

Managing Underperformance Policy for School Staff (excluding Headteachers)

August 2023 V3.0
Human Resources



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1.0 Policy Statement

- 1.1 The continued success of the school is dependent on all employees achieving and maintaining high standards of performance in their roles.
- 1.2 The definition of underperformance is: “where an employee is failing to carry out their responsibilities or duties in a satisfactory manner due to a lack of ability i.e. skill or aptitude.”
- 1.3 Such failings will be managed by the use of this policy and steps taken to improve performance within a defined period of time. Where such steps prove unsuccessful the employee may have their employment terminated on the grounds of underperformance.

2.0 Scope

- 2.1 This policy applies to all employees within the school with the exception of:
 - Headteachers
 - Newly qualified teachers during their period of induction
 - Support staff during their probationary period
 - Supply staff employed by an agency for whom separate arrangements exist. A similar policy applies to employees within Milton Keynes City Council.

3.0 Introduction/Purpose

- 3.1 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.
- 3.2 If the cause of an employee’s poor performance is related to ill-health then the **Managing Attendance Policy** should be followed.
- 3.3 If it is established that poor performance is as a result of employee misconduct or negligence; the **Disciplinary Policy for School Staff other than Headteachers** should be followed.

4.0 Key Roles and Responsibilities

- 4.1 Headteacher:
 - Ensuring that appropriate work standards are established and communicated.
 - Ensuring that regular one to ones, supervision and the annual appraisal take place.
 - Assessing employee performance and encouraging open and honest dialogue.
 - Communicating the policy and procedure.

- Taking appropriate action within this policy to deal with underperformance at the earliest opportunity.
- Developing a culture where employees are supported and assisted in achieving the required standards of performance.
- Recording and keeping 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, may be required to present the management case.

Note: For the purposes of implementing the Managing Underperformance policy, 'Headteacher' means, in the absence of the Headteacher or where delegated responsibility for dismissal has been passed to the Headteacher, a representative who is either a Deputy Headteacher or another senior member of staff who has formally been nominated by the Headteacher (i.e. Line Manager).

4.2 Governing Body or IEB

- Adopting the Policy and procedure
- Ensure that appropriate performance review processes are in place within the school and are followed in a fair and reasonable manner.
- Determine who will be responsible for conducting a Formal Underperformance Hearing which **may** result in dismissal. The Governing Body or IEB will make a decision based on the options given below and this decision should be formally minuted and reviewed annually:
 - a) to delegate responsibility for staff dismissals to the Headteacher (only applicable if Headteacher has not been involved in the case up to that point)
 - b) to appoint a separate Staff Underperformance Committee consisting of three governors (in exceptional circumstances this may be reduced to two)
 - c) may collaborate with another School's Governing Body or IEB
- Appoint an Appeal Committee (comprising three governors who have not previously been involved) to hear any appeals. 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.
- Staff governors must have no involvement in any formal underperformance proceedings against members of staff within the school.
- The Headteacher, the Governing Body or IEB will appoint a Clerk to keep a record of any hearing or appeal hearing relating to an underperformance matter.

4.3 Employees:

- Performing their role to a satisfactory level in accordance with their role profile and the expectations of management,
- Committing to the achievement of satisfactory levels of performance should this fall below the standards expected,
- Attending any meetings / hearings convened in accordance with this policy.

4.4 Human Resources Provider:

- Advising and supporting the Headteacher and Governors in the application of this policy,
- Attending in an advisory capacity at formal hearings / appeal hearings

5.0 Principles

5.1 This policy does not replace the normal day-to-day interaction between an employee and 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.

5.2 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 responsibilities 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.

5.3 If an employee does not meet the required standard of performance any consequent action will be based on:

- Adequate evidence that the employee is incapable of performing their duties satisfactorily,
- Adequate evidence that the employee knew of and was given reasonable support and assistance to overcome the shortfalls and,
- A fair procedure.

5.4 It is expected that the Headteacher will conduct the Informal Review Meeting as well as the Stage 1 and Stage 2 Formal Review Meetings. Although advice and guidance can be sought

from the HR provider at any point in the process there will not normally be an HR representative in attendance at either the Stage 1 or Stage 2 Formal Review Meetings.

