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Signed by

_____ **Chair of governors**

Date:

_____ **Headteacher**

Date:

CAPABILITY POLICY AND PROCEDURE

1. Scope of the Procedure

- 1.1 This policy and procedure applies to all employees of the Stephenson Studio School with the exception of the Head Teacher who will be subject to separate procedures.
- 1.2 New employees who are within their probationary period will be managed in accordance with the School's Probationary Procedure which provides for alternative arrangements for dealing with issues of underperformance.
- 1.3 Where there is an intended failure to perform to the standards required through negligence, lack of effort or insubordination this is viewed as misconduct and is dealt with under the School's Disciplinary Procedure.

2. Introduction

2.1 This procedure is designed to assist and encourage all employees to achieve and maintain good standards of job performance. The aim is to ensure consistent and fair treatment for all and to assist any employee who is considered to be experiencing difficulties in performing satisfactorily the duties required of the post to which they were appointed. It is designed to provide managers and employees with an opportunity to improve their performance in the workplace.

2.2 Managers may identify concerns regarding an employee's capability through a number of different ways. This could include:

- A general lack of proficiency or poor overall organisation;
- A shortfall in the aptitude, skill or experience necessary for the role;
- Lesson observations which are assessed as being at grades 3 or 4;
- Poor attendance at work which impacts on their ability to undertake their role (it may be appropriate to address this through the use of the Sickness Absence Policy);
- Agreed targets or deadlines not being met;
- The outcome of an investigation into complaints;
- A lack of clarity or understanding by the employee in respect of their job duties, priorities or goals.

Managers should be aware that there may be reasons for these concerns that are not directly related to the employee's capability to undertake the role but may be connected to issues such as personal or family difficulties, workload, short term health problems or changes arising from a reorganisation or redefinition of roles.

2.3 Concerns about capability should not be confused with disability. Where employees become disabled during their employment it is important to ensure that every effort should be made to retain them in their current role and make reasonable adjustments to enable this to happen, wherever possible. Where this is not possible, the School will consider whether suitable alternative roles might be possible.

- 2.4 In exceptional circumstances, it may be necessary to temporarily redeploy or suspend an employee immediately from their normal job. Employees will only be suspended or redeployed, if not doing so, would place someone at risk or in danger.
- 2.5 In the interest of ensuring that capability matters are resolved as quickly as possible, time limits are given for appropriate stages in this procedure. These are for guidance. If it is not practicable to adhere to these time limits, they may be amended by mutual agreement; any amended time limits should be reasonable and explained in writing. Due regard will be given to the personal circumstances of all parties involved in the procedure.
- 2.6 An employee has the right to be represented and accompanied by a representative of a trade union or workplace colleague at any formal stage of the Capability Procedure.
- 2.7 The expectation is that at every stage of the procedure, short of dismissal, continued efforts will be made to support an individual to improve performance through a mixture of monitoring, support, advice and training.
- 2.9 Any information relating to the implementation of this procedure shall remain confidential to all parties at all times.

3. INFORMAL PROCEDURE

- 3.1 As soon as a concern is identified, the issue should be discussed between the employee and their Line Manager. In these circumstances, both parties will have every opportunity to discuss the concern, to make any comments and to record them if desired. Most areas for concern can generally be dealt with through informal discussions, advice and guidance. Notes of the meeting may or may not be needed, if notes are made then a copy should be made available to the employee.
- 3.2 The purpose of this informal discussion will be to:
- define the performance problem, and ascertain if the employee accepts that there is a problem
 - Outline the standards of job performance required
 - Clarify the shortcomings in reaching these standards and explore the possible reasons for this
 - Discuss how the employee should seek to improve
 - Consider what training and support should be provided
 - Agree a time period for review
- 3.3 If, following the informal discussions or the agreed review period, the concerns still exist the line manager should conduct a further review meeting, the details of which should be recorded. The purpose of this review meeting is to identify any differences in perception between the line manager and employee, to review and agree objectives and methods for measurement of performance and to secure the required improvement in standards of work performance. The meeting should be informal and constructive to allow the employee an opportunity to express their opinion and for the line manager to determine what support can be offered. The employee should be given an opportunity

to give their interpretation before it is decided what action should be taken as it is possible that circumstances outside of the employee's control may have caused, or at least contributed to, to the employee's reduced effectiveness.

