

## Staff Capability Policy

This policy (and the procedure outlined within) is available on the SSMAT website and is accessible from the CTA website.

### **POLICY APPROVAL and REVIEW**

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## **1. Introduction / Overview**

1.1 This policy (and the procedure outlined within) is designed to ensure that concerns about the standards of professional performance demonstrated by colleagues in schools in the Stephen Sutton Multi-Academy Trust are dealt with in a fair and consistent way. It is not intended to deal with:

- discipline and conduct;
- staffing reductions, school closures and displacement;
- ill health; or
- the professional competence of newly qualified teachers, who have not yet successfully completed their initial period of assessment.

(Separate procedures exist for dealing with these matters.)

1.2 This policy provides a framework for dealing with performance-related issues. Its main aim is to allow professional difficulties to be identified, addressed and resolved. Such difficulties might relate to any aspect of a colleague's responsibilities. The issues tend to be complex and specific to the individual and it is therefore undesirable to lay down a rigid procedure for dealing with them, particularly in the early stages.

1.3 The over-riding requirements of the policy are fairness and reasonableness. All colleagues should be treated fairly and given appropriate advice and guidance from their line manager, senior staff, other colleagues and external advisers, as appropriate. There can be a conflict of interest in the process of monitoring the performance of an employee and supporting a colleague in improving their performance. Wherever possible, therefore, the person who monitors the performance of the employee is not the one who offers support. However, the procedures have to operate in the context of limited resources and of the constraints of the nature and requirements of a colleague's role.

1.4 No formal action is taken against an official of a colleague's professional association or trade union, until a full time official of the association has been notified.

## **2. Headteacher Performance**

2.1 SSMAT has a Scheme of Delegation that indicates the appropriate persons to implement this policy at the most senior levels. Action in relation to the Executive Headteacher is co-ordinated by the Chair of the Trust Board, in consultation with Trust Directors, whereas action in relation to the Head of School is co-ordinated by the Executive Headteacher, in consultation with the Chair of Governors.

## **3. Roles and Responsibilities**

### **3.1 Appropriate Manager**

The Head of School, or another nominated senior manager, usually undertakes the role of evaluating and reviewing the performance of staff subject to the capability procedure. The

person undertaking this role is referred to as the Appropriate Manager, for the purposes of this procedure.

### 3.2 Governors

Governors should not normally be involved in a capability procedure relating to an employee before the dismissal stage. The exception to this is where a governor, or governors, is/are involved in considering an appeal against a warning. It is important to be prepared for the possibility of dismissal. The procedure requires that a sufficient number of impartial governors remain available for the first and appeal committees. Normally at least three governors/directors are required for each committee.

### 3.3 Professional Advisers

School improvement advisers, or other advisers with education and personnel experience, may advise the school and, where appropriate, assist with the process, including classroom observation and providing support and advice at formal meetings.

### 3.4 Trade Unions and Professional Associations

Colleagues have a legal entitlement to be accompanied by a trade union representative, or another colleague, at all formal meetings. If the colleague's chosen companion is not available at the time proposed for the meeting or hearing, a mutually convenient time is arranged within five working days of the original date. Where practically possible, managers also give colleagues the opportunity to be represented during the informal stage of the procedure, which helps to ensure that appropriate external advice is available and that the relevant action plans for monitoring and support are agreed, as appropriate in the circumstances.

## 4. Written records

- 4.1 A written record should be made of all meetings with the employee and any action taken following the meeting. Except in agreed circumstances any formal warnings should be disregarded for disciplinary purposes after a specified period of satisfactory performance. These periods are: two terms for a first written warning; and three terms for a final written warning.

## 5. Grievances

- 5.1 In exceptional circumstances, an employee may raise a grievance about the Head of School, or another manager, during the course of a capability procedure. Where the grievance is unrelated to the capability procedure, the matter is investigated in accordance with the Trust's Staff Grievance Policy and should not delay the progress of the capability procedure. However, depending on the circumstances, it may be appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the employee has been mistreated and consideration should be given to bringing in another manager to deal with the capability case. Any records should be passed to the new manager and, as appropriate, the capability procedure should be continued within the same timetable.

