



**Wellspring Academy Trust**

**Performance Management and Capability Policy – Support Staff**

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Date of Review:	July 2022
Responsible Department:	Human Resources
Policy Applies to:	Wellspring Trust and all Academies within the Trust

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The Equality Act 2010 requires public bodies, in carrying out their functions, to have due regard to the need to:

- eliminate discrimination and other conduct that is prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and people who do not share it
- foster good relations across all characteristics - between people who share a protected characteristic and people who do not share it.

In the development of this policy due regard has been given to achieving these objectives.

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**Appendix 1**    **Process and Protocol at Formal Performance Management Meetings, Hearings and Appeals (Support Staff)**

**Appendix 2**    **Performance Management (Support Staff) Template Letters**

**Appendix 3**    **Form PAS1**

**Appendix 4**    **Template Support Plan**

**Appendix 5**    **Appeal Form**

## **1.0 Scope**

- 1.1 This policy and procedure applies to all centrally employed Wellspring Academy Trust employees and all Academy based non-teaching employees.
- 1.2 This policy does not apply to newly appointed staff whose terms and conditions of employment state that their appointment is subject to a Probationary Period. This is covered in the Probationary Policy.
- 1.3 Once the employee has successfully completed the Probationary Period, this policy applies to the continuance of their role.
- 1.4 This policy is not contractual and does not form part of an employee's terms and conditions of employment.

## **2.0 Principles**

- 2.1 Wellspring Academy Trust recognises that performance management should be a supportive and developmental process designed to ensure that all staff have the skills and support they need to carry out their role effectively.
- 2.2 Employees have the right to be accompanied by their trade union representative or a work colleague at the formal stages of the Capability Procedure. It is the employee's responsibility to make the necessary arrangements for representation. This right does not extend to family/friends or professionals such as solicitors and barristers.
- 2.3 All employees have the right of appeal against any formal capability sanction.
- 2.4 All documentation relating to Performance Management matters will remain confidential and will be retained on the employees personal file in line with the retention schedule.

## **3.0 Aims**

The aims of the policy are to:

- 3.1 Enable employees to perform at a consistently professionally high level in accordance with their Job Description.
- 3.2 Enable employees to achieve their full potential, by setting clearly defined objectives that align with the team and/or strategic plan.
- 3.3 Enable underperformance to be managed fairly and consistently.

## **4.0 The Performance Management Cycle**

- 4.1 The performance management period is a full year from appointment/completion of Probationary Period and, in Academies, in line with the academic year with regular one to one meetings taking place with the employee and the Line Manager throughout this period.

- 4.2 Employees appointed on a fixed term contract will have their performance managed in accordance with this policy. The length of the period will be determined by the length of their appointment.
- 4.3 Performance Management should be seen as an ongoing process, not just restricted to the annual performance management review meetings.

## **5.0 Preparing for the Performance Management Review Meeting:**

### **The Line Manager (Reviewer)**

- 5.1 Employees should be given adequate notice (no less than 5 working days) of the meeting and they should be given Form PAS1 (**Appendix 3**) (or other relevant form) to complete and hand it back at least 2 working days prior to the Performance Management Meeting taking place. Adequate time must be set aside for the meeting.
- 5.2 The objectives set (and re-aligned on successful completion of the Probationary Period) will be reviewed to ensure these have been achieved.
- 5.3 Objectives should focus on key areas. Groups of employees can have the same objectives and be met as a team or in small groups.
- 5.4 Employees must be able to understand their targets and objectives and know what they need to do in order to achieve them. They should be SMART (**S**pecific, **M**easurable, **A**chievable, **R**ealistic and **T**ime bound).
- 5.5 The employee's Job Description should be considered in the setting of targets.
- 5.6 Form PAS1 (or other form) should be available at the meeting.
- 5.7 Any appropriate supporting evidence that will aid discussion should be available at the meeting.

### **The Employee (Reviewee)**

- 5.8 The employee should complete the relevant form and also provide, in advance, any supporting evidence.
- 5.9 The form should be with the reviewer no less than 2 working days in advance of the meeting.

## **6.0 The Performance Management Meeting**

- 6.1 Both the Line Manager and the employee will have a good idea of how the year has gone so far. This meeting is not the place to raise serious issues of underperformance for the first time, if these exist.
- 6.2 Using the relevant form to lead it, the meeting should be a two-way discussion.
- 6.3 The reviewer should complete their sections of the relevant form (either paper based or on-line) during the meeting (or immediately afterwards) and both the reviewee and reviewer should sign the document to confirm agreement to its content.
- 6.4 A date for the performance management review meeting should be agreed and recorded.