- 3.4 During the meeting a written record should be agreed detailing the improvements required, the targets set and the timescale for improvement. The employee should be made aware that the consequence of failing to meet these could be a move to the formal stage of this process and potentially dismissal on the basis of capability.
- 3.5 An agreed action plan should be set out in writing to include:
- training and development specifically directed to facilitate improvement;
 - review and variance of workload as required and, where appropriate, revised SMART targets;
 - setting review dates and monitoring of standards of performance in respect of agreed objectives and the requirements of the job;
 - review and monitoring of the amount of supervision.
 - Schedule of additional meetings during the review period
- 3.6 If the employee is in agreement with the written record and action plan they should sign it. Unreasonable refusal to agree a reasonable action plan will be referred to the next level of management, who will consider whether the action plan and the employee's objection to it is reasonable. Having considered the action plan and the objections to it, that manager will then decide whether it should be implemented in its proposed form or with amendments being made to it, which will be made by that manager or withdrawn if appropriate.
- 3.7 Continued monitoring and assessment should take place for a period of time; this should not normally exceed 8 weeks. At the end of that period the manager will meet with the employee to assess their performance against the action plan.
- 3.8 It is anticipated that in the vast majority of cases, no further action, other than normal follow-up, will be necessary. If a sufficient level of improvement in performance has been secured then the employee should be informed of this in writing and encouraged to sustain it. However, if the employee does not achieve the objectives set out in the action plan and performance is not improved to the levels expected, then the line manager will commence the formal procedure.

4. FORMAL PROCEDURE

Stage 1 – First Written Warning

- 4.1 If following the informal procedure, the employee has not achieved the required performance improvements then a first formal meeting should take place to discuss performance.
- 4.2 This Stage 1 capability meeting will normally be conducted by the Line Manager with an HR representative. An employee may be accompanied by a Trade Union representative or work colleague if they wish during the formal stages.

- 4.3 A letter will be sent to the employee, at least 10 working days before the capability meeting, informing them:
- That their performance is to be addressed through the formal stages of the Capability Procedure
 - Of the detailed concerns about their performance
 - Of the right to be accompanied by a work colleague/trade union representative
 - That notes will be taken, normally by the HR representative
- 4.3 The purpose of the meeting will be to:
- inform the employee of the steps which have already been taken to facilitate improvement (training/development, support and counselling)
 - re-visit the areas of poor performance
 - review the results of monitoring
 - give the employee an opportunity to raise any points s/he wishes to be considered, or to offer an explanation
 - Draw up an action plan which should be agreed between the line manager and the employee. This should include:
 - The precise nature of the issue and the standards expected
 - further training and development, including the provision of a mentor if appropriate or any other agreed form of support
 - reducing workload or varying work type, as can be facilitated and as required
 - setting realistic review timescales and monitoring mechanisms of standards of performance, in respect of agreed objectives and the requirements of the job
 - review and monitoring of the amount of supervision given
 - timescales for improvement / review periods
- 4.4 The line manager will have due regard to all circumstances affecting performance, including:
- Induction, training and development needs
 - Any personal factors affecting performance
 - Changes in the management, duties or supervision of the person concerned
 - Length of time in post
 - Experience relevant to the post
- 4.5 The employee will have the opportunity to express their reaction to the criticism of their performance and/or put forward any evidence or facts for consideration. Possible causes of the problem(s) should be identified and discussed. Unless it becomes clear that there are no issues of competence or something is revealed which is best addressed more appropriately under another procedure, then the School would normally issue a first written capability warning and set out, where appropriate, an agreed programme of support, further training or development. Realistic and measurable targets or standards and dates for meeting these targets or standards should be set and monitored closely. Where it is possible a verbal decision will be given to the employee at the end of the meeting.

- 4.6 Whatever the outcome, the employee will receive written notification of the outcome of the meeting within 5 working days along with copies of notes taken from the meeting.

