



# Capability Procedure

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## **Capability Procedure**

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## **1. Introduction & Objectives**

- 1.1 For the purpose of this document, lack of capability is defined as a situation in which an employee fails consistently to perform his or her duties to a professionally acceptable standard. Capability concerns may be about a single matter or a number of separate issues.
- 1.2 This procedure is designed to help and encourage all staff to achieve and maintain acceptable standards of capability and work performance. However, capability action may, at its extreme, lead to dismissal.
- 1.3 This procedure applies to all staff employed by the Governing Body of the Academy about whose performance there are serious concerns that the appraisal process has been unable to address.
- 1.4 The Capability procedure should not be implemented unless a support plan has been in place from an agreed period and the individual has been provided with reasonable time for their performance to improve under the appraisal process.

## **2. Representation**

- 2.1 At all stages of the capability process employees have the right to be represented or accompanied by an accredited official of a recognised trade union or a work colleague, and should be so advised. The representative or work colleague may address the meeting and/or interview and confer with the employee but may not answer questions on their behalf.
- 2.2 The employee should make their own arrangements to be represented or accompanied. Where the chosen representative or colleague is not available at the proposed time and date, the employee may propose an alternative date as long as this date is within 5 working days of the original date.

## **3. Issues of Capability of Trade Union Officials**

- 3.1 Any capability action being contemplated in respect of staff representatives of recognised trade unions within this procedure should not be instigated without the prior involvement of the full time official or nominee, of the appropriate trade union.

## **4. Formal Capability Process – Invite to Meeting**

- 4.1 At least 5 working days' notice, in writing, will be given of the formal capability meeting. The notification will include:
  - Sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting
  - Copies of any written evidence connected to the concerns
  - The details of the date, time and place of the meeting
  - Advice about the employee's right to be represented by a trade union official or work colleague

## **5. Formal Capability Meeting**

- 5.1 This meeting is intended to establish the facts. It will be conducted by the person nominated by the Principal to manage the capability process (ie, line manager/member of the leadership team) with support from the Academy HR function if required. If the capability concerns are related to the Principal, the meeting will be conducted by the Chair of Governors and/or Trustee of NET. The meeting allows the member of staff to respond to concerns about their performance and to make any relevant representations that may provide new information or a different context to the evidence already collected.

- 5.2 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. 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 to consider any additional information.
- 5.3 In other cases, the capability meeting will continue and the appraisal process will be suspended during the period of the capability procedure. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:
- 5.3.1 Identify the professional shortcomings, for example which of the professional standards are not being met.
  - 5.3.2 Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures and identify and discuss any training needs for the member of staff and what support will be offered (this may be in the form of an action plan to include objectives, success criteria, timescale, support and monitoring).
  - 5.3.3 Seek to identify any contributing factors to the underperformance of the member of staff such as domestic or health issues.
  - 5.3.4 Explain the timescales fully and explain how performance will be monitored and reviewed. The timescale will depend on the circumstances of the individual case. In cases where the education of students is at serious risk the minimum timeframe of 4 weeks will apply. In other cases, where there may be some mitigating circumstances, a maximum timescale of up to 8 weeks may apply.
  - 5.3.5 Where concern about the standard of performance is serious, a first written warning may be issued that failure to improve within the set period could lead to dismissal. In very serious cases, where the education of students is at risk, this warning may be a final written warning.
  - 5.3.6 The content of the discussion at the meeting will be followed up in writing to the employee.

## 6. Monitoring & Review Period Following the Capability Meeting

- 6.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will then be invited to a formal review meeting.

## 7. Formal Review Meeting

- 7.1 **At least 5 working days' notice will be given in writing to the employee advising them of the date, time and place of the meeting and their right to be represented/accompanied by a trade union official or work colleague.**
- 7.2 The outcome(s) of the formal review meeting could be:
- 7.2.1 If sufficient sustained improvement has been made the capability procedure will cease and the appraisal process will re-start.
  - 7.2.2 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.

- 7.2.3 If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a written warning which could, in very serious cases, take the form of a final written warning.
- 7.2.4 If no, or insufficient improvement has been made during the monitoring and review period, and the employee has already received a final written warning they will be invited to a hearing to consider their continued employment on the grounds of capability (performance).
- 7.2.5 The content of the discussion at the meeting will be followed up in writing to the employee.

