

Capability Policy/Procedure

Designation	Name	Date	Signature
CEO:	Mrs Lyn Dance		
Chair of Trust Board:	Mrs Kerry Brimfield		

Monitoring and Evaluation	
Original implementation date:	October 2020
Review frequency:	2 years
Date of next Review:	October 2024
Review delegated to:	Finance & Resources committee

Document Version control

Version	Changes made	Date
1.0	Initial set up of Trust-wide policy	October 2020
	Reviewed, 7.3.4 added	September 2022

1. Introduction

- 1.1. This procedure applies where a member of staff is failing to carry out their responsibilities or duties in a satisfactory manner, due to a lack of ability, experience, qualifications or on health grounds.
- 1.2. This procedure aims to ensure fairness and consistency throughout the schools and provides for warnings to be given for failure to meet our standards of job performance. The procedure is non-contractual in nature, but applies to all members of staff except that this procedure will not apply during the first two years of employment. All members of staff should familiarise themselves with its provisions.
- 1.3. Most performance improvement procedures will follow the course set out below. However, we may vary the process to suit individual circumstances; such a variation will not amount to a breach of this procedure. The procedure will be invoked when performance issues arise or are identified either following an appraisal process or otherwise.
- 1.4. The School will normally address performance informally, and offer appropriate training and support to an employee before progressing under this procedure.
- 1.5. The procedure set out in this document aims to ensure that there is:
 - 1.5.1. Openness and awareness for staff when they are not meeting the required levels of performance.
 - 1.5.2. A means of monitoring performance and establishing performance criteria.
 - 1.5.3. A degree of consistency in how staff are given opportunities to attain satisfactory levels of performance.
 - 1.5.4. Assistance in identifying the most appropriate form(s) of support and providing that support
- 1.6. The School will consider what training and support it can give the employee to help them meet the performance requirements.

2. CONFIDENTIALITY

- 2.1. Our aim is to deal with performance matters sensitively and with due respect for the privacy of the 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.
- 2.2. An employee, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

3. SUSPENSION

- 3.1. Where you are accused of an act of serious or gross negligence, you may be suspended from work on full pay and benefits, pending the outcome of the capability or disciplinary procedure. Such suspension does not imply that any decision has already been made in relation to this procedure or the Disciplinary Procedure.

4. FORMAL MEETING

SAND Academies Trust

Lyn Dance CEO & Executive Headteacher

Registered in England: Company Number 11968610

Registered Office: The Milestone School, Longford Lane, Gloucester, GL2 9EU - Telephone: 01452 874000 – www.sandmat.uk

- 4.1. If we consider that it is necessary to invoke the formal capability procedure we will inform you in writing. In so doing, we will give you reasonable notice of a capability meeting and set out details of the alleged shortfall or failure in performance, together with any evidence relied upon if practicable and available.
- 4.2. At all stages of the procedure, you will be allowed to attend a capability meeting with a colleague or a trade union official as a representative and you will be given an opportunity to state your case. You must take all reasonable steps to attend the meeting. In the event that you fail to attend the meeting this will usually be rearranged once, but should you fail to attend the rearranged meeting then a decision may be reached in your absence.
- 4.3. Following the meeting, we will write to you to confirm our decision. You will also be informed of your right to appeal the decision if you are not satisfied with it.

5. APPEAL

- 5.1. An employee may appeal against a decision within five working days of receipt of the written decision. Such appeals are to be made in writing to the Board of Trustees.
- 5.2. The appeal meeting will be convened as soon as is reasonably practicable. The appeal meeting will be held by the a panel of Trustees (who have had no prior involvement). Trustees will not hear the appeal if they were involved in the capability meeting.
- 5.3. Where new evidence arises prior to or during the appeal the employee will be given access to any relevant information or evidence and will have the opportunity to make representations. The employee will have the right to be accompanied at any appeal meeting by a colleague or trade union representative. The employee will be informed in writing of the decision of the appeal meeting following the conclusion of the meeting. Such decision will be final. In the event of an unsuccessful appeal against a decision to dismiss the original dismissal date shall stand.
- 5.4. If your performance shortfall or failure is dealt with under the formal capability procedure, a record will be kept of the shortfall or failure, your defence or mitigation, minutes of the capability meeting, the action taken and reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records are confidential and will be retained on your personnel file in accordance with the prevailing data protection legislation.