This letter, which will constitute a first written warning, will detail:

- The date of the review and final meetings.
 - The details of the performance issues
 - That a formal warning has been given and the supporting reason(s)
 - The improvement(s) required of the employee detailed in the agreed programme of action including agreed time periods
 - The Stage 1 review date
 - The consequences of not achieving the improvements
 - The rights of and timescales for appeal as set out in section 8 of these procedures
- 4.7 A copy of the capability warning and the date that it was given will be placed on the employee's personal file, normally for 12 months. If, during this period, there is further evidence of poor performance (even if the employee successfully met the Stage 1 review targets) the School may proceed to Stage 2 of the policy.
- 4.8 At the end of the agreed time period, normally four to eight weeks, the line manager will arrange a Stage 1 review meeting with the employee to consider progress against the plan of action agreed at the initial Stage 1 meeting and to evaluate any improvement in performance. A union representative or work colleague may attend this meeting if required
- 4.9 Following an exchange of views the line manager will decide whether:
- No further action is required because the required improvement has been achieved.
 - There has been some but insufficient improvement and the Stage 1 review period and action plan should be extended.
 - The necessary improvements have not been met and the matter should be progressed to Stage 2.

5. FORMAL PROCEDURE

Stage 2 - Final Written Warning

- 5.1 If the employee's performance does not improve within the review period set out in the first written warning, or if there is further evidence of poor performance while the first written warning is still active, the School may decide to hold a Stage 2 capability meeting.
- 5.2 A letter will be sent to the employee, at least 10 working days before the capability meeting, informing them:
- That they are required to attend a Stage 2 capability meeting at a scheduled date, time and location.
 - Of the details of the ongoing concerns about their performance
 - Of the right to be accompanied by a trade union representative or work place colleague.
 - That notes will be taken, normally, by an HR advisor.
- 5.3 The purpose of the meeting will be to discuss:

- The specific concerns raised at Stage 1 and to evaluate the employee's performance against targets and standards agreed at the Stage 1 meeting
- The employee's views on how matters have progressed
- The standards required and constructive ways, in which progress can be achieved, including options for training, mentoring, coaching etc.

5.4 The line manager will decide on the most appropriate course of action, which may include:

- Taking no further action where satisfied that the required level of performance has been achieved;
- There has been some but insufficient improvement and the Stage 2 review period should be extended.
- Issuing a Final Written Warning and retaining the current action plan, but extending the review period to allow the member of staff additional time for improvement, if it is felt that this expectation is reasonable; or
- Issuing a Final Written Warning and devising a new action plan, taking account of the employee's response, with a further review period.

Where it is possible a verbal decision will be given to the employee at the end of the meeting.

5.5 Where a final written capability warning is given, the employee will be formally notified, within 5 working days along with copies of notes taken from the meeting.

The letter, which will constitute a final written warning, will detail:

- The date of the meeting
- The details of the performance issues and the standards expected
- The improvements required and timescales for improvement
- support to facilitate improvements including training
- That a formal warning has been given and the supporting reason(s)
- The Stage 2 review date
- The consequences of failing to achieve and sustain the required level of improvement, that is, the termination of employment being considered.
- The right to appeal against a final written warning

5.6 A copy of the final written capability warning will be placed on the employee's personal file. It will normally remain on the file for 18 months. If during this period there is further evidence of poor performance (even if the member of staff successfully met the Stage 2 review targets) the School may proceed to Stage 3 of the policy.

5.7 The employee should be reminded of the possibility of termination of employment if no improvement is made and given a final fixed timescale in which to make improvements. This should normally be no less than 4 weeks but no greater than 12 weeks.

5.8 At the end of this period the line manager will arrange a Stage 2 review meeting. The line manager will decide whether:

- No further action is required because the required improvement has been achieved.
- There has been some but insufficient improvement and the Stage 2 review period and action plan should be extended.

- The necessary improvements have not been met and the matter should be progressed to Stage 3 – Formal Capability Hearing.

5.9 Where it is possible a verbal decision will be given to the employee at the end of the meeting.

Whatever the outcome, the member of staff will receive written notification of the outcome of the meeting within 5 working days along with copies of notes taken from the meeting.

