

Policy and Procedure: Capability

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Introduction

The Academy recognizes that school leaders have a responsibility to ensure that pupils receive the best educational opportunities available to them. They believe that the schools can only be fully effective in delivering a service to their students and the community if they have well trained, motivated, committed and competent staff. In support of these aims this policy and procedure sets out the arrangements that will apply when staff are experiencing difficulties in meeting the standards that are expected of them.

One of the key elements in ensuring successful learning is the quality of teaching provided. The aim of this policy therefore is to seek to ensure that all teachers are performing to professionally acceptable standards. Whilst there are no statutory regulations for support staff regarding performance, the Academy has determined that it is good practice to provide a fair and equitable scheme for all school based staff, including the Principal.

It is a statutory requirement for schools to have a Capability Procedure for teachers and a policy, covering all staff, which deals with capability. Capability procedures apply to members of staff about whose performance there are concerns about where progress of students is jeopardized and/or that there are concerns about student health and safety.

The use of Capability procedure on this Campus will be a supportive and developmental process designed to ensure that staff have the skills and support they need to carry out their role effectively. It will help to ensure that staffs are able to continue to improve their professional practice and to develop in their professional roles.

The Academy is committed to ensuring consistency of treatment and fairness in the operation of its performance management and capability support processes. The Capability procedure will be used to address any general concerns that are raised about a staff member's performance and to provide a more tightly focused strategy of support and assessment. A staff member may be assisted by a trade union representative or work colleague at any stage of the Capability procedure.

This policy is compliant with the revised statutory School Staffing Regulations (England) (Amendment) 2012 and applies to all staff including the Principal.

CAPABILITY PROCEDURE

1. Capability Procedure

1.1 Transition Meeting to consider the move from Performance Management to Capability.

A Transition Meeting may be held at any stage of the performance management cycle if the staff member's performance remains a cause for concern as part of the normal performance management procedure. This may include concerns about low expectations of pupils,

unsatisfactory progress made by pupils, weak planning and preparation and inadequate classroom and behaviour management skills.

The staff member will have at least five working days notice of the meeting if the date has not been agreed at an earlier stage in the performance management procedure. In exceptional cases a very serious concern raised outside the Performance Management process, if validated, could lead directly to a Transition Meeting.

This meeting will be conducted by the Vice Principal or Principal (or by the Chief Executive of the Academy for Principal capability meetings). The meeting allows the staff member to have representation, as indicated in the Capability Policy, which may provide new information or a different context to the information/evidence already collected.

The meeting will provide an opportunity to review progress towards meeting the targets for improvement. The process for the meeting will be as follows:

1. A summary of the concerns will be given at this meeting by the appropriate leadership team member.
2. The staff member will be provided with an opportunity to respond.
3. The appropriate leadership team member will express a view on whether the performance management process should remain in place or whether formal capability proceedings should commence.
4. The staff member may make representations regarding their performance and targets set and progress made in meeting the targets.
5. If the person leading the meeting concludes 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 performance management process, then the transition to the Capability procedure would be inappropriate at this time. The staff member would continue to be supported, as described in the Performance Management Policy and a new timescale for improvement set together with a date for a review meeting.
6. The person conducting the meeting may also adjourn the meeting if, for example, they decide that further investigation is needed, or that more time is needed in which to consider any additional information.
7. If it is decided that capability procedures will commence the staff member will be notified in writing that the performance management process will no longer apply and that their performance will continue to be managed under the capability procedure.
8. An agreed date will be set for the Formal Capability Meeting and the staff member will receive written notification of the meeting, the evidentiary documents and a copy of the procedures will be supplied to the staff member a minimum of ten working days ahead of the meeting.

1.2 First Formal Capability Meeting

This meeting is intended to establish the support necessary to enable the member of staff to reach a consistently good standard to enable them to re-join the performance management

process. The meeting allows the staff member to have representation, as indicated in the Capability Policy.

During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

1. Identify the professional areas for development to enable performance standards to be met, (for example which of the standards expected of teachers are not being met).
2. Give clear guidance on the required standard of performance needed to ensure that the staff member has every opportunity to improve their performance. This may include the setting of new objectives focussed on the specific areas of development that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made.
3. The staff member may request an adjournment of the meeting at any point in order to consider the management proposals and develop alternative or additional suggestions.
4. Explain any support that will be available to help the staff member to improve their performance.
5. 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. A support and monitoring period of between four and ten weeks will be put in place to enable the member of staff to make progress against the relevant performance standards or new objectives set.
6. In cases, where the progress of students is being seriously jeopardised or where there are serious concerns on the grounds of health and safety, a written/final written warning may be issued with a four week period for improvement being given.
7. The staff member will be advised formally, that failure to improve within the set period could lead to dismissal.

