

**Ninestiles Academy Trust Mission Statement**

Ninestiles Academy Trust will be nationally and internationally acknowledged as a high achieving, innovative and exciting group of schools which recognise and respect the richness and diversity of their communities. The trust will be structured and resourced to meet the needs of 21st century students and pupils. Within a caring environment, we will develop and reinforce the values, skills and attributes which promote good citizenship and lifelong learning. Parents, directors and councillors, and the wider community will work in partnership with our committed, appropriately skilled workforce and our students and pupils, to ensure that high quality learning takes place.

Outcomes will be outstanding.

Policy title	Capability for Non-Teaching staff
<p><b>Rationale</b></p>	<p>This procedure is designed to ensure that competency problems arising in relation to the work of staff are dealt with in a systematic and fair way. The intention is that such problems shall be identified and the staff concerned given appropriate help and encouragement within a reasonable timescale to bring their performance up to an acceptable level and to sustain it at that level.</p> <p>Experience suggests that, with help, most employees experiencing difficulty with their performance can achieve this level if they have the will to do so and are appropriately supported by the school. However it should be recognised that there will be those who cannot or will not accept advice and therefore this procedure makes reference to the Disciplinary Procedure. In practice it is difficult to be certain in some cases, at least initially, whether a problem is one of discipline or competence and for those cases this procedure will be followed.</p> <p>Meetings associated with this procedure will only be postponed in exceptional circumstances and normally only once. Where the initial meeting is postponed the next meeting may continue in the absence of the employee. Where this is necessary the Principal will write to the employee to confirm the outcome of the meeting and ask the employee to make any comments with regard to this.</p> <p>For the purpose of this policy, the Principal can be substituted by the senior manager in charge of the particular member of staff.</p> <p>Whilst the School's disciplinary procedure is a separate policy, this capability procedure complies with the ACAS Code of Practice 1 – Disciplinary and Grievance Procedures. In exceptional circumstances, where there are immediate concerns</p>

	<p>regarding unacceptable levels of teaching and learning or a serious Health and safety risk, the Principal may take the decision to fast track the process. The School recognises that the fast track process will be the exception and that normally, the full procedure will be exhausted before an employee is dismissed on capability grounds.</p>
<p><b>Policy statement</b></p>	<p><b>Performance Standards</b></p> <p>The School will take account of relevant published performance standards that are updated from time to time as well as School documentation such as job descriptions, person specifications, competencies and other relevant information. Where appropriate, other occupational standards may be used for other support staff.</p> <p>The School will ensure that job descriptions, person specifications and other information related to particular jobs are reviewed as and when required to ensure that they reflect the job being performed.</p> <p><b>Informal Procedure</b></p> <p>It is part of the normal duties of a Principal and other Managers within the School to monitor the competence of their staff and to attempt to improve it by informal advice, support and encouragement. Nothing in this procedure is intended to inhibit informal action of this nature. The importance of supportive action before any formal procedures are involved must be stressed.</p> <p>The informal procedure begins with a meeting between the Principal and member of staff to identify areas of concern and agree an action plan to move forward. The meeting should establish:</p> <ul style="list-style-type: none"> <li>➤ That the employee understands the standards of work required and understands where they are not meeting them;</li> <li>➤ That the standards set are achievable;</li> <li>➤ Whether the role completed by the employee has changed significantly. This may involve checking that the job description for the role is up to date;</li> <li>➤ Any health or personnel issues which may be affecting the employee's performance. A decision may be taken to refer the employee to occupational health;</li> <li>➤ Whether there is a training issue;</li> <li>➤ The support that can be offered to the employee;</li> <li>➤ Timescales being given for the informal procedure;</li> <li>➤ A date for the next review;</li> <li>➤ That failure to improve could result in formal action under this policy which could ultimately lead to dismissal.</li> </ul> <p>Agreements reached at this meeting will be put in writing to ensure that both parties have clarity.</p> <p>If, following the review period, the employee has met the required standard, the employee will be informed in writing that no further action will be taken. A decision may also be taken to extend the informal review if the employee has improved but not yet met the required standards. Failure to make the necessary improvement will result in the formal procedure being invoked.</p> <p><b>Formal Procedure – First Stage</b></p> <p>Problems of competency grow the longer they remain unchecked. It is not desirable to persist with informal action over prolonged periods. If the problem persists despite informal measures, then consideration must be given to the use of the formal procedure.</p> <p><b>Identifying the Problem</b></p> <p>Before any decision is taken to invoke the formal procedure, there should be a discussion of the circumstances between the Principal and their HR Services provider. The Chair of the Trustees should also be advised of the situation. The</p>

purpose of this discussion is to identify:

- The precise areas of concern bearing in mind any special external factors (for example, financial circumstances, family illness, medical condition/disability), which might affect an employee's performance;
- Whether the issue is sufficiently serious to merit formal action or whether further informal action is appropriate.

The conclusions resulting from the decision should be made known to the employee concerned and to their trade union representative or work colleague should they wish.

### **Evidence of Unacceptable Performance**

If, as an alternative to taking no action or further informal action, it is decided that formal action is required, the Principal should gather evidence which shows:

- The areas where performance has not been satisfactory with supporting evidence, although it may be necessary to gather evidence of good performance to ensure fairness, particularly where it is only a part of the job in which the employee is underperforming.
- What constitutes an acceptable level of performance – this evidence should include full details about the job being performed including the job description, person specification, skills and competencies required, training and development undertaken by the employee and any other evidence relevant to the case.

Specific examples of the employee's poor performance will be given as examples, ensuring that the shortfall is identified against the task or standard being performed. Where appropriate, several examples will be given to show that the employee is consistently failing to meet the performance standards required.

