



Please note that subsequent to the approval of this policy, the name of the organisation changed to The Partnership Trust. All references to The Bath and Mendip Partnership Trust should be read as The Partnership Trust

## HR Capability Policy and Procedure

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**PLEASE NOTE THAT, SINCE CREATION OF THIS POLICY THE PARTNERSHIP TRUST HAS CHANGED ITS NAME TO THE BATH AND MENDIP PARTNERSHIP TRUST. ALL REFERENCES IN THIS POLICY TO THE PARTNERSHIP TRUST ARE TO BE READ AS THE BATH AND MENDIP PARTNERSHIP TRUST**

## **1. Policy Statement**

- 1.1 This policy sets out the framework for a clear and consistent assessment of the overall performance of support staff, teachers, including the Headteacher/Principal, and for supporting their development within the context of the Academy's plan for improving educational provision and performance, and the standards expected of teachers. It also sets out the arrangements that will apply when teachers or support staff fall below the levels of competence that are expected of them.
- 1.2 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.
- 1.3 This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary any parts of this procedure, including any time limits, as appropriate in any case, following consultation.

## **2. Who is Covered by the Policy?**

- 2.1 This procedure applies to all teaching staff and support regardless of length of service. It does not apply to agency workers or self-employed contractors.

## **3. What is Covered by the Policy?**

- 3.1 This policy sets out the formal capability procedure. The capability procedure applies to teachers (including the principal / head teacher) and support staff about whose performance there are serious concerns that the appraisal process has been unable to address.

## **4. Transition to Capability**

- 4.1 If an appraiser is not satisfied with progress after agreed informal support and training has been put in place, or where the performance is considered to be a serious concern and therefore it is not considered appropriate to manage the employee's capability concern through the appraisal procedure, the teacher or member of support staff may be notified in writing that the appraisal system will

no longer apply and that their performance will be managed under the capability procedure, and will be invited to a formal capability meeting.

## **5. Capability Procedure**

5.1 This procedure applies to support staff, teachers, and Principal/Headteachers' whose performance still raise serious concerns which the appraisal process has been unable to address.

## **6. Disabilities**

6.1 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 working arrangements, including changes to duties or providing additional equipment or training. The Academy may also consider making adjustments to this procedure in appropriate cases.

6.2 If a member of staff wishes to discuss this or inform the Academy of any medical condition considered relevant, they should contact their line manager or senior member of staff.

## **7. Confidentiality**

7.1 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.

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

7.3 Employees will normally be told the names of any witnesses whose evidence is relevant to the capability hearing, unless the Academy believes that a witness's identity should remain confidential.

## **8. Notification of a Capability Hearing**

8.1 If the 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 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 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 Academy will give the employee as much information as possible while maintaining confidentiality.

8.2 The 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 a reasonable amount of time usually two to seven days, to prepare their case based on the information they have been given.

## **9. Right to be Accompanied at Hearings**

9.1 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 colleague. The employee must tell the manager conducting the hearing who their chosen companion is, in good time before the hearing.

9.2 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.

9.3 If the choice of companion is unreasonable the Academy may require the employee to choose someone else, for example:

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

9.4 The 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.

## **10. Procedure at Capability Hearings**

10.1 If the employee or the companion cannot attend the hearing the employee should inform the 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 Academy may have to take a decision based on the available evidence including any written representations you have made.

10.2 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 Chair of Governors) and will normally be attended by the 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.

10.3 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.

10.4 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.

10.5 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.

10.6 The Academy will inform the employee in writing of the decision and the reasons for it, usually within one week of the capability hearing. Where possible this information will be given to the employee in person.

## **11. Stage 1 Hearing: First Written Warning**

11.1 Following a Stage 1 capability hearing, if the 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.

11.2 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.

11.3 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.

11.4 The performance of the employee will be monitored during the review period and the 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.

## **12. Stage 2 Hearing: Final Written Warning**

12.1 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 8.2.

12.2 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.

12.3 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.

12.4 The employees' performance will be monitored during the review period and the 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;
- b) if your 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.

### **13. Stage 3 Hearing: Dismissal or Redeployment**

13.1 The 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.

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

13.2 Following the hearing, if we find that the performance is unsatisfactory, the 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).

13.3 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 we dismissal may occur without notice or any pay in lieu.

## 14. Appeals Against Action for Poor Performance

- 14.1 If an employees 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 one week of the date on which they were informed in writing of the decision.
- 14.2 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.
- 14.3 If the employee raises any new matters in their appeal, the Academy may need to carry out further investigation. If any new information comes to light the 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.
- 14.4 The employee will be given written notice of the date, time and place of the appeal hearing. This will normally be two to seven days after they receive the written notice.
- 14.5 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 Academy depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.
- 14.6 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. The employee may bring a companion with them to the appeal hearing.
- 14.7 A hearing may be adjourned 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.
- 14.8 Following the appeal hearing the [staffing panel] may:
- a) confirm the original decision;
  - b) revoke the original decision; or
  - c) substitute a different penalty.

The 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.