



# Capability Policy and Procedure September 2020

*Office use*

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<b>Associated documents:</b>			
<ul style="list-style-type: none"> <li>Performance Management and Appraisal Policy</li> </ul>			
<b>Links to:</b>			
<ul style="list-style-type: none"> <li>Equality Act 2010.</li> <li>Employment Rights Act 199</li> </ul>		<ul style="list-style-type: none"> <li>Employment Relations Act 1999</li> <li>Employment Act 2008</li> </ul>	

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## Summary of changes

This section sets out a summary of the changes that have been made to the September 2020 policy. These changes will take effect immediately.

### Section 6

- Induction removed - see Induction Policy/Procedure

### Section 7

- Roles and responsibilities removed. Replaced with notification and procedure for formal meetings

### Section 8

- Responsibilities of the staff member removed

### Section 9

- Responsibilities of the line manager removed

### Section 10

- Responsibilities of HR removed

### Section 12

- Capability procedure – Managing capability issues removed

## **1 Policy statement and introduction**

1.1 We will endeavor to ensure that all staff members achieve and maintain the required standard of performance in their job. The standard required will be established with each staff member by way of our Values, Professional Standards and skill levels through the Performance Management Process. In short, all staff members will know what is expected of them. Performance will be monitored, and staff members given appropriate training and support to meet the required standard.

For the purposes of this procedure, capability can be defined as:

“The ability of the staff member to perform the job they are employed to do in an effective manner”

1.2 This procedure is to be used when a staff member is not meeting the required standard for their job. The reasons for this will be established and the staff member will be given all the support needed to enable them to meet the required standard.

1.3 Throughout this procedure, the term ‘line manager’ is a generic term.

## **2 Purpose**

2.1 This procedure provides a consistent and fair framework for dealing with issues of underperformance. It also ensures a mechanism is in place to help staff members achieve and maintain a high standard of performance.

2.2 This procedure is not intended as a substitute for sound employment practices, such as the induction of new staff/newly promoted staff members and comprehensive performance management. Generally, performance should be discussed regularly as part of the staff member’s supervision and under-performance identified and tackled early. Early identification of problems through performance review will help to avoid formal capability procedures. However, there will inevitably be cases where a more formal and structured approach is necessary.

## **3 Scope**

3.1 This procedure applies to all staff members (teaching and non-teaching) who either (a) have a permanent contract of employment, or (b) are fixed-term staff members. It does not apply to staff members subject to probation, who are subject to separate procedures.

3.2 Where there are concerns about performance as a result of a staff member’s negligence or willful failure to carry out their duties and responsibilities, in this case the matter should be addressed in accordance with the Staff Disciplinary procedure.

## 4 Overview

4.1 Formal capability should only be entered where either of the following circumstances exists:

- Prior to the stages below line management have carried out informal meetings, coaching and /or action planning to address issues of under- performance. The staff member will have been aware that there are performance issues and will have had a chance to address this.
- Or the impact of the capability has a very serious and detrimental effect on other staff members, learners, the Academy or the Trust e.g. very poor exam results, retention rates or achievement.

4.2 It is important to recognise that many issues of under-performance can be, and should be, resolved without recourse to the formal Capability Procedure. The formal procedure is intended as a framework and may need to be adapted to suit the needs of each situation. The capability procedure will be applied with great care, giving staff members the opportunity to develop and improve, as it is a difficult experience for a staff member who will ultimately be dismissed if unable to meet the required expectations and standards.

4.3 Concerns about capability may arise from several factors, including but not limited to:

- Lack of proficiency and under performance
- Poor results in key areas of achievement
- Student/parent complaints
- Lesson observations for teaching staff members
- Lack of aptitude, skill or experience
- Reorganisation or redefinition of role
- Poor attendance at work, related to ill health
- Personal/family difficulties
- Resources available which are crucial to the staff member's performance
- Changes in the nature and allocation of work, including heavy workload

4.4 Concerns about capability should not be confused with disability. Where a staff member has become disabled during their employment it is important to ensure that every effort should be made to retain them in their original job role through reasonable adjustments or redeploy them to a suitable alternative post, in line with the requirements of the Equality Act 2010.

