



Omega Multi-Academy Trust

Capability of Teaching Staff Policy

This policy uses The School Bus model and takes due consideration of all policies that transferred across to the Omega Multi-Academy Trust on conversion and in consultation with the Joint Consultative and Negotiation Committee.

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Review Date & Summary Changes

September 2022 – version 1.1	No Changes

Signed by:



CEO

Date: 04/10/2022



Chair of Trustees

Date: 04/10/2022

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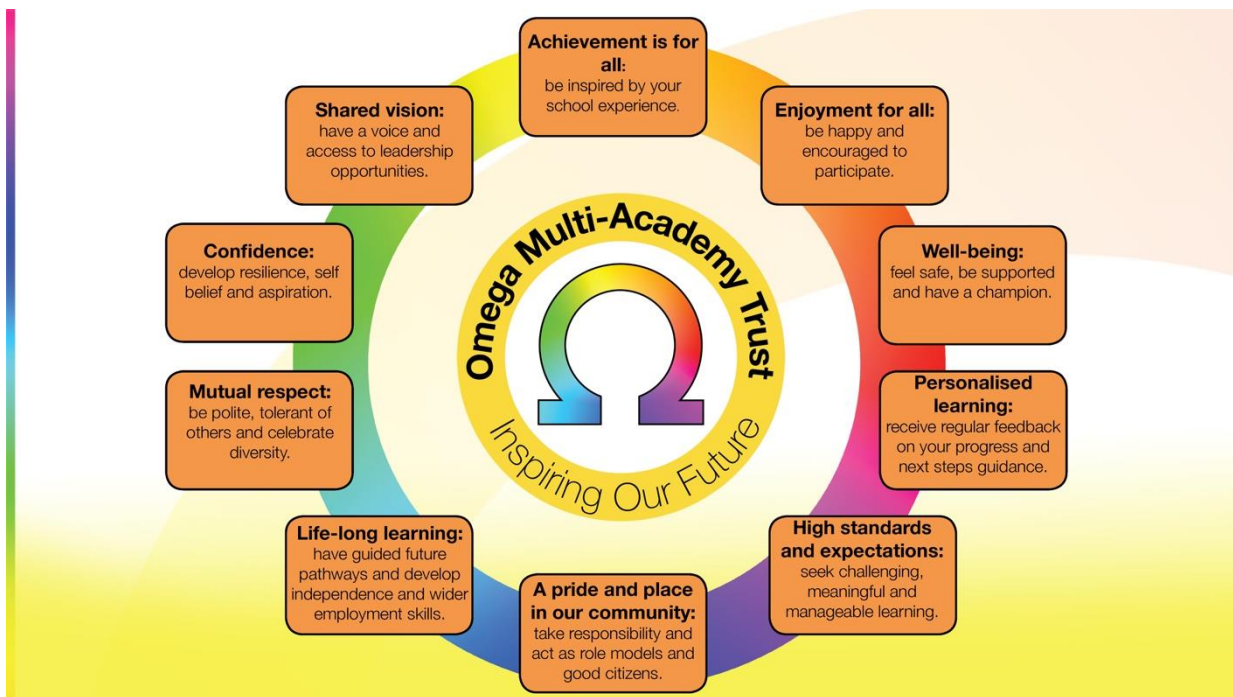
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Omega Multi-Academy Trust Mission Statement

The Omega learning community provides excellent teaching and learning with passion and purpose, based on core values, understood by all. Working in a warm and welcoming, yet purposeful environment, our mission is for everyone to be happy and inspired by their school experience. We empower students to harness their own creativity, to raise their aspirations and to achieve their potential. Working together, they gain confidence and pride to take their place in our community.



