Managing Performance and Capability Policy (Staff Capability Policy)

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1. Introduction and scope

This policy applies to employees of Kingshill Infant School. It does not apply to Early Careers Teachers (ECT) or employees in their probationary period, for which there are alternative policies in place.

This policy does not form part of any employees' contract of employment, and it may be amended at any time.

This capability policy provides a framework for resolving issues where an employee's performance has fallen below the expected standard. The focus is to address concerns and support the employee towards improved performance. The policy also covers steps to take if performance does not improve.

Concerns raised about performance as well as support and advice given at all stages should be well documented.

Where it is determined that poor performance is related to a medical condition, the Health and Attendance policy may be used, which will be considered on a case-by-case basis.

2. Misconduct

In some circumstances performance may be unsatisfactory due to an employee's own negligence or wilful misconduct. In such cases, the disciplinary policy should be used.

3. Right to be accompanied

An employee has the right to be accompanied and supported, at each formal stage of the procedure by a work colleague or an accredited professional association/trade union representative.

The employee should provide the name of their representative in advance of the meeting. Where the chosen companion is unavailable on the day scheduled for the meeting, the employee may request that the meeting be rescheduled to an alternative time that is reasonable and within five working days of the scheduled date.

If the representative remains unavailable, the employee may be asked to choose another companion, or the meeting may have to go ahead to avoid further delays.

During the meeting the companion may put the employee's case forward and confer with the employee, however they may not answer questions on the employee's behalf or make any representations if the employee indicates they do not wish this.

4. Informal management period

Before embarking on the formal capability stages, management will check that through normal performance appraisal and management supervision:

- the employee has been alerted to concerns.
- the employee is clear on agreed expectation of standards of performance.
- an informal performance improvement plan (PIP) has been set with support and a timescale for review.
- management will seek to agree each measure with the employee but reserve the right to insist on any aspect of the performance improvement plan if agreement cannot be

reached.

- a copy of this policy has been given to the employee.

5. The capability procedure

Where informal management has not resulted in improved performance to the required standards, an assessment will be undertaken to decide if there are grounds for managing performance formally under stages 1 to 3 of this policy. This will include a review of any records relating to the employee's work performance.

A move to the formal stages can also be considered where there is evidence of informal management support for performance issues in the preceding twelve months.

5.1. **Stage 1 – formal capability meeting**

The employee will be invited in writing to attend any formal capability meeting with 5 working days' notice. The employee will be informed of the nature of the performance concerns and that the appraisal process is suspended whilst performance is being managed under this policy.

The employee must make every effort to attend formal meetings and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason or is persistently unable to do so, a formal meeting will be convened in their absence and the decision taken based on the available evidence.

At this meeting the manager will:

- Identify the performance concerns, the support already given as part of the appraisal process, the informal stages of this policy, the standards required, and where the shortfall in performance has occurred, as applicable.
- Provide written evidence of the concerns identified (e.g., from job descriptions, supervision notes, classroom observations, examples of pieces of work that do not meet the required standards).
- Consider and discuss any causes and reasons for the underperformance including any reasons why the measures taken so far have not led to improvement. The employee should be given the opportunity to discuss any contributory factors they feel may have affected their performance and/or refute the evidence presented if appropriate.
- After reviewing the evidence before them and taking into account any contributing factors the employee has put forward, the manager will decide whether:
    - to move into a further period of monitoring without issuing a warning
    - to issue a first written warning
    - to issue a final written warning (serious cases only).

At which point the following will also apply:

- Set a formal PIP and targets for the future standard of performance with agreed objectives set out, showing clearly how these will be achieved and measured.
- Identify the support to be provided to assist the employee in reaching the required

PIP (e.g., additional supervision, coaching, observing exemplar lessons) the employee should also be invited to suggest what support they feel they may benefit from.

- Set out the timescales for improvement and explain how performance will be monitored and reviewed. The timescales will depend on the circumstances of the individual case but should usually be four to eight weeks or half a term. It is for the employer to determine the appropriate period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for improvement to take place.
- Notes must be taken of the meeting, and a copy provided to the employee within 7 calendar days of the meeting, or as soon as reasonably practical.

If, following response from the employee, it is accepted that it is not appropriate to proceed with the formal capability process; the matter could be addressed via performance appraisal or relevant management support. Otherwise, the decision and reasons for it will be put into writing.

5.2. **Monitoring and review period following a stage 1 capability meeting**

A performance monitoring and review period will follow the stage 1 formal capability meeting. At the end of the review period a letter will be sent to the employee advising either:

- that performance has improved to a satisfactory level and no further action will be taken.
- that substantial but insufficient improvement has been made and the review period will be extended.
- that insufficient improvement has been made and the matter will be progressed to a stage 2 capability meeting (or stage 3 if a final written warning has been issued).

