

# Capability Policy

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## 1. **Introduction**

- 1.1 The Trust is committed to providing high quality teaching and learning. Through our workforce we aim to provide opportunities for all of our pupils, whatever their ability. Each employee will therefore be given support to help them continually improve their performance and develop to their full potential, which will in turn help improve outcomes for our young people.
- 1.2 Having an effective performance management process in place is one of the ways we can support our employees and deal with performance matters as they arise; this is set out in our Appraisal Policy.
- 1.3 This policy sets out the arrangements that will apply when an employee falls below the levels of competence and performance that are expected of them and serious concerns have been raised which the Appraisal Policy has been unable to address
- 1.4 This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.5 The policy has been implemented following consultation with staff and recognised trade unions. It has been formally adopted by the Trust.
- 1.6 This policy does not form part of any employee's contract of employment and may be amended at any time, following consultation with the recognised trade unions.

## 2. **Scope and purpose of this policy**

- 2.1 The purpose of this policy is to provide a framework within which the Trust can work with employees to improve and maintain satisfactory standards of performance where serious concerns have been raised.
- 2.2 This policy will be applied when informal support as set out in the Appraisal Policy has been provided and the required improvement has not been made.
- 2.3 This policy applies to all employees of the Trust, including teachers and support staff, excluding those who are in the probationary period and NQTs (please see NQT Policy). It does not apply to agency workers. Where capability concerns are linked to ill-health or misconduct – these will be dealt within the appropriate policy.

## 3. **Notification and procedure for formal meetings**

- 3.1 An employee will be given at least five working days' written notice if required to attend any formal meeting under this procedure.
- 3.2 The written notification will also contain:
  - (a) Sufficient information about the performance concerns and their possible consequences (including either issuing a warning or dismissal) to enable the employee to prepare to answer the case
  - (b) Copies of any written evidence
  - (c) Copies of witness statements and details of witnesses attending (if appropriate)
  - (d) Details of the time and place of the meeting
  - (e) Your right to be accompanied (see 3.4)
- 3.3 Formal meetings will be conducted by the Head Teacher/Principal or other senior employee delegated this responsibility by the Trust.
- 3.4 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.

- 3.5 Relevant witnesses may be called by the person conducting the meeting and an employee may request that relevant witnesses are called to any formal meeting.
- 3.6 A formal meeting under this procedure will:
- (a) Outline performance shortcomings;
  - (b) 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;
  - (c) identify what action (including support provided) has been taken to date and what the outcome was;
  - (d) where appropriate, identify and explain any support that will be available to help the employee improve performance;
  - (e) where appropriate, warn an employee formally that failure to improve within the set period could lead to dismissal; and
  - (f) confirm the timescales 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.
- 3.7 The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required.
- 3.8 If at any stage the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.
- 3.9 Following a formal meeting, the matters covered in 3.6 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.
- 3.10 Minutes will be taken of all formal meetings and will be sent a copy following the meeting, normally within 5 working days.

#### 4. **Formal capability meeting (Stage 1)**

- 4.1 If we consider that there are serious performance concerns you will be invited to a formal capability meeting to establish the facts.
- 4.2 Where a warning is issued, this will usually be a first written warning. However in very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure, this could be a final written warning.
- 4.3 The warning will normally remain active for 12 months for a first written warning and 12 months for a final written warning from the end of the monitoring and review period. During this time any further performance concerns will be considered at the next stage of the process (stage 2). After the active period the warning will remain on your personnel file but will be disregarded in deciding the outcome of any future capability proceedings.

##### Monitoring & Review Period (1):

- 4.4 The standard set length of the monitoring and review period following the formal capability meeting in this Trust is normally six weeks. However in some cases it may be appropriate for a shorter period of four weeks to be set. In

exceptional circumstances, this period can be extended up to a maximum of 10 weeks.

- 4.5 At the end of the monitoring and review period you will be invited to a formal review meeting, unless you were issued with a final written warning in which case you will be invited to a decision meeting.