- 5.5 Should the process progress to the final stage, and dependent upon the delegated responsibility for dismissals at each individual school, the Formal Underperformance Hearing may be conducted by the Headteacher or by a Committee of three governors forming the Hearings Committee. At any Formal Underperformance Hearing and Appeal Hearing the Headteacher (if chairing) or Committee will be accompanied and advised by a representative from the Human Resources provider. A representative of the Local Authority may also attend the meeting should dismissal be a possible outcome.
- 5.6 In serious cases of underperformance where the requirements of the service do not permit any delay or where pupils' education is jeopardised the school (Chair of Governors/IEB) reserves the right to start the procedure at any stage with the proviso that the sanction of dismissal / redeployment will not be applied unless a Stage 2 Formal Review Meeting has taken place.
- 5.7 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 [Equality Act Guidance for Schools](#). This provides protection for several employee characteristics covered by equality legislation:
- Age – covers all age-related issues,
 - Disability, including making reasonable adjustments,
 - Gender reassignment from the moment transition starts,
 - Race, religion or belief,
 - Sex – things associated with being male or female,
 - Sexual orientation including feelings, sexuality as well as identity,
 - Marriage and civil partnership status,
 - Pregnancy and maternity.

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 the school's HR provider.

- 5.8 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 working 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.

- 5.9 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 to be present at the meetings.
- 5.10 If issues of underperformance relate to a Trade Union / Professional Association representative, the union's senior local convenor and regional officer must be notified. No further action should be taken until they have been informed.
- 5.11 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.
- 5.12 An employee cannot invoke other formal procedures such as grievance or harassment and bullying as a challenge to a decision of the Headteacher to issue a warning under this policy unless there are indications that the Headteacher 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 Resolving Workplace Concerns or Dignity at work Policy should be invoked.

6.0 Establishing the Performance Gap

- 6.1 The first task is to identify that there is a problem. The employee's performance must be objectively assessed in relation to the job for which they are employed to do.
- 6.2 Once a Headteacher has identified and has sufficient evidence that there is a performance problem then the following process should be followed.

7.0 Informal Process

- 7.1 The Headteacher will convene a meeting with the employee which must be held in private. There is no right for an employee to be accompanied at an informal meeting. At the meeting the Headteacher will:
 - Outline the specific performance shortcomings,
 - Explore the reasons for underperformance (is it work or non-work related?),
 - Explain the standards expected,
 - Agree the performance standards required (Performance Improvement Plan) and the timeframe (the 'Informal Review Period') in writing,
 - Decide on the support and help that will be offered.

- 7.2 The nature of the alleged shortcoming(s) will determine the type of help to be provided.
- 7.3 Any support agreed should be clearly detailed on the employee's Performance Improvement Plan.
- 7.4 The employee should also be reminded of the Education Support Partnership (open to all staff employed within schools) should issues of a personal nature be impacting on the individual's performance. The Education Support Partnership can be contacted 365 days of the year on 08000 562 561.
- 7.5 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. This would normally be between 4 and 12 weeks.
- 7.6 The Headteacher and employee must set dates for the interim review meetings to assess progress against the employee's Performance Improvement Plan. These will take place at regular intervals during the Informal Review Period.
- 7.7 A date must also be set for a meeting to review achievement at the end of the Informal Review Period. Depending on progress, this meeting will serve one of two purposes:
- Where the employee's performance improves to the standard required the employee should be informed of this and also reminded of the need to maintain the improved standard. The procedure will be suspended on the understanding that it will be reinvoked if performance becomes unsatisfactory at any time in the future. This should be confirmed in writing.
 - If the employee's performance does not reach the standard required this meeting will inform the employee that the process is moving to Stage 1 of the Formal Process and could result in the issue of a First Written Warning. A letter should be issued to the employee inviting them to a Stage 1 Formal Review meeting to take place 5 working days after the date of end of the Informal Process as detailed in Section 8 below.
- 7.8 It is important that the employee is made aware of the consequences of the failure to improve and if performance remains unsatisfactory at the end of the Informal Review Period then Stage 1 of the Formal Process will be commenced, which could result in the issue of a First Written Warning.
- 7.9 The outcome of the Informal Meeting including the various review dates will be confirmed in writing within 5 working days. A copy of this letter should be forwarded to the Human Resources provider for inclusion on the employee's personnel file.

8.0 Formal Process - Stage 1 Formal Review Meeting

- 8.1 If, after monitoring and support provided within the informal process, the employee's performance remains unsatisfactory or where the issues are serious enough to skip the informal stage, the Headteacher will arrange a Stage 1 Formal Review meeting with the employee.
- 8.2 The employee has the right to be accompanied by a trade union / professional association representative or workplace colleague.
- 8.3 The employee must be given at least 5 working 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.
- 8.4 At the meeting the Headteacher:
 - Will re-state the standards required and shortfalls identified,
 - Agree objectives / targets with the employee and timescales (Formal Review Period) for achievement using the Performance Improvement Plan,
 - Discuss and plan appropriate training / support,
- 8.5 The employee will be given an opportunity to comment on the concerns, to ask any questions and provide any supporting evidence.
- 8.6 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 maximum, taking into account the timescales already allotted to the Informal process.
- 8.7 The Headteacher will then conclude what action they propose 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 should be issued within 5 working 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. A copy of this letter should be forwarded to the Human Resources provider for inclusion on the employee's personnel file.
- 8.8 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.

