

“Together in Achievement”



Managing Underperformance Policy

for all staff

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Managing Underperformance Policy

1. Introduction/Purpose

This policy is designed to ensure that an employee whose standard of performance is unacceptable is clearly informed of what standards are expected and receives support towards achieving those standards.

If the cause of an employee's poor performance is related to ill-health, the Aspire Sickness Absence Policy should be followed.

If it is established that poor performance is as a result of employee misconduct or negligence, the Aspire Disciplinary Policy should be followed.

If the process concerns the performance of the Headteacher, this will be led by the Chair of the Local Governing Body [advised by the CEO of Aspire MAT] and for the CEO the process will be led by the Chair of the Board of Directors.

For staff employed in the central function only, the CEO will assume the responsibilities of the Headteacher.

2. Key Roles and Responsibilities

2.1 Headteacher / Line Manager

- Ensure that appropriate work standards are established and communicated.
- Ensure that regular one-to-ones, supervision and the annual appraisal takes place.
- Assess employee performance and encourage open and honest dialogue.
- Communicate the policy and procedure with all staff.
- Take appropriate action within this policy to deal with underperformance at the earliest opportunity.
- Develop a culture where employees are supported and assisted in achieving the required standards of performance.
- Record and keep details of all meetings with the employee, monitoring any targets and offering support and, should there be a need to hold a Formal Underperformance Hearing, be prepared to present the management case.

Note: For the purposes of implementing the Managing Underperformance Policy, the Headteacher means, in the absence of the Headteacher, a Deputy Headteacher or another senior member of staff who has formally been nominated by the Headteacher (i.e. line manager).

2.2 Board of Directors

- Adopt the policy and procedure/
 - Ensure that the appropriate performance review processes are in place across the Trust and are followed in a fair and reasonable manner.

2.3 Local Governing Body

- Determine who will be responsible for a Formal Underperformance Hearing which may result in dismissal. The LGB will appoint a separate Staff Underperformance Panel consisting of three governors (in exceptional circumstances this may be reduced to two).

- Appoint an Appeal Panel (comprising three governors who have not previously been involved) to hear any appeals.
- Appoint a clerk to keep a record of any hearing or appeal hearing.

Note:

- *Staff governors must have no involvement in any formal underperformance proceedings against members of staff within the Trust.*
- *A governor who has served on a staff underperformance committee or been involved in the case previously with the Headteacher i.e. setting performance standards with the Headteacher etc. must not serve on the appeal committee which hears a resultant appeal.*

2.4 Employees

- Perform their role to a satisfactory level in accordance with their role profile, job description, Teacher Standards (teaching staff only) and the reasonable expectations of management.
- Attend any meetings/hearings convened in accordance with this policy.

3. Principles

- 3.1 This policy does not replace the normal day-to-day interaction between an employee, a Line Manager or the Headteacher on issues of performance. It should only be used when options such as regular one-to-ones, supervision and annual appraisal have failed to produce a satisfactory result. It is therefore important to ensure that these mechanisms to review performance are in place and operating accordingly.
- 3.2 The policy set out in this document aims to ensure that there is:
- A means of monitoring performance and establishing reasonable and appropriate performance criteria.
 - Consistency in how employees with widely differing abilities and duties are given the opportunity to attain a satisfactory level of performance.
 - Assistance in identifying the most appropriate forms of support and providing that support.
- 3.3 If an employee does not meet the required standard of performance, any consequent action will be based on the following:
- Adequate evidence that the employee is not performing their duties satisfactorily.
 - Adequate evidence that the employee knew of and was given reasonable support and assistance to overcome the identified underperformance.
 - A fair procedure.
- 3.4 It is expected that the Headteacher will conduct the Stage 1 and Stage 2 Formal Review Meetings. An HR representative may be in attendance.
- 3.5 Should the process progress to the final stage, the Formal Underperformance Hearing will be conducted by a panel of three governors forming the Hearings Committee. At any Formal Underperformance Hearing and Appeal Hearing the panel will be accompanied and advised by a HR representative.
- 3.6 The provisions of The Equality Act 2010 will be applied throughout the implementation of this policy. Managers and staff should consult the guidance found at:
<https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>.

In underperformance cases this may mean ensuring that, where possible, consideration is given to making reasonable adjustments to the employee's role/working pattern / working environment etc. with the aim of preserving the employment of the individual. Advice should be sought from our HR providers, Anthony Collins Solicitors.