Rationale:

Omega Values	How this policy addresses these values
Achievement is for all: be inspired by your school experience.	Appraisal and capability in all the Trust's academies will be a supportive and developmental process designed to ensure that all staff have the skills and support they need to carry out their role effectively.
Enjoyment for all: be happy and encouraged to participate	Staff are encouraged to engage in the capability process through dialogue. The process will be transparent and intended to provide a clear framework which supports staff to meet the required standard of performance.
Well-being: feel safe, be supported and have a champion	Due regard will be made to the health and welfare of the individual and consideration given to a referral to Occupational Health. Individuals will be encouraged to contact their Trade Union or professional associations for advice and guidance and should be supported by them at formal meetings.
Personalised learning: receive regular feedback on your progress and next-steps guidance	During the capability process there will be regular opportunities for feedback with clear guidance given on the improved standard of performance needed with any support that will be available to help the colleague to improve their performance
High standards and expectations: seek challenging, meaningful and manageable learning.	The Trust has a shared commitment to high performance for the benefit of our pupils. The capability process will be managed in a way that avoids increased workload for all parties concerned.
Pride and place in our community: take responsibility and act as role models and good citizens.	Leaders and managers involved in the capability process will model the standards and expectations required of all staff and carry out their role in a responsible and professional manner.
Life-long learning: have guided future pathways and develop independence and wider employment skills	The capability process is designed to support the individual to meet the required standard of practice. If the staff member has made sufficient improvement, the capability procedure will cease and the appraisal process will restart.
Mutual respect: be polite, tolerant of others and celebrate diversity.	All colleagues involved in the capability process will demonstrate mutual respect and recognise the individual's rights to be heard and be supported.
Confidence: develop resilience, self-belief and aspiration.	The capability process will be fair, transparent and supportive and used to inform targets which will help individuals to meet the required standard of performance.
Shared vision: have a voice and access to leadership opportunities.	The capability process will be an open, collaborative and supportive process which will be used to inform continuing professional development and empower teachers to develop their skills and careers.

Statement of Intent

The Omega Multi-Academy Trust (“the trust”) is passionate about supporting the Continued Professional Development (CPD) of its staff with appropriate training at every level. Where professional standards fall below the expected levels, the trust is genuine in its aim to assist the staff member to improve their performance. Where that is needed, the process to be followed is explained in this policy, which provides a clear and concise framework for managing the required improvement. This policy is for all teachers and leaders.

This policy sets out the framework for clear and consistent assessment of the overall performance of teachers, including the Headteacher.

It is designed to support teachers’ development, within the context of the trust’s plan for improving educational provision and performance, and the standards expected of teachers and leaders. It sets out the arrangements that will apply when teachers/leaders fall below the expected levels of competence.

Section 5 of the policy, which covers appraisal, applies to the Headteacher and to all teachers employed by the trust, except those on contracts of less than one term, those undergoing ECF induction and those who are subject to section 8.

Section 8 of the policy, which sets out the formal capability procedure, applies only to teachers, including the Headteacher, whose performance raises serious concerns.

1. Legal Framework

- 1.1. This policy has due regard to all relevant legislation and statutory guidance including, but not limited to, the following:
- Equality Act 2010
 - The School Staffing (England) Regulations 2009 (as amended)
 - The Education (School Teachers' Appraisal) (England) Regulations 2012
 - DfE (2019) 'Governance handbook'
 - DfE (2019) 'Teacher appraisal and capability: A model policy for schools'
 - ACAS (2015) 'Code of practice on disciplinary and grievance procedures'
- 1.2. This policy operates in conjunction with the following trust policies:
- Teachers Appraisal Policy
 - Grievance Policy
 - Disciplinary Policy
 - Pay Policy
 - Sickness Absence Policy

2. Roles and Responsibilities

- 2.1. The Trust Board is responsible for:
- 2.1.1. Ensuring the effectiveness of this policy by monitoring and reviewing it annually.
 - 2.1.2. Ensuring consistency of treatment and fairness, and abiding by all relevant equality legislation.
 - 2.1.3. Conducting formal capability meetings where there are concerns about the Headteacher's performance
- 2.2. The Governing Body is responsible for:
- 2.2.1. Appraising the Headteacher and setting their objectives
 - 2.2.2. Ensuring all objectives contribute to the School Development Plan and improve the education of pupils within their school.
 - 2.2.3. Ensuring consistency of treatment and fairness, and abiding by all relevant equality legislation.
- 2.3. The Headteacher is responsible for:

