



HR: Capability Policy and Procedure

Review Due:	September 2021
Last Review	September 2020
Applicable to:	All Trust Schools
Reviewed By:	SP
Approved By:	Board of Trustees September 2020

Comments:

This policy has been reviewed in line with government requirement to review the document annually. It includes guidance through the capability process as well as an appendix which can be used to monitor staff performance through the capability process. The policy is in line with government guidance. Draft approved by external solicitors.

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1. Aims

The aim of our capability of staff policy is to set out a clear and consistent process for when any member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

It is our policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond at a hearing before any formal action is taken.

2. Legislation and guidance

This policy is based on the [Department for Education’s model policy and guidance](#), and the [Acas code of practice on disciplinary and grievance procedures](#).

When carrying out capability procedures, we will ensure we abide by the [Equality Act 2010](#). This policy also complies with our funding agreement and articles of association.

3. Definitions

Lack of capability is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires

References to **‘staff’** include the headteacher, teachers and school or central support staff, unless indicated otherwise.

References to **‘Academy’** refer to the schools within The Partnership Trust.

References to the **‘Trust’** refer to Partnership Trust

4. Roles and responsibilities

Where the member of staff subject to the procedure is the headteacher, the Local chair of governors will be responsible for co-ordinating the procedure.

Where the member of staff subject to the procedure is the Trust CEO, the chair of the Trust Board will be responsible for co-ordinating the procedure.

Where the member of staff subject to the procedure is not the headteacher or Trust CEO, the headteacher or a nominated member of senior staff will be responsible for co-ordinating the procedure.

Where appropriate, other members of staff may be asked to provide additional support or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

5. Capability Procedure

Performance is monitored on a day-to-day basis by line managers through informal support, training and monitoring and through the Trust's appraisal process.

Capability procedures will begin when line management support and the appraisal process have been unable to bring about satisfactory performance or improvements in the staff member's work.

In normal circumstances, an informal period of support, instigated and monitored by the line manager, will have been put in place before capability procedures are triggered, although in some circumstances, where the concerns about performance are very serious, the Trust reserve the right to move straight to the formal process. Evidence of this period of support will be available before the process begins.

An informal period of support may help:

- (a) *clarify the required standards;*
- (b) *identify areas of concern;*
- (c) *establish the likely causes of poor performance and identify any training needs; and/or*
- (d) *set targets for improvement and a time-scale for review.*

If we have concerns about the performance of an employee, we will undertake an assessment to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve reviewing the personnel file including any appraisal records, gathering any relevant documents, monitoring the work of the employee and, if appropriate, interviewing the employee and/or other individuals confidentially regarding their work. This process may take 4-6 weeks.

5.1 Notification of a capability hearing

5.1.1 If the Trust/Academy considers that there are grounds for taking formal action over alleged poor performance, the employee will be required to attend a capability hearing. The Trust/Academy will notify the employee in writing of the concerns over performance, the reasons for those concerns, and the likely outcome if it is decided after the hearing that performance has been unsatisfactory. The Trust/Academy will also include the following where appropriate:

- a) A summary of relevant information gathered as part of any investigation.
- b) A copy of any relevant documents which will be used at the capability hearing.
- c) A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the Trust/Academy will give the employee as much information as possible while maintaining confidentiality.

5.1.2 The Trust/Academy will give the employee written notice of the date, time and place of the capability hearing. The hearing will be held as soon as reasonably practicable, but the employee will be given five working days, to prepare their case based on the information they have been given.

5.2 Right to be accompanied at hearings

5.2.1 Employees may bring a companion to any capability hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a work colleague. The employee must tell the manager conducting the hearing who their chosen companion is, in good time before the hearing.

5.2.2 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 companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days we may require the employee to choose someone else

5.2.4 The Trust/Academy, may at their discretion, allow the employee to bring a companion who is not a colleague or union representative (for example, a member of the employees' family) where this will help overcome a particular difficulty caused by a disability, or where the employee has difficulty understanding English.

