

# **Capability Policy**

## **All staff**

**November 2017 – November 2018**

## **1. Status**

1.1 This policy and procedure was adopted in September 2017

## **2. Scope**

2.1 This policy should be read in conjunction with the Appraisal Policy. This policy sets out the arrangements that will apply when employees fall below the levels of competence that are expected of them and sets out the formal capability procedure. This applies to all employees (including the CEO) about whose performance there are serious concerns that the appraisal process has been unable to address. Performance will be assessed against the employee's ability to meet the requirements of their job description, targets set as part of the appraisal process and, in the case of teachers, the ability to meet all of the teachers' standards.

Legislation refers to capability as being assessed by reference to skill, aptitude, health or any other physical or mental quality. Early identification of problems will help to avoid the need for formal capability procedures. Incompetence giving rise to an unacceptable level of performance at work comes within the ordinary meaning of lack of capability provided its cause is a lack of skill or aptitude, and not just laziness or negligence which should be considered as misconduct and covered under the Disciplinary Procedure. It should be noted that in cases of incapability related to health, domestic or alcohol related issues, other action shall be considered in accordance with the appropriate procedure/advice from our HR Provider.

## **3. Authority**

3.1 The CEO and Head Teacher are accountable for the proper application of the Capability Policy for all employees at the Academy. The Trust Board of the Academy is responsible for the application of the Capability Policy in respect of the CEO at the School. This is a statutory requirement.

## **4. Informal Stage**

4.1 Where there are concerns about any aspects of the employee's performance or leadership (if the employee holds a leadership responsibility or is paid on the leadership spine) that the appraisal process has been unable to address, the appraiser and a member of the Academy leadership team will meet the teacher formally to:

- give clear feedback to the employee about the nature and seriousness of the concerns;
- give the employee the opportunity to comment and discuss the concerns;
- clarify the required standards and agree any support (e.g. coaching, mentoring, structured observations, training), that will be provided to help address those specific concerns;
- make clear how, and by when, progress will be reviewed. It will be appropriate to revise and set additional objectives, and it will be necessary to allow sufficient time for improvement. The amount of time is up to the Academy but should reflect the seriousness of the concerns);
- explain that if no – or insufficient – improvement is made the Capability Process will be invoked.

When progress is reviewed, if the appraiser and member of ALT is satisfied that the employee has made, or is making, sufficient improvement, the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process.

The appraiser will keep a record of any concerns, the support given and the review judgement. A record of this note will be given to the employee. If required, this will inform any decision on transition to the formal capability procedure.

Where performance drops again within 12 months, the employee will move immediately back into the appraisal arrangements outlined above and for a shorter timescale as determined by the circumstances. In exceptional circumstances the CEO or Head Teacher may decide to move straight to the formal capability procedure at this stage.

Where it is decided that no or insufficient progress has been made over the informal capability period the employee will be notified verbally and in writing at the end of that meeting that they will move to the formal capability procedure and the formal monitoring and support stages of the capability procedure will commence as set out below.

## **5. Formal Capability Meeting**

- 5.1** This procedure applies only to employees about whose performance there are serious concerns that the informal stage before the capability process has been unable to address. If under the informal stage the employee's performance is not wholly satisfactory, the senior manager and other person with line management responsibility for the employee, will invite the employee to a formal capability meeting to discuss with the employee the identified poor performance as specifically as possible.
- 5.2** The senior manager will write to the employee at least 5 working days in advance to inform him/her about:
- the date, time and place of the meeting.
  - the basic details of the concerns about the employee's performance
  - the employee's right to be accompanied by a representative of his/her trade union or a workplace colleague of his/her choice
  - the titles of enclosed copies of any documents to be used at the meeting.
  - names of any witnesses to be called
  - his/her right to call witnesses on his/her behalf.
  - The name and office of any adviser who will accompany the senior manager at the meeting.
  - An extra copy, together with any enclosures, will be provided for his/her companion.
- 5.3** This meeting is intended to establish the facts. It will be conducted by a senior manager delegated by the head teacher (or the Chair of MAT for head teacher). The meeting will allow the employee to respond to concerns about his/her performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.
- 5.4** The senior manager may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end.
- 5.5** The senior manager may also adjourn the meeting if it is decided that further investigation is needed, or that more time is needed in which to consider any additional information. In other cases, the meeting will continue.
- 5.6** During the meeting, or any other meeting which could lead to a formal warning being issued, the senior manager will:
- Identify the poor performance, including how the employee is not meeting expectations as specified within their job description and, in the case of teachers, the teachers' standards.

- Ensure the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations;
  - Establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement;
  - Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures which may include the setting of new objectives focused on the specific area/s of poor performance that need to be addressed. It will include any success criteria that are appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made;
  - Identify whether there are further measures which may improve performance and explain any support that will be considered and planned to help the employee, e.g. in-service training, visits to other schools, discussion with appropriate colleagues or professionals;
  - Set out the timetable for improvement and explain how performance will be monitored and reviewed.
  - The timetable will depend on the circumstances of the individual case but will be reasonable and proportionate, between four and ten weeks in normal circumstances, and will provide sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of any support and training required, and sufficient time to establish whether performance has improved; and
  - Warn the employee formally that failure to improve within the set period could lead to a final written warning which could then lead to his/her dismissal.
  - Informed the employee of the right of appeal
  - Agree with the employee and any companion the date of the formal review meeting
- 5.7** Notes will be taken of formal meetings and a copy sent to the employee and any companion. Where a first warning is issued, the employee will be informed in writing of the matters discussed in 1.6 above. S/he will also be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in a final written warning which could then lead to dismissal if wholly satisfactory performance is not achieved, together with the time limit for appealing against the first written warning.
- 5.8** If the concerns relate to a lack of capability that pose a risk to the health, safety or well-being of children, or is likely to result in serious damage to pupils' education, the shorter timescale may be appropriate. In such cases, the senior manager may exceptionally decide to issue a first and final written warning. If to do otherwise would expose students to serious risk in terms of their health, safety, well-being or educational prospects.

