



Diocese of Salisbury  
Academy Trust

## Capability Procedure for Teaching and Support Staff for Diocese of Salisbury Academy Trust

This model procedure will apply to both teaching and non-teaching staff working in Diocese of Salisbury Multi Academies Trusts  
This policy has been **updated in 2013** to align with the new Teachers Appraisal Policy and Procedure.

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## Duties, Responsibilities and Powers of Diocese of Salisbury Academy Trust (DSAT).

- I. Diocese of Salisbury Academy Trust (DSAT) are the employers of the school's teaching and support staff. DSAT therefore has the power to dismiss a member of staff at any of its Academies.
- II. The Local Authority does not have an automatic statutory right of attendance at dismissal proceedings, but DSAT under certain circumstances may accord the Local Authority rights to attend and give advice. Where the decision to invite the Local Authority has been taken this decision will be communicated to the Local Advisory Board (LAB) as soon as possible. Where the Local Authority is accorded such advisory rights, any advice given will be considered by those concerned before making a decision.
- III. DSAT will agree where such rights are accorded the Local Authority to consider the advice given by those concerned before any decision is made.

### 1. Policy Statement

- 1.1 DSAT has a statutory obligation to adopt formal policies and procedures for dealing with staff performance issues (School Staffing (England) Regulations 2009). A sound standard of performance is essential for the efficient and effective management of its Academies.
- 1.2 This procedure is primarily concerned with ensuring that an 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. This procedure should only be initiated when normal support mechanisms within DSAT Academies have failed to resolve the issues.
- 1.3 The policy provides for an outcome which is both fair and constructive. It is not intended that the procedure should replace normal communication between the Principal and a member of staff (or Executive Principal in cases of the Principal) in the day to day running of a school, whereby comments may be made informally. It is important that any member of staff is made fully aware of any complaint regarding their work at the time the complaint is received so that they are able to respond in a timely manner.
- 1.4 This procedure is designed to help all the Academies to maintain the required employee standards of performance. It allows those who do not maintain those standards the opportunity to improve. It provides a method of dealing with any apparent shortcomings in performance and can help an employee to become effective again. It provides for matters within the Academies to be dealt with in a fair and consistent manner.

## Who does this procedure apply to?

This procedure applies to all staff employed by the academy about whose performance there are serious concerns including teachers, Principal and Executive Head where the appraisal process has been unable to address.

In the case of Newly Qualified Teachers please refer to Section 4 of the DFE's Statutory Guidance for the Induction of Newly Qualified Teachers (England) 2012.

## 2 What is unacceptable performance?

- 2.1 This is performance that falls below the standards that have been set for, or that could reasonably be expected of, a member of staff. In the case of teachers this will include the national teachers' standards that are in place. Managers should also consider whether the member of staff is fulfilling the requirements of their job description, particularly in relation to specific additional roles and responsibilities.
- 2.2 Under the Employment Rights Act 1996 performance can be assessed by reference to skill and/or aptitude, for example, a lack of skill or ability in achieving objectives.

## 3 How does it differ from Discipline?

- 3.1 A clear distinction should be made between unacceptable performance which is due to a lack of skill, ability, knowledge, experience or aptitude. Unacceptable performance due to lack of care and/or wilful refusal may be considered to be misconduct and should be addressed using the Disciplinary Policy and Procedure.
- 3.2 If a case is initially dealt with under the Disciplinary Policy and Procedure and it becomes clear that performance issues are due to a lack of capability rather than misconduct, the matter should transfer to this procedure (and vice versa).

## 4 What if an employee's health is affecting their performance?

- 4.1 If it is clear that an employee's health is affecting their **attendance** at work, the Principal or Executive Head will seek relevant advice from the HR Officer. Where an employee's health is affecting their **performance** at work, the Principal or Executive Head should consider referring their concerns to Occupational Health before commencing with any stage of this procedure to ensure relevant medical advice is taken into account they should seek guidance from the HR Officer.
- 4.2 The Principal or Executive Head in conjunction with HR will consider whether an employee has a disability as defined in the Equality Act 2010 and therefore whether reasonable adjustments need to be made.

## **5 Who is responsible for managing the process?**

- 5.1 The Principal, Executive Head or a delegated senior leader is responsible for managing the process. In the case of the unacceptable performance of a Executive Head the DSAT subcommittee manages the process. The person managing this process is referred to as 'the manager' throughout the policy.

## **6 Can a grievance be raised during this process?**

- 6.1 In the event that an employee raises a grievance in the course of the capability procedure, or there remains an outstanding grievance, the manager will consider suspending this procedure until the outcome of the grievance investigation is known; each case will, however, be considered on its merits to ensure that the manager is acting reasonably. Guidance from the HR officer should be sort in all cases.