## **6. Addressing Underperformance – Informal Stage**

- 6.1 Where concerns regarding underperformance are raised, evidence is collected and then presented to the employee for discussion, in order to identify informal support at an early stage.
- 6.2 An Appropriate Manager will consider the evidence, and the context within which it was collected, and pursue one of three options:
- drop the matter because there is little or no under-performance;
  - provide informal support (see Appendix 1) to improve performance; or
  - (where the degree of underperformance is considered sufficiently serious) initiate the formal capability procedure. Where the Appropriate Manager is not the Head of School, authorisation from the Head of School is required.
- 6.3 The Manager discusses the areas of concern with the colleague, who is informed before the meeting that it is proposed to implement the informal stage of the procedure and that (s)he may be accompanied by a trade union (or other) representative.
- 6.4 The meeting provides a clear indication of:
- what is required of the colleague;
  - what agreed support will be provided;
  - how future performance will be reviewed, and over what agreed period; and
  - the fact that the formal procedure will be initiated if there is insufficient improvement.

This is all confirmed in writing to the colleague within five working days.

- 6.5 The meeting is supportive and avoids creating undue stress for the colleague.
- 6.6 Throughout the informal stage, those monitoring the performance of the colleague offer feedback and instruction to help the colleague improve their performance. If training courses or assistance from other colleagues would be helpful, these are arranged as soon as possible but do not compromise the timescales of the procedure.
- 6.7 After a period of review (which will not normally be less than four weeks), a firm conclusion is reached. The options are:
- drop the matter;
  - extend the informal period; or
  - initiate the formal stage of this procedure.

## **7. Absence during the Capability Procedure**

7.1 Absence that is triggered by the capability procedure, and which managers believe is likely to be long-term, is referred without delay to the Occupational Health Adviser to assess whether, or not, the colleague is fit for continued employment. Short absences do not delay any part of the formal stage of the capability procedure. Reasonable steps are made to enable the colleague to attend formal meetings, but where the employee is unable to attend, meetings may proceed if the absence is protracted. Where the employee is absent from such meetings, a full account of the evaluation of the circumstances is provided in the letter confirming the decision taken.

## **8. First Formal Meeting**

8.1 The Manager prepares a report on his/her concerns with the colleague's performance and arranges a meeting to discuss this with the colleague. The colleague has a right to be represented at all formal meetings and is strongly advised to be accompanied by a trade union representative or colleague. The colleague is given notice of the first formal meeting and is given a copy of the Manager's report at least five working days before the meeting.

8.2 The first formal meeting may provide new information or it may put a different interpretation on the evidence collected. If it becomes clear that further investigation is needed, then the interview is adjourned for an appropriate length of time to allow this to happen.

8.3 Having discussed the report with the colleague, the Manager adjourns the meeting to consider how to proceed. If 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. In other cases, the Manager decides to:

- provide continued support (except where already undertaken without improvement);
- issue a first written warning; or
- issue a final written warning.

The first option is only relevant where new information, a different interpretation on the information collected, or further investigation suggests that the matter is not as serious as it first seemed. If some progress has been made and there is confidence that sufficient progress is likely, it may be appropriate to extend the monitoring and review period. The second and third options are relevant to any case where the Manager remains seriously concerned about the standard of performance. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the professional shortcomings, e.g. which of the standards expected of teachers or support staff are not being met;
- give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures, which may include the setting of new objectives focused on the specific weaknesses that need

to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made;

- explain and agree the support that is available to help the employee improve their performance;
- set out the timetable for improvement and explain how performance is to be monitored and reviewed. The timetable will depend on the circumstances of the individual case and will be appropriate and realistic in light of the targets which are being set. The time period is usually between four and 10 weeks and is not longer than one term. It is for the school to determine the set period, which is reasonable and proportionate, but not excessively long, and provides sufficient opportunity for an improvement to take place; and
- warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

8.4 A letter is sent to the employee following the first formal meeting. The letter records: the result of the investigations; the main points discussed in the meeting; confirmation of the decision; and, where a warning is issued, information about the handling of the first formal assessment stage of the procedure. The letter also indicates that the employee has a right of appeal against a written or final written warning. Appeals must be to the Clerk to Governors, in writing, within five working days of receipt of the letter. Appeals take place within 10 working days of notification of the appeal.

