



## Bedfield and Wetheringsett Cof E Primary School

### CAPABILITY PROCEDURE

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### **The Mustard Seed**

"The Kingdom of Heaven is like a grain of mustard seed, when it is grown, it becomes a tree, so that the birds of the air come and lodge in its branches." Matthew 13:31 – 32

### **The Mustard Seed**

"If you have faith as small as a mustard seed... nothing will be impossible for you." Matthew 17:20-21



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## **1. Introduction**

- 1.1 The St Edmundsbury and Ipswich Diocesan Multi-Academy Trust ('the Trust') is committed to providing high quality teaching and learning and to continually developing and improving staff performance.
- 1.2 This procedure applies to all employees of the Trust, including those who are centrally employed and not working within a school. It does not apply to individuals working within the Trust under contract arrangements with external providers.
- 1.3 Every job carries standards of performance that employees are expected to achieve, but occasionally an employee's performance may fall short of the standards expected. This procedure will apply when an employee falls below those standards. Its emphasis is one of support and is designed to:
- Encourage staff to meet agreed standards of behaviour, conduct and job performance;
  - Deal fairly and consistently with staff who do not improve to meet those standards and identify ways to help them improve; and
  - Be applied in a consistent, fair, prompt and supportive way
- 1.4 Concerns about performance may arise due to ill-health and absence. This may affect the long-term ability for employees to continue to carry out the requirements of their role and may have a detrimental effect upon the needs of the Trust. In such circumstances, the issues should be addressed in accordance with the Trust's absence management processes.
- 1.5 The Trust's Appraisal Policy sets out arrangements for normal performance management and appraisal. This capability procedure will apply to all employees where there are serious concerns about their performance that the appraisal process has been unable to address. Excluded from this policy are NQTs and those subject to probationary procedures (for whom separate procedures exist) unless performance falls so far below professionally acceptable standards as to require immediate action. All incidences of formal capability should be notified to the Chief Executive Officer.

## **2 Scope and exclusions**

- 2.1 Where performance concerns relate to the Headteacher, a panel of the Local Governing Body shall be convened ('the Panel') in order to manage steps to be taken under this procedure (which should not include any members of the Appeals Committee). A Headteacher who is the subject of this procedure will have all the rights accorded to other employees at the various stages.
- 2.2 Incidents of misconduct arising from performance, such as willful deficient performance, refusal to follow instructions and negligence should be managed under the Trust's Disciplinary Procedure.

3.1 Preventing performance problems arising in the first place is important and this should be considered through:

- Careful recruitment, selection and training
- Clear standards, expectations and effective communication
- Regular supervision and performance development reviews
  - Identification and, where appropriate, assistance in resolving underlying problems

3.2 Many factors can contribute to poor performance, including those which are not directly related to the workplace. In resolving any such underlying issues Schools should explore with an employee the Wellbeing Service, use of a stress risk assessment toolkit and/or a referral to Occupational Health.

3.3 Good performance management is a continuous process of regular supervision and feedback. Concerns about performance should be addressed promptly and not left until formal review meetings.

3.4 In many cases, the right word, at the right time and in the right way may be sufficient to address poor performance. Managers should, in the first instance, seek improvements to performance through processes set out in the Trust's Appraisal Policy. Although there is no statutory right for the employee to be accompanied at an informal stage, it may be helpful for an employee's Trade Union representative to be involved at the earliest opportunity.

3.5 The purpose of this procedure is to:

3.5.1 Positively and constructively support employees to improve their performance through advice, guidance and support

3.5.2 Ensure that all employees are treated in a fair, consistent and timely manner and in accordance with all relevant legal requirements

3.5.3 Contribute to the improvement of the performance and effectiveness of the Trust

3.5.4 Support managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees

3.5.5 Ensure an employee is aware of each stage of the procedure and possible outcomes

#### **4 Informal performance management**

4.1 The Trust's Appraisal Policy sets out arrangements for performance management and appraisal. Every effort will be made to resolve performance issues informally pursuant to the Trust's appraisal processes.

