Diocese of Norwich
St Benet's
Multi Academy Trust

Diss & Scole Primary Academy Partnership

(Diss Infant Academy and Nursery, Diss CE Junior Academy and
Scole CE Primary Academy)

Capability Policy

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Our Christian Ethos and Values

Our academies are open to all and accepting of all regardless of faith. Our passion and ambition are to see children and young people in all our academies achieve excellent educational outcomes alongside developing and growing into their potential as individuals made in the image of God.

Our culture is one of high aspiration for all. This is rooted in our Christian values as demonstrated in the life and teachings of Jesus Christ. We have a desire to see our academies acknowledged as places of aspiration, high quality learning, achievement and hope making a significant contribution to the communities they serve.

All policies within St Benet's Multi Academy Trust (hereafter referred to as "the Trust"), whether relating to an individual academy or the whole Trust, will be written and implemented in line with our Christian ethos and values.

Overall accountabilities and roles

The Trust has overall accountability for all its academies and staff. Through a Scheme of Delegation for each academy it sets out the responsibilities of the Trust, its Executive Officers, the Local Governance Committee and the Headteacher. The Headteacher of each academy is responsible for the implementation of all policies of the Trust. All employees of the Trust are subject to the Trust's policies.

Contents

Definitions..... 3

1. Policy Statement..... 4

2. Scope..... 4

3. General Principles..... 5

4. Capability Procedure..... 6

5. Formal Process..... 6

6. Formal Review Meeting..... 10

7. Decision Meeting..... 10

8. Appeals..... 11

9. Duration of warnings..... 11

10. Links to other procedures..... 12

11. Passing information to prospective employers..... 13

12. Confidentiality..... 13

Definitions

The following definitions will apply throughout the policy and procedures:

The term “headteacher” also refers, where appropriate, to any other title used to identify the leader of the Academy.

The term ’employee’ refers to anyone employed to work at the academy. Where the employee works at more than one location, the capability policy and procedures will only apply to work undertaken at this academy.

The term ’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 employee, delegated by the Head teacher to deal with an appraisal and/or capability matter under these procedures.

‘Lack of capability’ is defined as a situation in which an employee fails consistently over a period of time to perform their duties to a wholly satisfactory standard of performance. This will be identified as set out in the Academy’s appraisal policy.

The term ‘weeks’ refers to working weeks unless stated otherwise.

1. Policy Statement

In the development of this policy consideration has been given to the impact on protected characteristics under the Equality Act and the work life balance of employees.

This policy provides a clear and consistent process for when the performance of any employee falls below the level of competence expected of them, as set out in the relevant professional standards, job descriptions and overall expectations of the role.

The policy ensures that any employee whose standard of performance is unacceptable in one or more areas is clearly informed what standards are expected and receives support towards achieving those standards.

The Employment Rights Act 1996 defines capability as 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality'. Careful recruitment and selection, induction, clarity of role and learning and development opportunities minimise the risk of poor performance. Employees should be clear of the standards and expectations and the potential consequences of failing to meet them.

Employees have a contractual responsibility to perform to a satisfactory level and they should be given guidance, support and encouragement to do so, alongside honest and constructive feedback. Line managers have a responsibility for setting smart, realistic and measurable standards of performance and for explaining those standards carefully to employees.

When carrying out capability procedures, the Trust will ensure that they abide by the Equality Act 2010.

2. Scope

This policy applies to all teaching and non-teaching employees employed to work in the Trust. It is to be used to manage individual employees' capability.

Concerns about an employee's performance will have been identified as soon as possible within the appraisal process and the policy will apply where it has not been possible to address the concerns through the use of the appraisal policy on an informal basis. The appraisal process will be suspended when the capability procedure is invoked.

Performance concerns of Early Career Teachers (ECT's) will normally be addressed via the early career framework rather than capability.

Matters which are excluded from being dealt with under this procedure are:

- Alleged misconduct
- Ill Health

- Bullying, harassment, discrimination and or victimisation

These should be dealt with separately through the relevant Trust policy respectively.