## **9. First Formal Assessment**

9.1 The colleague's performance is subject to a first formal assessment stage of no longer than one term. This involves regular monitoring and evaluation of performance, with guidance, training if necessary, and support.

9.2 Regular feedback and review takes place, in order to provide an opportunity for improvement throughout the assessment stage.

9.3 If the period at this stage is of 10 weeks or more, there is a mid-stage evaluation of progress involving the manager, the employee and, as appropriate, his/her representative. This mid-stage evaluation gives an opportunity for the withdrawal of any additional support provided in the first period, if the evaluation has shown satisfactory progress by the employee up to that point. Alternatively, it allows for escalation or adjustment of the support, if insufficient progress is demonstrated.

9.4 If, at any point during this stage, the circumstances suggest a more serious problem, the review period may be curtailed and the procedure moved to a second formal meeting.

## **10. Second Formal Meeting**

10.1 The Manager prepares a report outlining his/her concerns with the colleague's performance and arranges a second formal meeting. The colleague has a right to be represented at all formal meetings. Notice of the second formal meeting is given to the

colleague at least five working days before the meeting, together with a copy of the manager's report.

10.2 Having discussed the report with the colleague, the Manager adjourns the meeting to consider how to proceed. If the manager is satisfied that the colleague has made sufficient improvement, the capability procedure ceases and the appraisal process re-starts. Alternatives are:

- if some progress has been made, and there is confidence that sufficient progress is likely, it may be appropriate to extend the monitoring and review period; or
- if no, or insufficient improvement has been made during the monitoring and review period, the colleague receives a final written warning and a second formal assessment stage is implemented. Arrangements for this are explained at the meeting. The colleague is told explicitly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal. The decision and main points of the meeting are recorded in a letter to the colleague. The letter also indicates that the colleague has a right of appeal against a written or final written warning. Appeals must be to the Clerk to Governors, in writing, within five working days. The appeal will normally be heard within 10 working days of notification of the appeal.

## **11. Second Formal Assessment Stage**

11.1 The colleague's performance is normally subject to a second formal assessment stage of four weeks. This involves regular monitoring and evaluation of performance, with guidance, training if necessary, and support.

11.2 The procedure is the same as for the first formal assessment stage. If performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure ceases and this is confirmed in writing.

11.3 Where performance is unsatisfactory, the colleague is informed that the matter will be referred to a committee of the Governing Body.

## **12. First Panel Stage – Consideration of Dismissal**

12.1 The Governing Body sets up a panel to hear the representations and recommendations brought by the Head of School, or other manager conducting the capability procedure, and any representations that the colleague may wish to make. The Governing Body should also set up an Appeal Committee to hear any appeal against a dismissal decision. Where possible, a SSMAT Director will be present for the panel hearing. None of the governors on the First Panel should be on the Appeal Panel.

12.2 The Head of School (or other Appropriate Manager) prepares a report for the first panel, summarising the concerns with the colleague's performance and the outcomes during the assessment stage(s).



12.3 The employee is given notice of the date of the meeting and a copy of the Appropriate Manager's report at least five working days before the meeting. The colleague has the right to be accompanied by a trade union representative or colleague. The procedure for the meeting is attached as Appendix 2.

12.4 The Panel may decide:

- to drop the matter because it is not satisfied that there is underperformance;
- to allow a further period for improvement; or
- to dismiss the colleague, giving appropriate notice;

The Panel's decision is confirmed in writing and within five working days. It includes the reasons for the decision and the colleague's right of appeal.

### **13. Right of Appeal**

13.1 Following the issue of a formal warning, a final formal warning or a decision to dismiss, the colleague has the right of appeal to the Appeals Panel.