## **7 Absence during this process**

- 7.1 If an employee becomes unwell during a period of performance monitoring. Careful consideration should be given to any health related problems HR and Occupational Health advice should be sort where required.
- 7.2 Odd days of absences should not delay any part of this procedure. Reasonable steps should be taken to enable the employee to attend meetings. If necessary, the meeting will be rearranged on one occasion within 5 working days of the original date.
- 7.3 In the case of long term absences the procedure may be suspended and resumed on the member of staff's return to duty.

## **Capability Procedure**

### **8 Informal Stage (where concerns are not linked to the appraisal process)**

- 8.1 Principal and/or Executive Principal will convene a meeting with the employee. At the meeting the manager will outline the performance shortcomings, the performance standards required and the timeframe over which improvement will be expected and how this will be measured and monitored. This will be confirmed in writing to the employee. It is important that the employee is made aware of the consequences of the failure to improve. If the employee requests to be accompanied at this stage their request should not be unreasonably denied.
- 8.2 The employee must also be given a copy of this procedure.

- 8.3 In discussion with the employee the manager will also decide on the support and help that will be put in place. The nature of the shortcomings will determine the nature of the help and support to be provided. This could include:
- I. Mentoring and/or coaching
  - II. Provision of suitable training
  - III. Management and / or peer support
  - IV. Review of commitments
  - V. Appropriate equipment.
- 8.4 The employee must be supported for a period of time which is reasonable considering the post, the nature of the shortcoming (s) and the employee's length of service before a decision is taken to move to the formal stage; this would normally be between four and ten weeks. Timescales set may be subsequently extended.
- 8.5 Where the employee's performance improves to the standard required the employee should be informed of this and also reminded of the need to maintain the improved standard. The procedure may be suspended on the understanding that it will be re-invoked if performance becomes unsatisfactory at any time in the future.
- 8.6 When the employee demonstrates they are maintaining the improved standard, they should be informed in writing that the procedure is being withdrawn.

## **9 Formal capability meeting**

- 9.1 The member of staff will be given at least five working days' notice of the formal capability meeting. The notification will contain sufficient information regarding the concerns about performance and their possible consequences to enable the member of staff to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the member of staff of their right to be accompanied by Trade Union Representative or a current workplace colleague, but not a family member or relative not acting in a professional capacity.
- 9.2 This meeting is intended to establish the facts. It will be conducted by the Principal the meeting allows the employee (the Executive Head for the Principal), to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected. The employee may be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent but not a family member or relative.
- 9.3 The person conducting the meeting 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 through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also

adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

- 9.4 If the manager conducting the meeting concludes that the formal capability measures should be implemented, the meeting will continue. During this meeting, or any other meeting which could lead to a formal warning being issued, the manager conducting the meeting will:
- I. identify the shortcomings, for example which of the standards expected are not being met;
  - II. give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (*this 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*);
  - III. explain any support that will be available to help the employee improve their performance;
  - IV. 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 in straightforward cases could be between four and ten weeks and
  - V. 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.
- 9.5 Full and detailed records will be kept by the manager at each stage of the procedure identifying the reasons for the teacher's failure to meet the required standards of performance and the manager's response. These records should include the agreed targets, timescales and the support that is being put in place for the member of staff. Notes of all meetings should be kept and made available to the member of staff.
- 9.6 The decision to issue a final warning at the first formal capability meeting should be made by the Chair of the meeting in conjunction with advice from the HR Officer and having heard representations from the member of staff.
- 9.7 In issuing a final warning, the academy may choose to consider whether the following circumstances apply, although this list is not exhaustive:
- I. Performance is likely to endanger the health and safety of other people;
  - II. Performance will have a significant impact on the business;
  - III. An member of staff's performance has already been reviewed as part of this procedure, only for it to deteriorate again in a relatively short period of time;
  - IV. If there is evidence that the education of the pupils is being put in jeopardy. Where this is the case, the school will provide evidence to support the decision, which will include an explanation as to why the problem was not resolved at an earlier stage.

## 10

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

- 10.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).
- 10.2 A timetable of regular monitoring sessions with the manager should be arranged. These sessions may coincide with or replace normal or existing management meetings. If there are any further concerns these must be identified at the meeting and the support and monitoring in place should be reviewed. Any progress made should be discussed and recognised with the member of staff.

## 11

### Formal review meeting

- 11.1 As with formal capability meetings, at least five working days' notice in writing will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent but not a family member or relative.
- 11.2 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:
  - I. If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
  - II. If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.
- 11.3 Where a final warning is issued, a final programme of support and monitoring should be discussed and agreed, emphasising that significant and rapid improvement in performance is required. If the required improvement in performance is not achieved by the end of the final review period, the manager may refer the case to a hearing where continuation of employment will be considered.
- 11.4 Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal.
- 11.5 Notes will be taken of formal review meetings and a copy will be sent to the member of staff who will also be given information about the handling of any further monitoring and



review period and the procedure and time limits for appealing against the final warning. At the end of the final review period, the employee will be invited to a decision meeting.

## 12

### Decision meeting

- 12.1 The member of staff will be given at least five working days' notice in writing of the meeting and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a Trade Union Representative or a current workplace colleague, not acting in a professional capacity but not a family member or relative.
- 12.2 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 re-start. If performance remains unsatisfactory, a decision, or recommendation to DSAT or the LAB, will be made that the teacher should be dismissed or required to cease working at the Academy.
- 12.3 Before the decision to dismiss is made, the Principal and/or Executive Head will consult with the HR Officer.
- 12.4 An Academy has the delegated power to dismiss which rests with the LAB but this responsibility may be delegated to the Principal.
- 12.5 The employee will be informed within 10 working days in writing if 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.

## **13 Dismissal**

- 13.1 Once the decision to dismiss has been taken, the LAB, Principal or Executive Head will dismiss the staff member in writing with notice in line with their contractual arrangements.
- 13.2 In certain circumstances depending on individual circumstances the staff member may be dismissed with immediate effect and receive pay in lieu of notice.

## **14 Appeal**

- 14.1 If the staff member feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, based on a failure to follow procedures or factually incorrect, they may appeal in writing against the decision within ten days of the decision, setting out the grounds for appeal.
- 14.2 Appeals will be heard within ten working days of the appeal letter being received where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the employee.
- 14.3 The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case.
- 14.4 The staff member will be informed in writing of the results of the appeal hearing within ten working days of the appeal hearing.

### **Appeal hearing procedure for warning, final warnings and dismissals**

#### **Presentation of the management case**

- I. The Chair hearing the case will make introductions and outline the process to be followed to ensure that everyone present understands what is going to happen.
- II. The Chair or Panel will be advised throughout the hearing by an HR Officer. Notes of the meeting will be taken throughout which will then be available to all parties present.
- III. The manager will then present their case highlighting key points and calling any witnesses if any to present their evidence. The manager will refer to any documents as necessary.
- IV. The member of staff and/or their representative may question any witnesses or question the manager on their evidence.
- V. The Chair or Panel hearing the case may also question any person present.
- VI. Each witness will join the hearing to give evidence and leave after doing so, although they may need to be recalled if necessary.

#### **Presentation of the Member of Staff's Case**

- The member of staff or representative presents their case, referring to any relevant documents, and calling any witnesses as appropriate.
- The manager may question the member of staff or any of the witnesses on their evidence.
- The Chair or Panel hearing the case may also question any person present.
- Each witness will join the hearing to give evidence and leave after doing so, although they may be recalled if necessary.

#### **Summing Up**

- The manager summarises the main points of the case.
- The member of staff or their representative summarises the main points of their case, including any mitigating circumstances.
- At this stage no new evidence may be introduced. The manager, the member of staff and their representative then leave the meeting.

## **The Decision**

- The Chair or Panel hearing the case will consider whether there is sufficient grounds to issue the warning, final warning or to dismiss the member of staff because of their poor performance or uphold the appeal. The Chair or Panel should take into account any mitigating circumstances. If further clarification of information is required in order to make a decision, both parties will be recalled, or the hearing adjourned until the information is provided.
- The Chair or Panel should consider all the evidence available at the time of the hearing.
- The Chair or Panel will read out their decision, including the reasons for it. In complex cases deliberation may take some time. If this occurs, a decision should be made within 2 working days of the conclusion of the hearing, and, in both situations the outcome of the hearing should be confirmed in writing within 5 working days.

### **General Principles Underlying This policy**

#### **ACAS Code of Practice on Disciplinary and Grievance Procedures**

The policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

#### **Confidentiality**

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for DSAT to quality-assure the operation and effectiveness of the appraisal system. DSAT to advise how they might achieve this, for example, the Principal in conjunction with the Executive head might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers.

DSAT will need to be aware of any recommendations made in relation to any pay increases that have been made. However this does not necessarily automatically follow that a pay award will be given.

#### **Consistency of Treatment and Fairness**

DSAT is committed to ensuring consistency of treatment and fairness across all its Academies. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled teachers. DSAT is aware of the guidance on the Equality Act issued by the Department for Education.

#### **Definitions**

Unless indicated otherwise, all references to "employee" include teachers, Principals and Executive Head.

#### **Delegation**

Normal rules apply in respect of the delegation of functions by DSAT to LAB, Executive Heads and Principals.

#### **Grievances**

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily 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.

## **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 DSAT's absence policy and will be *(eg referred immediately to the occupational health service to assess the member of staff's health and 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.

## **Monitoring and Evaluation**

DSAT will regularly monitor the operation and effectiveness of the Academy's appraisal arrangements.

## **Retention**

DSAT will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.