

TEACHERS CAPABILITY POLICY

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1. Introduction

Academy leaders have a responsibility to ensure that pupils receive the best educational opportunities available to them. One of the key elements to learning is the quality of teaching provided ensuring that all teachers are performing to professionally acceptable standards. Academies must have a Capability Procedure for teachers and a policy, covering all staff, which deals with lack of capability. This policy sets out the Academy's formal capability procedure. It replaces the statutory guidance "Capability Procedures for Teachers" that was issued in July 2000. Capability procedures apply only to members of staff (including Principals/Head of School) about whose performance there are serious concerns that the appraisal process has been unable to address

This model policy is compliant with the revised statutory Academy Staffing Regulations (England) (Amendment) 2012 and applies to teachers, including Principals/Head of Schools.

It is a statutory requirement for Trusts to have a Capability Policy and Procedure for teaching staff and Principals/Head of School. Whilst there are no statutory regulations for support staff regarding performance, it is good practice to provide a fair and equitable scheme for all Academy based staff, therefore, Academy's may wish to adapt it for use with all Academy staff, subject to the appropriate consultations. It has been written in the context of Academy's, but the same principles apply to unattached teachers.

The revised performance standards for Principals/Head of Schools and teachers need to be applied as appropriate to the role in Academy and the context within which the member of staff is practicing. Principals/Head of Schools will determine professional standards against key Academy priorities and staff will need to demonstrate that their practice is consistent with the standards that are being applied in Academy's by which all are being measured.

This model policy has been provided as a Trust level resource for BDAT and does not form part of an employee's terms and conditions of employment.

2. Model Policy

The Governing Body adopted this policy and procedure after consultations with the recognised trade unions. It will review it in 12 months.

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

The Governing Body is committed to ensuring consistency of treatment and fairness in the operation of its performance management and capability support processes.

Purpose

The Governing Body believes that the Academy can only be fully effective in delivering a service to pupils and the community if it has 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.

The Capability Procedure will be used to address any general concerns that are raised about a member of staff's performance and to provide a more tightly focussed strategy of support and assessment.

Application of the policy

This policy applies to the Principal/Head of School, other members of the Leadership Team, and to teachers. The Policy may also be used for all other staff employed by the Academy.

Capability Procedure

This procedure applies to Principals/Head of Schools, Leadership and teachers about whose performance there are serious concerns. This policy may also be used for all other members of staff in the Academy.

The Capability Policy should only be used in circumstances where the formal appraisal process has been complied with and the member of staff has been unable to address concerns regarding their performance.

The right to be accompanied by a trade union representative or work colleague, applies at all the meetings listed under the stages of this procedure.

Stage 1 - Transition meeting

A transition meeting may be held at any stage of the appraisal cycle if the member of staff's performance remains a cause for concern as part of the normal appraisal procedure.

The staff member may be assisted by a trade union representative or work colleague and will have at least 5 working days notice of the meeting if the date had not been agreed at an earlier stage in the appraisal procedure.

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 Principal/Head of School who may be assisted by the appraiser or another manager.
2. The staff member will be provided with an opportunity to respond.
3. If the Principal/Head of School will express a view on whether the appraisal process should remain in place or whether formal capability proceedings continue.
4. The employee, assisted by the trade union representative or accompanying work colleague, may make representations regarding their performance and targets set and progress made in meeting the targets.
5. If it is decided that transition to Stage 2 of the Capability Procedure is inappropriate at this time, then the staff member will continue to be supported under an Action Plan, as described in the Appraisal Policy for staff experiencing difficulties, and a new timescale for improvement will be set together with a date for a review meeting.
6. If it is decided that capability procedures will continue and progress to Stage 2 of the Policy the staff member will be notified in writing that the appraisal system will no longer apply and that their performance will continue to be managed under the capability procedure.
7. The parties should agree a date when the Stage 2 Formal Capability Meeting will be held, ensuring that the written notification of the meeting, the evidentiary documents and a copy of the procedure are supplied to the staff member a minimum of 10 working days ahead of the meeting.

In the case of a Principal/Head of School capability

1. A summary of the concerns will be given at this meeting by the Chief Executive & Executive Principal.
2. The Principal/Head of School will be provided with an opportunity to respond.
3. If the Chief Executive will express a view on whether the appraisal process should remain in place or whether formal capability proceedings continue.
4. The Principal/Head of School, assisted by the trade union representative or accompanying work colleague, may make representations regarding their performance and targets set and progress made in meeting the targets.
5. If it is decided that transition to Stage 2 of the Capability Procedure is inappropriate at this time, then the Principal/Head of School will continue to be supported under an Action Plan, as described in the Appraisal Policy for staff experiencing difficulties, and a new timescale for improvement will be set together with a date for a review meeting.
6. If it is decided that capability procedures will continue and progress to Stage 2 of the Policy the Principal/Head of School will be notified in writing that the appraisal system

will no longer apply and that their performance will continue to be managed under the capability procedure.

7. The parties should agree a date when the Stage 2 Formal Capability Meeting will be held, ensuring that the written notification of the meeting, the

Stage 2 - Formal Capability meeting

The written notification of the meeting, together with the evidentiary documents and a copy of the procedure should be supplied to the staff member a minimum of 10 working days ahead of the meeting.

This meeting is intended to establish the facts. It will be conducted by the Executive Principal and the Chief Executive for Principal/Head of School capability meetings, or the Principal/Head of School (or a Deputy Head teacher) for all other staff.

The meeting allows the staff member, accompanied by a work colleague or a trade union representative who has been certified as being competent by the union to respond on behalf of their member to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The person conducting the meeting 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. 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.

