



The
MAST
 Academy Trust

Policy	Colleague capability policy	
Owner	The Mast Executive Administrator	
Date approved	28 th February 2023	
Approver	Colleague Committee for the Trust Board	
Date consulted on with recognised trade unions	21 st February 2023	
Date adopted following consultation process on	21 st February 2023	

Current version	V5.0
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Next review due	Spring 2024
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Objective of Policy
<p>The Mast Academy Trust (the Trust) recognises that school leaders have a responsibility to ensure that pupils receive the best educational opportunities available to them. They believe that the schools can only be fully effective in delivering a service to their pupils and the community if they have well trained motivated, committed and competent colleague. This policy aims to provide guidance on the policy and process for when any member of colleague is experiencing difficulties in meeting the standards that are expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.</p> <p>The Capability Procedure will be used to address any concerns that are raised about a member of colleague’s performance where there is clear, triangulated evidence of sustained under performance which the usual performance management process and informal support programmes have failed to address and where the progress of pupils is at risk and/or that there are concerns about pupil health and safety and to provide a more tightly focused strategy of support.</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.
4.0	Annual review. Replacement of informal capability process with transition meeting 5.1. Amended timescales in 5.3. Additional amends requested by unions throughout. Addition of section 7: Grievance and disciplinary procedures. Additional of Appendix B: Equality Impact Assessment
5.0	Annual review. Section 2 – updates to legislation and links. 'Staff member' changed to 'colleague' Responsibilities when the colleague is a member of the collaborative team.

Sign off requirements			
Approvers		Position	
Colleague Committee		Trust Board	
Reviewers		Position	
Natasha Greenough		CEO The MAST	
Dorcas Atkinson		Trustee	
Unions consulted			
ASCL	GMB	NEU, (ATL)	NAHT
NASUWT	UNISON	UNITE	

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1. Aims

The aim of our capability of colleague policy is to set out a clear and consistent process for when any member of colleague is experiencing difficulties in meeting the standards that are 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 Trust will determine professional standards against key Trust priorities and colleague will need to demonstrate that their practice is consistent with the standards that are being applied in the Trust by which all are being measured.

Employees transferring will be subject to TUPE provisions, where employees in this situation have enhanced contractual terms, the enhanced terms will continue to apply.

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

An impact assessment is undertaken annually on all colleague policies to ensure that no groups or individuals with protected characteristics are unintentionally disadvantaged by the policy or practice.

2. Legislation and guidance

This policy is based on the Department for Education's model policy and guidance, [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 colleague 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 'colleague' include the Headteacher, teachers and support colleague, unless indicated otherwise.

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

4. Roles and responsibilities

Where the colleague subject to the procedure is the Headteacher, the CEO will be responsible for coordinating the procedure.

Where the colleague subject to the procedure is not the Headteacher, the Headteacher or a nominated member of senior colleague will be responsible for coordinating the procedure. In cases involving members of the trust's collaborative team, the CEO will appoint an appropriate leader to co-ordinate the process. If the colleague subject to procedure is the CEO, it will be the Chair of the Trust Board.

Where appropriate, other colleagues may be asked to provide additional support to the colleague 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 there is clear, triangulated evidence of sustained under performance which the usual performance management process and informal support programmes have failed to address.

The Capability Policy should only be used in circumstances where the formal appraisal process has been unable to address concerns regarding their performance. The Trust will ensure that the instigation of a capability process will not come as a surprise to the employee concerned.

The right to be accompanied by a trade union representative or work colleague, applies at all the meetings listed under the stages of this procedure. The availability of the trade union representative may require an extension of 5 school days' notice for attendance at a meeting, this will be considered on a case by case basis and will result in no more than a total of 10 school days' notice for the meeting(s).

5.1 Transition Meeting

A Transition Meeting may be held at any stage of the appraisal cycle if the member of colleague's performance remains a cause for concern as part of the normal appraisal procedure. This may include concerns about low expectations of pupils, unsatisfactory progress made by pupils, weak planning and preparation and inadequate classroom and behaviour management skills.