## **7.0 Managing Performance Concerns Informally**

- 7.1 There may be occasions when, despite adequate support, an employee's performance consistently fails to reach the required standard. Line Managers should discuss performance concerns with their employees at the earliest opportunity, identifying support and the required improvement within specific timescales. This could be additional training, mentoring or coaching, or just some on the job support or shadowing from an experienced colleague. During this conversation it may become apparent that underperformance may be due to causes outside of the employee's control. Consideration should be given to this.
- 7.2 An informal Support Plan should then be put in place (an example template is contained in **Appendix 4**). Realistic and achievable targets should be set and a suitable review period agreed. This is usually between 4-6 weeks, so employees have adequate time to demonstrate improvements.
- 7.3 Progress must be regularly reviewed during the informal performance period to ensure support is adequate and effective. An informal Support Plan should be updated regularly and signed by the employee and the Line Manager.
- 7.4 Where adequate improvements have been made over the time period specified, the employee should be informed in writing that the Support Plan is being lifted (**Appendix 2 – letter 1**).
- 7.5 Where adequate progress has been made on some of the targets but not all in the time period specified, but there is a confidence all targets can be met, the informal Support Plan can be extended by no more than 4 weeks. This should be confirmed in writing (**Appendix 2 – letter 2**) with the revised informal Support Plan enclosed.
- 7.6 If improvements have been made to the required sustained standards, the employee should continue to be managed through the above Performance Management process.
- 7.7 The Line Manager should be confident that the informal performance support has been exhausted and does not have a realistic chance of success within a reasonable time period. Advice should be sought from the HR Business Partner to consider whether the employees' underperformance falls under the Capability or Disciplinary Policy before proceeding any further.
- 7.8 In exceptional cases where there are serious and significant concerns relating to the performance of the employee (including where the education of students may be in jeopardy), a decision shall be made by the (Executive) Principal/Line Manager, in liaison with HR, to move the employee from the Performance Appraisal Procedure to Capability.

## **8.0 The Capability Policy**

- 8.1 Where the employee has not met the required standards after an informal Support Plan, a formal Capability Meeting will be convened (**Appendix 2 – letter 3**), whereby a formal sanction could be issued (e.g. written warning/final written warning).

## 8.2 **Formal Capability Meeting**

The decision to progress to a formal Capability meeting will be confirmed in writing and must include:

- Details of the concerns in relation to underperformance.
  - All supporting evidence including any corroborative documentation to be referred to in the meeting.
  - The date/time/location of the meeting, giving 5 working days' notice.
  - The employees' right to be accompanied as set out in the Principles.
- 8.3 If an employee attends with a TU representative or work colleague, the chosen representative does not have the right to answer questions on the employees' behalf or address any meeting without the employees' consent. They will, however, be allowed to address any formal hearing and present the employees' case.
- 8.4 Every reasonable effort should be made by the employee and representative to be available for the meeting. If the employees' representative is unable to attend on the specified date, the employee may request that the meeting be postponed. Provided that the new date and/or time is reasonable, and within 5 working days of the original date, this will be accommodated.
- 8.5 The Line Manager will outline the ongoing areas of concern, the support that has already been given and state clearly why the employee has not met the required standard. The employee will be requested to respond and provide any mitigation.
- 8.6 At the end of the meeting the Line Manager will consider all of the information presented. Possible outcomes of the formal capability meeting are:

### **No action**

No action is appropriate where there is reasonable belief the evidence is insufficient or that the employees performance has achieved a satisfactory level. The employee will continue with the normal cycle of performance management.

### **Extension of informal support plan**

Where adequate progress has been made on some of the targets but not all in the time specified, but there is confidence all targets can be met, the informal support plan can be extended by no more than 4 weeks. The employee would revert to 7.5 of the policy (Managing Performance Concerns Informally).

### **Written warning/final written warning**

If it is determined that all possible support, training and management intervention has been implemented during the informal process and the employees performance has not improved to a satisfactory level, the Line Manager will make a decision as to whether it is appropriate to issue a written warning/final written warning in conjunction with any further support deemed appropriate to enable the employee to meet the required standards.

- 8.7 The employee has the right to appeal against any formal sanctions within 10 working days of the sanction being issued.