4.5 In exceptional circumstances, it may be necessary to temporarily redeploy or suspend a staff member immediately from their normal job, e.g. staff against whom serious complaints of lack of capability and/or lack of competence have been made by students or workplace colleagues.

4.6 The capability procedure may be run in parallel with other Academy procedures as appropriate.

## **5 Assessment of capability**

5.1 The assessment of capability is an ongoing process. It starts at the stage of recruitment, when the staff member is assessed as being capable of doing the job. It is likely that the staff member will need additional training when first employed – and this will be addressed during the induction process.

5.2 On an on-going basis, capability is assessed through the appraisal process. If any capability difficulties are addressed during this process the manager conducting the appraisal and the staff member being appraised are required to draw up a “development/support action plan” (Appendix A&B) together to address the issue. This will include a series of measures designed to help improve the staff member’s performance. Each measure will be agreed with the member of staff, although we reserve the right to insist on any aspect of the performance improvement programme in the absence of such agreement. Each programme will contain the following elements:

- Timescale
- Targets
- Measures
- Feedback
- Review
- Ongoing review

## **6 Timescales**

6.1 Capability matters should normally be conducted within the timescales set out in the procedure. However, if there is a valid reason to do so, timescales can be varied. If this is initiated by management, the staff member should be given as much notice as possible with a clear explanation.

6.2 All efforts should be made by staff members to attend meetings that constitute part of this procedure. When there are valid reasons to reschedule meetings then these should be rearranged without undue delay.

## **7 Notification and procedure for formal meetings**

7.1 Ten working days' written notice will be given of any formal meetings under this procedure.

7.2 Formal meetings will be conducted by the Principal/Business Leader or other senior leader delegated this responsibility by the Principal/Business Leader.

7.3 An employee has the right to be accompanied to any formal meeting under this procedure by a companion, who may be a colleague or a trade union representative.

7.4 A formal meeting under this procedure will:

- Identify performance shortcomings
- Allow an employee to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected
- Identify what action (including support provided) has been taken to date and what the outcome was
- Where appropriate, identify and explain a support plan of action that will be available to help the employee improve performance. The employee will be given the opportunity to make an input to this support plan of action
- Provide the employee with the support plan of action (example in Appendix 1 & 2) listing those responsible for ensuring support is provided, targets for improvement, support to be provided and when, and measures of success. It should also detail dates and times for informal review meetings with mentors, observations or other form of intervention activity
- Where appropriate, warn an employee formally that failure to improve within the set period could lead to dismissal
- Confirm the timescale for the monitoring and review period which will follow a formal meeting where a warning is issued. The timetable will depend on the circumstances of the individual case but the period will be reasonable and proportionate and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support will continue during this period.

7.5 The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required. The employee may adjourn the meeting to attain further information to assist them in responding to the concerns raised. Following an adjournment, the meeting must be reconvened within ten working days.

7.6 Following a formal meeting, the matters covered and any other relevant points will be confirmed in writing. Where a warning has been issued the letter will set out the length of the monitoring and review period and the procedure and time limits for appealing against the warning.

7.7 Minutes will be taken of all formal meetings and the employee will be sent a copy following the meeting.

## **8 Formal Capability Meeting (Stage 1)**

8.1 At the meeting the concerns regarding performance will be put to the employee and the employee will be able to respond to those concerns and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected. The procedures are to be implemented with the intention of supporting the staff in achieving the required standards. Before commencing with the formal procedure HR must be consulted.

8.2 There are four options at Stage 1, either

1. No further action\* or
2. Arrange additional informal support\* or
3. First written warning or
4. In exceptional circumstances for very serious cases a final written warning could be issued

\*1 & 2 are only relevant where new information, evidence, a different perspective on the information collected, or further investigation suggests that the matter is not as serious as it first seemed or there is no case to answer.

8.3 If performance is unsatisfactory a first written warning will normally be issued and will invoke the first monitoring and review period.