- 3.7 If the employee or their representative is unable, for good reason, to attend the Formal Underperformance Meeting / Hearing on the date proposed, the Headteacher will reschedule the meeting / hearing to take place no later than 5 school days after the date of the original meeting / hearing. No further rescheduling will be considered unless the reason for non-attendance is regarded as exceptional. If the employee fails to attend the rescheduled meeting / hearing, it will continue in the employee's absence.
- 3.8 Each stage of the procedure will be carefully documented. It is the Headteacher's responsibility to ensure notes are taken of the informal review meetings or in the case of the formal stages, arrange for a note taker/clerk to be present at the meetings. Minutes will be shared with the staff member, who will have the opportunity to comment on them and to give their view as to whether or not they constitute an accurate record.
- 3.9 If the issue of underperformance relates to a Trade Union / Professional Association representative, the union's senior local convener and regional officer must be notified. No further action should be taken until they have been informed.
- 3.10 An employee has the right to appeal against a sanction issued under the Formal Process. However, the submission of an appeal will not halt the progress of any Formal Review Period which will run concurrently with the appeals process.
- 3.11 An employee cannot invoke other formal procedures such as grievance or harassment and bullying as a challenge to a decision of the Headteacher/Panel to issue a warning under this policy unless there are indications that the Headteacher/Panel has acted in a vexatious or discriminatory manner. The Chair of Governors will determine whether the employee has a justified complaint and whether or not the Grievance Policy or Harassment and Bullying Policy should be invoked.

4. Establishing the Performance Gap

- 4.1 The first task is to identify that there is a problem with performance. The employee's performance must be objectively assessed in relation to the job for which s/he is employed to do. This will be done through the annual performance management cycle, or in the case of newly qualified teachers, through the NQT Induction process.
- 4.2 Once a Headteacher has identified and has sufficient evidence that there is a performance problem, then the following process should be followed.

5. Formal Process – Stage 1 Formal Review Meeting

- 5.1 If, after the 12 weeks of monitoring and informal support provided by the Aspire Performance Management Policy, the employee's performance remains unsatisfactory, the Headteacher will arrange a Stage 1 Formal Review Meeting with the employee.
- 5.2 The employee has the right to be accompanied by a trade union / professional association representative or workplace colleague. The Headteacher may have a HR representative present.

- 5.3 The employee must be given at least 10 school days' written notice of the meeting and confirmation of the nature of the concerns and any accompanying documents that will be referred to at the meeting.
- 5.4 At the meeting, the Headteacher will:
- Re-state the standards required and shortfalls identified.
 - Agree objectives/targets with the employee and the timescales (formal review period) for achievement using the Performance Improvement Plan.
 - Discuss and plan appropriate training / support.
- 5.5 The employee will be given an opportunity to comment on the concerns, to ask any questions and provide any supporting evidence.
- 5.6 The employee must be supported for a period of time which is reasonable considering the role, the nature of the shortcoming(s) and the employee's length of service. The Formal Review Period is recommended at between 4 and 12 weeks.
- 5.7 The Headteacher will then conclude what action s/he proposes to take. If there are no extenuating circumstances, then the Headteacher will issue a First Written Warning. This will remain 'live' for a period of 12 months from the date of the meeting. This letter will be issued within 5 school days of the meeting clearly detailing the employee's right to appeal the decision and also include the date of the Stage 2 Formal Review Meeting.
- 5.8 At the end of the Stage 1 Formal Review period a Stage 2 Formal Review Meeting must be held to assess progress. The validity of the formal process is dependent upon the Stage 2 Formal Review Meeting taking place.

6. Formal Process – Stage 2 Formal Review Meeting

- 6.1 At the Stage 2 Formal meeting, the Headteacher will discuss with the employee their performance during the Formal Review Period. The same principles (including employee's right to be accompanied) and format that applied to the Stage 1 Formal Review Meeting are applicable to this meeting.
- 6.2 Following discussion, the Headteacher will decide:
- Whether the employee's performance has reached the required standard and therefore, suspend the procedure, clearly indicating that should performance deteriorate during the lifetime of the First Written Warning then the process will recommence from this point.
 - Whether the employee's performance has not reached the required standard, and therefore initiate a further Formal Review Period and issue a Final Written Warning. This Final Written Warning will remain 'live' for a period of 24 months from the date of the meeting and will then be removed from their record.
 - Whether the employee's performance has deteriorated, and therefore arrange a Formal Underperformance Hearing.
- 6.3 Whatever the outcome of this meeting the decision will be confirmed in writing within 5 school days of the meeting. A copy of this letter will be included on the employee's personnel file.
- 6.4 If the outcome of the Stage 2 Formal Review Meeting is the issue of a Final Written Warning, the employee will be given a further opportunity to improve and the Headteacher will set a date for a Final Formal Review Meeting. This will be between 4 weeks and 12 weeks from the

Stage 2 Meeting and should take into account the timescales previously set during Stage 1 of the formal process.

