes will be taken at the formal review meeting and a copy will be sent to the employee and any companion.
- 7.7 Where a final warning is issued, the employee will receive a letter confirming the warning and reminding them that failure to achieve an acceptable standard of performance within the set time scale will result in a recommendation for dismissal.

- 7.8 The employee will be given information about the further monitoring and review period and the procedure and time limits for appealing against the final written warning. The date of the decision meeting will be agreed with the employee and any companion.
- 7.9 At this stage, consideration may be given to the employee being given a different range of duties or an alternative post. By agreement with the Trust, this may include transfer to a post suited to the employee's capabilities, which may be at a lower salary level. In such cases, salary safeguarding will not apply.

## 8. Appeal against a formal written warning

- 8.1 If the employee feels that a decision to issue a first and/or final written warning, is wrong or unjust, they may appeal in writing against the decision. Appeals against a written warning will be restricted to considering the reasonableness of the decision made by the senior manager, or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Trust HR Department within 10 working days of the formal written warning having been received.
- 8.2 The same arrangements for notification and the right to be accompanied by a companion will apply for an appeal hearing as for the formal capability and review meetings and, as with those meetings, notes will be taken, and a copy sent to the employee and any companion.
- 8.3 Pending any appeal hearing, the employee will be expected to continue to work in accordance with the targets set for their improvement. The employee's progress towards the achievement of these targets will continue to be monitored during this period.
- 8.4 All appeal hearings will be held as soon as possible after receipt of the appeal at an agreed time and place. The appeal will be heard by another Senior Manager/Executive Headteacher who has not been involved in the case.
- 8.5 The Appeal Chair may either confirm the warning, reduce a final warning to a first warning, or cancel the warning. Sanctions should not be increased. The employee will be informed in writing of the results of the appeal hearing as soon as possible.

## 9. Stage 3: Decision meeting

- 9.1 In exceptional circumstances where the employee has been issued a final, or a first and final warning, but continues to show insufficient improvement, they will be invited to a decision meeting. As before, the employee will be given at least 5 working days' notice that the decision meeting will take place.

- 9.2 The meeting will be conducted by the by a panel of Senior Leaders/Directors unless they chaired the review meeting, in which case another Senior Leader will conduct the meeting.
- 9.3 At the decision meeting, the chair will consider submissions from the manager who issued the final warning and from the employee or their representative. If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end.
- 9.4 If progress has been made and there is confidence that satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review period again rather than to dismiss. In those circumstances, the final written warning will be extended for a short, specified assessment period (not more than six weeks).
- 9.5 However, if performance has remained unsatisfactory, a decision will be made that the employee will be dismissed. The employee will be informed in writing within 5 days of the decision meeting. The letter will set out the reasons for the dismissal, the date on which the employment will end in line with contractual notice. Notice will not normally be worked, and the employee will be paid in lieu of notice. The letter will also confirm the right of appeal.

## 10. Appeals

- 10.1 Appeals will follow the same format as above and will normally be held by a senior manager, not previously involved in the case.
- 10.2 The employee will be informed in writing of the results of the appeal hearing as soon as possible and normally within 5 working days.

## 11. Sickness Absence during Capability Procedures

- 11.1 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. 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 or Trust.
- 11.2 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 employee's duties or providing additional equipment or training. The Trust may also consider making adjustments to this procedure in appropriate cases e.g. moving from this procedure to procedures used by the Trust to terminate the employment of the employee on the grounds of ill health.
- 11.3 If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, 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.

## 12. Grievances arising during the procedure

- 12.1 Where an employee has a grievance against the way the senior manager has conducted the procedure, this will normally be dealt with under the appeals process set out above. However, in exceptional circumstances, where the behaviour of the senior manager is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered.

## 13. Providing References where an employee is subject to formal capability processes.

- 13.1 When providing references or responding to reference requests, the Trust has a responsibility to comply with The School Staffing (England) Regulations 2012, paragraph 2, Regulation 8.
- 13.2 The Trust recognises that it has a duty to other employers to give truthful and balanced references and it is the policy of the Trust that any references provided will state, in accordance with the above regulation, if an employee had been subject to formal capability procedures in the preceding 2-year period.