

## Staff Capability and Performance Policy and Procedure

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*\* Policies will be reviewed more frequently if legal changes or good practice require*

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**Related policies/documents:** Staff Grievance Policy and Procedure

## **1. Application and Scope**

For the purposes of this Policy, North Kent College, which incorporates Hadlow College, will be referred to as “the College”.

This procedure sets out the steps to be followed where possible issues concerning an employee’s capability and or performance are identified.

Capability includes the ability to perform the role as defined by the job description and employment contract. Factors which may affect capability include health related issues, whether permanent or temporary; therefore, this policy covers absence from duty in addition to work performance issues.

The primary aim of this procedure is to provide a framework within which managers can work with College employees to maintain satisfactory performance standards and to encourage improvement where necessary.

It is the College’s policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond at a hearing before any formal action is taken.

This procedure does not apply to members of staff who are in their probationary period, agency workers or self-employed contractors.

This procedure does not form part of any College employee’s contract of employment. It may be amended at any time.

## **2. General Provisions**

Employees who are the subject of a formal meeting or appeal hearing under this procedure (paragraphs 5 and 6) have the right to be accompanied and represented at such meetings or hearings by a trade union representative or work colleague. The employee must inform the manager conducting the formal meeting or appeal hearing as required by timeframes set at the time of arranging the meeting, if they are intending to be accompanied at the planned meeting.

The length of the warnings, set out in paragraph 5 below, are for guidance only and are subject to the factual circumstances of the situation and so will be considered on a case-by-case basis.

Employees will not normally be dismissed for performance reasons without previous warnings and the general practice will be that the employee will progress through the informal and formal stages, set out below, sequentially. However, in serious cases the College may deem it necessary to dispense with stages one and/or two where dismissal without previous warnings may be appropriate.

The chosen companion will be allowed reasonable time off from duties, without loss of pay, to attend any hearing or meeting.

The chosen companion can take a note of the proceedings, address the meeting/hearing, respond on behalf of the employee to any views expressed at the meeting and confer with the employee but may not answer questions on behalf of the employee or prevent the manager of the meeting (or other College representative as appropriate) explaining their position.

Employees should make every effort to attend meetings, as requested. Where an employee is repeatedly unable or unwilling to attend a meeting without good cause, the College may make its decision on the evidence available to it. Alternatively, if the chosen companion is unavailable for more than five working days, the College may require the employee to choose a different companion. Failure to attend without good reason may be treated as misconduct.

At any stage in the process and, in some circumstances, the College may need to suspend an employee from work. If an employee is suspended, HR will confirm the arrangement to the employee in writing and set out the reasons for the suspension. Suspension is a precautionary measure and does not indicate the outcome of any formal stage of this process. Suspensions will be reviewed periodically, at least monthly. During any such period of suspension, the employee will be expected to co-operate fully with any investigation and to be available for interview during their normal working hours. During such a period of suspension, the employee will not normally be entitled to access any College premises (except to attend meetings at the College's request) or to use the College's internet/intranet/SharePoint/email facilities or to engage in normal day to day duties, without express written permission from a Senior Manager.

All employees involved in this process must maintain the confidentiality of the process and any information communicated to them in connection with a matter that is subject to this capability procedure. Any breach of confidentiality by an employee may be treated as a disciplinary offence. The requirements of confidentiality do not stop the individual making a protected disclosure (whistle blowing) or disclosing information as required by law or any statutory authority.

Unless previously agreed with the College, no audio and/or visual recordings of meetings or hearings conducted under this process are permitted.

Concerns that arise will be dealt with promptly and meetings, decisions or confirmation of those decisions will be communicated promptly. Before any sanction is imposed any necessary investigation will be undertaken to gather relevant evidence.

Where an employee raises a grievance in the course of proceedings under this procedure, the procedure may be, temporarily, suspended so that the grievance can

be dealt with, if appropriate. Where the grievance and the performance issue are related, the two issues may be dealt with together.

Where witness evidence is relevant to a capability and performance procedure regarding an employee, that employee will normally be told the names of any witnesses whose evidence is relevant to the proceedings against them. This will be the case unless the College believes that the identity of a witness should remain confidential in order to protect any individual involved or the wider interests of the College.

### **3. Disabilities**

If an employee has difficulty at any stage of this procedure because of a disability or because English is not their first language, the employee should discuss the situation with their line manager or HR as soon as possible, so that reasonable adjustments can be made.

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are any reasonable adjustments that could be made to the employee's working arrangements, including changing their duties or providing additional equipment or training. The College may also consider making adjustments to this procedure in appropriate cases. If the employee wishes to discuss this or inform the College of any medical condition that may be relevant, they should contact their line manager or HR.

If necessary, the College will obtain professional medical reports and/or advice from the College's Occupational Health Provider, who may wish to obtain a report from the employee's own GP. If the employee refuses to fully co-operate with the College and/or its designated medical adviser, the College reserves the right to progress the case based on the information available at the time.

