

Capability Policy

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Approving Body	Trust Board
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Owner	Director of Resources
Applies to	All Trust Schools, all Trust staff

Version	Date	Reason
1.0	October 2020	To establish a Trust wide policy
1.1	October 2023	Periodic review

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1. Introduction

1.1 Initio Learning Trust is committed to providing high quality teaching and learning. Through our workforce the Trust aims to provide opportunities for all of pupils, 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 young people.

1.2 Having an effective performance management process in place is one of the ways the Trust can support employees and deal with performance matters as they arise; this is set out in the 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 This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures.

1.5 The policy has been implemented following consultation with staff and recognised trade unions. It has been formally adopted by the Trust Board.

1.6 This policy does not form part of any employee's contract of employment and may be amended at any time.

2. Scope and purpose of this policy

2.1 The purpose of this policy is to provide a framework within which Initio Learning Trust can work with employees to improve and maintain satisfactory standards of performance where serious concerns have been raised.

2.2 This policy will be applied where there is underperformance and 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, support staff and NQT's, 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.

3.2 The written notification will also 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
- (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) Details of the right to be accompanied (see 3.4)

3.3 Formal meetings will be conducted by the Headteacher or other manager designated by

the Headteacher or member of the Senior Leadership Team (“designated manager”).

3.4 An employee has the right to be accompanied to any formal meeting under this procedure by a companion, who may be a colleague or a trade union representative. Employees are entitled to request an alternative date which is within five days of the original date, if their representative is unable to attend the meeting.

3.5 Relevant witnesses may be called by the person conducting the meeting and an employee may 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 a warning or dismissal or other serious implications such as no pay progression ; and
- (f) confirm the timescales for the monitoring and review period which will follow a 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 ensuring that the arrangements minimise the impact on workload for all parties involved, 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 designated manager may adjourn the meeting, for example for further investigation or to consider if additional information is required.

3.8 If at any stage the designated manager 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. If under performance occurs again shortly after the end of the live period of the warning, the Trust reserves the right to deal with the matter at the same stage of the procedure and not return to earlier stage (including not returning to the appraisal policy).

3.10 Minutes will be taken of all formal meetings and staff will be sent a copy following the meeting.

4. Formal capability meeting (Stage 1)

4.1 If the designated manager considers that there are serious performance concerns you will be invited to a formal capability meeting to establish the facts.

4.2 A first written warning is the usual outcome when a formal warning is issued. However, in cases of very serious underperformance, or if the employee has previously been subject to the formal capability procedure, the outcome could be a final written warning or other serious implications, such as the withholding of pay progression.

If a formal warning is issued, the employee must be informed that this may result in pay progression being withheld for the current cycle. This decision must align with the Trust's Pay Policy and either the STPCD (for teachers) or the NJC Green Book (for support staff) and be supported by the evidence of underperformance presented at the Stage 1 meeting.

4.3 The warning will normally remain active for six 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 your personnel file but will be disregarded in deciding the outcome of any future capability proceedings.

Monitoring & Review Period (1):

4.4 The standard set length of the monitoring and review period following the formal capability meeting in the Trust 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.

4.5 At the end of the monitoring and review period you will be invited to a formal review meeting, unless you were issued with a final written warning in which case you will be invited to a decision meeting.

5. Formal review meeting (Stage 2)

5.1 If the designated manager decides that sufficient progress and improvement has been made, then the capability procedure will cease and the appraisal process will restart.

5.2 If the designated manager decides that some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period up to a maximum of 4 additional weeks.

5.3 If no, or insufficient, improvement has been made during the monitoring and review period, you will receive a final written warning. A further Monitoring and Review Period will follow in accordance with 4.4.

5.4 The warning will normally remain active for six 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 your personnel file but will be disregarded in deciding the outcome of any future capability proceedings.

Monitoring & Review Period (2):

5.5 At the end of the further monitoring and review period, you will be invited to a decision meeting.

5.6 At this stage and by agreement with you, instead of progressing to a decision meeting it may be appropriate to consider whether there is a vacant post and if so whether this may be more suited to your capabilities. If there is a vacant post which we agree with you is 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 usually be conducted by the designated manager. Dismissal is a possible outcome of a decision meeting.

6.2 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start.

6.3 If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be imposed. There will be a further decision meeting at the end of that extended monitoring and review period.

6.4 If performance remains unsatisfactory and is a matter of serious concern, a decision will be made regarding your future employment. This may result in you being offered alternative employment or being dismissed, or required to cease working at the Trust. Should you accept alternative employment at a different grade and pay scale, your terms and conditions of employment will be changed accordingly.

6.5 You 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 you feel that the decision to dismiss you or other action taken against you (including warnings) is wrong or unjust, you may appeal. You should appeal in writing to the designated manager 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 usually be chaired by the CEO or a member of the Trust senior leadership team.