#### **5 Transition to capability**

##### **5.1 Timescales**

5.1.1 Capability issues should normally be resolved within ten to twelve weeks, however, it is acknowledged that there may be circumstances when the process will take longer to complete. These may include annual leave, working patterns or ill-health where reasonable adjustments need to be made under the Equality Act 2010. Where this is anticipated, advice must be obtained from the Schools' HR Team.

5.1.2 The period of monitoring under a first or final written warning will not normally exceed six weeks, (excluding school closure periods where appropriate), according to the needs of the individual and the school. Whilst every effort should be made to agree the appropriate length of this period of monitoring, where agreement cannot be reached, it will be set by the Headteacher

## **5.2 Progressing to the next stage of the procedure**

5.2.1 Before action under the formal stages of this procedure is considered, the employee should be informed in writing that this will be considered if there is no improvement within the agreed review period and invited to a meeting to discuss the evidence in more detail.

5.2.2 In many circumstances, significant evidence will already have been gathered as part of pupil progress monitoring, normal performance management and the additional support provided, which the school will simply collate and summarise as evidence.

5.2.3 The collated evidence will clearly indicate the support and advice offered to date and make a recommendation for one of the following:

- No further action,
- Further support as part of normal performance management
- Formal action under this procedure

5.2.4 In all cases, the outcome will be confirmed in writing to the employee.

5.2.5 Where the decision is made to take formal action under this procedure because the employee has made insufficient improvement despite the support and monitoring, the employee will be invited to a formal meeting under Formal Stage 1 of the procedure.

5.2.6 All employees should progress through each stage of the procedure, and in accordance with agreed timescales.

5.2.7 Exceptions can apply in the following circumstances and consequently, line managers can decide to progress them to the next stage of the procedure earlier than agreed:

5.2.7.1 Deterioration in performance

5.2.7.2 Not meeting the targets in the agreed Development Plan.

## **6 Formal Stage 1 – Meeting (written Warning)**

### **Purpose**

6.1 The purpose of Formal Stage 1 is to support the employee in improving their performance to meet the required standard which shall be recorded in an agreed Development Plan.

### **Procedure**

6.2 At least five working days' notice will be given of the Formal Stage 1 meeting and the notice will contain sufficient information about the performance concerns and the possible consequences to enable the employee to answer the case at a formal capability meeting. The notice will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by their accredited Trade Union Representative, or a work colleague.

6.3 This meeting is intended to establish the facts and will be conducted by the Headteacher or a member of the School's Senior Leadership Team ('SLT') (in the case of a Headteacher, the Panel) referred to as 'Manager' in the proceeding paragraphs. The meeting allows the employee to respond to concerns about their performance and to make relevant representations. This may provide new information or a different context to the information/evidence already collected.

6.4 This meeting is the start of the performance monitoring and review period. Formal monitoring, evaluation, guidance and support will continue during this period. The employee will be invited to a formal review meeting, unless they have received a final written warning, in which case they will be invited to a decision meeting (see below).

### **6.5 At the meeting the Manager will:**

6.5.1 Confirm that the employee has the right to be accompanied by a Trade Union representative or work colleague;

6.5.2 Confirm that the meeting is being held under the Trust's capability procedure and explain the process that will be followed and possible outcomes;

6.5.3 Confirm the expected standard of performance and the standard at which the employee is currently performing, i.e. identify the professional shortcomings, e.g. for teachers, which of the standards expected of teachers or pupil progress targets are not being met;

6.5.4 Ensure the employee has the opportunity to respond to and explain any factors affecting their current performance and consider this when determining the appropriate course of action (it is not anticipated that any information that was not shared during normal performance management arrangements will be disclosed);

6.5.5 Explain the consequences to the school and pupils of the underperformance; 6.5.6 Confirm the options available to support the employee in improving their performance (i.e. support, development, training, etc.);

6.5.7 Ensure the employee is aware of the support which is available to them e.g. the Employee Assistance Programme (EAP), Trade Union support, etc.;

6.5.8 Confirm that Formal Stage 1 constitutes a 'written warning' which if no further action is taken, will remain active for 6 months from the date of the meeting.

6.6 If the employee has been assigned a mentor during the monitoring period the mentor may also be invited to attend the meeting to discuss the support they have provided and how the employee has performed against the development plan.