The colleague will have at least 5 school days' notice of the meeting if the date had not been agreed at an earlier stage in the appraisal procedure. In exceptional circumstances, a very serious concern raised outside the Performance Management process, if validated, could lead directly to a Transition meeting.

This meeting will be conducted by the line manager responsible for performance management of the colleague or the Headteacher. For Headteachers, the CEO will conduct meetings and for Trust colleague, 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 meeting will provide an opportunity to review progress towards meeting the targets for improvement. The process for the meeting will be as follows:

- A summary of the concerns will be given at this meeting by the appropriate leadership team member.
- The colleague member will be provided with an opportunity to respond.
- The appropriate leadership team member will express a view on whether the performance management process should remain in place or whether formal capability proceedings should commence.
- The colleague member may make representations regarding their performance and targets set and progress made in meeting the targets.
- If the person leading the meeting concludes 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 performance management process, then the transition to the capability procedure would be inappropriate at this time. This will be confirmed, in writing, to the employee within 5 school days. The colleague would continue to be supported and a new timescale for improvement set together with a date for a review meeting.

- The person conducting the meeting may also adjourn the meeting if, for example, they decide that further investigation is needed, or that more time is needed in which to consider any additional information.
- If it is decided that capability procedures will commence the colleague will be notified in writing that the performance management process will no longer apply and that their performance will continue to be managed under the capability procedure.
- An agreed date will be set for the Formal Capability Meeting and the colleague will receive written notification of the meeting, the evidentiary documents and a copy of the procedures will be supplied to the colleague a minimum of 5 school days ahead of the meeting.

5.2 Stage 1: Formal capability meeting

5 school 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 colleague 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 colleague member, or the Headteacher. For Headteachers, the CEO will conduct meetings and for Trust colleague, 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 colleague to respond to the concerns and make relevant representations. The meeting will also establish a way forward/action plan for improvement. An adjournment may be requested if a colleague wishes to discuss a proposed plan with their trade union representative.

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. The employee will receive written confirmation that their performance will be continued to be managed under the usual performance management 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:

- Review the professional areas for development to enable performance standards to be met, (for example which of the standards expected of teachers, career stage expectations and/or job description remain a concern and are not being met)
- Give clear guidance on the improved standard of performance needed to ensure that the colleague has every opportunity to improve their performance. This may include the setting of refined objectives focused on the specific areas of development 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.
- Explain the support available to help the colleague improve their performance.
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case. A support

and monitoring period of between four and six weeks (see 5.3) will be put in place to enable the colleague to make progress against the relevant performance standards or new objectives set. It is for the Trust to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.

- Advise the colleague of possible outcomes which may include a final written warning or dismissal. A review period following a final written warning of between four and six weeks will be put in place to enable the colleague to make progress against the relevant performance standards or new objectives set.

It is at this point that the colleague enters into the formal capability process.

5.2.2 After the meeting

The colleague will be sent formal meeting notes within 5 school days of the meeting. If a formal warning has been issued, the colleague 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, whom to appeal to 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 4 week period from the commencement of the plan, and can be extended at the discretion of the head teacher, or leader managing the process, for a further 2 weeks. In extenuating circumstances, and where significant progress has been made, the length of time may be extended beyond 6 weeks, but this should be made clear to the colleague in writing alongside the reasons and should not exceed a period of 8 weeks in total.

The colleague will be invited to a Stage 2: formal review meeting (see 5.4 below), unless they were issued with a final written warning, in which case they will be invited to a Stage 3: decision meeting (see 5.5 below).

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

5.4 Stage 2: Formal review meeting

At least 5 school 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 colleague 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 colleague 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 colleague will be notified in writing within 5 school 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 colleague member will receive a final written warning and a second formal capability meeting will be arranged after a 4 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 colleague within 5 school days.

The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of colleague 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 colleague member will be invited to a decision meeting.

5.5 Stage 3: Decision meeting

At least 5 school 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 colleague 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 colleague's performance has not improved to a sufficient standard, a decision, or recommendation to the governing board, may be made that the colleague should be dismissed or required to cease working in their current role at the school. Alternatives to dismissal may be considered if this is appropriate such as deployment to an alternative role if a vacancy were available in the school or another school in the Trust.