## 5. **Formal review meeting (Stage 2)**

- 5.1 If the person conducting the formal review meeting decides that some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period up to a maximum of 4 additional weeks. If sufficient progress has been made then the formal process will cease and performance will be managed appropriately through informal support, returning to the previous point of the formal process if performance were to drop again.
- 5.2 If no, or insufficient improvement has been made during the monitoring and review period, you will receive a final written warning. A further Monitoring and Review Period will follow in accordance with 4.4.
- 5.3 The warning will normally remain active for 12 months from the end of the further monitoring and review period after which it is disregarded. During this time any further performance concerns will be addressed at the next stage of the process (stage 3). After the active period the warning will remain on your personnel file but will be disregarded in deciding the outcome of any future capability proceedings.

### Monitoring & Review Period (2):

- 5.4 At the end of the further monitoring and review period, you will be invited to a decision meeting.
- 5.5 At this stage, by agreement with you and after consultation, instead of progressing to a decision meeting it may be appropriate to consider whether there is a vacant post and if so whether this may be more suited to your capabilities. If there is a vacant post which we agree with you is reasonable and suitable, this would be a permanent change in role and if the alternative post is at a lower salary level, the substantive lower salary would apply. The capability procedure would cease on commencing in the new post and the appraisal process would re-start.

## 6. **Decision meeting (Stage 3)**

- 6.1 The decision meeting will usually be conducted by the Head Teacher/Principal if they have not previously been involved or a panel of governors not previously involved in the case, which could include the Head Teacher/Principal. Dismissal is a possible outcome of a decision meeting.
- 6.2 If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be imposed. There will be a further decision meeting at the end of that extended monitoring and review period.
- 6.3 If performance remains unsatisfactory, a decision will be made that you should be dismissed or required to cease working at the Academy/Trust. Normal delegation rules apply to the power of dismissal.
- 6.4 You will be informed in writing as soon as possible of the dismissal, the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and your right of appeal.

## 7. **Appeal**

- 7.1 If you feel that the decision to dismiss you or other action taken against you (including warnings) is wrong or unjust, you may appeal. You should appeal in writing to the Head Teacher/Principal, setting out the grounds for appeal within ten working days of the decision.
- 7.2 Appeals will be heard without unreasonable delay, the Trust will endeavour to agree a time and place, where possible. The same arrangements for notification and right to be accompanied by a companion will apply as set out in section 3.
- 7.3 The appeal will be dealt with impartially and, wherever possible, by a panel of three governors who have not previously been involved in the case (having exhausted all available governors within the Trust) in line with the Trust's arrangements for appeals.
- 7.4 You will be informed in writing of the results of the appeal hearing as soon as possible.
- 7.5 There is no further right of appeal against the sanction or dismissal within the Trust.

## 8. **Sickness**

- 8.1 If at any stage long term sickness absence appears to have been triggered by the commencement of this procedure, the case will be dealt with in accordance with the Trust's sickness absence policy.
- 8.2 The employee will be referred immediately to the occupational health service to assess their 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 monitoring and/or formal procedures to continue during a period of sickness absence.

## 9. **General principles underlying this policy**

### Confidentiality

- 9.1 The capability process will be treated confidentially. However, it needs to be recognised that, in supporting employees through this process, some degree of information sharing is likely to be necessary.

### Consistency of Treatment and Fairness

- 9.2 Enrich Learning Trust and the Trustees are committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled employees. The Governing Body is aware of the guidance on the Equality Act issued by the Department for Education.

### Retention and data protection

- 9.3 The Governing Body and Head Teacher/Principal will ensure that all written records are retained in a secure place. As part of the application of this policy, the School/Academy/Trust may collect, process and store personal data in accordance with our data protection policy. We will comply with the requirements of the Data Protection Legislation (being (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the

UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998). Records will be kept in accordance with our Workforce Privacy Notice, our Retention and Destruction Policy and in line with the requirements of the Data Protection Legislation.

**10. Review of policy**

- 10.1 This policy is reviewed periodically Trust in consultation with the recognised trade unions. We will monitor the application and outcomes of this policy to ensure it is working effectively.