8.4 In cases of particularly serious concern, it is possible to move directly to a final written warning. This will invoke the second monitoring and review period immediately.

## **9 Monitoring and review period (1)**

9.1 A performance monitoring and review period will follow the formal capability meeting (stage 1).

9.2 It is important that a timescale for improvement is set in line with an agreed support plan. Ordinarily to ensure improvements are made and sustained this is likely to be a period of not less than 6 working weeks. However, if the improvement can reasonably be achieved and measured effectively with agreement this period can be shorter.

9.3 Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the performance monitoring and review period (1), the employee will be invited to a formal

review meeting (stage 2), unless they were issued with a final written warning, in which case they will be invited to a decision meeting (stage 3) (see below).

9.4 If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be put in place. There will be a further formal meeting at the end of that extended monitoring and review period.

## **10 Formal review meeting (Stage 2)**

10.1 Where, following the formal capability meeting (stage 1), the employee's performance has improved to a satisfactory level, this should be formally recognised and confirmed in writing within five working days of the meeting. Explanation should be given to the employee of the importance of sustaining this level of performance.

10.2 There are two options at Stage 2, either:

1. No further action because the employee's performance has improved sufficiently, or
2. Final written warning

10.3 Where, following the formal capability meeting and despite appropriate support mechanisms having been put in place, the employee's performance remains unsatisfactory, a final written warning may be issued. At this point the employee will be advised that if there is insufficient improvement in performance it could lead to their dismissal.

10.4 Again, the main focus of the meeting should be to explore ways of supporting the employee to improve their performance to an acceptable level.

## **11 Monitoring and review period (2)**

11.1 A performance monitoring and review period will follow the formal review meeting (stage 2).

11.2 It is important that a timescale for improvement is set in line with an agreed support plan. Ordinarily to ensure improvements are made and sustained this is likely to be a period of not less than 6 working weeks. However, if the improvement can reasonably be achieved and measured effectively with agreement this period can be shorter.

11.3 Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the further monitoring and review period (2), the employee will be invited to a final formal review meeting (stage 3).

11.4 If performance is deemed to have improved but not reached the required standard, a further monitoring and review period can be put in place. There will be a further formal meeting at the end of that extended monitoring and review period.

## **12 Final formal review meeting (Stage 3)**

12.1 Where, following the formal review meeting (stage 2), the employee's performance has improved to a satisfactory level, this should be formally recognised and confirmed in writing within five working days of the meeting. Explanation should be given to the employee of the importance of sustaining this level of performance.

12.2 There are two options at Stage 2, either:

1. No further action because the employee's performance has improved sufficiently
2. Proceed to a Decision Meeting

12.3 Where, following the formal review meeting (stage 2) and despite appropriate support mechanisms having been put in place, the employee's performance remains unsatisfactory, a Decision Meeting will take place, during which the employee's ongoing employment with the Trust will be considered. At this point the employee should be aware that if there is insufficient improvement in performance, it could lead to their dismissal.

12.4 Again, the main focus of the meeting should be to explore ways of supporting the employee to improve their performance to an acceptable level.

## **13 Decision meeting**

13.1 Where, following the second assessment stage the staff member's performance remains unsatisfactory, the matter will be referred to a decision meeting. This meeting will be conducted by a panel consisting of the Principal/Executive Lead/Operational Lead or nominated deputy. Advisors will be invited as appropriate. The staff member will be given at least ten working days' written notice of this meeting and will be provided with any relevant documentation.

13.2 The staff member must submit any evidence that they wish to present to the panel at least five working days prior to the hearing.

13.3 The purpose of the meeting will be for the panel to consider whether the staff member's performance falls below the standard that is required, to satisfy themselves whether adequate support mechanisms have been offered to the staff member, and to ensure that all reasonable alternatives to dismissal, such as redeployment, have been exhausted.

13.4 Where the panel is satisfied regarding the above, it may make a decision to dismiss the staff member on grounds of capability.

