



# Capability Policy & Procedure September 2019

## 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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## **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 performance via an agreed development/support plan.
- 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 All staff members have the right to be represented and accompanied by a representative of a trade union or workplace colleague at any stage of the formal Capability Procedure.

4.7 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 Induction**

6.1 All new staff members should attend appropriate induction, as outlined in the Induction Policy/Procedure NQT’s will be subject to a statutory induction.

## **7 Roles and Responsibilities**

7.1 Executive Leaders are responsible for maintaining fair, consistent and objective procedures for matters relating to staff member's capability.

7.2 The Principal/Senior Executive Lead/Business Leads have overall responsibility for the management of their area of responsibility.

## **8 Responsibilities of the staff member**

8.1 The staff member is required to work effectively, and to perform to the highest standard achievable.

8.2 If the staff member is struggling in any area of, they work, that staff member should speak to the line manager and ask for assistance. Admitting the need for assistance is not seen as a weakness.

8.3 The staff member is responsible for working with the line manager to agree an appropriate way to address any capability difficulties.

8.4 The staff member is responsible for attending any learning and development activities that are planned to enhance their performance at work.

8.5 The staff member is also responsible for identifying any learning and development needs appropriate to their role or any agreed development action plans, i.e. mentoring or shadowing as well as more formal training events. The staff member must be aware that the line manager has a limited budget for learning and development events, and hence it might not always be possible to give permission to pursue a learning and development activity.

## **9 Responsibilities of the line manager**

9.1 The line manager is responsible for meeting with all new starters and identifying any training or other interventions that are required to help the new starter work effectively within the team.

9.2 To complete performance management appraisals in accordance with the Performance Management & Appraisal policy.

9.3 If any capability issues are identified during the appraisal process the line manager is responsible for working with the staff member to draw up an appropriate action plan to address the issue(s) that have been identified.

9.4 The line manager is responsible for agreeing appropriate targets with the staff member.

9.5 The line manager is responsible for monitoring the progress of any staff member who is working in accordance with an action plan and identifying and addressing any issues that arise which mean the targets within that plan are not being met.

9.6 The line manager is required to support all staff members in their team to ensure that they all perform to the best of their ability.

## **10 Responsibilities of HR**

10.1 The HR team are responsible for supporting the line manager and staff member in their attempts to address any capability issues. The HR team will do this through:

- a) Advising the line manager on the processes to follow
- b) Supporting any appropriate learning and development issues
- c) Meeting with the line manager and staff member if required
- d) Giving any other advice as required.

## **11 Timescales**

11.1 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.

11.2 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.

## **12 Capability procedure – Managing capability issues**

12.1 The staff member's line manager will raise concerns regarding a staff member's performance as part of normal management processes in the first instance. In such circumstances, the line manager should explain where the performance falls below standard, discuss the possible causes of the problem, and agree with the staff member appropriate means of support and development required for improving performance. This will include a timescale for improvement of not less than six working weeks.

12.2 Where inadequate performance persists, the line manager will invite the staff member to a meeting to discuss concerns regarding their performance. The staff member will be given the opportunity to be represented by an accredited trade union representative or work colleague, at

this meeting. Informal support (for example coaching, appropriate development activities, additional supervision) will be provided for a clearly defined and reasonable timescale. This timescale must allow sufficient time for concerns to be communicated and offer the staff member the opportunity to achieve the required standards. The line manager must explain the consequences of continued inadequate performance to the staff member and confirm the main points of the discussion in writing.

12.3 In cases of particularly serious concern, such as where the health and safety of others is being placed at risk or the education of children is in jeopardy, the formal procedure can be commenced immediately.

## **13 Formal procedure**

13.1 If, after informal support, performance continues to fall short of the required standard, the formal procedure will apply. The focus of the formal procedure will still be on supporting and developing the staff member to improve their performance and allows more serious performance issues to be managed in a structured way. Before commencing with the formal procedure HR must be consulted.

13.2 At each stage, staff members subject to the formal capability procedure will be advised in writing of their right to be accompanied by a recognised trade union representative or work colleague.

13.3 Staff members have the right to appeal at each stage against capability warnings that may be issued to them, as well as any dismissal that may result (see 'Appeals', below).

## **14 Review meeting(s)**

14.1 The first review meeting initiates the formal stage of the capability procedure.

It provides an opportunity to:

- a) Deal with more serious problems in a structured way
- b) Allow the staff member to respond to concerns about performance and be represented by a union representative or colleague.

14.2 The line manager will meet with the staff member to discuss the staff member's performance. Advisors will be invited to the meeting as appropriate. The staff member should be given ten working days' written notice of this meeting.



14.3 The manager will clarify where the staff member's performance is falling short of the required standards and specify what the required standards are. This meeting should be used as an opportunity to explore further with the staff member any reasons for their under -performance, as well as establishing appropriate training and support mechanisms that will assist an improvement.