3. General Principles

The following general principles apply:

- all employees must be capable of performing the job for which they are employed to acceptable standards;
- the overall aim will be to support the employee to restore them to a sustained and effective standard of performance, employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence dismissal without previous warnings may be appropriate under the disciplinary procedure;
- line managers must set clear standards of work performance and communicate these to all their employees through the annual appraisal process;
- where an employee's work performance is believed to have fallen below standard the line manager is responsible for exploring and identifying the cause and taking appropriate supportive action without delay;
- where there is a concern regarding poor performance this will be tackled initially by the line manager and employee jointly. After this discussion has taken place, the line manager may decide that:
    - the matter is groundless and should be dropped;
    - the matter is of a relatively trivial or 'one-off' nature and that informal discussion is sufficient to resolve the matter without further action;
    - the matter is not a matter of capability but is one which should be dealt with under separate procedures; or
    - the matter is one where informal support should be provided in relation to performance through the appraisal process.
    - where the matter does require informal support, the employee will be advised and an appropriate support plan will be put in place. Whilst Trade Union representative attendance is only provided for at formal meetings the employee may wish to discuss the fact that they are on an informal support plan at an early stage with them;
    - an employee may request to have a Trade Union representative at an informal meeting, these requests will be considered on a case by case basis;
- where the support plan does not succeed, the formal Capability procedure will be applied;
- the line manager will seek advice from the HR team before applying the formal procedure;
- it is recommended that the employee seeks the support and guidance from their Trade Union representative if appropriate at each stage of the procedure. The employee will be given full details of how their work performance is considered to have fallen below the standards required and will be given every opportunity to respond to this;

- the employee has the right to be accompanied and/or represented at any stage during the formal procedure by their Trade Union representative or a work place colleague;
- reasonable management support, guidance and training will be given to the employee with the aim of helping and encouraging them to achieve improved work performance;
- employees will be treated with dignity and sensitivity at all times;
- review periods will be set based on the nature of the duties of the job and the improvements required and will allow sufficient time for the employee to meet and sustain an acceptable standard of work performance;
- where the employee is unable to sustain an acceptable standard of work performance and is dismissed on grounds of incapability, they have the right to appeal against the dismissal;
- strict confidentiality will be maintained at all stages of the process and information will only be shared with the relevant parties; and
- Lack of capability due to ill health will be dealt with under the Management of Sickness Absence Policy.

4. Capability Procedure

Informal Process

Performance is monitored on a day-to-day basis by line managers through informal support, training and monitoring and through the Trust's appraisal process. The use of informal support plans is expected before considering a move to formal proceedings.

The line manager will make it clear (and ensure the employee has a copy of any meeting notes) that the employee has been put on an informal support plan and, as well as outlining the support offered to achieve expected performance, will make it clear to the employee that if informal structured support is unsuccessful within a reasonable timeframe, then formal capability proceedings will commence. This will usually be a maximum of six weeks at the end of this period a decision will be made on if the process will transition to formal capability.

Trade Union Officials

Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

5. Formal Process

5.1 Formal Capability Meeting

A formal capability meeting initiates the capability procedure. It provides an opportunity to deal with more serious problems in a structured way or to give more intensive support and monitoring where the support provided at the appraisal stage has failed to bring about the required improvement. It allows the employee to prepare a response to concerns about performance and make a case in the company of a companion. This may provide new information or a different context to the information/evidence already collected.

5.2 Invitation to the Formal Capability Meeting

In every case, the employee will receive a minimum of five working days written notice of the meeting to allow them time to prepare and/or arrange for a workplace colleague or trade union representative to attend. The meeting will be chaired by the Headteacher or a nominated senior manager. If the procedure is applied to a Headteacher it will be chaired by the Trust CEO or another member of the senior management team nominated by the Trust CEO.

The notice of the meeting will include the following:

a) The date, time and place of the meeting;

b) The details of the concerns about the employee's performance and the possible consequences to enable the employee to answer the case at the formal meeting;

c) The employee's right to be accompanied by a representative of his/her trade union or a workplace colleague of their choice;

d) The documents that will be used at the meeting;

e) The name of any other people, including advisers who will be attending the meeting.

A copy of this capability procedure should be included with the invitation letter along with:

a) A description of the problem(s);
b) supporting evidence provided through the appraisal process (where appropriate) which identifies what the issues are, what support has been offered so far, and what progress has been made;
c) reference to and copies of other evidence being used to confirm problems, e.g. records of observations.

If the employee or the companion cannot attend the hearing the employee should inform the Headteacher/senior manager immediately and usually an alternative time or date will be arranged within 5 days of the original meeting date. The employee must make every effort to attend the meeting, 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 (for example, for health reasons), the meeting may proceed in the employee's absence and a decision taken based on the available evidence including any written representations they have made.