13.2 A colleague wishing to appeal notifies the Clerk to the Governors, in writing, within five working days of the written notification of the outcome, of their intention to appeal. Their letter includes:

- the grounds of appeal (which may include: facts disputed; procedural faults or principles not observed; previous evidence not fully investigated; evidence not previously considered; and/or a contention that the level of warning is inappropriate);
- whether, or not, they wish to be represented, or accompanied, at the meeting of the Appeals Panel and, if so, by whom;
- whether, or not, they propose to call witnesses at the meeting and, if so, who those witnesses are; and
- whether, or not, they wish to introduce any additional documents not used previously. (If so, these should be included with the letter of appeal).

13.3 Appeals take place within 10 working days of notification of appeal. The procedure for the meeting is attached as Appendix 3.

***Stuart Jones; July '21***

## Appendix 1 – Examples of Possible Support

1. Advice, encouragement and identified professional support from managers, colleagues and other agencies;
2. Assignment of a mutually agreed mentor;
3. Opportunities to observe the exemplary practice of others in the colleague's own school or at another school;
4. Opportunities to review own practice, make adaptations and implement improvements accordingly;
5. Support of experienced staff / subject managers / Headteacher / advisers, leading lessons / activities, co-working / team-teaching or advising on management processes;
6. Specific training or other opportunities for professional development;
7. Provision of medical advice, where ill-health appears to be a contributory factor;
8. Consideration of redeployment, changes to role and/or responsibilities, changes to working pattern, and suitable adaptations, as appropriate;
9. Consideration of, and adaptation of, present commitments (where practicable), e.g. through the voluntary relinquishment of additional responsibilities and associated responsibility payments;
10. In-school workshops/coaching, e.g. on class management;
11. Observation of the colleague's practice, with a specific focus on agreed issues and appropriate supportive feedback;
12. Opportunity to use classroom observation system (e.g. IRIS) to observe one's own practice and, if desired, sharing of evidence with mentor / line manager;
13. Opportunities to enhance the individual's status, e.g. specialist teaching in a primary school, leading sessions on areas of expertise, or additional non-contact time to carry out specified responsibilities as appropriate;
14. Specific advice on curriculum and lesson planning procedures;
15. Specific advice on teaching and learning styles.

Note: the agreed support should indicate the improvement it is intended to secure.

## **Appendix 2 - Procedure for First Governors' Panel Meeting**

1. Introduction by Chair and explanation of procedure.
2. Head of School / Appropriate Manager amplifies report prepared, recommending dismissal of colleague.
3. Head of School / Appropriate Manager may present witnesses.
4. Colleague (or representative) may ask questions of Head of School / Appropriate Manager and witnesses.
5. Colleague (or representative) puts case against dismissal.
6. Headteacher may ask questions of colleague and witnesses.
7. Panel may ask questions of Head of School / Appropriate Manager, employee and witnesses.
8. Head of School / Appropriate Manager sums up case.
9. Colleague (or representative) sums up case.
10. Parties retire. (Professional Adviser may remain with Panel to offer advice.)
11. Panel considers case and notifies parties of their decision. This may be conveyed verbally, at the conclusion of the hearing or soon after. The decision is then confirmed in writing, by no later than five working days after the meeting.

This procedure may be varied by agreement of all the parties.

### **Appendix 3 – Procedure for Governors’ Appeals Panel Meeting**

1. Introduction by Chair and explanation of procedure.
2. Colleague (or representative) puts their argument, explaining the grounds of their appeal, including any new evidence that is to be presented.
3. Head of School / Appropriate Manager may ask questions of colleague (or representative).
4. Head of School / Appropriate Manager summarises original report recommending dismissal of colleague and responds to the appeal statement.
5. Colleague (or representative) may ask questions of Head of School / Appropriate Manager.
6. Panel may ask questions of Head of School / Appropriate Manager and colleague.
7. Chair summarises facts for meeting.
8. Parties retire. (Professional Adviser may remain with Appeals Panel to offer advice.)
9. Appeal Panel considers case and notifies parties of their decision. This may be conveyed verbally, at the conclusion of the hearing or at a later date. The decision is then confirmed in writing, by no later than five working days after the meeting.

This procedure may be varied by agreement of all the parties.