- 2.3.1. The day-to-day implementation of this policy.
 - 2.3.2. Ensuring that the appraisal and capability process is managed in a way that avoids increased workload for all parties concerned.
 - 2.3.3. Ensuring that all members of staff have read and understand the provisions in this policy.
 - 2.3.4. To evaluate standards of teaching and ensure high standards of professional performance are maintained
 - 2.3.5. Conducting formal capability meetings where there are concerns about a teacher's performance.
- 2.4. Teaching staff are responsible for:
- 2.4.1. Improving their teaching through proactive engagement in appropriate CPD opportunities.
 - 2.4.2. Voicing concerns where they believe the appraisal process has become too work intensive

3. General Principles Underlying this Policy

Confidentiality

- 3.1. The capability processes will be treated with confidentiality; however, the desire for confidentiality does not override the need for the Headteacher, Chief Executive, Governing Body and Trust Board to quality-assure the operation and effectiveness of the appraisal system. No individuals will be identified during this quality assurance process.

Consistency of Treatment and Fairness

- 3.2. The Governing Body 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 teachers with disabilities. The Governing Body is aware of the guidance on the Equality Act 2010 issued by the DfE.

Definitions

- 3.3. Unless indicated otherwise, all references to "teacher" include the Headteacher.
- 3.4. Unless indicated otherwise, all references to "teacher" exclude those who are part of an ECF induction programme.

Delegation

- 3.5. Normal rules apply in respect of the delegation of functions by the Governing Body, Headteacher, Trust Board and Chief Executive.

Grievances

- 3.6. Where a teacher raises a grievance during the capability procedure, the procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.
- 3.7. Grievances should be handled in accordance with the trust's Grievance Policy.

Sickness

- 3.8. 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.

4. Purpose

- 4.1. This procedure applies only to teachers or Headteachers about whose performance evidence has arisen of serious concerns. These concerns may be identified by the teacher's appraiser under the trust's Appraisal Policy, and referred to the Headteacher following insufficient improvement being made.
- 4.2. The capability process will not apply to Early Career Teachers (ECT), who have their performance managed through a separate induction process.
- 4.3. Good management, clear expectations and appropriate support will often address weaknesses in performance. Early identification of concerns will help to avoid the need for recourse to the Capability Procedure and in most cases an improvement may be achieved with support and attention.
- 4.4. Before commencing the Capability Procedure, Headteachers should examine at this stage the possibility that the member of staff's professional performance may be affected by ill health or some external influence or concern. If this is the case the matter should be dealt with under the appropriate procedure before any consideration is given to the capability procedure. It should also be considered whether the issue is a matter of conduct and, if so, follow the Disciplinary Policy instead.
- 4.5. The formal capability process should only be invoked where there is clear, triangulated evidence of sustained underperformance that the appraisal process has failed to address, following an informal process.
- 4.6. A member of staff has the right to be represented at any stage of the Capability Procedure either by their professional association or Trade Union Representative or a work colleague.
- 4.7. Members of staff have the right to appeal against any sanction issued at any stage of the procedure.

- 4.8. Where formal capability action is to be taken against an employee who is a recognised Trade Union Official (including safety and learning representatives) no action will be taken until the circumstances of the case have been discussed with a full-time officer of the trade union concerned.

5. Performance Appraisal

- 5.1. As outlined in the trust's Appraisal Policy, the trust will be supportive, and the developmental process is designed to ensure that all teachers have, or fully develop, the skills and access to support they need to carry out their role effectively. It will help to ensure that teachers are able to continue to improve their professional practice and to develop as teachers.

