

## NET Capability Policy

### Policy Number 52

#### Document Management Information

<b>Applicable to:</b>	This Policy applies to all staff of the Trust and to those others offered access to such resources
<b>Dissemination:</b>	Trust wide. Held on secure area of Trust website accessible to all employees.
<b>Linked Policies:</b>	Disciplinary, Pay, Professional Learning
<b>Implementation:</b>	HR
<b>Training:</b>	None
<b>Review Frequency:</b>	Annual
<b>Policy Author:</b>	Head of HR
<b>Policy Lead:</b>	Head of HR
<b>Approval by:</b>	Trust Board – subsequent reviews via HR Committee
<b>Approval Date:</b>	Autumn 2022
<b>Next Review Due:</b>	Autumn 2023

#### Revision History

Document version	Description of Revision	Date Approved
V2	Split out from Policy 01 Professional Learning – now 2 separate policies to avoid confusion. 01 - Professional Learning and 52 – Capability	

#### Introduction

School leaders have a responsibility to ensure that pupils receive the best educational opportunities available to them. One of the key elements to learning is the quality of education provided ensuring that all staff are performing to professionally acceptable standards. Schools must have a Capability Procedure for all staff, which deals with lack of capability.



Careful recruitment and selection, induction, clarity of role and learning and development opportunities minimise the risk of poor performance.

Employees should be clear of the standards and expectations at the trust and the potential consequences of failing to meet them. Staff have a contractual responsibility to perform to a satisfactory level and they should be given guidance, support and encouragement to do so, alongside honest and constructive feedback. Managers have a responsibility for setting realistic and measurable standards of performance and for explaining those standards carefully to employees.

Capability procedures apply only to members of staff about whose performance there are serious concerns that the appraisal process has been unable to address.

### **Purpose**

This policy and procedure sets out the arrangements that will apply when staff are experiencing difficulties in meeting the standards that are expected of them.

The Capability Procedure will be used to address any general concerns that are raised about a member of staff's performance and to provide a more tightly focussed strategy of support and assessment.

The purpose of the Capability Policy and Procedure is to provide a fair and consistent framework to enable managers and staff to:

- Identify constructive agreed support with the aim of improving performance
- Enable staff to achieve and maintain an acceptable standard of work through constructive support
- Follow a fair and consistent process in managing and improving poor performance

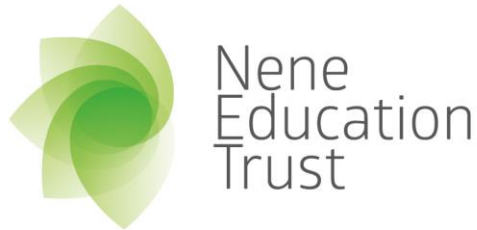
This policy may also be used to enable and encourage staff to raise concerns regarding their ability to adapt to changes affecting their roles.

### **Annual assessment**

Performance and development priorities will be reviewed and addressed on a regular basis throughout the year. The employee will receive as soon as practicable following the end of each Performance review period, a written Professional Learning report and will have the opportunity to comment in writing.

The performance of each employee covered by this policy will be formally assessed at the end point of the annual Professional Learning cycle.

All staff will receive their completed written Professional Learning reports by 31 October, except in some of our larger schools where support staff may continue on a cycle that is formally concluded by 31 March.



The completed Professional Learning report will include:

- 1) details of the employee's objectives for the Professional Learning period in question;
- 2) an assessment of the employee's performance of their role and responsibilities against their objectives and, for teachers, against the relevant standards; for support staff consideration against relevant performance standards.
- 3) an assessment of the employee's training and development needs and identification of any action that should be taken to address them. The assessment of performance and of training and development needs will inform the planning process for the following Professional Learning period.
- 4) a recommendation on pay where that is relevant. Pay recommendations will be made by 31 October for the majority of staff with the exception of support staff as described in the previous section whose cut off date is 31 March.

### **Appeals**

Staff will have the right to comment on the Professional Learning report and through discussion the need to appeal may be avoided.