Formal support will continue at all stages and informal feedback meetings should be arranged to enable regular updates on performance.

5.3. Stage 2 – formal capability meeting

The stage 2 meeting may be instigated if there is further evidence of unsatisfactory performance during the period of monitoring or a failure to make sufficient improvements. If a final written warning was issued at the first stage progress to stage 3.

The meeting will cover:

- the areas in which the employee has not met the required performance standards set out in the PIP and the previous warning.
- any relevant documents including minutes from the Stage 1 formal meeting.

5.4. Outcome of the stage 2 formal capability meeting

There are three possible outcomes to the stage 2 meeting:

- that sufficient improvement has been made, in which case the capability process will cease, and the appraisal process will resume.
- there has been some improvement, and there is confidence that more is likely, but further support or monitoring is required and the monitoring, review period and PIP will be extended.
- If no, or insufficient improvement has been made, the employee will receive a first written warning if one wasn't issued at the first stage or a final written warning if a first writing warning has already been issued. The decision will be confirmed in writing.

5.5. Monitoring and review period following a stage 2 capability meeting

A performance monitoring and review period will follow the stage 2 formal capability meeting. At the end of the review period a letter will be sent to the employee advising either:

- that performance has improved to a satisfactory level and no further action will be taken.
- that substantial but insufficient improvement has been made and the review period will be extended.
- that insufficient improvement has been made and the matter will be progressed to a stage 3 capability meeting.

Formal support will continue at all stages and informal feedback meetings should be held to enable regular updates on performance.

5.6. Stage 3 – formal capability meeting (dismissal stage)

Where dismissal is a possible outcome, it will be heard by an appropriate individual or a panel of appropriate individuals, who have had no prior involvement, will normally hear the case. Where this is impracticable, or would cause unreasonable delays, a panel of two individuals may hear the case.

If the case concerns the Headteacher, a panel of governors or trustees would hear the case.

Copies of all relevant documents will be sent to the panel members and employee before the meeting.

At any meeting where dismissal is to be considered, an external HR Adviser may be invited to attend. The role of the HR Adviser is to provide professional advice and support to the panel, they are not a decision maker in the process.

Dismissal on the grounds of capability shall be with notice.

The outcome will be confirmed in writing to the employee as soon as reasonably practicable and usually within five working days.

6. Ongoing review

Following the successful completion of a performance improvement plan, the performance of the employee will continue to be monitored. If, at any stage during the following 12 months, an employee's performance again starts to fall short of an acceptable standard, management may decide to move straight to the appropriate formal stage of this policy.

7. Appeals

An employee may appeal against a warning or dismissal at any stage within seven calendar days of the receipt of a decision letter, specifying the grounds of appeal. The appeal may be rejected where the grounds for appeal are not made clear.

Wherever possible the appeal will be heard by an appropriate individual, or panel of individuals, who have not been involved in the decision to impose the original sanction.

The appeal hearing may be a complete rehearing of the matter, or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at our discretion depending on the circumstances of the case. The appeal panel can uphold or reduce the original sanction but cannot increase the original sanction imposed.

The decision of an appeal panel at each stage will be final. The outcome will be confirmed in writing to the employee as soon as reasonably practicable and usually within five working days.

8. Duration of warnings

In circumstances where a written or final written warning is issued it will be placed on the employee's personnel file normally for a period of twelve months, unless the employee is notified to the contrary. The employee will need to be at work throughout the relevant warning period. If they should be absent from work for any reason, we reserve the right to extend the period of warning at our discretion.

After the active period the warning will remain permanently on the employees personnel file but will be disregarded in deciding the outcome of future capability proceedings.

If an employee is subject to the formal capability policy or has a live warning in place at the time of a reference request, this must be referred to in any employment reference.

There may be occasions when expired warnings are referred to, such as where the performance is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where such a pattern emerges, an employee's record of previous warnings may be borne in mind when making decisions on further warnings or whether it is appropriate to undertake disciplinary action instead, on the basis that the employee has been able to previously demonstrate the required standard of performance.

9. Disputes about the policy

If an employee raises a grievance, or a concern relating to bullying and harassment, whilst they are subject to capability proceedings, it will not prevent us from continuing with or concluding these processes, other than in exceptional circumstances, and this will be at our discretion.

Where issues arise relating to this policy, for example identified support has not been provided; they should be raised during the monitoring period and/or at any subsequent formal meeting or appeal process.