- 8.8 Any further support must be formalised in a Support Plan (adapting **Appendix 4**). Realistic and achievable targets must be set and a suitable review period agreed. This is usually between 4-6 weeks, so employees have adequate time to demonstrate improvements. It is also important to monitor and review the employee's progress during the period so time must be set aside to meet to review and to ensure support is being effective. It is advisable to take notes of the meetings. The formal Support Plan template may also need to be updated to highlight any amendments to objectives.
- 8.9 The employee must be advised that failure to reach the expected standards may lead to the next stage of the procedure, which could lead to their dismissal.
- 8.10 Where adequate improvements have been made over the time period specified, the employee should be informed in writing that the Support Plan is being lifted (**Appendix 2 – letter 1**).
- 8.11 Once the required improvements have been made to the expected sustained standards the employee will be managed through the above Performance Management process.
- 8.12 Where adequate progress has been made on some of the targets but not all in the time period specified, but there is a confidence all targets can be met, the Support Plan can be extended by no more than 4 weeks. This should be confirmed in writing (**Appendix 2 – letter 2**) with the revised Support Plan enclosed.
- 8.13 Where adequate progress has not been made in this period, the employee will be informed both verbally and in writing that a further Capability meeting will be convened to consider issuing a Final Written Warning and a further appropriate monitoring period (4-6 weeks) will be agreed.
- 8.14 Where adequate progress has not been made within this further monitoring period and the employee has been issued a Final Written Warning, they will be informed both verbally and in writing that the matter will progress to a Formal Capability Hearing where their ongoing employment will be considered which may lead to their dismissal.

## **9.0 Formal Capability Hearing**

- 9.1 The decision to progress to a formal Capability Hearing will be confirmed in writing and must include:
- Details of the concerns in relation to underperformance.
  - All supporting evidence including any corroborative documentation to be referred to in the hearing including a brief overview of the case.
  - Witness statement (s) (where relevant).
  - The date/time/location of the meeting, giving 10 working days' notice.
  - The name(s) of the person(s) hearing the case.
  - A copy of the procedure.
  - The employees' right to be accompanied.

- 9.2 In some cases, the employee may wish to submit documentation for consideration by the panel. This should be provided no later than 5 working days prior to the hearing. Where relevant, the employee must also confirm which witnesses they wish to call and make arrangements for their attendance.
- 9.3 It is expected that all internal witnesses attend the hearing to be questioned. However, in some circumstances, it may be impracticable or unacceptable for the witnesses to be present at the meeting. Where internal or external witnesses do not attend for whatever reason, it is for the panel to determine the weight placed on the evidence presented in the witness statement.
- 9.4 Should the employee request their representative attend on their behalf or if they wish to provide a written submission, the person hearing the case will consider this.
- 9.5 Every reasonable effort should be made by the employee and representative to be available for the meeting. If the employees' representative is unable to attend on the specified date, the employee may request that the meeting be postponed. Provided that the new date and/or time is reasonable, and within 5 working days of the original date, this will be accommodated. Where no agreement can be reached the hearing date will be set by the Line Manager.
- 9.6 Should the employee/their representative fail to attend without any reasonable explanation, the person hearing the case will make a decision whether to proceed in their absence.
- 9.7 The hearing will be conducted as detailed in **Appendix 1**.
- 9.8 Membership of panels will consist of between one and three members, depending on the specific circumstances.
- 9.9 The panel will comprise of members of the Trust's Executive and Senior Management Team who have had no previous involvement in the matter and are not conflicted (i.e. the CEO, Executive Principals, Principal, Executive Vice Principals, Heads of School or members of the Support Centre's Leadership Team).
- 9.10 In instances where a hearing relates to an Executive Principal, Principal, Executive Vice Principal or Head of School, the Hearing panel members should comprise of the relevant Local Governing Body (LGB) Chair or Vice Chair (or another LGB member appointed by the LGB Chair), along with up to two members of the Trusts Executive Management Team (i.e.) the CEO, Executive Principals or members of the Support Centre's Leadership Team). The composition of the panel will be agreed jointly between the LGB Chair and the Trust.
- 9.11 If an employee attends with a TU representative or work colleague, the chosen representative does not have the right to answer questions on the employees' behalf or address any meeting without the employees' consent. They will be allowed to address the panel and present the employees' case.



## **10.0 Outcome of Formal Capability Hearing**

10.1 Possible outcomes of the Capability Hearing are:

### **No Action**

No action is appropriate where there is reasonable belief the evidence is insufficient or that the employees' performance has achieved a satisfactory level. The employee will continue with the normal cycle of performance management.