Reviewers have a right of appeal against any of the entries in their Professional Learning written report. Details of the appeals process are as follows. The first line of appeal will be by making representations at a meeting with the reviewer. If the matter is still unresolved after this stage the matter will be heard by the reviewer's line manager. The final right of appeal would be to the Appeals Committee of the Trustees using the Trust's grievance procedures. Appeals on matters relating to pay progression will be dealt with under the procedure set out in the Trust's pay policy.

### **Capability Procedure**

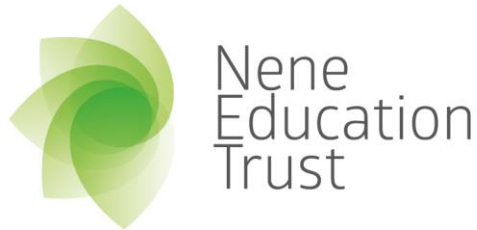
#### **Informal Capability Meeting**

If your manager identifies unsatisfactory performance, they will usually ask to meet with you informally in the first instance, using the below pro-forma in appendix 1.

The meeting with you will focus on discussing where there are shortcomings, establishing the reasons for them, and discussing and agreeing how you can be supported to achieve the standards expected.

#### **Formal Capability Meeting**

This procedure applies only when there are concerns about an employee's performance that the Professional Learning process has been unable to address. If an employee's performance, is not wholly satisfactory, the line manager, or another person with line management responsibility for the employee, will invite the employee to a formal capability meeting to discuss with the employee the identified poor performance as specifically as possible.



The Line Manager will write to the employee at least 5 working days in advance to inform him/her about:

- the date, time, and place of the meeting.
- the basic details of the concerns about the employee's performance
- the employee's right to be accompanied by a representative of his/her trade union or a workplace colleague of his/her choice
- the titles of enclosed copies of any documents to be used at the meeting.
- names of any witnesses to be called.
- The name of the member of HR in attendance

An extra copy, together with any enclosures, will be provided for his/her companion.

This meeting is intended to establish the facts. It will be conducted by your line manager delegated by the Principal or the CEO. The Line Manager may be accompanied by a member of the Trust's HR team. The meeting will allow the employee to respond to concerns about his/her performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The line manager 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 Professional Learning process. In such cases, the capability procedure will come to an end.

The line Manager may also adjourn the meeting if it is decided that further investigation is needed, or that more time is needed in which to consider any additional information. In other cases, the meeting will continue.

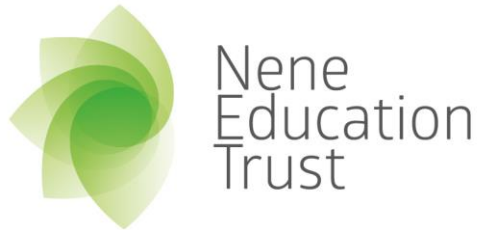
During the meeting, or any other meeting which could lead to a formal warning being issued, the line manager will:

Identify the poor performance and in the case of a teacher which of the teaching standards are not being met;

Ensure the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations;

Establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement;

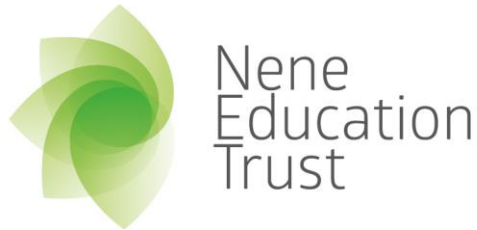
- give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures which may include the setting of new objectives focused on the specific area/s of poor performance that need to be addressed. It will include any success criteria