Transition to Capability

- 5.2. Where the formal capability is instigated, performance management processes will be suspended
- 5.3. The instigation of a capability procedure should not come as a surprise to the employee concerned;
- 5.4. The capability procedures will be conducted in accordance with section 6, 7 & 8 of this policy.

6. Identification of Capability Performance Issues

- 6.1. Where performance issues or evidence have been identified via a route other than through the Appraisal Policy, transition to this Capability Policy, should only be considered following a formal review meeting, conducted by the Headteacher or another nominated senior leader.
- 6.2. The formal review meeting, where the evidence of underperformance will be considered, the employee and/or their representative will be able to offer explanation and/or refutation of the allegations
- 6.3. The Headteacher or nominated senior leader will decide, following the first meeting, whether or not to commence a capability process
- 6.4. Following the first meeting an action plan, support offer and timescales will be agreed. Timescales for improvement should be between 4 to 12 weeks. A rationale should be provided for any timescale less than 6 weeks.
- 6.5. Following the first meeting, and time period for improvement, a second meeting, where the evidence of underperformance will be considered, the employee and/or their representative will be able to offer explanation and/or refutation of the allegations

- 6.6. The second meeting will decide whether sufficient progress has been made, in which case the process ends, or a further support period is enacted
- 6.7. Following the second meeting, the action plan, support offer and timescales will be agreed, if required. Timescales for improvement will be between 4 to 12 weeks. A rationale should be provided for any timescale less than 6 weeks.
- 6.8. If there are further concerns following the second meeting, a third 'Decision, Meeting' will be agreed where the evidence of underperformance will be considered and the employee and/or their representative will be able to offer explanation and/or refutation of the allegations. The outcome of which will either be the conclusion of the procedure, further support, or move to a dismissal or demotion.

7. Support During Capability Procedure

- 7.1. Individuals should be encouraged to contact their Trade Union or professional associations or the HR Department for advice and guidance. All employees have a legal entitlement to be accompanied by a work colleague or union representative at any formal meeting under this procedure. Best practice would recommend that there be an opportunity for an employee to be accompanied at informal meetings, if agreed by all parties the employee will be advised to contact their union whenever either a formal or informal capability process may be invoked, and representation is permitted at all capability meetings
- 7.2. Those monitoring the performance should offer feedback and instruction to help the employee improve performance; this should be done in line with the trust's Appraisal Policy. If training courses or assistance from colleagues would be helpful, these should be arranged as soon as possible but should not interrupt the timing of the procedure.
- 7.3. A referral to Occupational Health should be considered when reviewing the welfare of the employee during this process.

8. Capability Procedure

- 8.1. This procedure applies only to teachers whose performance raises serious concerns that the appraisal process has been unable to address
- 8.2. At least 10 school days' notice will be given of the formal capability meeting. The notification will contain sufficient information about performance-related concerns and their possible consequences to enable the teacher to prepare a defence for the formal capability meeting
- 8.3. Teachers are entitled to request an alternative date which is within 10 school days of the original date

- 8.4. The notice will also contain copies of any written evidence, the details of the time and place of the meeting, and will advise the teacher of their right to be accompanied by a companion, who may be a colleague, a Trade Union Official, or a Trade Union Representative who has been certified by their union as being competent.

Formal Capability Meeting – Step 1

- 8.5. This meeting is intended to establish the facts. It will be conducted by the CEO or Chair of Governors for Headteachers (or a nominated person) or by Headteacher (or a nominated person) for all other teachers. The meeting allows the teacher to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information or evidence already collected.
- 8.6. 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 appraisal process. In such cases, the capability procedure will come to an end.
- 8.7. The person conducting the meeting may also adjourn the meeting if they decide that further investigation is needed, or more time is needed to consider additional information.
- 8.8. In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal penalty being issued, the person conducting the meeting will:
- 8.8.1. Identify the professional shortcomings of the teacher.
 - 8.8.2. Give clear guidance on the improved standard of performance needed to ensure that that the teacher can be removed from formal capability procedures.
 - 8.8.3. Explain the support that will be available to help the teacher to improve their performance.
 - 8.8.4. Outline the timetable for improvement and explain how performance will be monitored and reviewed.
 - 8.8.5. The detail should be brought together in an appropriate SMART action plan.
- 8.9. Notes will be taken of formal meetings and a copy will be sent to the teacher, together with the action plan and letter detailing the programme of action, support, monitoring and timescales, within 5 school days.
- 8.10. The timescale, which will depend on the circumstances of the individual case but will be reasonable and proportionate, and 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. A rationale should be provided for any timescale less than 6 weeks.