### **Extension of Formal Support Plan**

If the panel determines that there is an avenue of support or training which has not yet been explored, a recommendation can be made to extend the Formal Support plan by a further 4 weeks at the end of which the formal Capability Hearing will be reconvened (letter 7).

### **Capability Dismissal**

If it is determined that all possible support, training and management intervention has been implemented during both the informal and formal processes and the employees performance has not improved to a satisfactory level, the panel should dismiss with immediate effect giving the appropriate pay in lieu of notice (up to a maximum of 12 weeks).

10.2 The employee will be notified verbally of the outcome by the person that heard the case. The decision will also be confirmed in writing within 5 working days' wherever possible, informing the employee of their right to appeal.

10.3 In relation to warnings given due to underperformance, copies will be kept on the employees' personal files as a record of events/employment history but will be disregarded for performance purposes after the stipulated timescale.

## **11.0 Right of Appeal**

11.1 Employees have the right of appeal against any sanction given as a result of a hearing within 10 working days' of receiving their confirmation letter and (where appropriate) should provide supporting evidence (for example, if new evidence has come to light). The Appeal Form in Appendix 5 should be used for this purpose but a letter outlining the grounds for appeal is also acceptable.

11.2 Membership of all appeals Panels will consist of between one and three members, depending on the specific circumstances.

11.3 The Panel will be drawn from the Trust's Executive and Senior Management Team who have had no previous involvement in the matter and who are not conflicted (i.e. the CEO, Executive Principals, Executive Vice Principals, Heads of School or Members of the Support Centre's Leadership Team) and/or a member of the LGB with agreement of the LGB Chair.

11.4 In instances where an appeal hearing relates to an Executive Principal, Principal, Executive Vice Principal, or Head of School, the Panel will comprise of the relevant LGB Chair or Vice Chair (or another

LGB member appointed by the LGB Chair), along with the CEO (or a person appointed to deputise for the CEO) and up to one member of the Trusts' Executive Management Team (i.e. the CEO, Executive Principals, or members of the Support Centre's Leadership Team). The composition of the Panel will be agreed jointly between the LGB Chair and the CEO.

- 11.5 The employee will be given 10 working days' notice of the Appeal Hearing and be informed of: -
- The name(s) of the person(s) who will hear the case.
  - The date, time and location of the hearing.
  - The right to representation
  - A copy of the relevant policy.
- 11.6 The appeal will be conducted, having regard to the matters set out on the Appeal Form and/or letter from the employee, and the outcome letter of the Capability hearing.
- 11.7 The person(s) hearing the appeal will receive the Appeal Form and/or letter, relevant documents referred to in the Capability Hearing and a copy of the letter confirming the outcome of the Capability Hearing.
- 11.8 At the appeal stage, either party may decide that it is relevant for witnesses to attend the meeting. In circumstances whereby it is impracticable or unacceptable for witnesses to attend, the person hearing the appeal will determine the weight placed on the evidence provided.
- 11.9 Every reasonable effort should be made by the employee and representative to be available for the appeal hearing. If the employees' representative is unable to attend on the specified date, the employee may request that the meeting be postponed. Provided that the new date and/or time is reasonable, and within 5 working days of the original date, this will be accommodated.
- 11.10 If following reasonable attempts to arrange a suitable date for all to attend and the employee/their representative is still unavailable, the person hearing the appeal may determine that the appeal is withdrawn.
- 11.11 The appeal should normally be conducted in one day except in exceptional circumstances.
- 11.12 If an employee attends with a TU representative or work colleague, the chosen representative does not have the right to answer questions on the employees' behalf or address any meeting without the employees' consent. They will be allowed to address the appeal panel and present the employees' case.
- 11.13 The process for the Appeal Hearing will be as outlined in the Process at a Formal Appeal Hearing (see Appendix 1).
- 11.14 The person(s) hearing the appeal has authority to confirm, reduce, or revoke the original outcome. The decision of the person(s) hearing the appeal is final.
- 11.15 Where possible the decision will be given to the employee at the conclusion of the meeting and confirmed in writing no more than 5 working days' after the hearing.

11.16 The written record of the appeal hearing should be completed as quickly as possible after the date of the hearing.

11.17 All documents pertaining to this procedure should be retained on the employee's personal file as per point 2.4.

## **12. Monitoring and Review**

12.1. The policy will be reviewed to ensure consistency of application and adherence to Equalities legislation.

12.2. The policy will be reviewed every three years.

This policy has been consulted and agreed with the following Trade Unions: NEU, ASCL, Unison, GMB Unite, NASUWT and NAHT.