6.7 On occasion, the Manager may decide to adjourn the meeting if they decide that further investigation or time is needed to consider any additional information.

**6.8 At the meeting the Manager and employee will discuss and agree:**

6.8.1 The employee's current and expected levels of performance;

6.8.2 The objectives for the Development Plan, how they will be achieved, the timescales for achieving them and when progress against each objective will be reviewed; 6.8.3 The reasons the employee is not meeting the expected standards (which may be as a consequence of personal issues);

6.8.4 When review meetings will be held;

6.8.5 Warn the employee that failure to improve within the set period could lead to dismissal (in very serious cases, this warning could be a final written warning); 6.8.6 The content of the Development Plan (this should be signed by the parties); 6.8.7 Any agreed reasonable adjustments to be made under the Equality Act 2010

**6.9 At the end of the meeting the Manager will:**

6.9.1 Summarise the meeting;

6.9.2 Ensure the employee understands what is expected of them, the process that will be followed and the possible next stages of the procedure, including the right of appeal against the warning (any appeal must be submitted in writing, within 14 days of the date of the letter issuing the warning. The grounds of the appeal must also be detailed at this stage);

6.9.3 Agree the support, development and reasonable adjustments (if appropriate) which will be put in place

**6.10 After the meeting the Manager will:**

6.10.1 Confirm the outcome of the meeting in writing, including that a written warning has been issued;

6.10.2 Ensure that the employee receives the support agreed in the Development Plan;

6.10.3 Ensure that the agreed review meetings (and any further review meetings deemed necessary) take place;

6.10.4 Continue to monitor the employee's progress against the Development Plan and progress the employee as appropriate and in line with this procedure;

6.10.5 Ensure that any agreed support, development or reasonable adjustments are put in place in a timely manner

**6.11 After the meeting the employee will:**

6.11.1 Make every effort to meet the objectives agreed in the Development Plan; 6.11.2

Attend the agreed review meetings (and any further review meetings deemed necessary);

6.11.3 Give honest feedback on their current performance and progress against the Development Plan and pupil progress targets.

- 6.12.1 The letter confirming the outcome of the first formal meeting and a copy of the Development Plan will be sent to the employee and will invite the employee to a formal review meeting at the end of the agreed review period. The employee has the right to be accompanied at the formal review meeting by their accredited Trades Union Representative, or a work colleague.
- 6.12.2 At the formal review meeting, the Manager and employee will review the employee's progress against the Development Plan and the Manager will confirm one of the outcomes stated below. As with paragraph 6.6 if the employee has been assigned a mentor they may be invited to attend the meeting to discuss the support they have provided and how the employee has performed against the most recent development plan

### 6.13 Possible Outcomes of Formal Stage 2

6.13.1 The Manager will confirm one of the following outcomes:

6.13.1.1 **The required standard of performance has been met:** The employee's performance will be managed under normal performance management arrangements and the written warning will remain active for 6 months from the date of the Formal Review Meeting;

6.13.1.2 **The required standard of performance has not been met or significant progress has not been made towards meeting the required standards:**

The employee will be progressed to Formal Stage 3 of the procedure (see section 7) and a 'final written warning' will be given. Pending the Formal Stage 3 Decision Meeting, the employee will continue to be supported to meet the requirements of the Development Plan.

6.13.2 The outcome of the Formal Review Meeting will be confirmed to the employee in writing. If the employee has been progressed to Formal Stage 2–3 of this procedure, the letter will include:

6.13.2.1 An invitation to the Formal Stage 2 3 Decision Meeting;

6.13.2.2 Confirmation that a final written warning has been issued, which if no further action is required, will remain active for 12 months from the date of the meeting.

6.13.2.3 Confirmation that failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal;

6.13.2.4 Information about the handling of the further monitoring and review period, the procedure and time limits for appealing against the final warning.

### 7 Formal Stage 2 3 – Decision Meeting

7.1 As with the formal capability meetings and formal review meetings, at least five working days' notice will be given and the notice will confirm the time, date and place of the meeting, and will advise the employee of their right to be accompanied. The Decision Meeting will be



conducted by the Headteacher or a panel of members of the Local Governing Body (normally 3), as appropriate.