7.4 You will be informed in writing of the results of the appeal hearing as soon as possible.

7.5 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 at any stage 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. This will be confirmed to you in writing within 5 working days.

9. General principles underlying this policy

Confidentiality

9.1 The capability process will be treated confidentially. However, it needs to be recognised that, in supporting employees through this process, some degree of information sharing is likely to be necessary to quality-assure the operation and effectiveness of the process.

Consistency of Treatment and Fairness

9.2 Initio Learning Trust is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled employees. The Trust is aware of the guidance on the Equality Act issued by the Department for Education.

Grievances

9.3 Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently, and at the same meeting.

Retention and data protection

9.4 As part of the application of this policy, the Trust may collect, process and store personal data in accordance with our data protection policy. We will comply with the requirements of the Data Protection Legislation (being (i) the General Data Protection Regulation ((EU) 2016/679) (unless and until the GDPR is no longer directly applicable in the UK) 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, including the Data Protection Act 2018). Records will be kept in accordance with our Staff Privacy Notice, our Data Protection 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.

APPENDIX 1

Equality Impact Assessment/ Analysis (EIA)

Step 1: Scoping and Identifying the Aims

School/Service	People Department
Title of Change:	Capability Policy
What are you completing this EIA for?	Policy
Is this a new or existing activity or change?	Existing
What are the main aims / objectives of the changes?	Ensure policy is still relevant and the most current legislation is being adhered to.
What is the context for this EIA? e.g., policy, practice, service, curriculum proposal or project?	
Why is the activity/change needed? E.g., The policy or practice affect different "protected groups" differently?, enhancing of services, education	
Name/s of people/Date undertaking analysis:	Shani Davies, Director People & Culture
Who will be affected by this activity/change? eg pupils/students, service users, employees, wider community	All Staff in scope of this policy
Does it relate to an area with known inequalities? E.g., access to service for disabled people, pupils/students, vulnerable pupils/students, SEND, racist bullying etc.	
EIA Schedule: When will the EIA be reviewed?	

Step 2: Assessing the Impact

Detail any positive or negative impacts of this document /policy on pupils/students and staff in the box below. If there is no impact, please select "not applicable"

Protected Characteristic	Positive Impact(s)	Negative Impact(s)	NA	Action to address negative impact: (e.g. adjustment to the policy)
Sex consider issues for: men and women, non-binary.	Y			
Gender reassignment E.g. privacy of data and harassment	Y			
Disability e.g., attitudes, physical, social barriers, visible and non-immediately visible disabilities, neurodivergence, learning disability	Y			
Age e.g., consider all ages but there may be some issues that relate for example to older people/younger people	Y			
Sexual Orientation consider heterosexual as well as lesbian, gay and bisexual (and other sexual orientations)	Y			
Pregnancy and maternity e.g., childcare, working arrangements, part time working	Y			

Marriage and civil partnership	Y			
Religion or belief consider religions, beliefs, or no belief	Y			
Ethnicity / Race e.g., language barriers, different ethnic groups/nationalities	Y			
Socio-economic factors e.g., resident status – socio economic/low-income groups, migrants, carers, impacts on children and families (please state)	Y			
Mental health e.g. short term, long term, acute, fluctuating mental health conditions, impacts	Y			

If you answer yes to any of the following, you MUST complete the evidence column explaining what information you have considered which has led you to reach this decision.

Assessment Questions	Yes / No	Please document evidence / any mitigations
In consideration of your document development, did you consult with others, for example, external organisations, employees, pupils/students, carers or community groups?	Yes	Staff and Trade Unions
Have you taken into consideration any regulations, professional standards?	Yes	DfE Teachers Standards, Equality Act 2010, KCSIE, ACAS, CIPD, STPCD, Burgundy Book, Green Book

Step 3: Review, Risk and Action Plans

Low – No major change	Medium - Adjust the policy	High – Stop and remove
The activity is robust and there is no potential for discrimination, and you have taken all appropriate opportunities to advance and foster relations between groups.	This involves taking steps to remove barriers or to better advance equality. It can mean introducing measures to mitigate the potential effect.	If there are adverse effects that are not justified and cannot be mitigated, you will want to consider stopping the policy/project altogether. If the activity shows unlawful discrimination, it must be removed or changed.

How would you rate the overall level of impact / risk to the school / service / Trust if no action was taken?	Low x ☐	Medium ☐	High ☐
What action needs to be taken to reduce or eliminate the negative impact?	N/A		
Who will be responsible for monitoring and regular review of the document / policy / change?	Director People & Culture		

Step 4: Authorisation and sign off

I am satisfied that all available evidence has been accurately assessed for any potential impact on pupils/students and employees with protected characteristics in the scope of this project / change / policy / procedure / practice / activity. Mitigation, where appropriate has been identified and dealt with accordingly.

Equality Assessor:	Shani Davies	Date:	01/04/26
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