6. Stage 3 – Capability Hearing

6.1 If the performance issues persist and there is a continued failure to improve or achieve the standards expected following receipt of a final written warning, consideration should be given to dismissing or where appropriate, redeploying the employee.

6.2 The member of staff will be given notice, in writing, to attend a formal Capability Hearing at Stage 3 of this procedure. A Capability Hearing will normally be conducted by the Head Teacher with a representative from HR in attendance. A letter will be sent to the employee, at least 10 working days before the Capability Hearing, informing them:

- That they are required to attend a Capability Hearing at a scheduled date, time and location
- Of the detailed concerns about performance.
- The right of the employee to be accompanied and/or represented by a colleague or trade union representative
- That notes will be taken, normally, by an HR advisor or other appropriate note taker
- That an outcome of the meeting could be dismissal

6.3 Employees will be given reasonable opportunity to provide any written material that they would wish to rely on at the hearing and will be expected to submit these at least 5 working days in advance of the hearing.

8.4 If an employee repeatedly fails to attend a hearing without providing a good reason the hearing may still take place and a decision made. Where the employee or their representative are not able to attend a scheduled hearing for good reason the hearing will be re-arranged to a mutually convenient date, usually within 10 working days of the original hearing date

8.5 The line manager will normally be responsible for presenting the evidence to the hearing. The employee will have the opportunity to set out their case and answer the alleged complaint of marginal performance/capability. Both parties will be able to ask questions, present evidence and call and question appropriate witnesses.

8.6 The Head Teacher will announce the decision verbally to the employee (and his/her representative) and the decision will be confirmed in writing within 5 working days.

8.7 Prior to reaching a decision - the Head Teacher will be satisfied that:

- The procedure has been properly followed
- That the employee has had a reasonable opportunity to improve
- That support and training has been offered where appropriate
- That options short of dismissal such as redeployment have been considered and have been rejected or are not feasible
- That there is no underlying medical condition/reason affecting performance

6.7 Having heard the case put forward by both sides, the Head Teacher will decide on the most appropriate course of action, which could include:

- Extending the performance review period to allow the employee additional time for improvement, if it is felt that this expectation is reasonable;
- Dismissal on the grounds of capability; or
- Possible redeployment into another suitable job with consent, as an alternative to dismissal.

7. Dismissal Procedure

7.1 Where the Head Teacher considers that the appropriate sanction is dismissal, the employee will be informed of this at the hearing and written confirmation will be sent to the employee along with notes of the meeting within five working days of the hearing.

7.2 The dismissal letter will specify:

- The details of the incapability dealt with at the hearing and such detail of events leading to the dismissal as is appropriate
- The rights of and timescales for appeal
- When the dismissal takes effect.

The dismissal should normally take effect at the end of the contractual or statutory period of notice (whichever is greater).

8. Appeals Procedure

8.1 Employees have the right to appeal against the outcome of the capability hearing or any formal penalty awarded. To exercise this right of appeal the employee must notify the Head Teacher in writing, within 10 working days of the outcome, giving brief grounds of appeal and providing any further written material that he/she would wish to make available in support of their appeal.

8.2 The employee should state in the letter his/her grounds of appeal. (e.g. the appeal is against the nature of the penalty awarded, against the procedure used or that new evidence has come to light).

8.3 Appeals against formal warnings will be heard by the Head Teacher.

8.4 Appeals against dismissal will be heard by a sub-committee of the School's Governing Body

8.3 The appeal hearing will take place as soon as reasonably practicable after the notice to appeal has been received. The employee will be given at least ten working days' notice of the date, time and place fixed for the appeal hearing (unless an earlier date has been mutually agreed).

8.4 At the appeal hearing, the employee will be given an opportunity to state his or her case and will be entitled to be accompanied and represented by a trade union representative or workplace colleague of his or her choice.

8.5 The decision will be notified to the employee in writing without unreasonable delay.

9. Review of Policy

9.1 This policy will be formally reviewed 2 years from the date of its implementation. However, changes may also be made in the light of any experience of using it.