

## PROFESSIONAL CAPABILITY POLICY AND PROCEDURE ODST SCHOOLS

### I STATEMENT OF INTENT

This policy sets out the framework for addressing issues of capability for staff in ODST schools. It has been developed to comply with current legislation.

**Please note:** The starting point for developing this policy was the Oxfordshire County Council model policy which had been drawn up following consultation with all the recognised Trade Unions and Associations and which is compliant with the model document published by the Department of Education. It has been amended to reflect the independent status of ODST as a multi-academy trust, although the substantial content remains the same. ODST intends that future changes to this policy will be subject to consultation with its schools/academies, their staff and any recognised Trade Unions and Associations. At any such time that the Department of Education model document is updated, ODST will also review its process and consider whether it continues to be appropriate to follow national policy if that policy no longer seems appropriate to, or achieves ODST's objective.

### II INTRODUCTION

ODST's Funding Agreement with the DfE sets out a requirement for ODST to establish procedures for dealing with lack of capability on the part of staff employed in its schools.

This Professional Capability Policy and Procedure has been developed from the model published by the Department for Education. It includes additional details where it is considered that these are helpful to the operation of an effective procedure.

It applies to teachers, including Headteachers and school support staff. The policy has been written in the context of schools, but the same principles apply to unattached or centrally employed members of staff.

This policy should be read alongside the Appraisal Policy.

### III OBJECTIVES

The objectives of the professional capability policy and procedures are to:

- Provide a framework that should be followed when the performance of an employee falls below the levels of professional capability that are expected of them;
- Enable all employees to be treated in a fair and consistent manner;
- Maximise the quality of teaching, learning and caring in a school.

### IV SCOPE

- All School based staff
- Central Office Staff

## **V RELEVANT LEGISLATION**

- The Professional Capability Policy and Procedure will be implemented in accordance with the provisions of the ACAS Code of Practice.

## **VI RELATED POLICIES**

- Appraisal Policy
- Grievance Policy
- Pay Policy

## **VII RELATED DOCUMENTS**

- ODST Scheme of Delegation
- ODST Funding Agreement

## **VIII DATE OF REVIEW**

The policy will be reviewed as required by the Board of Trustees of ODST to take account of national policy development and feedback from ODST staff and schools and in any event by 31 December 2020.

## **IX GENERAL PRINCIPLES**

### **Definitions**

- The term “relevant body” has been used throughout this policy. In ODST the relevant body is the Board of Directors of ODST;
- Unless indicated otherwise, all references to teacher include the Headteacher;
- Unless indicated otherwise, all references to “staff” include both teaching and support staff.

### **Confidentiality**

The capability process will be treated with confidentiality.

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

ODST is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

### **Delegation**

The relevant body has chosen to delegate some of its functions to Local Governing Bodies as set out in this policy.

### **Retention**

All written capability records are retained in a secure place for six years and then destroyed.

### **Monitoring and Evaluation**

The Local Governing Body and Headteacher will monitor the operation and effectiveness of the school's Professional Capability Policy and Procedure. The Headteacher/ Chair of the Local Governing Body will

periodically report to the ODST pay and personnel sub-committee the details of the operation of this policy in the relevant school.

## **ODST PROFESSIONAL CAPABILITY PROCEDURE**

This procedure sets out the arrangements that will apply when the performance of employees falls below the levels of professional capability that are expected of them. This may include a drop in the standard of observed teaching; a downward trend in relevant pupil attainment and progress data; other areas where the teaching standards or objectives set for other staff members have not been met;

### **Aims and Objectives**

1/ In adopting this policy and procedure the aim is to:

- maximise the quality of teaching, learning and caring at the school;
- ensure that decisions are managed in a fair, objective and transparent way.

### **Application of the procedure**

2/ This procedure applies to teachers or Headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.

3/ Where there are concerns about the performance of the Headteacher, the professional capability procedure will be conducted by the Chair of Governors (or other governor nominated by the Local Governing Body) and by an officer appointed by the relevant body for that purpose.

4/ A modified version of this policy will also apply to all support staff employed by the school and all centrally employed ODST support staff.

5/ Advice and guidance on the application of this procedure should be obtained from the ODST HR team before any consideration or commencement of formal processes.

### **Transition to capability**

6/ If, following a period of support and monitoring under the Appraisal Policy, the appraiser/ Headteacher is not satisfied with progress<sup>1</sup>, the employee will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the Professional Capability Procedure. He/she will be invited to a formal capability meeting.

7/ At least five working days' written notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee 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 employee 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.

### **Formal capability meeting**

8/ This meeting is intended to establish the facts. It will be conducted by the Chair of Governors or another nominated governor, and an officer of ODST (for Headteacher capability meetings), or the Headteacher or senior manager (for other teachers and support staff). The meeting allows the employee, accompanied if they wish, 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.

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<sup>1</sup> Progress will be measured against teachers' standards, targets and objectives agreed for the period, outcomes of lesson observations, students, results, complaints regarding individual's performance received from any parent/ student and where support given has not been effective.

9/ 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.

- 10/ In other cases, the meeting will continue. During the meeting, the person conducting the meeting will:
- identify the professional shortcomings, for example which of the standards expected of teachers are not being met or the performance required in the agreed job objectives within the performance management policy; or other areas as previously identified in the Appraisal process;
  - give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (this will normally include the setting of 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 if the necessary improvement has been made);
  - provide an opportunity for the employee to respond to the concerns and make any representations;
  - explain any support that will be available to help the employee improve their performance;
  - 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 will normally be six working weeks<sup>2</sup>; and
  - warn the employee formally that failure to improve within the set period could ultimately lead to dismissal. At this stage a first written warning would normally be issued but in very serious cases, a final written warning may be appropriate.

11/ Notes will be taken of the meeting and a copy given to the member of staff within three working days of the meeting.

12/ Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

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

13/ A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period.

14/ At the end of 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).

### **Formal review meeting**

15/ At least five working days' notice will be given and the written notification will give details of the time and place of the meeting and will advise the employee 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.

16/ At the formal review meeting the person conducting the meeting will:

- Remind the employee of the purpose of the Professional Capability procedure;

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<sup>2</sup> It is for the person conducting the meeting to determine the set period which should be between four and ten working weeks. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.

- Review the employee's progress in achieving the improved standard of performance identified in the formal capability meeting;
- Provide the employee with an opportunity to respond to the assessment of his/her performance and make any representations;

17/ The person conducting the meeting will also make a decision, as follows:

EITHER

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. The employee will be informed that if there is further cause for concern within six months they will re-enter the formal capability procedure at the stage at which they left it.

OR

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 and to schedule a further formal review meeting. The timetable for improvement will depend on the circumstances of the individual case and will be between four and ten working weeks.

OR

If no, or insufficient improvement has been made during the monitoring and review period, the employee will be issued with a final written warning. If a final warning is issued the period for improvement will normally be four working weeks.

18/ The employee will be invited to a decision meeting at the end of the monitoring and review period.

19/ Notes will be taken of the meeting and a copy given to the member of staff within three working days of the meeting.

20/ In all cases, the outcome of the meeting will be confirmed in writing.

21/ 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 monitoring and review period and the procedure and time limits for appealing against the final warning.

### **Decision meeting**

22/ At least five working days' notice will be given and the written notification will give details of the time and place of the meeting and will advise the employee 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.

23/ At the Decision meeting the person conducting the meeting will:

- Remind the employee of the purpose of the Professional Capability procedure;
- Review the employee's progress in achieving the improved standard of performance identified in the formal capability and/or formal review meeting;
- Provide the employee with an opportunity to respond to the assessment of his/her performance and make any representations;

24/ The person conducting the meeting will also make a decision, as follows:

EITHER

- If an acceptable standard of performance has been achieved during the monitoring and review period, the capability procedure will end and the appraisal process will re-start. The employee will be informed that if there is further cause for concern within six months they will normally re-enter the formal capability procedure at the stage at which they left it.

OR

- If performance remains unsatisfactory a recommendation will be made to the Local Governing Body that the employee should be dismissed or required to cease working at the school.

25/ Notes will be taken of the meeting and a copy given to the member of staff within three working days of the meeting.

26/ In all cases, the outcome of the meeting will be confirmed in writing.

27/ If it is decided to recommend that the employee is dismissed, he/she will be notified in writing that the recommendation to dismiss will be referred to a panel of governors in accordance with the school's formal Disciplinary procedure. The employee will be given a copy of the Disciplinary procedure.

### **Decision to dismiss**

28/ Whilst the power to decide that staff should no longer work for ODST ultimately rests with the relevant body, in most cases this is delegated to the Local Governing Body.

29/ The school will always fully involve and consider ODST HR advice throughout any capability process.

30/ The power to dismiss staff in the central team will be delegated to a panel of Trustees (minimum 3).

### **Dismissal procedure**

31/ A formal meeting will be arranged between the employee and the Local Governing Body's Staff Dismissal Panel, the Headteacher or the person who has conducted the Professional Capability Procedure will present the recommendation to the panel.

32/ Once the Local Governing Body has decided that the employee should no longer work at the school, it will notify the relevant body of its decision and the reasons for it.

33/ Once the decision to dismiss has been taken, the dismissal panel will dismiss the employee with notice.

### **Appeals**

34/ If an employee feels that a decision to dismiss them or other action taken against them is wrong or unjust, they may appeal in writing against the decision within five working days of the decision, setting out at the same time the grounds for appeal. Appeals will be 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 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.

35/ The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case. The appeal panels would normally consist of 2 members of the Local Governing Body and an ODST nomination and there must always be an ODST nomination on the staff dismissal appeals panel. If there are insufficient “untainted” governors or if the capability concerns the Headteacher the panel can comprise of ODST nominations and in exceptional cases ODST also reserve the right to appoint an appeals panel.

36/ Appeals against formal warnings before the Decision to dismiss stage may be heard by a senior manager or an individual governor who has not been previously involved with the case.

37/ Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence or any procedural irregularities. Where the reasonableness of the decision is being questioned, the test should be that the decision was perverse, in that it was so unreasonable that no other Headteacher or manager, acting with proper regard to his/her responsibilities, could have chosen to take it.

38/ Where an appeal is upheld the matter should be referred to the Headteacher or person conducting the procedure to be reconsidered or for further appropriate action. Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

39/ The employee will be informed in writing of the results of the appeal hearing within three working days of the date of the hearing.

#### **Provision of information about teacher or Headteacher capability**

40/ Where a teacher or Headteacher applies for a teaching post at another school or academy the Local Governing Body must, on request, advise in writing whether the teacher or Headteacher has in the preceding two years been subject to capability procedures. If this is the case they must provide written details of the concerns which gave rise to capability procedures, the duration of the proceedings and their outcome.

#### **Grievances**

41/ Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended to deal with the grievance.

42/ Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

#### **Sickness**

43/ If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be 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.