9.0 Formal Process – Stage 2 Formal Review Meeting

- 9.1 At the Stage 2 Formal Review 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 (See 8.2, 8.3, 8.4 & 8.5 above).
- 9.2 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.
 - Whether the employee's performance has deteriorated, and therefore arrange a Formal Underperformance Hearing.
- 9.3 Whatever the outcome of this meeting the decision must be confirmed in writing within 5 working days of the meeting. A copy of this letter should be forwarded to the Human Resources provider for inclusion on the employees personnel file.
- 9.4 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 can be between 4 and 12 weeks, maximum, and should take into account the timescales previously set during Stage 1 of the formal process.
- 9.5 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.
- 9.6 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.

10.0 Formal Underperformance Hearing

- 10.1 The employee will be given at least 5 working days written notice, advised of the right to be accompanied by a workplace colleague or 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.

- 10.2 Dependent upon the delegated responsibility arrangements for each individual school the Hearing will be conducted by the Headteacher or the Hearings Committee and will be advised by a representative from the Human Resources provider.
- 10.3 The Headteacher (or nominated representative in situations where the Headteacher is hearing the case) will present the evidence for of the underperformance issues, how those have been addressed, the process followed and the support and training given.
- 10.4 The employee will be given the opportunity to respond.
- 10.5 The Headteacher or the Hearings Committee will consider the evidence about 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 the HR provider)
 - To give the employee further time to improve
 - To withdraw the procedure
- 10.6 The decision must be confirmed in writing within 5 working days of the hearing. The employee must be notified of their right to appeal.
- 10.7 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.

11.0 Appeal

- 11.1 If the employee wishes to appeal the decision at any stage of the Formal Process they should do so, in writing, within 5 working days of notification of the decision to the Chair of Governors or Clerk to the hearing stating the grounds for appeal.
- 11.2 The employee can appeal on the following grounds only:
- That the managing underperformance procedure has been applied defectively or unfairly
 - That new evidence has come to light that was not available at previous meeting / hearing 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.
- 11.3 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 or like the outcome.

- 11.4 Arrangements for the appeal to be heard will be made within 10 working days of the receipt by the Chair of Governors / Clerk to the Committee of the written appeal.
- 11.5 The employee will be given notice in writing at least 7 working days in advance of the time and place of the hearing.
- 11.6 Management and the employee should provide the Clerk to the Committee with any written material to be used at the hearing at least 5 working days prior to the hearing.
- 11.7 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 working days prior to the hearing.
- 11.8 Any extension on the time frames must be agreed in advance by both parties.
- 11.9 All appeals will be heard by the governing body's Appeal Committee (which will not include any governor who was a member of the Hearings Committee) advised by a representative from the Human Resources provider. A representative of the Local Authority may also attend the meeting where dismissal was the outcome of the original hearing.
- 11.10 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.
- 11.11 The employee has the right to be accompanied to the appeal hearing by a work colleague, or a trade union / professional association representative.
- 11.12 The employee or the accompanying person has the opportunity to consider any new evidence arising during the hearing before any decision is taken.
- 11.13 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; or
 - Appeal is not upheld, and is dismissed The decision of the Appeal Committee should be communicated in writing within 5 working days of the hearing.
- 11.12 The decision of the Appeal Committee is final and there is no further internal right of appeal.

12.0 Representation

- 12.1 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.

13.0 Data Protection

- 13.1 The organisation processes personal data collected to monitor and manage employee's performance and any subsequent actions required in accordance with its Data Protection Policy.
- 13.2 A written record of all meetings conducted under the Managing Underperformance process will be made, either by the person holding the meeting or by an additional person arranged by the organisation to take notes.
- 13.3 Any data collected and processed as part of managing an employee's performance is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the performance improvement process under the procedure. Records are retained and destroyed in accordance with the organisations Retention Schedule.
- 13.4 Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Data Protection Policy immediately. It may also constitute a disciplinary offence, which may be dealt with under this Disciplinary Procedure.

14.0 Interpretation

- 14.1 Any questions as to the interpretation of this policy should be referred to the Human Resources provider.

15.0 Version Control and RAG Status

Version Control

Version	Date	Updated by	Comments
3.0	2023 08 16	MKCC HR	Updated onto new policy template

RAG Status