5.3 Conducting the Formal Capability Meeting

The format for the meeting will normally be as follows:

a) The Headteacher/senior manager introduces those present and confirms the purpose of the meeting;
b) The Headteacher/senior manager refers to the information/evidence provided with the invitation letter;
c) Witnesses may be called by the Headteacher/senior manager or employee;
d) The employee and/or their companion may ask questions of the Headteacher/ senior manager and any witnesses.

e) The Headteacher/senior manager and their HR adviser may ask questions;
f) The employee and/or their companion will present their case and will be able to refer to written evidence and/or call on witnesses of their own. Prior notice must be given of any witnesses called or referred to, and any written evidence circulated before the review meeting;
g) The Headteacher/senior manager and their HR adviser can ask questions of the employee or their witnesses;
h) The Headteacher/senior manager may adjourn the meeting if they decide that further investigation is needed, or that more time is needed in which to consider any additional information;
i) Where appropriate, the Headteacher/senior manager and employee and/or companion may summarise their cases;
j) The Headteacher/senior manager will adjourn the meeting while they decide what action to take. Any decision on the level of warning should be made after all the facts and any representations from the employee and/or companion have been considered. The employee and their companion must be informed of the outcome as soon as possible - in most cases, that will be immediately after the adjournment, and no later than five days after the review meeting.

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

5.4 Outcome of the formal capability meeting.

There are four possible outcomes from a formal capability meeting:

a) **The matter may be dropped** – this is only where new information, a different slant on the information collected or further investigation suggests the matter is not as serious as it first seemed.

b) The Headteacher/senior manager may **extend the informal support plan** provided through the appraisal process. This will be appropriate in cases where the meeting has provided new information or put a different slant on evidence already collected. The Headteacher/senior manager may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to address the remaining concerns through the appraisal process. In such cases, the capability process will come to an end and the appraisal process will recommence.

c) The Headteacher/senior manager may **issue an oral or formal first written warning** to the employee, clearly stating that failure to improve within the set period could lead to dismissal. However:
   - An oral warning should not normally be necessary in cases where the informal process has already taken place;
   - If performance is unsatisfactory a first written warning may be the appropriate step (which will invoke a formal support monitoring period of up to six weeks).

d) In very serious cases the Headteacher/senior manager could issue a **final written warning**. This would apply only to cases of particularly serious concern, where the education of children is in jeopardy. In such cases, it is possible to fast track the process and move directly to a **final written warning** (which will invoke formal support monitoring period not normally exceeding six weeks before final consideration on performance at a decision meeting). In these extreme cases it will be important to consider (before a decision is made about issuing a final warning) how and why the employee's performance has dipped significantly.

5.5 Action Plan

Where the decision has been reached to issue a warning and commence with formal capability, then the remainder the meeting should be used to agree the formal support plan to:

a) Identify the professional shortcomings (for example, giving details of which of the standards are not being met);
b) Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from the formal capability procedure (this may include the setting of new objectives focussed on the specific weaknesses that need to be addressed, and success criteria that might be appropriate and the evidence that will be used to assess whether the necessary improvement has been made);
c) Explain any support that will be available to help the employee improve their performance;
d) Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but is determined by the school in each case and should not normally be less than four weeks or more than six;
e) The Headteacher/senior manager will agree a date for the next formal review meeting (or decision meeting if a final written warning has been issued) and make it clearly understood that failure to improve may ultimately lead to dismissal.

The approach taken should seek agreement on all aspects of the action plan but where agreement cannot be reached the Headteacher/senior manager will determine what is to be included but will incorporate any comments the employee may wish to make.

An outcome letter, along with the agreed plan should be sent to the employee after the formal meeting recording the outcome, the main points discussed at the meeting, confirming the decision, and where a warning is issued, giving information about the handling of the formal stage and the

appeals process within five working day's. The letter must state that if there is insufficient improvement in the capabilities of the employee by the end of the stated period, this could lead to further action under the formal procedure including dismissal for lack of capability.

6. Formal Review Meeting

The formal review meeting should be convened by the Headteacher/senior manager in the same way as the formal capability meeting i.e. through invitation giving details of the time, date and place of the formal review meeting and the right to be accompanied by a companion. The invitation should be sent at least five working days in advance, and include a summary report detailing the following:

a) the original action plan and written warning;
b) details of help and guidance provided and results of monitoring;
c) copies of evidence from observations and other relevant evidence;
d) a clear assessment by the Headteacher/senior manager of the progress made

The format of the formal review meeting is the same as the formal capability meeting. If the Headteacher/senior manager is satisfied that the employee has made sufficient improvement the capability process will cease and the appraisal process will restart. In other cases, if some progress has been made and there is confidence that more is likely, the monitoring and review period may be extended.

If no, or insufficient improvement has been made during the monitoring and review period the employee will receive a **final written warning**. Formal monitoring, evaluation, guidance and support will continue for a further six week period. Arrangements for this should be explained at the meeting. At the end of the period of monitoring and review, the employee will be invited to a decision meeting.