Notes of this formal meeting will be taken and a copy sent to the staff member. Where a warning is issued, the staff member will be informed in writing and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning

1.3 Interim Formal Review Meeting

Written notification of the meeting, together with the evidentiary documents and a copy of the procedure will be supplied to the staff member a minimum of ten working days ahead of the meeting.

If the Vice Principal/Principal conducting the meeting is satisfied that the staff member has made sufficient and sustainable improvement, the capability procedure will cease and the performance management process will re-start.

In other cases:

1. If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period (four to ten weeks);
2. If no, or insufficient improvement has been made during the monitoring and review period the staff member will receive a formal warning.

Where such a warning is issued, the staff member will be informed in writing and given information about the timing and handling of the review stage, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance, within the support and monitoring period of four to ten weeks, may result in dismissal.

1.4 Final Formal Review Meeting

At the end of the support and monitoring period there will be a Final Formal Review Meeting with the staff member at which progress towards improvement will be discussed. If the school remains dissatisfied then the staff member will be invited to a final capability decision meeting at which dismissal can be considered. The staff member will be advised that dismissal is a possible outcome of this meeting.

At least ten working days notice will be given of a Final Capability Decision Hearing. The notification will give details of the time and place of the meeting and will advise the staff member of their right to be accompanied by a work colleague or trade union representative.

1.5 Final Capability Decision Hearing

The Chair of Trustees of the Academy have formally delegated powers of dismissal to the Principal and this hearing will be held by them.

For capability proceedings regarding the Principal the Chair of Trustees shall have the authority to dismiss and a nominated Trustee will hear any Appeal. For capability proceedings regarding the Chair of Trustees, a nominated Trustee will have the authority to dismiss and any Appeal will be to another nominated Trustee.

In a case where any person with the power to dismiss is compromised through existing circumstances or, will need to be significantly involved in the investigation – the case will be discussed by the Chair of Trustees to determine the appropriate course to take.

As with formal capability meetings and formal review meetings, at least 10 working days notice will be given of a Final Capability Decision Hearing. The notification will give details of the time and place of the hearing and will advise the staff member of their right to be accompanied by a work colleague or trade union representative.

Procedure at the Final Capability Decision Hearing

At the beginning of the meeting the Principal introduce those present and explain the purpose of the meeting. The employee will be reminded of his/her right to be accompanied (if the employee has not chosen to be accompanied by a trade union representative or a work colleague).

The Principal will go through the evidence that has been gathered. The employee will be able to respond and present any relevant evidence.

Evidence (save for additional matters that the employee wishes to raise) is provided through witness statements. There is no right for either the Academy or the employee to call witnesses to the hearing. As such, there is no power for the Academy or the employee to cross examine witnesses (albeit that the Principal may ask questions of the employee).

The employee will be given full opportunity to ask questions and put forward any mitigating factors which he/she believes are relevant to the hearing.

Once the employee has been afforded an opportunity to explain their position, the Principal will either:

- give the decision and explain the reasons for the decision, and confirm as soon as possible in writing; or
- inform the employee that the decision will be given in writing as soon as possible.

The Principal may adjourn the hearing if the Academy needs to carry out any further investigations in light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider and comments on any new information obtained before a decision is given.

Decisions taken by the Final Capability Decision Hearing

If this hearing finds that a required standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the performance management process will re-start.

If performance continues to fall below the acceptable standards, the Principal will make a decision to whether to dismiss the employee on the grounds of lack of professional capability.

The Principal also has the power to order a further period of improvement if they believe that there has been some progress and that there is a likelihood of the staff member being able to reach the required standard of performance with additional support and time for improvement. In this case the Principal will adjourn the meeting for a period of four working weeks when it will reconvene to consider whether an appropriate standard of work has been achieved or whether to go ahead with consideration of a decision to dismiss the employee.

In some cases, the Academy may at its discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

- demotion;
- transfer to another department or job;
- a period of suspension without pay;
- loss of seniority;
- reduction in pay;
- loss of future pay increment.

The staff member will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end.

1.6 Appeal

All Employees have the right of appeal.

Appeals must be lodged in writing to the Principal within 5 working days of the decision being communicated to the employee (i.e. usually within 5 days of the date of the outcome letter).

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity of pay.

If the employee raises any new matters in his/her appeal, the appeal officer may need to carry out further investigation. If any new information comes to light the appeal officer will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.

