

INVICTUS

Education Trust

**CAPABILITY POLICY
AND PROCEDURE**

Approved by Board of Trustees
25th March 2019

To be reviewed by Board of Trustees
February 2022

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1. Policy Statement

- 1.1 Invictus Education Trust is committed to providing high quality teaching and learning for its students across its schools. Through our workforce we aim to provide opportunities for all of our students, whatever their ability. Each employee will therefore be given support to help them continually improve their performance and develop to their full potential, which will in turn help improve outcomes for our young people.
- 1.2 Having an effective performance management process in place is one of the ways we can support our employees and deal with performance matters as they arise; how we support performance and development is set out in our Appraisal Policy.
- 1.3 This policy sets out the arrangements that will apply when an employee falls below the levels of competence and performance that are expected of them and serious concerns have been raised which the Appraisal Policy has been unable to address.
- 1.4 Capability matters will be dealt with and managed within each School. The Trust, as employer, will, however, provide support and guidance, and record and monitor relevant data. The Headteacher will be required to update the Executive Headteacher in relation to relevant matters arising from such procedures.
- 1.5 This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures. The Trust is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation.
- 1.6 This policy does not form part of any employee's contract of employment and may be amended at any time following consultation. We may also vary application of this procedure, including any time scales for action, as appropriate.

2. Scope and Purpose of this Policy and Procedure

- 2.1 The purpose of this policy is to provide a framework, within which Invictus Education Trust can work with employees, to improve and maintain satisfactory standards of performance where serious concerns have been raised. The priority is to help improve performance.
- 2.2 This policy will be applied when informal support as set out in the Appraisal Policy has been provided and the required improvement has not been made.
- 2.3 This policy applies to all employees of the Trust, including teachers and support staff within each School, excluding those who are in the probationary period. It does not apply to agency workers.

3. Notification and Procedure for Formal Meetings

- 3.1 An employee will be given at least five working days' written notice, if required, to attend any formal meeting under this procedure. This will follow confirmation that the application of the appraisal process no longer applies following the conclusion of informal support.
- 3.2 The written notification will contain:
 - (a) Sufficient information about the performance concerns and their possible consequences (including either issuing a warning or dismissal) to enable the employee to prepare to answer the case against them.
 - (b) Copies of any written evidence
 - (c) Copies of witness statements and details of witnesses attending (if appropriate)

- (d) Details of the time and place of the meeting
 - (e) The employee's right to be accompanied (see 3.4)
- 3.3 Formal meetings will be conducted by the Headteacher or other senior employee delegated this responsibility by the Headteacher (unless the meeting is a dismissal meeting).
- 3.4 An employee has the right to be accompanied to any formal meeting under this procedure by a companion, who may be a work colleague or a Trade Union representative.
- 3.5 Relevant witnesses may be called by the person conducting the meeting, the presenting manager (if appropriate) and an employee may also request that relevant witnesses are called to any formal meeting.
- 3.6 A formal meeting under this procedure will:
- (a) Identify performance shortcomings;
 - (b) Allow an employee to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected;
 - (c) Identify what action (including support provided) has been taken to date and what the outcome was;
 - (d) Where appropriate, identify and explain any support that will be available to help the employee improve performance;
 - (e) Where appropriate, warn an employee formally that failure to improve within the set period could lead to dismissal; and
 - (f) Confirm the timescales for the monitoring and review period which will follow this formal meeting where a warning is issued. The timetable will depend on the circumstances of the individual case but the period will be reasonable and proportionate and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support will continue during this period.
- 3.7 The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required.
- 3.8 If at any stage the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.
- 3.9 Following a formal meeting, the matters covered in 3.6 and any other relevant points will be confirmed in writing. Where a warning has been issued the letter will set out the length of the monitoring and review period and the procedure and time limits for appealing against the warning. The outcome letter should warn the employee formally that failure to improve within the set period could ultimately lead to dismissal.
- 3.10 Minutes will be taken of all formal meetings and the employee will be sent a copy following the meeting with the outcome letter.
- 4. Formal Capability Meeting (Stage 1)**
- 4.1 Where there are serious performance concerns the employee will be invited to a formal capability meeting to establish the facts and determine what action to take.