5.3 Procedure at capability hearings

5.3.1 If the employee or the companion cannot attend the hearing the employee should inform the Trust/Academy immediately and usually an alternative time will be arranged. The employee must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason, or is persistently unable to do so (for example, for health reasons), the Trust/Academy may have to take a decision based on the available evidence including any written representations you have made.

5.3.2 The hearing will normally be held by the line manager (or in the case of the Headteacher, this will be held by the CEO or a representative of the CEO) and will normally be attended by the Trust/Academy's' HR representative. The employee may bring a companion with them to the hearing. The companion may make representations, ask questions, and sum up the case, but will not be allowed to answer questions on behalf of the employee. The employee may confer privately with their companion at any time during the hearing.

5.2.3 The employee may ask relevant witnesses to appear at the hearing, provided they have given sufficient advance notice to arrange their attendance. The employee will be given the opportunity to respond to any information given by a witness.

5.2.4 The aims of a capability hearing will usually include:

- a) Setting out the required standards that are believed may have been failed to have been met, and going through any relevant evidence that has been gathered;
- b) Allowing the employee to ask questions, present evidence, call witnesses, respond to evidence and make representations;
- c) Establishing the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement;
- d) Identifying whether there are further measures, such as additional training or supervision, which may improve performance;
- e) Giving clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures. This will include the setting of new objectives focused on the specific weaknesses 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;
- f) 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 in straightforward cases could be four weeks

- g) Warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning. Serious cases are defined as concerns relating 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.

5.2.5 A hearing may be adjourned if further evidence needs to be gathered or to give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

5.2.6 Notes will be taken at all hearings and any appeal meetings and these will be shared with the employee within five working days of the meeting.

5.2.7 The Trust/Academy will inform the employee in writing of all decisions and their reasons for them, usually within one week of the capability hearing. Where possible, this information will be given to the employee in person.

6. Stage 1 Hearing: First Written Warning

6.1 Following a Stage 1 capability hearing, if the Trust/Academy decides that performance is unsatisfactory, the employee will be given a first written warning, setting out:

- a) The areas in which the employee has not met the required performance standards.
- b) Targets for improvement.
- c) Any measures, such as additional training or supervision, which will be taken with a view to improving performance.
- d) A period for review.
- e) The consequences of failing to improve within the review period, or of further unsatisfactory performance.

6.2 The warning will normally remain active for six months (from the end of the review period), after which time it will be disregarded for the purposes of the capability procedure.

6.3 After the active period, the warning will remain permanently on the employees' personnel file but will be disregarded in deciding the outcome of future capability proceedings.

6.4 The performance of the employee will be monitored during the review period and the Trust/Academy will write to the employee to inform them of the outcome:

- a) if the line manager is satisfied with the employees' performance, no further action will be taken;
- b) if the line manager is not satisfied, the matter may be progressed to a Stage 2 capability hearing; or
- c) if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

7. Stage 2 Hearing: Final Written Warning

7.1 If the employees' performance does not improve within the review period set out in a first written warning, or if there is further evidence of poor performance while the first written warning is still active, it may be decided to hold a Stage 2 capability hearing. The employee will be sent written notification as set out in paragraph 5.1.

7.2 Following a Stage 2 capability hearing, if it is decided that the performance is unsatisfactory, the employee will be given a final written warning, setting out:

- a) the areas in which the employee has not met the required performance standards;
- b) targets for improvement;
- c) any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- d) a period for review; and
- e) the consequences of failing to improve within the review period, or of further unsatisfactory performance.

7.3 A final written warning will normally remain active for 12 months from the end of the review period. After the active period, the warning will remain permanently on the employees' personnel file but will be disregarded in deciding the outcome of future capability proceedings.

7.4 The employees' performance will be monitored during the review period and the Trust/Academy will write to inform them of the outcome:

- a) if the line manager is satisfied with the employees' performance, no further action will be taken and the usual appraisal process will re-start;
- b) if the line manager is not satisfied, the matter may be progressed to a Stage 3 capability hearing; or
- c) if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

8. Stage 3 Hearing: Dismissal or Redeployment

8.1 The Trust/Academy may decide to hold a Stage 3 capability hearing if they have reason to believe:

- a) the employees' performance has not improved sufficiently within the review period set out in a final written warning;
- b) the employee's performance is unsatisfactory while a final written warning is still active; or
- c) the employees' performance has been grossly negligent such as to warrant dismissal without the need for a final written warning.