14.4 The staff member will be given the opportunity to respond, and as a result the meeting may provide new information or put a different slant on evidence collected. If it becomes clear that further investigation is needed the meeting should be adjourned for as long as necessary.

14.5 The manager's decision should be made after all the facts and any representations from the staff member have been considered. The line manager should adjourn the meeting briefly, to take advice from HR and/or Occupational Health and consider the appropriate action before delivering a decision to the staff member.

14.6 There are four options at the first review interview, either;

- a) No further action\*
- b) Arrange additional informal support \*
- c) Issue capability warning
- d) Issue a final capability warning

\* For a and b they are only relevant where new information, a different slant 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.

14.7 In cases of particularly serious concern, it is possible to move directly to a final capability warning. This will invoke the second assessment period immediately. Final warnings issued as a result of this meeting will remain on the staff member's file for a period of 12 months.

14.8 Where a further informal support or a formal warning is issued, the manager should use the remainder of the meeting to;

- a) Identify and agree the performance shortcomings
- b) Give clear guidance on the improved standard of performance needed to be reached and maintained to end the capability procedure
- c) Discuss and agree the development and support that will be available, and how performance will be monitored over the following weeks

- d) Confirmation that a written warning has been issued (where relevant) and the staff member's right of appeal.
- e) Depending on the level of warning issued, to identify the timetable for improvement and agree a date for the next evaluation meeting.
- f) Make it clearly understood that failure to improve may lead to dismissal.

14.9 A letter should be sent to the staff member within five working days after the formal meeting recording the main points discussed at the meeting, confirming the decision, and where a warning is issued, giving information about the next stages and possible outcomes if no improvements are forthcoming. If the level of performance has been satisfactory and there is confidence that it can be sustained the capability procedure can end here with a letter from the line manager. If some improvements are made, then the meeting may be adjourned for further monitoring.

## **15 First review meetings**

15.1 It is important that a timescale for improvement is set. This will vary according to the level and nature of improvement needed. 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.

15.2 The assessment meetings will involve the on-going agreement and review of development action plans, with regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the staff member. For teaching staff this may also involve lesson observations.

15.3 If at any time, unforeseen developments suggest a more serious problem, a decision may be taken to move directly to a second review meeting.

## **16 Second review meeting**

16.1 The line manager will meet with the staff member again to review the staff member's performance. Advisors will be invited to the meeting as appropriate. The staff member should be given ten working days' written notice of this meeting and notified of the right to be represented by his or her trade union representative or colleague.

16.2 Where, following the first review meeting, the staff member's performance has improved to a satisfactory level, this should be formally recognised and confirmed in writing within five working days of the meeting. The manager should explain to the staff member the importance of sustaining this level of performance. Where it is sustained for an agreed period of time, action under the capability procedure may be considered concluded. (If inadequate performance reoccurs during

this period, the formal capability procedure will normally recommence at the first review meeting stage.)

16.3 Where, following the first review meeting and despite appropriate support mechanisms having been put in place, the staff member's performance remains unsatisfactory, the manager may issue a final capability warning.

16.4 Again, the main focus of the meeting will be to explore ways of developing and supporting the staff member to improve their performance to an acceptable level.

16.5 Following this meeting, the manager will write to the staff member with details and confirm that failure to make the required improvement in their work performance within the agreed timescale may result in dismissal.

16.6 Final capability warnings issued as a result of this meeting will remain on the staff member's file for a period of 12 months. Where at the end of the monitoring period agreed at the second review meeting the staff member's performance improves to a satisfactory level, the manager will reconvene the second review meeting, giving ten working days' written notice. The purpose of this meeting will be to formally recognise the improvement, and to emphasise the need to sustain it. This should be confirmed in writing after the meeting. (If inadequate performance reoccurs within the years' duration of the final capability warning, the formal capability procedure will normally recommence at the second review meeting stage.)

## **17 Second assessment stage**

17.1 It is important that a timescale for improvement is set. This will vary according to the level and nature of improvement needed. 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.

17.2 The second assessment stage will involve the production of an action plan, regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the staff member. For teaching staff this will also involve lesson observations.

17.3 If at any time, unforeseen developments suggest a more serious problem, a decision may be taken to move directly to a capability hearing.

## **18 Formal capability hearing**

18.1 Where, following the second assessment stage the staff member's performance remains unsatisfactory, the matter will be referred to a capability hearing. This hearing 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.

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

18.3 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.

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

18.5 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.

## **19 Appeals**

19.1 Appeals under this procedure must be made in writing within ten working days and will be heard by a panel of the Local Academy Board as well as the CEO/Executive Lead or nominated deputy.

19.2 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.

19.3 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.

19.4 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.

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

19.6 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.

19.7 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.

## **20 Record Keeping**

20.1 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.

20.2 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.

## **21 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.

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:  Manager:  Date:	Signed:  Staff member:  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