The Academy will give the employee written notice of the date, time and place of the appeal hearing.

The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the Academy's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.

Where possible, the appeal hearing will be conducted impartially by a more senior manager who has not been previously involved in the case. The employee may bring a companion to the appeal hearing.

The appeal officer may adjourn the appeal hearing if the Academy need to carry out any further investigations in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before a decision is given.

The appeal officer may:

- confirm the original decision;
- revoke the original decision; or
- substitute a different penalty.

The appeal officer will inform the employee in writing of the final decision as soon as possible.

There will be no further right of appeal.

1.7 References

The Academy complies with The School Staffing (England) Regulations 2009, paragraph 2, Regulation 8. The Trust recognises that it has a duty to other employers to give truthful and balanced references and it is the policy of the Academy regulation, if an employee had been subject to formal capabilities procedures in the preceding 2 year period. For the purpose of clarity, it will be deemed that an individual has entered the formal capability procedures,

once they have attended the Transition meeting to consider the move from Performance Management to Capability.

The Academy will provide written details to the request of a governing body or proprietor of an employment requesting a reference of the duration and outcome of the proceedings and the concerns which gave rise to the actions carried out under the Capability Procedure.

2 General Principles Underlying This Policy

2.1 Consistency of Treatment and Fairness

The Chair of Trustees is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation. Any member of staff who feels that they are being treated unfairly should raise a concern under the grievance procedures immediately, identifying the nature of the concern.

At the Transition meeting to consider the move from Performance Management to Capability and all the Review Meetings and Hearing, the person leading the meeting should consider:

1. Sustained and substantial improvement which has meant the member of staff has reached a consistently good standard of work and can re-join the performance management process.
2. If there has been some progress and there is the likelihood that the staff member will be able to reach the required standard with additional support and time.
3. Whether there is any risk of: unfair, partial or prejudicial consideration having played a part in reaching this point.

2.2 Right to be accompanied

The employee may bring a companion to any meeting or hearing under this procedure. The companion may be either a trade union representative or a work colleague. The employee must tell the disciplinary officer who his/her chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

If the choice of companion is unreasonable, the Academy may ask the employee to choose someone else. For example:

- if in the Academy's opinion the employee's companion may have a conflict of interest or may prejudice the hearing; or
- if the companion is unavailable at the time a hearing is scheduled and will not be available for more than 5 working days afterwards.

The Academy may, at its absolute discretion, allow the employee to bring a companion who is not a work colleague or union representative (for example a member of family) if this will help the employee overcome a disability.

At a hearing, the companion may make representations to the Academy and ask questions, but should not answer questions of the employee's behalf. The employee may confer privately with his/her companion at any time during a hearing.

2.3 ACAS Code of Practice on Disciplinary and Grievance Procedures

The conduct of the formal capability stage will be undertaken in accordance with the provisions of the ACAS Code of Practice.

2.4 Sickness

If long-term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the Academy Staff Attendance Policy and will normally be referred to the Trust occupational health provider to assess the staff member's 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 formal procedures to continue during a period of sickness absence. However, the views of the occupational health physician will always be taken into account before a decision is reached.

2.5 Grievances

Where a member of staff raises a grievance during the performance management or capability process, the performance management or capability process may be temporarily suspended in order to deal with the grievance. Where the grievance and performance management or capability cases are related it may be appropriate to deal with both issues concurrently.

2.6 Confidentiality and Professional Relationships

The performance management and capability processes will be treated with confidentiality. Only the staff member's line manager or, where s/he has more than one, each of her/his line managers will be provided with access to the staff member's plan recorded in her/his statements. This will be done only when it is necessary to enable the line manager to discharge her/his line management responsibilities. Staff members who are involved in providing support for their colleagues will have the same duty of confidentiality with regard to the information provided to them.

The process of gathering evidence for performance review should not compromise normal professional relationships between staff. The Chair of Trustees recognise that the performance management reviewer will consult with, and seek to secure the agreement of, the staff member before seeking information from other colleagues about the work of the staff member.

2.7 Monitoring and Evaluation

The Chair of Trustees and Principal will monitor the operation and effectiveness of this policy.

The Principal will provide the Chair of Trustees with a written report on the operation of this policy annually. The reports will not identify any individual by name. The reports will include an assessment of the impact of these policies on:

- Race
- Sex
- Sexual Orientation
- Disability
- Religion and Beliefs
- Age
- Part-time Status
- Maternity and Pregnancy

A report on whether there have been any appeals or representations on an individual or collective basis on the grounds of alleged discrimination will also be provided.