Monitoring and Review Period Following a Formal Capability Meeting

- 8.11. A performance monitoring and review period will follow the formal capability meeting.
- 8.12. Formal monitoring, evaluation, guidance and support will continue during this period.

Formal Review Meeting – Step 2

- 8.13. At least 10 school days' notice will be given, and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a Trade Union Official, or a Trade Union Representative who has been certified by their union as being competent.
- 8.14. If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will restart. In other cases:
 - 8.14.1. 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.
- 8.15. If no or insufficient improvement has been made during the monitoring and review period, the staff member will move to Step 3 (Capability Hearing). Notes will be taken of formal meetings and a copy sent to the teacher within 5 school days. Teachers will also be given information about the handling of the further monitoring and review period, and the procedure and time limits for appealing against the final hearing. The teacher will be invited to a capability hearing.

Capability Hearing – Step 3

- 8.16. A capability hearing will be arranged where an employee has made no, or insufficient improvement during the monitoring and review period. The Headteacher will make a recommendation to the Governing Body that the teacher should be dismissed or demoted. In the case of the Headteacher, the CEO or Chair of Governors will make the recommendation to the Trust Board.
- 8.17. At least ten school days notice will be provided, and the notification will give details of the time and location of the meeting. The notice will also advise the teacher of their right to be accompanied by a companion who may be a

colleague, a Trade Union Official or a Trade Union Representative who has been certified by their union as being competent.

- 8.18. 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 restart. If performance remains unsatisfactory, a decision or recommendation to the Governing Body will be made that the teacher should be dismissed and cease working for the trust. (Action short of dismissal may be considered as an alternative for example, demotion to a lower pay grade and/or transfer to an alternative role within the academy or wider trust, subject to a suitable role being available and the individual circumstances of the case. There would be no pay protection with this option and it should be noted that there is no entitlement to this outcome).
- 8.19. The teacher will be informed as soon as possible of the reasons for their dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

Decision to dismiss

- 8.20. The power to dismiss or demote rests in line with the Scheme of Delegation.

Dismissal

- 8.21. Once the decision to dismiss or demote has been taken, the Governing Body/Trust Board or delegated authority will dismiss or demote the teacher with notice.

Appeal

- 8.22. If a teacher feels that a decision to dismiss them, or another action taken against them, is wrong or unjust, they may appeal in writing against the decision within ten school days, setting out the grounds for appeal at the same time. Appeals will be heard without unreasonable delay, where possible, at an agreed time and place. The letter should be for the attention of to the Headteacher or Chair of Governors, via the School office
- 8.23. The same arrangements for notification and the 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 teacher within 5 school days.
- 8.24. The appeal will be dealt with impartially by Governors who have not previously been involved in the case. The Appeal Committee (made up from a minimal panel of 3) will review all evidence presented by the Headteacher/Governing Body and the employee and should have access to impartial advice from a HR advisor (who have not been involved in the case previously).

- 8.25. The teacher will be informed in writing of the results of the appeal hearing within 5 school days.
- 8.26. The decision of the appeals committee will be final. A statutory right to access an employment tribunal is not affected.

9. Monitoring and Evaluation

- 9.1 This policy will be reviewed annually and any changes made to this policy will be in joint negotiation with a consultation committee and be communicated to all teaching staff.
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