### **4. Informal Process**

Minor issues regarding performance should normally be dealt with informally between the employee and their line manager as part of day-to-day management. This may present itself as minor lapses in performance or lapses which appear to an individual's line manager to be uncharacteristic, transitory, or arising from misunderstood expectations.

The line manager may issue advice and guidance to the employee and appropriate support to:

- 4.1. clarify the required standards;
- 4.2. identify areas of concern;

- 4.3. establish the likely causes of poor performance and identify any training needs; and/or
- 4.4. set targets for improvement and a timescale for review.

The line manager may arrange an informal meeting, at short notice, in order to progress the matter in a timely fashion. Where appropriate, a note of any such informal discussions may be placed on the employee's personnel file. Confirmation of the same and/or a letter of concern may be issued to the staff member to confirm the improvement needed in performance.

Under the informal process, the employee will not normally be permitted to bring a companion to the meeting.

## **5. Formal Procedure**

### **5.1 Notification of a capability meeting/hearing**

If the College considers that there are grounds for taking formal action over alleged poor performance, the employee will be invited to attend a capability meeting/hearing. The procedure involved will depend on the circumstances but may involve reviewing the employee's personnel file including any appraisal and relevant teaching and learning records, gathering any relevant documents, monitoring the employee's work and, if appropriate, interviewing the employee and/or other individuals confidentially regarding the employee's work.

A letter will be sent to the employee, providing sufficient time before the meeting/hearing for the employee to prepare and will set out the:

- 5.1.1. College's concerns over the employee's performance;
- 5.1.2. reasons for those concerns;
- 5.1.3. likely outcome if the College decides after the hearing that the employee's performance has been unsatisfactory. In some circumstances, the outcome may result in action up to and including dismissal; and
- 5.1.4. date, time, and place of the meeting/hearing.

Where appropriate, the College will send to the employee, no less than five days before the meeting/hearing:

- 5.1.5. a summary of relevant information gathered as part of any investigation;

- 5.1.6. a copy of any relevant documents which will be used at the relevant meeting/hearing; and
- 5.1.7. a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the College will give the employee as much information as possible while maintaining confidentiality.

If the employee wants to provide additional information/evidence or invite specific witnesses to attend the meeting/hearing, this must be submitted and/or requested at least three working days before the relevant meeting/hearing.

## **5.2 Stage 1 - Initial Review Meeting**

The employee is entitled to be accompanied at this meeting in accordance with the relevant paragraphs in Section 2, above.

The Initial Review Meeting will normally be held by the employee's line manager (or appropriate manager) and will normally be attended by a member of the Human Resources Department.

At the meeting, the employee will be given the opportunity to state their case and to raise any factors they wish to be considered.

The aims of the Initial Review Meeting will usually include:

- 5.2.1 setting out the required standards that the College believe the employee may have failed to meet and going through any relevant evidence that has been gathered;
- 5.2.2 allowing the employee to ask questions, present evidence, call witnesses, respond to evidence and make representations;
- 5.2.3 establishing the likely causes of poor performance, including any reasons why any measures taken so far have not led to the required improvement;
- 5.2.4 identifying whether there are further measures, such as additional training or supervision, which may improve performance;
- 5.2.5 where appropriate, discussing targets for improvement and a timescale for review; and/or

- 5.2.6 if dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.

The Initial Review Meeting may be adjourned, if further information or consideration needs to be undertaken to matters discussed at the Initial Review Meeting. The employee will be given a reasonable opportunity to consider any new information obtained before the meeting is re-convened.

After the Initial Review Meeting and if the employee's performance is deemed unsatisfactory, the College will issue a written warning confirming the decisions and reasons for it. The warning will set out:

- 5.2.7 the areas in which the employee has not met the required performance standards;
- 5.2.8 the targets for improvement;
- 5.2.9 details of any training, supervision or other measures identified to support the employee;
- 5.2.10 the review period; and
- 5.2.11 the consequences if improvement is not achieved or of further unsatisfactory performance.

The employee's performance will be monitored during the review period and the College will write to inform the employee of the outcome:

- 5.2.12 if the line manager is satisfied with the employee's performance, no further action will be taken;
- 5.2.13 if the line manager is not satisfied, the matter may be progressed to a Review Meeting;
- 5.2.14 if the line manager feels that there has been a considerable but insufficient improvement, the review period may be extended; or
- 5.2.15 If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.

The warning will normally remain active for twelve months from the end of the review period. After the active period, the warning will remain permanently on

the employee's personnel file but will be disregarded in deciding the outcome of any future capability proceedings.

### **5.3 Stage 2 - Review Meeting**

If the employee's performance has not met the required improvements by the conclusion of the review period set out in the written warning, or if there is further evidence of performance issues whilst the first written warning is still active, the College may write to the employee inviting them to a Review Meeting.

The invitation letter and any evidence/witnesses the employee wishes to call to the meeting will be dealt with in accordance with paragraph 5.1, above.

