



# Capability of Staff Policy

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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.

### 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 support staff, unless indicated otherwise.

### 4. Roles and responsibilities

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

Where the member of staff subject to the procedure is a member central staff, the CEO will be responsible for the procedure.

Where the member of staff subject to the procedure is not the headteacher, 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 to the teacher 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. In the case of teachers this will be achieved through lesson observations (no more than 3 per year), lesson drop-ins and appropriate data analysis and performance against targets. In the case of non-teachers this will be through monitoring of the

quality of work, performance against targets and time-keeping. All staff are expected to arrive promptly for meetings, training, appointments and in the case of teachers, lessons.

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.

A period of informal support, put in place and monitored by the line manager, will have been in place before capability procedures are triggered. Evidence of this will be available before the process begins.

In the case of Headteachers/Heads of school, performance will be monitored by the Trust CEO. This will be through assessment of performance against Improvement Plans, financial and outcomes data.

In the case of the CEO, performance will be monitored by the Trust Board. This will be through assessment against Trust Improvement Plans, financial and outcomes data.

### **5.1 Formal capability meeting**

At least 10 working days' notice will be given of the formal capability meeting, and will explain:

- The concerns about performance and possible consequences
- Any written evidence
- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

It will be conducted by the Headteacher/Head of School. Where there are concerns about the capability of Headteachers or Heads of School, the meeting will be conducted by the CEO. Where there are concerns about the capability of the CEO, the meeting will be conducted by delegated members of the Trust Board.

The purpose of the meeting is to establish the facts, and to allow the staff member to respond to the concerns and make relevant representations.

#### **5.1.1 Possible outcomes**

The meeting may establish that there are no grounds to pursue the capability issue. In this case, the procedure will come to an end and the issues will continue to be addressed through the appraisal process. The meeting may be adjourned if further investigation is needed, or if more time is needed to consider additional information presented.

If the meeting continues, the person conducting the meeting will:

- Explain the expected standards that are not being met based on the teacher's standards, career stage expectations and/or job description
- Give clear guidance on the standard of performance needed to end the procedures
- Explain the support available to help the staff member improve their performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. Timescale which will depend on the circumstances of the individual case but will be reasonable and proportionate, will provide sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of any support and training required, and allow sufficient time to establish whether performance has improved. All stages will be followed for all cases.
- Warn the staff member that failure to improve within this timetable could lead to dismissal

#### **5.1.2 After the meeting**

The staff member will be sent formal meeting notes. If a formal warning has been issued, the staff member will also receive:

- A written record of the bullet points above
- Information about the timing and handling of the review stage
- Information about the procedure and time limits for appealing against the warning

## **5.2 Monitoring and review period**

A performance monitoring and review period consisting of formal monitoring guidance and support will follow the formal capability meeting.

The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see 5.4, below).

## **5.3 Formal review meeting**

At least 10 working days' notice will be given of the formal review meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

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:

- 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
- If no, or insufficient improvement has been made during the monitoring and review period, the staff member will receive a final written warning

Notes will be taken of formal meetings and a copy sent to the member of staff.

The final written 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. They will be given information about the further monitoring and review period, the procedure and time limits for appealing against the final warning.

The staff member will be invited to a decision meeting.

## **5.4 Decision meeting**

At least 5 working days' notice will be given of the decision meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

If an acceptable standard of performance has now been achieved, the capability procedure will end and the appraisal process will re-start.

If the staff member's performance does not improve to a sufficient standard, a decision, or recommendation to the governing board, may be made that the staff member should be dismissed or required to cease working at the school. In the case of the CEO, Headteacher/Head of School, the recommendation will be made to the Board of Trustees.

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
- Their right of appeal

## **5.5 Dismissal**

The power to decide that members of staff (below SLT level) should no longer work at this school has been delegated to the Headteacher, supported by CEO. In the case of the Headteacher/Head of School, central Trust staff or SLT this has been delegated to the CEO. In the case of the CEO this has been delegated to the Chair of Trustees.

The power to dismiss staff (other than SLT) in this school has been delegated to the Headteacher/Head of School, supported by the CEO. In the case of the Headteacher/Head of School this has been delegated to the CEO. In the case of the CEO this has been delegated to the Chair of Trustees.

## **6. Right to appeal**

If a staff member feels that a decision to dismiss them is wrong or unjust, they may appeal in writing against the decision within 10 working days of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard within 20 working days and at an agreed time and place. The same arrangements for notification and 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.

The appeal will be dealt with impartially and by at least 3 senior leaders or governors who have not previously been involved in the case.

The staff member will be informed in writing of the results of the appeal hearing within 5 working days. Appeals will be dealt with in line with the Trust's Scheme of Delegation.

## **7. Data Protection**

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and governing board to quality assure the operation and effectiveness of the system. The Trust processes any personal data collected during the capability procedure in accordance with its data protection policy. Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the capability procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Trust's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the Trust's disciplinary procedure.

## **8. Consistency of treatment and fairness**

The governing 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.

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

## **9. Monitoring arrangements**

The effectiveness of this policy will be monitored by the CEO and Board of Trustees

This policy will be reviewed every 2 years, but can be revised as needed.

This policy will be approved the Board of Trustees

## **10. Links with other policies**

This policy links to our policies on:

- Staff code of conduct
- Teachers' appraisal
- Staff grievance procedures
- Staff disciplinary procedures
- Equality information and objectives
- Non-teaching staff appraisal policy

## Appendix 1: capability action plan template

This template can be used as part of the process of supporting a teacher who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, appropriate to the career experience of the member of staff concerned. Three would usually be sufficient.

Name of staff member	Name of Appraiser	Date of meeting
<b>Objective 1:</b>		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

<b>Objective 2:</b>		
<b>Professional standard(s) that the objective relates to</b>	<b>Success criteria</b>	<b>Evidence to be used to assess progress</b>
<b>Support/resources to be provided</b>	<b>Monitoring arrangements</b>	<b>Review date</b>

<b>Objective 3:</b>		
<b>Professional standard(s) that the objective relates to</b>	<b>Success criteria</b>	<b>Evidence to be used to assess progress</b>
<b>Support/resources to be provided</b>	<b>Monitoring arrangements</b>	<b>Review date</b>

**Other support provided**

<b>Mentor/coach allocated</b>	Yes/No (If yes give name)
<b>Counselling to be provided</b>	Yes/No
<b>Occupational health referral to be made</b>	Yes/No
<b>[Insert any other support provided]</b>	
<b>Formal review date</b>	

<b>Signed by member of staff</b>	<b>Signed by appraiser</b>	<b>Date</b>