



The MAST Academy Trust

Policy	Staff capability policy		
Owner	Melanie Humphreys – The Mast Executive Administrator		
Date approved	6 th October 2020	Adopted from	October 2020
Approver	Martyn Jones		

Current version	V3.0
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Next review due	Autumn term 2021
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Objective of Policy
<p>To provide guidance on the policy and 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.</p>

Version Control	
Version Number	Summary of amends from previous version
2.0	Review and appropriate updates since last version, front cover amends.
3.0	Annual review, Additional wording to section 5 to clarify timescales.

Sign off requirements	
Approvers	Position
Chair of trustees ratification	Martyn Jones
Reviewers	Position
Natasha Greenough	CEO The MAST
Dorcas Atkinson	Trustee
Unions consulted (if applicable)	Representative
ASCL	
GMB	
NASUWT	
NEU, (ATL)	
UNISON	
NAHT	
UNITE	

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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 and where there is serious underperformance which the appraisal process has been unable to address, as set out in the relevant professional standards, job descriptions and overall performance expectations.

The policy is designed to support employees to improve their practice.

The policy does not apply to NQTs. [Refer to the NQT Induction policy on the trust website.](#)

2. Legislation and guidance

This policy is based on:

[The School Staffing \(England\) Regulations 2009 \(regulation 8\)](#)

[The School Staffing \(England\) \(Amendment\) Regulations 2013](#)

[The Education \(School Teachers' Appraisal\) \(England\) Regulations 2012 \(the Appraisal Regulations\)](#)

This policy is based on the [DfE Staffing and employment advice for schools \(February 2017\)](#), 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, due to insufficient skill or aptitude, and that their job requires, including for medical reasons.

References to '**staff**' include the Headteacher, teachers and support staff, unless indicated otherwise.

Any lack of capability linked to ill health (as defined by a medical practitioner or by occupational health) will be managed under the attendance policy. [Refer to the staff attendance policy on the trust website.](#)

4. Roles and responsibilities

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

Where appropriate, other members of staff may be asked to provide additional support to the staff member 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, following the school's monitoring and evaluation procedures and formal performance management, including probationary periods. 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.

5.1. Informal capability process An informal period of support, put in place and monitored by the line manager, will have been in place before capability procedures are triggered. Informal support will last for a period of not less than 7 weeks initially. However this period of support may be extended to no more than 13 weeks where appropriate. Evidence of this will be available before the process begins and an action plan will be completed as part of the informal capability process (Appendix A). Opportunity will be given for the staff member to consult with a trade union representative on the action plan before agreeing.

Where there are concerns about any aspects of performance the appraiser will meet the staff member formally to:

- Give clear feedback about the nature and seriousness of the concerns
- Give the appraisee the opportunity to comment and discuss the concerns
- Set clear objectives for required improvement (Appendix A)
- Agree any support (e.g. coaching, mentoring, structured observations), that will be provided to help address those specific concerns
- Make clear how, and by when, the appraiser will review progress against the objectives – objectives may be amended following review with agreement of the appraisee
- Explain the implications and process if no, or insufficient, improvement is made – e.g, impact on pay progression and **potential move to formal capability**

When progress is reviewed, if the appraiser is satisfied that the member of staff has made, or is making, sufficient improvement, the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process. The improvements made are expected to be sustained over time by the employee and any subsequent decline in standards, may lead to either a shortened period of support or the escalation of procedures to Formal Capability.

Consequently, where:

- Insufficient progress has been made towards meeting the expected professional standards OR
- Previous improvements have not been sustained over time

The process is likely to move to Formal Capability.

For the avoidance of doubt issues affecting the capability and relating to adverse health will be dealt with under the Mast Academy Trust Staff attendance policy. [The staff attendance policy can be found on the trust website.](#)

5.2 Formal capability meeting

10 working days' notice will be given of the formal capability meeting (from the date of the letter), and will explain:

- The areas of performance which remain a concern following a performance management process where concerns were identified 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 line manager responsible for performance management of the staff member, or the Headteacher. For Headteacher's the CEO will conduct meetings and for Trust staff, line managers will conduct the meeting unless it is the CEO, in which case it will be the Chair of the Trust Board who will conduct the meeting.