## **6. Sickness absence and the use of this procedure**

- 6.1** It is important that sickness absence should not delay or avoid the use of formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay. Arrangements will normally be made to seek medical advice from an occupational health adviser to assess the employee's health and fitness for continued employment at the school.
- 6.2** Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing the employees duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases e.g. moving from this procedure to procedures used by the school to terminate the employment of the employee on the grounds of ill health.

- 6.3** If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the occupational health adviser will normally be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure. In the event that the employee is deemed not fit to attend a formal capability meeting s/he may present a written submission for consideration and/or be represented by a companion in her/his absence.

## **7. Monitoring and review period following a formal capability meeting**

- 7.1** A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Following this monitoring and review period, the employee will be invited to a formal review meeting (see paragraph 10 below), unless s/he had been issued with a final written warning, in which case s/he will be invited to a decision meeting (see paragraph 10 below).

## **8. Formal review meeting**

- 8.1** At least 5 working days before the date for the formal review meeting a written reminder will be given to the employee together with details of the meeting as set out in paragraph 5.2 above.
- 8.2** The formal review meeting will follow a similar procedure to that identified for the formal capability meeting as set out in paragraph 5.6 above.
- 8.3** If the senior manager (Chair of MAT for the Head teacher) is satisfied that the employee has made sufficient improvement, the formal capability procedure will cease and the appraisal process will restart.
- 8.4** In cases:
- where some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
  - where no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.
- 8.5** Notes will be taken at the formal review meeting and a copy will be sent to the employee and any companion.
- 8.6** Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and will be given information about the further monitoring and review period and the procedure and time limits for appealing against the final written warning. The date the decision meeting will be agreed with the employee and any companion.
- 8.7** At this stage, rather than refer the matter to a decision meeting, consideration could be given to the employee being given a different range of duties or an alternative post. By agreement, this may include transfer to a post suited to the employee's capabilities. If this post is at a lower salary level, the substantive lower salary would apply.

## **9. Right of Appeal against a formal written warning**

- 9.1** If an employee feels that a decision to issue a first and/or final written warning, is wrong or unjust, s/he may appeal in writing against the decision
- 9.2** Appeals against a written warning shall be restricted to considering the reasonableness of the

decision made by the senior manager, any relevant new evidence not previously available to the senior manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Clerk to the Governors within [5] working days of the formal written warning having been received.

- 9.3 All appeal hearings will be held as soon as possible after receipt of the appeal at an agreed time and place.
- 9.4 The appeal will be heard by the Appeals Panel of Governors. The number of governors on the Appeals Panel of Governors will not be fewer than two. The panel may be advised by a person engaged for the purpose by the Trust Board. The panel can either confirm the warning, reduce a final warning to a warning, or cancel the warning. The employee will be informed in writing of the results of the appeal hearing as soon as possible.
- 9.5 The same arrangements for notification and the right to be accompanied by a companion will apply for an appeal hearing as for the formal capability and review meetings and, as with those meetings, notes will be taken and a copy sent to the employee and any companion.
- 9.6 Pending any appeal the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and his/her progress towards the achievement of these targets may be monitored during this period.

## **10. Decision meeting**

- 10.1 At least 5 working days before the date of the decision meeting a reminder will be given in writing together with details of the meeting as in paragraph 5.2 above. The meeting will be conducted by the Head teacher (Governor Panel for the Head teacher).
- 10.2 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 where the employee is subject to Part A above.
- 10.3 If progress has been made and there is confidence that wholly satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review period rather than to dismiss. The final written warning will be extended for a short specified assessment period.
- 10.4 If performance has remained unsatisfactory, a decision will be made that the employee will be dismissed. The employee will be informed in writing as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and whether the notice is to be served or there will be pay in lieu of notice, and the right of appeal.

## **11. Right of Appeal against a decision to dismiss**

- 11.1 The employee has a right of appeal to the Appeals Committee of the Trust Board against a decision to dismiss.
- 11.2 The Appeals Committee shall consist of at least 3 governors, none of whom will have had any previous involvement in the case.
- 11.3 The employee's notice of appeal should be sent to the Clerk to the Governors within [10] working days of receipt of the written decision to dismiss, setting out the grounds of appeal.
- 11.4 Appeal hearings should be held as soon as possible after receipt of the appeal and will be conducted in the same way as appeals referred to in paragraph 9 above.

## **12. Notice of Dismissal**

- 12.1** Following a decision to dismiss, the Trust Board will notify the employee in writing that the employee is to be dismissed, whether with notice or with pay in lieu of notice in accordance with the decision of the Head Teacher or CEO (or Disciplinary Committee).
- 12.2** In the event that the Appeal Committee of the Governors decides not to uphold the decision to dismiss, the employee shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

## **13. Grievances arising during the procedure**

- 13.1** Where an employee has a grievance against the way the senior manager has conducted the procedure this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the senior manager is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered

## **14. Trade Union Officials**

- 14.1** Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

## **15. Confidentiality**

- 15.1** Our aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.
- 15.2** The employee, and anyone accompanying the employee (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure. Failure to observe confidentiality could be a reason for disciplinary action under the school's disciplinary procedure.
- 15.3** If an employee's performance is not maintained following their meeting of the standards within the Capability procedure and this raises concerns resulting in a decision to revisit the procedure, then their situation will be reviewed as part of the appraisal process and a decision will be made as to which point they will re-enter the Capability procedure.