



**THE BAY
LEARNING TRUST**

Capability Policy (Support Staff)

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1 SCOPE AND PURPOSE

- 1.1 The primary aim of this policy is to provide a framework within which the **Trust and its Academies** can work with its staff to maintain satisfactory performance standards and to encourage improvement where necessary.
- 1.2 It is the policy of the **Trust and its Academies** to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond at a hearing before any formal action is taken.
- 1.3 This policy does not form part of any employee's contract of employment and it may be amended at any time following consultation with the **Trust and its Academies'** recognised Trade Unions. The **Trust and its Academies** may also vary any parts of this policy, including any time limits, as appropriate in any case.
- 1.4 This policy is used to deal with issues of poor performance. It does not apply to cases involving genuine sickness absence, proposed redundancies or misconduct. In those cases reference should be made to the appropriate policy or procedure.
- 1.5 Members of support staff will have been notified of concerns regarding their performance during the appraisal process detailed in the **Trust's** Appraisal Policy. Where the appraiser has not been satisfied with progress during the appraisal process, the member of support staff will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under this policy.
- 1.6 Members of Support Staff will not normally be dismissed for performance reasons without previous warnings. However, members of support staff who have entered the Capability Procedure because their performance has not been satisfactory during their probationary period will start the process at the final capability meeting stage.

2 WHO IS COVERED BY THE POLICY?

- 2.1 This policy applies to members of support staff at all levels and grades, including senior managers, officers, employees, trainees, part-time and fixed term employees (collectively referred to as employees in this policy). It does not apply to agency staff and self-employed contractors.
- 2.2 This policy will apply to all members of support staff about whose performance there are serious concerns that the appraisal process has been unable to address.
- 2.3 This policy will not apply to employee's whose performance has not been satisfactory during their probationary period.

3 WHO IS RESPONSIBLE FOR THE POLICY?

- 3.1 The **Trust** has overall responsibility for the effective operation of this policy and for ensuring compliance with the relevant statutory framework. The **Trust** has delegated day-to-day responsibility for operating the policy and ensuring its maintenance and review to the **Principal**.
- 3.2 The [**Senior Leadership Team**] has a specific responsibility to ensure the fair application of this policy and all employees are responsible for supporting colleagues and ensuring its success.

4 DELEGATION OF AUTHORITY

- 4.1 The personnel responsible for each stage of this policy depends on the role the relevant employee performs.

- 4.2 The following table describes the normal course of action although this may be subject to change depending on the circumstances of the individual case.

Capability relates to	Capability Officer	Appeal Officer
Support Staff	Senior Leadership Team appointed by the Principal	Principal

5 **INFORMAL STAGE**

- 5.1 If there are concerns about an employee's performance, whether a formal appraisal cycle has finished or not, the employee will be notified on an informal basis that they are expected to improve their performance within a reasonable period of time.
- 5.2 If the employee is still not meeting the required standard the matter will progress to a formal capability meeting in accordance with this policy.

6 **NOTIFICATION OF A CAPABILITY HEARING**

- 6.1 At least two working days' notice will be given of the first capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable an employee to prepare to answer the case at the first capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied at the hearing.

7 **PROCEDURE AT CAPABILITY HEARINGS**

- 7.1 If an employee or their companion (see 15.1) cannot attend the hearing at the time specified, the employee should inform the person chairing the relevant meeting immediately and he/she will try, within reason, to agree an alternative time. Employees must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If an employee fails to attend without good reason, or is persistently unable to do so (for example, for health reasons), a decision may be taken in the employee's absence based on the available evidence.

8 **FIRST CAPABILITY MEETING**

- 8.1 This meeting is intended to establish the facts. 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 **Trust's** Appraisal Policy, at which time they would revert back to the appraisal process at the stage where they left it and in such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.
- 8.2 In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued (including second or final capability meetings), the person conducting the meeting will:
- 8.2.1 identify the professional shortcomings, for example which of the standards expected of the employee that are not being met;

- 8.2.2 give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses 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);
 - 8.2.3 explain any support that will be available to the employee improve their performance;
 - 8.2.4 set out the timetable and resourced performance improvement plan for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in most cases will be between 4-8 weeks which is sufficient time for improvement to take place; and
 - 8.2.5 warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning. Any warning will remain "live" for a period of 12 months.
- 8.3 Notes will be taken of formal meetings and a copy sent to the employee. Where a warning is issued, the employee will be informed in writing of 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.