The purpose of the meeting is to confirm which areas of performance remain a concern with clear evidence to support this conclusion, establish the facts, and to allow the staff member to respond to the concerns and make relevant representations and to establish a way forward/action plan for improvement.

5.2.1 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 remain a concern following a performance management process
- Discuss concerns and shortcomings in performance, steps needed to improve, and associated timescales
- 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
- Warn the staff member of possible outcomes which may include a final written warning and dismissal.

5.2.2 After the meeting

The staff member will be sent formal meeting notes within 5 working days of the meeting. 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

- Consequences for failure to meet the required improvements

5.3 Monitoring and review period

A performance monitoring and review period consisting of formal monitoring guidance and support will follow the formal capability meeting. This should be for an initial 6 week period from the commencement of the plan, and can be extended at the discretion of the head teacher for a further 2 weeks. In extenuating circumstances, and where significant progress has been made, the length of time may be extended beyond 8 weeks, but this should be made clear to the colleague in writing alongside the reasons and should not exceed a period of 13 weeks in total.

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).

The member of staff can appeal any decision made in accordance with the direction set out in section 6.

5.4 Formal review meeting

At least 10 working days' notice will be given of the formal review meeting (from the date of the letter), 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
- The nature of the capability concerns that remain following performance management, what formal and informal actions have already been taken, what progress has been made and any outstanding concerns.

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. Where practical, this meeting will be conducted by the same person(s) that conducted the formal capability meeting. Ceasing of the capability process for staff will be notified in writing within 5 working days of the meeting and will be subject to the improvements being sustained.

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 and a second formal capability meeting will be arranged after a 4-6 week period. The support arrangements will continue during this period.

Notes will be taken of formal meetings and a copy sent to the member of staff within 5 working days.

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 and process for appealing against the final warning. The staff member will be invited to a decision meeting.

5.4 Decision meeting

At least 10 working days' notice (from the date of the letter) 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
- The nature of the capability concerns that remain following performance management, what formal and informal actions have already been taken, what progress has been made and any outstanding concerns.

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

If the staff member's performance has not improved 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 in their current role at the school.

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 as per Section 6

5.6 Dismissal

The power to dismiss staff in this school will be applied in line with the scheme of delegation in force at the time of the dismissal hearing.

6. Right to appeal

If a staff member feels that a decision at any stage of the capability process 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 without unreasonable delay and at an agreed time and place. The same arrangements for notification (10 days from the date of the letter) 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 within 5 working days.

The appeal will be dealt with impartially and by 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 panels will be in line with the scheme of delegation and will not involve persons involved in the initial decision making process.

More specifically (subject to amendments in the Scheme of delegation, changes to which will override the below):

- Members of teaching staff (up to deputy head) and support staff at schools to be heard by the Local Governing Body
- Headteacher to be heard by Trustees
- Mast Trust staff to be heard by Trustees

7. Confidentiality

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. Records will be kept in line with the standards set out in the Data Protection Policy. The Data Protection Policy can be found on the trust website.

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 Headteacher and governing board.

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

This policy will be approved by The Board of Trustees

10. Links with other policies

This policy links to our policies on:

- Staff code of conduct
- Staff grievance procedures
- Staff disciplinary procedures
- Equality information and objectives

[All policies can be found on the trust website.](#)

Appendix A: capability action plan template

This template can be used as part of the process of supporting a teacher who is underperforming and will be completed at the start of the informal capability process. 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. The objectives will relate specially to the areas of concern and will not replace objectives set any annual objectives.

Name of staff member	Name of Appraiser	Date of meeting

Objective 1:		
Area of competence/performance that requires improvement	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

Objective 2:

**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

Objective 3:

**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

Other support provided

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

Signed by member of staff	Signed by appraiser	Date