As before, notes will be taken of the formal meeting and a copy sent to the employee. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The employee should be clear that a decision meeting, at which consideration of dismissal is an option, will follow once the final written warning is issued.

7. Decision Meeting

As with formal meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of the right to be accompanied by a work colleague or trade union representative. The invitation to attend should include a summary report which includes the outcome of the formal review meeting, as well as all the information referred to in the process so far – including:

a) the original action plan and any written warnings;
b) details of help and guidance provided and results of monitoring;
c) copies of evidence from observations and any other relevant evidence;

d) a clear assessment by the Headteacher/senior manager of the progress made

The invitation to a decision meeting should make it clear who will be in attendance and who has the authority to dismiss. The meeting will be convened by the person who has the authority to dismiss which at [insert Trust] is the Headteacher for all academy employees and the CEO / Deputy CEO for Headteachers. If the process is being applied to the CEO or Deputy CEO the Trust Board holds the authority to dismiss. The decision meeting will follow the same format as the formal capability meeting.

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 be reinstated.

If performance remains unsatisfactory, a decision will be made that the employee should be dismissed. The employee will be informed 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 their right of appeal.

8. Appeals

If an employee appeals a formal warning or decision to dismiss they must do so within 10 working days of the written notification.

Appeals against a written warning will be restricted to considering the reasonableness of the decision made by the Headteacher/senior manager, any relevant new evidence not previously available to the Headteacher/senior manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the CEO (in the case of the CEO appeals should be submitted to the Chair of the trustees).

Any appeal submitted will not normally interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

Any appeal submitted by an employee will be heard by an appeal panel whose members will have had no prior involvement with the proceedings.

The Appeals Panel may confirm a warning, reduce a final warning to a first warning, or cancel the warning, overturn or confirm the dismissal. If the dismissal is confirmed the original date of dismissal is unchanged. The Panel does not have the power to award any other sanction.

The outcome of the Appeal Panel hearing must be confirmed in writing to the employee within five working days. The decision of the Appeal Panel is final. The employee has no further right of appeal.

9. Duration of warnings

If an employee receives a First Written Warning and their performance has improved such that they return to the appraisal policy and within 12 months of that First Written Warning their performance deteriorates such that the formal capability process is used, they will be called to a Formal Review Meeting at which a Final Written Warning may be issued.

If an employee receives a Final Written Warning and their performance has improved such that they return to the appraisal policy and within 12 months of that Final Written Warning their performance deteriorates such that the formal capability process is used, they will be called to a Formal Review Meeting at which a further Final Written Warning may be issued.

10. Links to other procedures

10.1 Sickness absence and the use of this procedure

Sickness absence should not normally 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 be made to seek medical advice from an occupational health adviser to assess the employee's health and fitness for continued employment with the Trust if required.

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. This may include 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 the absence management policy to terminate the employee's service on the grounds of ill health.

If an employee's medical condition is not serious enough to warrant consideration of termination of employment on the grounds of ill health, the occupational health adviser will be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under the capability 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 representative in their absence.

10.2 Grievances arising during the procedure

Where an employee has a grievance about the way in which the procedure has been conducted this will be dealt with as part of the appeals procedure. Only in exceptional cases such as where the behaviour of the CEO/Headteacher/senior manager is the cause of the grievance will agreement from the Trust be given to pause the process and deal with the grievance via the grievance procedure.

10.3 Gross Incapability/Suspension

In exceptional circumstances the actions and/or omissions of an employee may be considered gross incapability/incompetence e.g. where the health and safety of children are at risk, or where there are issues relating to child safeguarding. Where the actual/potential consequences of any action/omission are considered so serious as to render the continued employment of the employee impossible, the employee may be suspended from duty, on full pay pending further investigation. The matter will be dealt with under the Trust's disciplinary procedure.

10.4 Disciplinary procedure

Where it is deemed the unsatisfactory performance is not related to capability but related to an issue of discipline i.e. an employee wilfully choosing not to comply then the Trust's Disciplinary Procedure will be invoked.

11. Passing information to prospective employers

Trusts are advised to ask for relevant information about an employee's capability as part of their appointment process. Where reference requests, asking for this information, are received from other Trusts or maintained schools the Trust must respond to them. Trusts should also ask the interviewee at interview if they have been subject, in the last two years, to their school's capability procedure.

12. Confidentiality

The Trust aim to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.

No one involved in this procedure, whether CEO, Headteacher, senior manager, line manager, employee, witness or representative may make electronic recordings of any meetings or hearings conducted under this procedure. Failure to observe confidentiality could result in disciplinary action under the Trust's disciplinary procedure.