### **Purpose**

7.2 The purpose of the Formal Stage 3 Decision Meeting is to determine:

7.2.1 Whether the school/Trust has exhausted all options in supporting the employee to improve their performance;

7.2.2 The outcome of the procedure.

### **Procedure**

7.3 The procedure for the Formal Stage 3 Decision Meeting appears at paragraph 13 below.

### **Possible Outcomes of Formal Stage 3**

7.4 The outcome of the Formal Stage 3 Decision Meeting will be one of the following:

7.4.1 **The required standard of performance has been met:** The employee is performing to the required standard and will be managed under normal performance management arrangements.

7.4.2 **The required standard of performance has not been met but it has been determined that the required standard can be met within a short period:** A further review period (it is recommended this is no more than two working weeks from receipt of the Development Plan) and Development Plan will be implemented (under Formal Stage 3 of this procedure).

7.4.2.1 In these circumstances:

7.4.2.1.1 The additional support to be given to the employee and the duration of the extended review period will be explained to the employee verbally at the meeting and the updated Development Plan will be included in the outcome letter.

7.4.2.1.2 A review meeting will take place at the end of the extended review period and one of the three outcomes set out within paragraph 7.4 will be determined.

7.4.3 **The required standard of performance has not been met and the panel has determined:**

7.4.3.1 **The required standard cannot be met within a short period; or** 7.4.3.2 **The employee is capable of performing at the required standard but is not doing so willfully or recklessly.**

7.4.4 In the circumstances of paragraph 7.4.3 the Headteacher/panel will determine that the employee shall be dismissed from their employment.

7.4.5 The employee shall be dismissed with notice. The Headteacher/panel may determine that for the duration of an employee's notice period they will be granted paid leave or will return to work in an alternative capacity, for example, which does not affect the education of children.

7.4.6 The outcome of the hearing will be confirmed to the employee in writing as soon as possible, and will include information about the employee's right of appeal. If a further review period has been granted (see paragraph 7.4.2), the letter will include an invitation to the review further hearing.

## **8 Returning to earlier warnings**

8.1 If there is evidence within six months of the procedure ceasing (for a first written warning or within twelve months for a final written warning) that the employee has not sustained the level of performance required, the procedure may be resumed at any stage up to and including the stage previously reached.

## **9 Exceptional circumstances**

9.1 Where underperformance is so serious and/or could have serious consequences, successive warnings will not be appropriate. For example;

- where the employee's performance falls so far short of an acceptable standard, that improvement to an acceptable level may reasonably be deemed impossible; or
- where a lack of competence has a seriously detrimental effect on the education of pupils and students; or
- where the employee's lack of competence could have other serious consequences e.g. safety considerations

9.2 In such circumstances, a school may proceed directly to consideration of a final written warning or dismissal, with or without notice, as appropriate. HR advice should be sought before taking such a decision.

## **10 Appeals**

10.1 Employees have the right to appeal against any warning or dismissal imposed under this procedure. The procedure for an appeal hearing is set out in paragraph 13.

10.2 If an employee considers that a sanction imposed pursuant to this procedure is wrong or unjust, they may appeal in writing within five working days of the date of the decision and will need to set out the grounds for their appeal.

## **11 Headteachers**

11.1 Headteachers' performance shall be managed by the MAT as part of the Trust's informal processes set out in its Appraisal Policy.

11.2 If the help and support which has been provided within the normal performance management processes does not lead to the required improvement, the Chair of Governors will liaise with the

Chief Executive Officer (CEO) who will commission an investigation into the performance issues, including potential causes and an assessment of its seriousness.

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11.3 Following completion of the investigation, the CEO will receive the report and determine any action to be taken.

11.4 The CEO will carry out those functions normally undertaken by the Manager at formal stages 1 and 2, referred to throughout this procedure. A special committee of members of the trust board will carry out the functions referred to at formal stage 3.