- 4.2 Where a warning is issued, this will usually be a **first written warning**. However, in very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure, this could be a final written warning.
- 4.3 The warning will normally remain active for 12 months from the end of the monitoring and review period. During this time any further performance concerns will be considered at the next stage of the process (stage 2). After the active period the warning will remain on the employee's personal file but will be disregarded in deciding the outcome of any future capability proceedings.
- 4.4 However, in some cases where performance has improved only to dip again soon after the active period of the warning despite support being provided, a decision may be made to re-enter the procedure at stage 2.

Monitoring & Review Period (1):

- 4.5 The standard set length of the monitoring and review period following the formal capability meeting in this is normally six weeks. However, in some cases it may be appropriate for a shorter period of four weeks to be set. In exceptional circumstances, this period can be extended up to a maximum of 10 weeks.
- 4.6 At the end of the monitoring and review period the employee will be invited to a formal review meeting, unless they were issued with a final written warning in which case they will be invited to a decision meeting.

5. Formal Review Meeting (Stage 2)

- 5.1 If the person conducting the formal review meeting decides that some progress has been made and there is confidence that more is likely, it may be appropriate at this stage to extend the monitoring and review period up to a maximum of 4 additional weeks. However, this should only be permitted if there is evidence of real and more sustained progress.
- 5.2 If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning at this meeting.
- 5.3 The warning will normally remain active for 12 months from the end of the further monitoring and review period. During this time any further performance concerns will be addressed at the next stage of the process (stage 3). After the active period the warning will remain on the employee's personal file but will be disregarded in deciding the outcome of any future capability proceedings.
- 5.4 However, in some cases where performance has improved only to dip again soon after the active period of the warning despite support being provided, a decision may be made to re-enter the procedure at stage 3.

Monitoring & Review Period (2):

- 5.5 At the end of the further monitoring and review period, the employee will be invited to a decision meeting.
- 5.6 At this stage and by agreement with the employee, instead of progressing to a decision meeting it may be appropriate to consider whether there is a vacant alternative post and if so whether this may be more suited to their capabilities. If there is a vacant post which is considered suitable, this would be a permanent change in role and if the alternative post is at a lower salary level, the substantive lower salary would apply. The capability procedure would cease on commencing in the new post and the appraisal process would re-start.

6. Decision Meeting (Stage 3)

- 6.1 The decision meeting will be conducted by a panel of Governors from the Local Governing Body. Dismissal is a possible outcome of a decision meeting. The Headteacher will present the information in relation to the poor performance as considered at the earlier stages and the employee will be asked to respond to the information presented.
- 6.2 If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be imposed (this will be in exceptional circumstances and for a maximum of 4 weeks). There will be a further decision meeting at the end of that extended monitoring and review period.
- 6.3 If performance remains unsatisfactory, a decision will be made that the employee should be dismissed from the Trust.
- 6.4 The employee will be informed in writing as soon as possible of the dismissal, the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and your right of appeal.

7. Appeal

- 7.1 If the employee feels that the decision to dismiss or other action taken (including warnings) is wrong or unjust, they may appeal. The employee should appeal in writing to the Headteacher, setting out the grounds for appeal within five working days of the decision.
- 7.2 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as set out in section 3.
- 7.3 The appeal will be dealt with impartially and, wherever possible, by a panel of Governors of the Local Governing Body who have not previously been involved in the case.
- 7.4 The employee will be informed in writing of the results of the appeal hearing as soon as possible. There is no further right of appeal against the sanction or dismissal within the Trust.

8. Sickness

- 8.1 If at any stage long term sickness absence appears to have been triggered by the commencement of this procedure, the case will be dealt with in accordance with the Trust's Sickness Absence Policy.
- 8.2 The employee will be referred immediately to the Occupational Health Service to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

9. Retention and Data Protection

- 9.1 The School will ensure that all written records are retained in a secure place. As part of the application of this policy, the School may collect, process and store personal data in accordance with Invictus Data Protection Policy. We will comply with the requirements of the **Data Protection Legislation**

(i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then

(ii) any successor legislation to the GDPR or the Data Protection Act 1998). Records will be kept in accordance with our Privacy Notice, our Retention and Erasure Policy and in line with the requirements of the **Data Protection Legislation**.

10. Review of Policy

10.1 This policy is reviewed every three years by the Board of Trustees. We will monitor the application and outcomes of this policy to ensure it is working effectively.

Appendix 1 – Flowchart for Capability Procedure