- that are appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made;
- identify whether there are further measures which may improve performance and explain any support that will be considered and planned to help the employee, e.g. in-service training, visits to other Academy's, discussion with appropriate colleagues or professionals;
- 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 will be reasonable and proportionate, between four and ten weeks in normal circumstances,
- and will provide sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of any support and training required, and sufficient time to establish whether performance has improved; and
- warn the employee formally that failure to improve within the set period could lead to a final written warning which could then lead to his/her dismissal.
- informed the employee of the right of appeal
- agree with the employee and any companion the date of the formal review meeting
- Notes will be taken of formal meetings and a copy sent to the employee. Where a first warning is issued, the employee will be informed in writing of the matters discussed. S/he will also be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in a final written warning which could then lead to dismissal if wholly satisfactory performance is not achieved, together with the time limit for appealing against the first written warning.
- If the concerns relate to a lack of capability that poses a risk to the health, safety or well-being of children/other members of staff or stakeholders, or is likely to result in serious damage to pupils' education, the shorter timescale may be appropriate. In such cases, the senior manager may exceptionally decide to issue a first and final written warning if to do otherwise would expose students to serious risk in terms of their health, safety, well-being or educational prospects.

### **Sickness absence and the use of this procedure**

It is important that sickness absence should not delay or avoid the use of formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay. When sickness absence occurs, arrangements will normally be made to seek



medical advice from an occupational health adviser to assess the employee's health and fitness for continued employment with the Nene Education Trust.

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 the employee's working arrangements, including changing the employees duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases e.g. moving from this procedure to policies used by the Trust to terminate the employment of the employee on the grounds of ill health. In these circumstances, the Trust will seek medical advice from an occupational health adviser.

If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the occupational health adviser will normally be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure. In the event that the employee is deemed not fit to attend a formal capability meeting, in most circumstances, the meeting will go ahead as planned and s/he may present a written submission for consideration and/or be represented by a companion in her/his absence.

If sickness absence occurs at any stage in the process, the line manager reserves the right to retain agreed timescales for the monitoring and review period but will give due consideration to individual circumstances.

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

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Following this monitoring and review period, the employee will be invited to a formal review meeting, unless s/he had been issued with a final written warning, in which case s/he will be invited to a decision meeting.

### **Formal review meeting**

At least 5 working days before the date for the formal review meeting a letter will be given to the employee inviting them to the meeting.

The formal review meeting will follow a similar procedure to that identified for the formal capability meeting.

If the line manager is satisfied that the employee has made sufficient improvement, the formal capability procedure will cease and the Professional Learning process will re-start.



In cases:

- where some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- where no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.

Notes will be taken at the formal review meeting and a copy will be sent to the employee and any companion.

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 will be given information about the further monitoring and review period and the procedure and time limits for appealing against the final written warning. The date of the decision meeting will be agreed with the employee and any companion.

At this stage, rather than refer the matter to a decision meeting, consideration could be given to the employee being given a different range of duties or an alternative post. By agreement, this may include transfer to a post suited to the employee's capabilities. If this post is at a lower salary level, the substantive lower salary would apply.

### **Right of Appeal against a formal written warning**

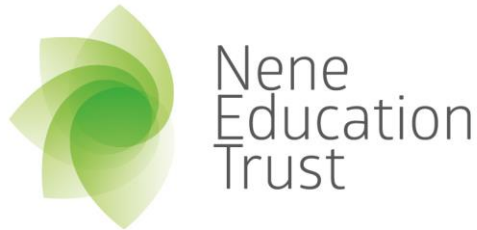
If an employee feels that a decision to issue a first and/or final written warning, is wrong or unjust, s/he may appeal in writing against the decision

Appeals against a written warning shall be restricted to considering the reasonableness of the decision made by the line manager, any relevant new evidence not previously available to the line manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Clerk to the Trustees within 10 working days of the formal written warning having been received.

All appeal hearings will be held as soon as possible after receipt of the appeal at an agreed time and place.

The appeal will be heard by the Appeals Committee of the Trustees. The number of Trustees on the Appeals Committee will not be less than three. The panel may be advised by the HR Manager (if not previously involved in the case) or an external person engaged for the purpose by the Trustees. The Committee can confirm the warning, reduce a final warning to a warning, or cancel the warning. The employee will be informed in writing of the results of the appeal hearing as soon as possible.

The same arrangements for notification and the right to be accompanied by a companion will apply for appeal hearings as for the formal capability review meetings and, as with those meetings, notes will be taken and a copy sent to the employee. Pending any appeal the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and his/her progress towards the achievement of these targets may be monitored during this period.