6. PERFORMANCE WARNINGS

6.1. Written warning

- 6.1.1. In the case of serious shortfall, or failure or a repetition of earlier shortfall or failure, you will be given a written warning, setting out the precise nature of the shortfall or failure, the likely consequences of further shortfall or failure and specifying, if appropriate, the improvement required and over what period. Objectives, timescales and measures for the performance improvement should be set. Your Head of Department or line manager should offer help with training and supervision as required. A written warning will be kept on your record in accordance with the Staff Privacy Notice and Data Retention Policy but will be considered expired after 12 months. Your performance may be appraised, at intervals to be determined by your Head of Department or line manager, at any time during this period.

6.2. Final written warning

- 6.2.1. In the case of a further repetition of earlier shortfall or failure, if you still fail to improve or if the shortfall or failure, whilst falling short of gross negligence, is serious enough to warrant only one written warning, you will be given a final written warning setting out the precise nature of the shortfall or failure containing a statement that any recurrence or failure to improve will lead to dismissal or whatever other penalty is considered appropriate and specifying, if appropriate, the improvement required and over what period. A final written warning will be kept on your record in accordance with the Staff Privacy Notice and Data Retention Policy but will be considered expired after 12 months. Objectives, timescales and measures for the performance improvement should be set. Your Head of Department or line manager should offer help with training and supervision as required. Your conduct and performance will be appraised, at intervals to be determined by your Head of Department or line manager, at any time during this period.
- 6.2.2. Depending upon the seriousness of the matter and all the circumstances, any of the above stages may be omitted.

6.3. Dismissal

- 6.3.1. In the case of gross negligence, or if all of the appropriate stages of the warning procedure have been exhausted, you will normally be dismissed.
- 6.3.2. We reserve the right to consider other possible formal action, including (but without limitation): demotion or transfer; loss of seniority or salary increment; suspension (without pay).
- 6.3.3. If you are dismissed, you will be provided with a written statement detailing the reasons for dismissal, the date on which employment will terminate and the right of appeal.

7. EXAMPLES

- 7.1. The following are non-exhaustive and non-exclusive examples of the sort of performance shortfalls or failures, which will normally lead to action being taken.
- 7.2. **Minor offences** (informal oral warning)
- 7.2.1. Occasional poor job performance involving sub-standard work or application.
- 7.3. **Serious offences** (written or final written warning)
- 7.3.1. Consistent poor performance or application.
- 7.3.2. Failure to improve performance following an appraisal meeting or performance review, within the timescale specified within such a meeting or review.
- 7.3.3. Failure to perform duties or roles to an acceptable standard for reasons which it is within your power to rectify.
- 7.3.4. Failure to comply with Trust policies.
- 7.4. You should be made aware that if there is no adequate improvement following the issue of warnings, such issues may result in dismissal.

8. Capability and consistent performance offences (dismissal with notice)

- 8.1. Incapable and/or unsuitable of performing role or main job functions/duties as set out in job description and which could not be rectified by training or coaching.
- 8.2. Consistent failure or unable to improve performance to required or reasonable standards or to the level of other members of staff carrying out the same, similar or equivalent work.
- 8.3. You are unable satisfactorily to do or do not have the qualifications, aptitude and/or ability for the job.

9. Gross negligence (dismissal without notice)

- 9.1. In the most serious cases of gross negligence, normally (but not necessarily) resulting in significant financial loss or loss of reputation to the School, where our continued trust and confidence in you has been destroyed as a result, dismissal may be without notice or payment in lieu of notice.

10. DISABILITIES

- 10.1. 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 an employee's working arrangements, including changing their duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases.

11. LONG-TERM SICKNESS ABSENCE

- 11.1. Where an employee's underperformance is as a result of long term sickness absence then the School will always seek medical advice prior to making a decision about an employee's ongoing employment. The School will also consider whether there are any reasonable adjustments which can be made to assist the employee to perform their role. In cases where the School has concerns about the employee's long term ability to perform their job as a result of health grounds the School will normally move to dismissal stage without prior warnings.

12. RELATIONSHIP WITH DISCIPLINARY PROCEDURE

- 12.1. The Capability Procedure is not intended to apply to cases where poor performance results directly from misconduct, in which case the Disciplinary Procedure should normally apply. It may not, however, always be immediately clear whether poor performance results from misconduct or capability and the procedures may, initially, be run in parallel whilst the concerns are being investigated.
- 12.2. You may be dismissed following exhaustion of the formal capability procedure and have no separate right to have the disciplinary procedure followed prior to dismissal, and vice versa.
- 12.3. Live warnings issued under the disciplinary procedure may, if appropriate, be taken into consideration when considering the level of warning to be given under the capability procedure, and vice versa.