13.5 The panel's decision will be communicated to the staff member, and confirmed in writing within five working days of the decision and the staff member advised of their right to appeal against the decision, the timescale for appeal, to whom it should be addressed and that he or she is entitled to be represented by his or her trade union representative or colleague at any appeal hearing.

## **14 Appeals**

14.1 Appeals under this procedure must be made in writing within ten working days and will be heard by a panel of the Academy Committees/Trustees as well as Executive Principal/Chief Education Officer or nominated deputy.

14.2 In all instances except dismissal, notices of appeal will be made to the Principal, who will make arrangements for the appropriate person/s to hear the appeal. Advisors will be invited as appropriate. Appeals against dismissal, should be made to the Chief Executive Officer.

14.3 Appeals will usually be considered by the panel in relation to one or more of the following grounds:

The PROCEDURE, – the grounds of appeal should detail how procedural irregularities prejudiced any decision.

The FACTS, – the grounds of appeal should detail how the facts do not support the decision or were misinterpreted or disregarded. They should also detail any new evidence to be considered.

The DECISION, – the grounds of the appeal should state how the level of action taken was unreasonable and unjustified.

14.4 Appeal hearings will be convened as soon as is reasonably practicable and the staff member will be given ten working days' notice of the time and place of the appeal hearing and will be provided with any relevant documentation.

14.5 The staff member must submit any evidence that they wish to present to the panel at least five working days prior to the hearing.

14.6 The purpose of the hearing is to review the decision to give a written warning or to dismiss. The person chairing the appeal will communicate the decision, which will be final, in writing to the staff member within ten working days of the appeal hearing.

14.7 Appeals should not unnecessarily delay progression of the capability procedure. Whilst it will normally be considered reasonable to delay a second review meeting/capability hearing pending an outstanding appeal, any monitoring or supportive action being taken by management will continue whilst the appeal is being processed (and count towards any monitoring

periods/timescales previously agreed). If a staff member's representative cannot attend on a proposed date, the staff member can suggest another date so long as it is reasonable.

## **15 Record Keeping**

15.1 Records of meetings and discussions relating to the capability process must be kept. These must be written during or as soon after the event as possible to ensure the accuracy of the record. Written records must be dated and issued to all parties. Copies of all final meeting records must be given to staff members and their representatives. Written confirmation of the outcome of any meetings will be sent to the staff member and their representative for their information and a copy kept on the staff member's personnel file.

15.2 Records should include:

- The nature of the inadequate performance;
- What was decided and actions taken;
- The reason for the actions;
- Whether an appeal was lodged;
- The outcome of the appeal; and
- Any subsequent developments.

## **16 Review of the Policy**

This policy is reviewed annually by the Trust which will monitor the application and outcomes of this policy to ensure it is working effectively.



## Appendix A

### Development Action Plan for Support Staff.

Staff member name: \_\_\_\_\_

Job Role: \_\_\_\_\_

Manager Name: \_\_\_\_\_

Manager Role: \_\_\_\_\_

The performance gap – current performance compared to expected performance.

Actions taken so far to get performance back on track.

The results of that action.

What the staff member is required to do now.

The timescale over which performance is expected to reach acceptable levels.

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The consequences of the staff member not performing to acceptable levels within that timescale.

The support, including any retraining, that will be given to the staff member to help them reach and maintain acceptable performance levels.

Review date:

Signed:	Signed:
Manager:	Staff member:
Date:	Date:

**Appendix B.**

**Teachers Support plan**

INSERT DATE for a period of 4 school weeks to INSERT DATE

Name of staff member	Name of Appraiser	Date of meeting
Support to be provided	Staff member	

Objective 1: Teachers' Standards Objectives X and X.

Teachers' standards that the objective relates to	Success Criteria	Evidence to be used to assess progress
Support/resources to be provided	Support/resources to be provided	Support/resources to be provided

Objective 3: Teachers' Standards Objective X

Teachers' standards that the objective relates to	Success criteria	Evidence to be used to assess progress
Objective 2: Teachers' Standards objectives X and X		
Teachers' standards that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Support/resources to be provided	Support/resources to be provided