### **Decision meeting**

At least 5 working days before the date of the decision meeting a letter will be sent to the employee inviting them to the meeting. For Academy based staff, the meeting will be conducted by the Principal. For the Principal and Central Services Team the meeting will be conducted by the CEO or COO. For the CEO or Trust Executive Leaders, the meeting will be conducted by the Trustees' HR Committee.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the Professional Learning process will re-start where the employee is subject to Part

If progress has been made and there is confidence that wholly satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review

period rather than to dismiss. The final written warning will be extended for a short specified assessment period.

If performance has remained unsatisfactory, a decision will be made that the employee will be dismissed. The employee will be informed in writing as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and whether the notice is to be served or there will be pay in lieu of notice, and the right of appeal.

### **Notice of Dismissal**

Following a decision to dismiss, the employee will be notified in writing of the dismissal and whether it will be with notice or with pay in lieu of notice in accordance with the decision of the line manager.

In the event that the Appeal Committee of the Trustees decides not to uphold the decision to dismiss, the employee shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

### **Right of Appeal against a decision to dismiss**

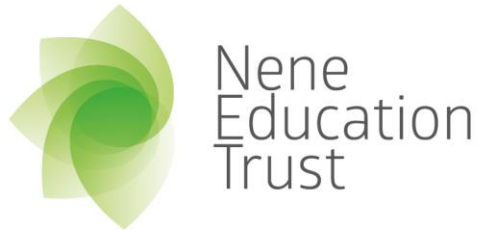
The employee has a right of appeal to the Appeals Committee of the Trustees against a decision to dismiss.

The Appeals Committee shall consist of at least 3 Trustees, none of whom will have had any previous involvement in the case.

The employee's notice of appeal should be sent to the Clerk to the Trustees within 10 working days of receipt of the written decision to dismiss, setting out the grounds of appeal.

Appeal hearings should be held as soon as possible after receipt of the appeal and will be conducted in the same way as appeals referred to in paragraph 5 above.





### **Grievances arising during the procedure**

Where an employee has a grievance against the way the line manager has conducted the procedure this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the senior manager is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered.

### **Trade Union Officials**

Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal warning will be taken until the

circumstances of the case have been discussed with the relevant professional trade union officer.

### **Confidentiality**

Our aim is to deal with performance matters sensitively and with due respect for the privacy of any 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.

The employee, and anyone accompanying the employee (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure. Failure to observe confidentiality could be a reason for disciplinary action under the Nene Education Trust's disciplinary procedure.



## Appendix

### CAPABILITY REVIEW MEETING FORM

*This Capability Review Meeting Form is designed as a guide for line managers when meeting with employees for a capability review meeting, You may complete some or all of this form, depending on the circumstance. It is important that line managers carry out these discussions in a confidential, supportive and constructive manner*

General Steps to consider;

- Identify Key Issues of concern
- Any other comments received from other managers regarding work performed
- Seek employee input and any mitigation
- Confirm and clarify expectations
- Identify any additional further support
- Agree action plan and SMART performance targets
- Agree review within 6 months time.

<b>Employee's Name:</b>	
<b>Job Title:</b>	
<b>Location (Place of Work):</b>	

#### ISSUES TO ADDRESS AND EMPLOYEE RESPONSE:

Advise that the meeting is taking place due to concerns regarding the employee's performance. Explore the reasons for poor performance and establish any patterns or mitigation.

Establish if there is an underlying contributing problem/s or identify any knowledge gaps where further training or support may be required.



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Identify that improvements in performance are required and agree upon any reasonable actions necessary to help the employee improve. (Action Plan/SMART Objectives)

Inform the employee that failure to evidence satisfactory improvement within 6 months may result in formal action (either in line with the Disciplinary Policy or the Capability Policy as applicable).



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Provide the employee with details of the Employee Assistance Program.	
<b>Employee signature:</b>	<b>Date:</b>
<b>Manager signature:</b>	<b>Date:</b>
<b>Manager name:</b>	

Retain a copy of the return to work interview form on the individuals personnel file.