9 **MONITORING AND REVIEW PERIOD FOLLOWING A FORMAL CAPABILITY MEETING**

- 9.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period and the agreed performance improvement plan will provide the basis for these meetings. The employee will be invited to a Second Capability meeting, unless they were issued with a final written warning, in which case they will be invited to a Final Capability meeting (see below).

10 **SECOND CAPABILITY MEETING**

- 10.1 As with the other formal capability meetings, at least two days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a recognised trade union official, or a recognised trade union representative who has been certified by their union as being competent.
- 10.2 If 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.
- 10.3 In other cases:
- 10.3.1 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;
 - 10.3.2 If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning. A final written warning will remain "live" for a period of 12 months.
- 10.4 As before, notes will be taken of formal meetings and a copy sent to the employee. The final written warning will mirror any previous warnings that have been issued. Where a final written warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale which is typically 4-8 weeks,) 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. The employee will be invited to a final capability meeting.

11 FINAL CAPABILITY MEETING

- 11.1 As with the other formal capability meetings, at least two working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a recognised trade union official, or a recognised trade union representative who has been certified by their union as being competent.
- 11.2 If 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, a decision may be made that employee should be dismissed or required to cease working at the **Academy/Trust**.
- 11.3 If a decision to dismiss is made the employee 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.

12 DECISION TO DISMISS

The power to dismiss an employee in this **Academy/Trust** has been delegated to the **Principal** who is authorised to make a decision regarding dismissal.

13 DISMISSAL

Once the decision to dismiss has been taken, an employee will be dismissed with notice.

14 APPEAL

- 14.1 If an employee 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 ten days of the notification of the decision, setting out at the same time the grounds for appeal.
- 14.2 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion 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 employee.
- 14.3 The appeal will be dealt with impartially and by those who have not previously been involved in the case.
- 14.4 An employee will be informed in writing of the results of the appeal hearing as soon as possible

15 RIGHT TO BE ACCOMPANIED AT HEARINGS

- 15.1 Employees may bring a companion to any capability hearing or capability appeal hearing under this procedure. The companion may be a colleague, a recognised trade union representative who has been certified by their union as being competent. The employee must tell the person conducting the hearing who their chosen companion is, in goodtime before the hearing.
- 15.2 A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.
- 15.3 If an employee's choice of companion is unreasonable, they may be required to choose someone else, for example:
- 15.3.1 if it is considered that the companion may have a conflict of interest or may prejudice the hearing; or

- 15.3.2 if the companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days..
- 15.4 The **Trust** may, at its discretion, allow an employee to bring a companion who is not a colleague or recognised union representative (for example, a member of family) where this will help overcome a particular difficulty caused by a disability, or where staff have difficulty understanding English. There is no entitlement to legal representation.
- 15.5 The companion can address the meeting in order to:
- 15.5.1 put forward the employees case
 - 15.5.2 sum up the employee's case
 - 15.5.3 respond on the employee's behalf to any view expressed at the interview meeting.
- 15.6 The companion can also confer with the employee during the interview meeting.
- 15.7 The companion has no right to answer questions on the employee's behalf, or to address the interview meeting if the employee does not wish it, or to prevent the employee from explaining their case.
- 15.8 Where a companion has been identified to the relevant Manager but has confirmed in writing to the relevant Manager that they cannot attend the date or time set for the interview meeting, the relevant Manager may postpone the interview meeting provided that the employee has suggested an alternative date within five working days of the original date set by the **Trust** to a date or time agreed with their companion provided that it is reasonable.

16 **GENERAL PRINCIPALS UNDERLYING THIS POLICY**

16.1 **ACAS Code of Practice on Disciplinary and Grievance Procedures**

This policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

16.2 **Confidentiality**

The capability process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the **Principal [Governing Body/Trust]** and the **Trust** to quality-assure the operation and effectiveness of the appraisal system.

16.3 **Consistency of Treatment and Fairness**

The **Trust** is 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 **Trust** is aware of the guidance on the Equality Act 2010 issued by the Department for Education.

16.4 **Grievances**

Where an employee raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance but in most cases the processes will run concurrently.

16.5 **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 **Trust's** Sickness Absence Policy.

16.6 **Monitoring and Evaluation**

The **Trust** will monitor the operation and effectiveness of the **Trust's** capability arrangements.