In other cases, the meeting will continue. 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 improved 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 focused 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 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. In straightforward cases there could be between four and ten weeks depending on the time required for support and assessment processes. It is for the Academy to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.
6. In very serious cases, where the progress of pupils is being seriously jeopardised or where there are serious concerns on the grounds of health and safety this warning could be a written/final written warning being issued with a four week period for improvement being given. (see appendix 6 for details)
7. advise the staff member formally that failure to improve within the set period could lead to dismissal. Normally, a warning will be issued where applicable. (see appendix 6 for details)

Notes of this formal meeting will be taken and a copy sent to the member of staff. Where a warning is issued, the staff member will be informed in writing in addition to the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning. There is a right of appeal to the Appeals Committee. Details of the appeal should be provided in writing within 5 days of the decision being communicated.

Stage 3 – Formal Capability meeting

Again, the staff member has the right to be accompanied by a work colleague or trade union representative or who has been certified by their union as being competent.

The written notification of the meeting, together with the evidentiary documents and a copy of the procedure should be supplied to the staff member a minimum of 10 working days ahead of the meeting.

If the person conducting the meeting is satisfied that the staff member has made sufficient improvement, the capability procedure will cease and the appraisal 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;
2. If no, or insufficient improvement has been made during the monitoring and review period, the staff member will receive a final warning.

Where a warning is issued, the staff member will be informed in writing in addition to the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning. The final warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.

There is a right of appeal to the Appeals Committee. Details of the appeal should be provided in writing within 5 days of the decision being communicated.

At the end of the improvement period there will be a discussion with the staff member and their trade union or colleague supports at which progress towards improvement will be discussed. If the manager remains dissatisfied then the staff member will be invited to a Stage 4 final capability decision meeting at which dismissal can be considered. The staff member must be advised that dismissal is a possible outcome of the Stage 4 meeting.

Although it is not a legal requirement, before a decision is made to move towards dismissal, the Academy & Trust may discuss the matter with its HR Advisory Service.

Stage 4 – Final capability decision meeting

This meeting will be held by the Governing Body's Discipline, Grievance and Dismissals Committee. In the case of the Principal, responsibility lies with the Chief Executive and Chair of the Local Governing Body. The Trust has the overall decision making authority.

As with formal capability meetings and formal review meetings, at least 10 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of their right to be accompanied by a work colleague or trade union representative who has been certified by their union as being competent.

If the Stage 4 meeting finds that 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.

If performance remains unsatisfactory, the Committee may make a decision to dismiss the employee on the grounds of lack of professional capability.

The Committee (or the persons hearing the case) also have 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 Committee 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 a decision to dismiss the employee.

NOTE:

In Multi Academy Trusts the Trust is the employer but the power to dismiss can be delegated to the Principal/Head of School, to one or more governors, or to one or more governors acting with the Principal/Head of School. In the case of the Principal/Head of School, dismissal lies with the Trust/Chief Executive in conjunction with the Chair of Governors.

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, the appropriate period of notice and their right of appeal. Any Appeal will be heard by the Governing Body's Appeals Committee.

Appeal

If a staff member feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within 5 days of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard by the Governing Body's Appeals Committee without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a work colleague or trade union representative who has been certified by their union as being competent will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the staff member.

In the Case of Principal/Head of School

If the Principal/Head of School feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within 5 days of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard by a panel of trustees and the Chair of Governors, at an agreed time and place. The same arrangements for notification and right to be accompanied by a work colleague or trade union representative who has been certified by their union as being competent will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the staff member.

References

The Academy recognises that it has a duty to other employers to give truthful and balanced references and it is the policy of the Trust that any references provided will state, in accordance with the above regulation, if an employee had been subject to formal capability procedures in the preceding 2 year period. For the purposes of clarity, it will be deemed that an individual has entered the formal capability procedures, once they have attended the stage 1 Transition Meeting.

The Governing Body must, at the request of a Governing Body or proprietor of the employer requesting the reference, provide written details of the duration and outcome of the proceedings and the concerns which gave rise to the actions carried out under the Capability Procedure.

4. General Principles Underlying This Policy

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.

Consistency of Treatment and Fairness

The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

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's absence policy and will normally be referred to the occupational health service to assess the member of staff'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.

Grievances

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

Confidentiality & Professional Relationships

The appraisal and capability processes will be treated with confidentiality. Only the appraiser's line manager or, where s/he had more than one, each of her/his line managers will be provided with access to the appraisee's plan recorded in her/his statements. This will be done upon request and only where this is necessary to enable the line manager to discharge her/his line management responsibilities. Appraisees will be consulted on requests for access to statements in the context of this policy.

The process of gathering evidence for performance review will not compromise normal professional relationships between staff. The Governing Body recognises that the appraiser will consult with, and seek to secure the agreement of, the appraisee before seeking information from other colleagues about the work of the appraisee.

However, the desire for confidentiality does not override the need for the Principal/Head of School and Governing Body to quality-assure the operation and effectiveness of the appraisal system. The Principal/Head of School or appropriate colleague might, for example, review all staff members' objectives and written appraisal records personally – to check consistency of approach and expectation between different appraisers. The Principal/Head of School might also wish to be aware of any pay recommendations that have been made.

Monitoring and Evaluation

The Governing Body and Principal/Head of School will monitor the operation and effectiveness of the Academy's appraisal arrangements.

The Principal/Head of School will provide the Governing Body with a written report on the operation of the Academy's appraisal and capability policies annually. The report will not identify any individual by name. The report 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

The Principal/Head of School will report on whether there have been any appeals or representations on an individual or collective basis on the grounds of alleged discrimination.

Retention

The Governing Body and Principal/Head of School will ensure that all written appraisal records are retained in a secure place for six years and then destroyed. The Trust will also retain appraisal records for central Trust Staff and Academy Principals.