8.2 The Trust/Academy will send written notification of the hearing as set out in paragraph 5.1.

8.3 Following the hearing, if we find that the performance is unsatisfactory, the Trust/Academy may consider a range of options including:

- a) Dismissal.
- b) Redeployment into another suitable job at the same or (if the contract permits) a lower grade.
- c) Extending an active final written warning and setting a further review period (in exceptional cases where we believe a substantial improvement is likely within the review period).
- d) Giving a final written warning (where no final written warning is currently active).

8.4 Dismissal will normally be with full notice or payment in lieu of notice, unless the performance has been so negligent as to amount to gross misconduct, in which case the dismissal may occur without notice or any pay in lieu.

9. Appeals against action for poor performance

9.1 If an employee feels that a decision about poor performance under this procedure is wrong or unjust they should appeal in writing, stating their full grounds of appeal, to the Chair of Governors within five working days of the date on which they were informed in writing of the decision. In the case of a Headteacher, the appeal should be submitted in writing, stating the full grounds of appeal, to the Chair of the Trust Board.

9.2 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 or pay.

9.3 If the employee raises any new matters in their appeal, the Trust/Academy may need to carry out further investigation. If any new information comes to light the Trust/Academy 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.

9.4 The employee will be given written notice of the date, time and place of the appeal hearing. This will normally be at least five working days after they receive the written notice.

9.5 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 discretion of the Trust/Academy depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.

9.6 Where possible, the appeal hearing will be conducted by a more senior manager who has not been previously involved in the case. A HR representative and the manager who conducted the capability hearing will also usually be present. In the case of a Headteacher or the CEO, the appeal hearing will be conducted by members of the Trust Board who have not been previously involved in the case. The same arrangements for statutory right to be accompanied will apply as with formal capability and review meetings. Notes will be taken and a copy sent to the staff member.

9.7 A hearing may be adjourned if further information needs to be gathered or to give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

9.8 Following the appeal hearing the panel may:

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

9.9 The Trust/Academy will inform the employee in writing of their final decision as soon as possible, usually within one week of the appeal hearing. Where possible this will also be explained in person. There will be no further right of appeal.

10. Confidentiality

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.

Employees, and anyone accompanying an employee (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

The employee will normally be told the names of any witnesses whose evidence is relevant to their capability hearing, unless we believe that a witness's identity should remain confidential.

11. Consistency of treatment and fairness

The Trust board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.

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 employees' working arrangements, including changing their duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases.

If an employee wishes to discuss this or inform us of any medical condition they consider relevant, they should contact their line manager or a member of the Human Resources Department.

The Trust board is aware of the guidance and provisions of the Equality Act 2010.

12. Monitoring Arrangements

The effectiveness of this policy will be monitored by Trust Leaders and the Trust Board.

This policy will be reviewed every year, but can be revised as needed in consultation with the recognised trade unions.

This policy will be approved by the Trust Board.

13. Links with other policies

This policy links to our policies on:

- Staff code of conduct
- Appraisal
- Disciplinary Policy and Procedure
- Equal Opportunities Policy
- Grievance Procedure Policy
- Staff Sickness absence policy

Appendix 1: Formal structured support plan template

FORMAL STRUCTURED SUPPORT PLAN NAME			
Start Date: DATE		Review Date: DATE	Duration of Plan: XX weeks
Target 1:			
Target 2:			
Target 3:			
Required Outcomes		Achievement will be assessed through	Support
Preparation for Week 1 Week beginning DATE			
Week 1 Week beginning DATE			
Week 2 Week beginning DATE			

Week 3 Week beginning DATE			
Week 4 Week beginning DATE			
Week 5 Week beginning DATE			
Week 6 Week beginning DATE			

As part of the capability procedure, I sign to accept this formal structured support plan.

Signed:

Print name:

Date: