

CONTRACTUAL POLICY



Capability Policy

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(This policy supersedes all previous Capability policies)

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Amendments

Policy Date	New Version Number	Summary of change	Comments
August 2017	V1.0		
March 2020	V1.1	Minor amendments. Removal of 5.5 from the Monitoring and Review period section.	

Union Consultation

Date	Action (meeting, email etc)	Comments	Attendance
10/07/17	Meeting with Union Reps		UNISON, GMB, NASUWT, ATL, NUT

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1. Introduction

- 1.1 Education South West is committed to providing high quality teaching and learning. Each employee will therefore be given support to help them continually improve their performance and develop to their full potential, which will in turn help improve outcomes for our young people.
- 1.2 Having an effective performance management process in place is one of the ways we support our employees and deal with performance matters as they arise; this is set out in our Appraisal Policy.
- 1.3 This policy sets out the arrangements that apply when an employee falls below the levels of competence and performance that are expected of them and concerns have been raised which the Appraisal Policy has been unable to address
- 1.4 This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.5 The policy has been implemented following consultation with staff and recognised trade unions. It has been formally adopted by the Trust.
- 1.6 This policy is contractual and forms part of any employee's contract of employment.

2 Scope and purpose of this policy

- 2.1 The purpose of this policy is to provide a framework within which Education South West works with employees to improve and maintain satisfactory standards of performance where concerns have been raised.
- 2.2 This policy is applied when informal support as set out in the Appraisal Policy has been provided and the required improvement has not been achieved.
- 2.3 This policy applies to all employees of the Trust, including teachers and support staff, excluding those who are in the probationary period.

3 Notification and procedure for formal meetings

- 3.1 An employee is given at least five working days' written notice if required to attend any formal meeting under this procedure.

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3.2 The written notification contains:

- (a) Sufficient information about the performance concerns and their possible consequences (including either issuing a warning or dismissal) to enable the employee to prepare to answer the case
- (b) Copies of any written evidence
- (c) Copies of witness statements and details of witnesses attending (if appropriate)
- (d) Details of the time and place of the meeting
- (e) The right to be accompanied (see 3.4)

3.3 Formal meetings are conducted by the Headteacher/Business Manager/Chief Executive Officer or other senior employee delegated this responsibility by the Chief Executive Officer or Headteacher.

3.4 An employee has the right to be accompanied to any formal meeting under this procedure by a companion, who may be a colleague or a trade union representative.

3.5 Relevant witnesses may be called by the person conducting the meeting and an employee may request that relevant witnesses are called to any formal meeting.

3.6 A formal meeting under this procedure:

- (a) identifies performance shortcomings;
- (b) allows an employee to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected;
- (c) identifies what action (including support provided) has been taken to date and the outcome;
- (d) where appropriate, identifies and explains any support that is available to help the employee improve performance;
- (e) where appropriate, warns an employee formally that failure to improve within the set period could lead to dismissal; and

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- (f) confirms the timescales for the monitoring and review period which follow a formal meeting where a warning is issued. The timetable depends on the circumstances of the individual case but the period is reasonable and proportionate and provides sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support continue during this period.
- 3.7 The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required.
- 3.8 If at any stage the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure ceases and the appraisal process re-starts.
- 3.9 Following a formal meeting, the matters covered in 3.6 and any other relevant points are confirmed in writing. Where a warning has been issued the letter sets out the length of the monitoring and review period and the procedure and time limits for appealing against the warning.
- 3.10 Minutes are taken of all formal meetings and the employee is sent a copy following the meeting.

4. Formal capability meeting (Stage 1)

- 4.1 If it is considered that there are performance concerns, the employee is invited to a formal capability meeting to establish the facts.
- 4.2 Where a warning is issued, this is usually a first written warning. However, in very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure, this could be a final written warning.
- 4.3 Any warning is time limited and therefore during this time any further performance concerns are considered at the next stage of the process (stage 2). After the active period the warning remains on the employees' personnel file but is disregarded in deciding the outcome of any future capability proceedings.

Monitoring & Review Period (1):

- 4.4 The standard set length of the monitoring and review period following the formal capability meeting in this Trust is normally six weeks. However, in some cases it may be appropriate for a shorter period of four weeks to be set. In exceptional circumstances, this period can be extended up to a maximum of ten weeks.

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4.5 At the end of the monitoring and review period the employee is 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.

5. Formal review meeting (Stage 2)

5.1 If the person conducting the formal review meeting decides that some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period up to a maximum of 4 additional weeks.

5.2 If not, or insufficient improvement has been made during the monitoring and review period, the employee receives a final written warning. A further Monitoring and Review Period follows in accordance with 4.4.

5.3 The warning normally remains active for 12 months from the end of the further monitoring and review period. During this time any further performance concerns are addressed at the next stage of the process (stage 3). After the active period the warning remains on the employee's personnel file but is disregarded in deciding the outcome of any future capability proceedings.

Monitoring & Review Period (2):

5.4 At the end of the further monitoring and review period, the employee invited to a decision meeting.

6. Decision meeting (Stage 3)

6.1 The decision meeting is usually conducted by the Headteacher / Business Manager/Chief Executive Officer if they have not previously been involved or a panel of governors not previously involved in the case, which could include the Headteacher/Business Manager/Chief Executive Officer. Dismissal is a possible outcome of a decision meeting.

6.2 If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be imposed. There is a further decision meeting at the end of that extended monitoring and review period.

6.3 If performance remains unsatisfactory, a decision is made that the employee is dismissed.

6.4 The employee is informed in writing as soon as possible of the dismissal, the reasons for the dismissal, the date on which the employment contract ends, the appropriate period of notice and the right of appeal.

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7. Appeal

- 7.1 If the employee feels that the decision to dismiss or other action taken against them (including warnings) is wrong or unjust, they may appeal. They appeal in writing to the Headteacher/Business Manager/Chief Executive Officer, setting out the grounds for appeal within five working days of the decision.
- 7.2 Appeals are heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion apply as set out in section 3.
- 7.3 The appeal is dealt with impartially and, wherever possible, by a panel of three governors or directors who have not previously been involved in the case in line with the Trust's arrangements for appeals.
- 7.4 The employee is informed in writing of the results of the appeal hearing as soon as possible.
- 7.5 There is no further right of appeal against the sanction or dismissal within the Trust.

8. Sickness

- 8.1 If at any stage long term sickness absence appears to have been triggered by the commencement of this procedure, the case will be dealt with in accordance with the Trust's sickness absence policy.
- 8.2 The employee is referred immediately to the occupational health service to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures.

9. Review of policy

- 9.1 This policy is reviewed every three years or upon change of relevant legislation. We monitor the application and outcomes of this policy to ensure it is working effectively.