The colleague 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 colleagues 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 colleague 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 5 school 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 (5 school 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 colleague member within 5 school days.

The appeal will be dealt with impartially and by senior leaders or governors who have not previously been involved in the case.

The colleague will be informed in writing of the results of the appeal hearing within 5 school 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):

- Teaching colleague (up to deputy head) and support colleague at schools to be heard by the Local Governing Body
- Headteacher to be heard by Trustees
- Mast Trust colleague to be heard by Trustees

7. Grievance and disciplinary procedures

If a colleague raises a grievance or is subject to a disciplinary the capability procedure may be temporarily suspended in order to deal with the grievance or disciplinary.

Where the grievance/disciplinary and capability cases are related it may be appropriate to deal with both issues concurrently, in this case the processes will be dealt with by different managers.

8. 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 (or designated leaders as outlined in this policy) 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.

The governing and trust boards are aware of the guidance and provisions of the Data Protection Act 2018.

9. Consistency of treatment and fairness

The governing and trust boards are 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 and trust board is aware of the guidance and provisions of the Equality Act 2010.

10. Monitoring arrangements

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

This policy will be approved by The Board of Trustees as delegated to the staffing committee.

11. Links with other policies

This policy links to our policies on:

- Colleague code of conduct
- Colleague grievance procedures
- Colleague disciplinary procedures
- Equality information and objectives
- Colleague Appraisals Policy

[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 formal capability process. It records the outcomes of the 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 colleague concerned. The objectives will relate specially to the areas of concern and will not replace objectives set any annual objectives.

Name of colleague 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 colleague	Signed by appraiser	Date

Appendix B: Equality Impact Assessment

Name of policy being assessed	Colleague Capability Policy
Summary of aims and objectives of the policy	Refer to page 1
What involvement and consultation has been done in relation to this policy? (e.g. with relevant groups and stakeholders)	Refer to page 2
Who is affected by the policy?	All employees
What are the arrangements for monitoring and reviewing the actual impact of the policy?	Annual review

Protected Characteristic Group	Is there a potential for positive or negative impact?	Please explain and give examples of any evidence/data used	Action to address negative impact (e.g. adjustment to the policy)
Disability	No	Policy is an internal policy and does not differentiate capability.	NA
Gender reassignment	No	Policy is an internal policy and does not differentiate capability.	NA
Marriage or civil partnership	No	Policy is an internal policy and does not differentiate capability.	NA
Pregnancy and maternity	No	Policy is an internal policy and does not differentiate capability.	NA
Race	No	Policy is an internal policy and does not differentiate capability.	NA
Religion or belief	No	Policy is an internal policy and does not differentiate capability.	NA
Sexual orientation	No	Policy is an internal policy and does not	NA

		differentiate capability.	
Sex (gender)	No	Policy is an internal policy and does not differentiate capability.	NA
Age	No	Policy is an internal policy and does not differentiate capability.	NA

Evaluation

Question	Explanation / justification
Is it possible the proposed policy or change in policy could discriminate or unfairly disadvantage people?	Policy is an internal policy and does not differentiate capability. Protected characteristics declaration are provided through equality and diversity monitoring form. Changes to the policy have been consulted with unions.

Final decision

Please indicate the final decision using the options below	1
What is the explanation for this?	
No changes to the policy that would discriminate.	

There are four options open to you:

1. No barriers or impact identified, therefore policy will **proceed**.
2. You can decide to **stop** the policy or practice at some point because the evidence shows bias towards one or more groups.
3. You can **adapt or change** the policy in a way which you think will eliminate the bias, or
4. Barriers and impact identified, however having considered all available options carefully, there appear to be no other proportionate ways to achieve the aim of the policy or practice (e.g. in **extreme cases** or where **positive action** is taken). Therefore you are going to **proceed with caution** with this policy or practice knowing that it may favour some people less than others, providing justification for this decision.

Will this EIA be published* Yes/Not required	Yes
Date completed:	23 rd January 2023
Review date (if applicable):	Spring 2024