A formal capability hearing will be arranged by the Principal, the details of which will be placed in writing to the employee. The letter should confirm the date, time and venue of the meeting, the purpose of the meeting, the right to be accompanied and must enclose relevant documentary evidence that will be considered during the hearing. The letter will include details of the employee's right to be accompanied by a fellow worker or accredited trade union representative, ensuring that a minimum of 5 days' notice is given to allow them to prepare.

The Principal will normally be supported by their HR services provider.

### **Capability Hearing**

Following the preparation carried out after identifying the problem, the Principal should have a clear picture of the ways in which an employee is underperforming, or underachieving with evidence to support this.

The following outcomes should be sought from the capability hearing:

- Identify clearly and fairly the ways in which an employee is underperforming/achieving. This should be evident from examining documents such as job descriptions, person specifications, management notes, and evidence of complaints or pieces of work determining the standard required for the job;
- Ensure that the employee clearly understands the concerns about their performance and the standard required and where actual performance has fallen short of this standard;
- Identify, agree potential causes and discuss and agree a programme of support and monitoring;
- Consider ways to improve performance which may include the following:
  - Counselling/welfare assistance from within or external to the school;
  - Further medical support;
  - Extra support and supervision from their line manager/Principal;
  - Retraining or further training either on or off the job;

- Setting or reviewing work targets;
  - A temporary or permanent change of hours/duties subject to the agreement of all parties and where feasible;
  - Support via a mentor.
- Allow the employee a chance to challenge and/or put forward any facts or evidence for consideration;
  - Agree a review period and ensure that the employee is clear about timescales and when their performance will next be discussed;
  - The key points of this capability hearing and any action agreed should be detailed in writing to the employee along with the potential consequence of failure to achieve a significant and sustained improvement within the agreed time period;
  - The employee should also be informed that records will be kept during this monitoring period and other relevant information retained;
  - There is no set time period for the review but should not normally be less than 1 month or more than 3 months (where interim reviews may also be used).

### **Review Meeting**

At the conclusion of the review period, the Principal, in conjunction with their HR Service provider will arrange a meeting with the employee to discuss their performance. At the capability hearing, the employee can be accompanied by an accredited trade union representative or work colleague and the Principal by their HR Service provider.

If the Principal is satisfied that the level of performance has improved to a satisfactory level, then the employee should be informed in writing that they should now continue with this level of performance. After a year if their performance is still satisfactory, all reports held on file with regard to their performance will cease to have effect and normally be disregarded. If the employee fails to maintain the level of performance required during the year, they may be subject to further review under the capability procedure.

Where, having heard the explanation of the employee, the Principal is satisfied that the level of performance has improved substantially but not to a level which can be considered satisfactory, further time should be given to the employee to enable a satisfactory standard to be reached. The employee should be warned that at the end of the extended period, the position will be reviewed as before and that if a satisfactory standard is not reached, the competency procedure will continue.

Where no or limited improvement has been made, the employee will be issued with a first written warning which will include the specific issues, support offered, targets set and the review date. The employee will be warned that the second stage of the procedure has been invoked and failure to meet these standards could ultimately result in dismissal.

The employee has the right to appeal against this decision and will be advised to write to the Appeal Committee of the Board of Trustees within 5 days of them receiving the written warning.

### **Formal Procedure Second Stage**

Following the review period, a capability hearing will be held with the Principal accompanied by their HR Representative if required and the employee who has the right to be accompanied by their union representative or a work colleague. Where appropriate other members of staff who have been providing support or have been involved in the monitoring of the employee will also be asked to attend part of the capability hearing.

If the employee has met the required standards of performance the employee will be advised that the procedure will now cease however the warnings will be held on file for twelve months and will be taken into consideration if the process has to be recommenced during that time. All reports held on file with regard to their performance and any warnings will cease to have effect and normally be disregarded after the specified period of time.

	<p>Where standards have not been met, a final written warning will be issued in which the specific problems, targets set, support offered and review period will be confirmed. They will also be advised that the third stage of the procedure is being invoked and failure to meet the standards set could lead to dismissal.</p> <p>The employee has the right to appeal against this decision and will be advised to write to the Appeal Committee of the Board of Trustees within 5 days of them receiving the written warning.</p> <p><b>Formal Procedure – Third Stage – Dismissal Hearing</b></p> <p>At the end of this review period, if the employee has still not met the standards required, the procedure has been exhausted. It is clear that the employee, despite the support measures introduced, is not able to improve to the required standards and dismissal on the grounds of capability should be considered.</p> <p>Where a decision is reached to dismiss, it will be on the grounds of capability and will follow a formal capability hearing. The required notice given in the employment contract will be given.</p> <p>A representative from the panel of trustees conducting the formal hearing, will write to the employee explaining the concerns about the employee’s work performance and that the employee will be given the opportunity to state their case at a formal hearing. They will also be told of their right to be accompanied by a work colleague or accredited trade union representative. The formal capability hearing will be heard by a panel of trustees and will be conducted in the manner of a formal disciplinary hearing.</p> <p>In the event the panel of trustees take the decision to dismiss the employee, the employee has a right of appeal against dismissal on the grounds of capability and this will follow the same process as for disciplinary hearings.</p>
<b>Monitoring and review</b>	
<b>Links</b>	Disciplinary Policy, Staff Code of Conduct, Appraisal Policy for Support staff Equality Policy
<b>Staff responsible</b>	HR Lead, CEO, Operations Director
<b>Committee responsible</b>	Board of Trustees
<b>Date approved</b>	October 2016
<b>Review date*</b>	October 2018

*\*Please note that should any further national guidance be issued by external agencies that are relevant to this policy, it will be updated accordingly prior to the review date shown above and referred to the next academy council meeting*