11.5 A Headteacher who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

## **12 General principles underlying this procedure**

### **12.1 Confidentiality**

Processes conducted under the Trust's appraisal and capability procedures will be treated confidentially. However, the requirement for confidentiality does not override the need for the Headteacher and Local Governing Bodies to quality-assure the operation and effectiveness of the Trust's appraisal and capability systems.

### **12.2 Grievances**

Where a member of staff raises a grievance during the capability procedure only in limited circumstances will the capability procedure be suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

### **12.3 Sickness**

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the Trust's absence management processes and will be referred promptly to the Trust's occupational health service provider to assess the employee's health and potential fitness for continued employment 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.

### **12.4 Retention**

Schools will ensure that all written appraisal records are retained in a secure place for six years and then destroyed (in the case of centrally employed staff, the Chief Executive Officer will assume this responsibility).

## **13 Procedure for a Formal Stage 3 Decision Meeting**

Meetings will be held in as informal a manner as possible. The conduct of the meeting is at the discretion of the Headteacher/Chair of the committee hearing the case ('Headteacher/panel'), but they will allow the parties every reasonable opportunity to present their case.

In the case of an appeal the order of presentation would normally be reversed, with the employee (as appellant) presenting their case first. This will not be the case in circumstances where the appeal is a re-hearing. Appeal Committees should ensure that all parties understand and agree on the order of presentation.

## 1 Introduction

### 1 Introduction

The Headteacher/Chair of the panel hearing the case will ensure that those present are introduced to each other and that they are aware of the procedure to be followed. The point will be made to all parties that it is not permissible for the meeting to be recorded.

## 2 Presentation of the Case

### 2. Presentation of the Case

The individual presenting the case may make an opening statement outlining the case. If the employee has accessed the support of a mentor the mentor may be invited to discuss the support they have provided and how the employee has performed against the most recent development plan. The employee and / or their representative may ask questions of the mentor.

The presenting officer will then present any other information as necessary to conclude the presentation of their case (if applicable).

The employee /employee representative and the person or committee hearing the case may then ask question to the presenting officer based on what they have submitted. The Headteacher/panel and the employee may ask questions.

Where evidence is presented in the form of documents, the person presenting the case will explain the nature and significance of the documents.

## 3 The Employee's Case

### 3. The Employee's Case

The employee or their representative will present their case. The Headteacher/panel and the person presenting the case against the employee may ask questions.

Where there is any documentary evidence, the employee or their representative will explain its significance.

## 4 Re-examination

### 4. Re-examination

Both parties will be asked if they wish to re-examine any evidence which has come before. Headteacher/panel may also do so at its discretion.

## 5 Final Statements

### 5. Final Statements

The person presenting the case against the employee may make a final statement. The employee or their representative may then also make a final statement.

## 6 Adjournment

### 6. Adjournment

Either party may ask for an adjournment at any stage. The decision to adjourn is at the discretion of the Headteacher/Chair of the panel, who will consider a request in the light of the reason given for it.

## 7 Consideration of the Case

### 7. Consideration of the Case

All parties will withdraw. The Headteacher/panel will consider/deliberate. An HR advisor may be present at these deliberations to advise on procedural matters.

If it is necessary to recall either party or any witnesses, to resolve a point of uncertainty, both

parties should be present.

8. **Decision** **Decision**

If possible, the decision will be communicated orally to the employee after the meeting. The decision will be confirmed in writing to the parties after the meeting, normally within five working days.

### Capability Procedure Timeline Appendix 1

It is anticipated that most cases of capability will be resolved within ten to twelve working weeks (including informal feedback as part of normal performance management arrangements). However, it is acknowledged that there may be circumstances when the process takes longer to complete. Where this is anticipated, advice should be obtained from HR.

## Illustrative capability procedure timeline

Final warning followed  
by monitoring & review meeting Decision

Support and monitoring as part of normal performance management  
Formal capability meeting  
1<sup>st</sup> warning followed by monitoring & review period  
Formal review meeting  
Final warning followed by further monitoring and review period  
Decision meeting

weeks +  
5  
days' notice  
4- 6  
weeks  
minimum

+ =  
4 - 6 weeks  
minimum

**Note: The timings given above are illustrative only.  
Schools will tailor the length of their monitoring and review periods to suit individual circumstances.**