- 6.5 Should the employee's performance reach the required standard by the time of the Final Formal Review Meeting, they will be informed that the procedure will be suspended. However, it will be made clear that should performance deteriorate during the lifetime of the Final Written Warning then the process will recommence from this point.
- 6.6 If performance still remains unsatisfactory at the time of the Final Formal Review Meeting, the Headteacher will inform the employee of the intention to move to a Formal Underperformance Hearing and that the outcome of this could result in dismissal.

7. Formal Underperformance Hearing

- 7.1 The employee will be given at least 10 school days' written notice, advised of the right to be accompanied by a workplace colleague or a trade union / professional association representative, given confirmation of the nature of the concerns and provided with all relevant evidence that will be discussed at the hearing.
- 7.2 The Hearing will be conducted by the Hearings Panel and will be advised by a HR representative.
- 7.3 The Headteacher will present the evidence of the underperformance issues, how those have been addressed, the process followed, and the support and training given.
- 7.4 The employee will be given the opportunity to respond.
- 7.5 The Hearings Panel will consider the evidence of underperformance and determine whether it is appropriate to:
 - Dismiss the employee with notice considering whether alternative employment is available and whether it is appropriate that it be offered to the employee (advice on the feasibility of this option must be sought from HR); or
 - To give the employee further time to improve; or
 - To withdraw the procedure.
- 7.6 The decision will be confirmed in writing within 5 school days of the hearing. The employee will be notified of their right to appeal.
- 7.7 If a teacher is dismissed as a result of a Formal Underperformance Hearing, they should be advised that the Headteacher will make a referral to the appropriate body in line with national guidelines.

8. Appeal

- 8.1 If the employee wishes to appeal the decision at any stage of the formal process s/he should do so, in writing, within 5 school days of notification of the decision to the Chair of Governors or Clerk to the Hearing stating the grounds for appeal.
- 8.2 The employee can appeal on the following grounds only:
 - That the managing underperformance procedure has been applied defectively or unfairly; or

- That new evidence has come to light that was not available at previous meetings/hearings and that it is likely to make a difference to the original decision, and, as a result, the outcome or level of sanction imposed was inappropriate.
- 8.3 The employee must ensure that the written appeal clearly demonstrates that they have information/evidence available to them that substantiates their grounds for appeal. An employee cannot appeal simply because they do not agree with the outcome.
- 8.4 Arrangements for the appeal to be heard will be made within 10 school days of the receipt by the Chair of Governors / Clerk to the Panel of the written appeal.
- 8.5 The employee will be given notice in writing at least 10 school days in advance of the time and place of the hearing.
- 8.6 Management and the employee should provide the Clerk to the Panel with any written material to be used at the hearing at least 5 school days prior to the hearing.
- 8.7 The clerk will arrange for a copy of the other party's written material to be provided to management and the employee at least 3 school days prior to the hearing.
- 8.8 Any extension on the time frames must be agreed in advance by both parties.
- 8.9 All appeals will be heard by the local governing body's appeal committee which will not include any governor who was a member of the Hearings Panel, advised by a HR representative.
- 8.10 At the appeal hearing both parties i.e. the individual who is appealing against the action taken against them and the Chair of the Formal Underperformance Hearing who is presenting the management's case) have the opportunity to state their case and to ask questions of each other.
- 8.11 The employee has the right to be accompanied to the appeal hearing by a work colleague or a trade union / professional association representative.
- 8.12 The employee or accompanying person has the opportunity to consider any new evidence arising during the hearing before any decision is taken.
- 8.13 In the case of an appeal against action that includes dismissal, the Appeal Committee can sanction that the:
- Appeal is upheld and that the sanction will then be the same or a lesser penalty, including removal of the sanction; or
 - Appeal is not upheld and dismissed.
- The decision of the appeal committee will be communicated in writing within 5 school days of the hearing.
- 8.14 The decision of the Appeal Committee is final and there is no further internal right of appeal.

9. Representation

- 9.1 As confirmed throughout the policy, employees have the right to be represented at formal meetings / hearings and appeals by a trade union / professional association representative or a workplace colleague.

10. Interpretation

- 10.1 Any questions as to the interpretation of this policy should be referred to the HR provider.
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