A relevant member of SLT will be involved in this meeting, which will be attended by a member of Human Resources.

At the meeting, the employee will be given the opportunity to state their case and to raise any factors they wish to be considered.

The Review Meeting may be adjourned if the College needs to gather any further information or give consideration to matters discussed at the Review Meeting. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

At the conclusion of the Review Meeting, the College will decide what action, if any, needs to be taken. If the employee's performance remains unsatisfactory, the College will issue a final written warning, setting out:

- 5.3.1 the areas of improvement which have not met the required performance standards;
- 5.3.2 the targets for improvement that is required;
- 5.3.3 details of any training, supervision or other measures to support the employee;
- 5.3.4 the period for review; and
- 5.3.5 the consequences if improvement is not achieved within the review period or of further unsatisfactory performance.

A final written warning will normally remain active for 12 months from the end of the review period. After the active period, the warning will remain permanently on the employee's personnel file but will be disregarded in deciding the outcome of future capability proceedings.



The employee's performance will be monitored during the review period and the College will write to inform the employee of the outcome:

- 5.3.6 if the relevant line manager is satisfied with the employee's performance, no further action will be taken;
- 5.3.7 if the relevant line manager is not satisfied, the matter may be progressed to a Stage 3 Final Review Hearing; or
- 5.3.8 if the manager feels that there has been a considerable but insufficient improvement, the review period may be extended.

#### **5.4 Stage 3 – Final Review Hearing**

The College may invite the employee to a Stage 3 Final Review Hearing where it has reason to believe that:

- 5.4.1 the employee has not demonstrated sufficient improvement within the review period as specified in the final written warning;
- 5.4.2 the employee's performance is unsatisfactory whilst a final written warning is still active; and/or
- 5.4.3 the employee's performance has amounted to gross negligence or the employee's ongoing serious ill-health is preventing the ability to perform the role (depending on the circumstances, the College may dispense Stages 1 and/or 2, after appropriate investigation). This may result in a dismissal without the need for a final written warning.

The invitation letter and any evidence/witnesses desired by the employee will be dealt with in accordance with paragraph 5.1, above.

The Final Review Hearing will be chaired by a panel comprising two SLT members ("the Panel") who have not been involved in the case previously. The Panel will be advised by a member of the Human Resources Department, who will service the meeting. A note taker may also be present.

At the Final Review Hearing, the Panel will consider the issues which have been raised in respect of the employee's capability and performance. The member of staff will be given the opportunity to state their case and to raise any factors they wish to be considered.

The Panel may adjourn the Final Review Hearing if it needs to carry out further investigation, such as re-interviewing witnesses in the light of any new points which the employee has raised during the Final Review Hearing. The member of staff will be given a reasonable opportunity to consider any new information obtained before the hearing is re-convened.

At the conclusion of the Final Review Hearing, the Panel will decide what action, if any, needs to be taken. If the employee's performance remains unsatisfactory, the Panel may conclude one or more of the following is appropriate:

- 5.4.4 dismissal (without notice in the case of gross negligence);
- 5.4.5 re-deployment into another suitable job or at a lower grade;
- 5.4.6 extension of an active final written warning and setting a further review period (where the Panel consider that substantial improvement is likely);
- 5.4.7 the withholding of any forthcoming increment of salary;
- 5.4.8 the demotion to a post of lower grading;
- 5.4.9 the removal of any title or office held in addition to the substantive appointment; and/or
- 5.4.10 giving of a final written warning (where no previous final written warning is currently active).

The decision and sanction will be communicated in writing to the employee including details of their right of appeal and the appeal process that will apply.

## **6 Appeals**

The employee will have the right to appeal against any decision under this procedure. The appeal must be in writing and must set out the grounds on which the appeal is made.

The appeal must be sent to the Head of HR within ten working days of the date of the dismissal letter.

If the employee has been dismissed, the appeal will not delay the effect of the dismissal. However, if the employee's appeal is successful, they will be reinstated with no loss of continuity or pay.

If new matters are set out in the appeal, the College may need to carry out further investigation. If any new information comes to light, the College will provide the employee with a summary of the information, including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.

HR will write to the employee informing them of the date, time, and place of the appeal hearing, which will be held without unreasonable delay and will be heard by the Chief Executive and Executive Principal (or designate).

The appeal will consider the grounds of the appeal; the appeal will not be a full re-hearing of the case. Appeal grounds include:

- 6.1 severity of the penalty;
- 6.2 procedural flaw; and
- 6.3 new information (not presented at the Hearing).

A hearing may be adjourned if the College needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Following the appeal hearing the College may:

- 6.4 confirm the original decision;
- 6.5 revoke the original decision; or
- 6.6 substitute a different penalty.

The decision following the appeal will be final and the employee will not be entitled to any further right of appeal. The member of staff will be notified of the outcome in writing by HR within ten working days of the appeal hearing.