## 8. Hearing

- 8.1 At least 5 working days' notice will be given in writing to the employee advising them of the date, time and place of the meeting and their right to be represented/accompanied by a trade union official or work colleague. See **(Appendix 1)** for procedure for the hearing.
- 8.2 If the Principal has not been involved in the case, the Principal shall hear the case with support from a nominated HR representative. If the Principal has been involved, or the hearing is about the Principal, the case shall be heard by a panel of 3 Governors including a NET Trustee. In exceptional circumstances, where it is not reasonably practicable to comply with the requirement of a minimum of 3 Governors, the membership of the panel shall be comprised in such a way as to ensure that any subsequent Appeal Committee includes no fewer members than on the Hearing Committee.
- 8.3 If an employee fails to attend the hearing the case will be heard in their absence, unless the Hearing Committee agrees to postpone the hearing to a later date having received acceptable reasons.
- 8.4 The Hearing Committee should have before them copies of all relevant papers that will be referred to during the hearing including any submitted by the employee. Any evidence the employee wishes to table should be made available at least 2 days before the hearing so that it can be copied to all parties.
- 8.5 At the hearing the panel will decide whether late evidence from either side will be accepted. The views of both sides should be heard when considering whether to accept late evidence, along with general considerations of reasonableness and fairness. If late evidence is accepted in the form of written documentation, the hearing will normally be adjourned for a brief period to provide reading time.

The Chair will open the proceedings by:

- Stating the purpose of the hearing
- Introducing all present
- Saying how the hearing will be conducted
- Confirming that all have the same documentation
- Confirming the numbers and names of witnesses attending on both sides
- Asking for any points of clarification to be stated

## 9. Outcome of the Hearing

- 9.1 Potential outcomes of the hearing:
- 9.1.1 If evidence has come to light that has not been previously considered and the panel believe that quick and sustained improvement can be made; they can instruct the case to revert to the appraisal process/formal capability review meeting stage

- 9.1.2 If the panel believes that sufficient progress can be made they can extend the period of monitoring under the final written warning
- 9.1.3 Where the panel believes that no or insufficient improvement will be made the employee will be informed that they will be dismissed from their employment with the Academy on the grounds of capability (performance); the date on which the employment contract will end, the appropriate period of notice and their right of appeal

## **10. Appeal**

- 10.1 An employee can appeal against any formal action taken against them as a result of this procedure if they feel it is wrong or unjust. This appeal must be made in writing, within five working days of receipt of the decision, setting out the grounds for the appeal. The appeal will be heard without unreasonable delay and the employee will be given 5 working days' notice of the date of the appeal. Depending what the appeal is against, ie, final written warning/dismissal etc, the appeal will be heard by the Principal or a panel of Governors/NET Trustee and wherever possible, by those who have not been involved in the case.
- 10.2 Arrangements, notification, production of documentation, the right to representation and the procedure for the appeal will be the same as the arrangements and procedure for the hearing (see appendix 1).
- 10.3 An appeal will be a full re hearing of the case. The decision of the Appeals Committee is binding and final on all parties.

## **11. General Principles Underlying this Policy**

### **11.1 Records**

- 11.1.1 The maintenance of accurate records is essential, particularly in the event of a referral to an Employment Tribunal. Records should be kept in a secure and confidential manner and in accordance with the Data Protection Act.

### **11.2 Consistency of Treatment & Fairness**

- 11.2.1 The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

### **11.3 Confidentiality**

- 11.3.1 The capability process will be treated with confidentiality.

### **11.4 Grievances**

- 11.4.1 Where an employee raises a grievance during the capability process the grievance will be dealt with swiftly and concurrently with the capability process. Depending on the seriousness of the grievance, it may be appropriate to temporarily suspend the capability process.

### **11.5 Sickness**

- 11.5.1 Sickness absence during the capability process will be dealt with in accordance with the Academy's attendance management policy. Sickness absence does not automatically mean the capability process will cease, this will depend on the stage of the capability process and how much evidence has been gathered relating to the performance of the employee.

11.5.1 The employee will normally be referred to the occupational health service to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring and formal procedures. In some cases it may be appropriate for formal procedures to continue during a period of sickness absence. However, the views of the occupational health physician will be taken into account before a decision is reached.

## Procedure for the Hearing/Appeal

1. The Management representative\* to present the facts of the case and may call witnesses.
2. The employee or his/her representative to have the opportunity to question the Management representative and any witnesses about the facts provided.
3. The Principal/Committee to have the opportunity to question the Management representative\* and any witnesses.
4. The employee or his/her representative to put his/her case and may call witnesses.
5. The Management representative\* to have the opportunity to ask questions of the employee or his/her representative and witnesses.
6. The Principal/Committee to have the opportunity to ask questions of the employee or his/her representative, or the witnesses.
7. The Management representative\* to have the opportunity to sum up his/her case. (No new evidence should be submitted at this point)
8. The employee or his/her representative to have the opportunity to sum up his/her case. (No new evidence should be submitted at this point)
9. The Management representative\* and the employee and his/her representative to withdraw.
10. The Principal/Committee to consider the facts presented to them.
11. The hearing may also be adjourned at the deliberation stage, in order to allow for further investigation if the Principal/Committee feels that there are points that need clarification. An opportunity may be given to re-examine the evidence/witnesses.
12. The decision will normally be announced in person to all parties once the Principal/ Committee have carefully considered the evidence presented to them. However, in some cases this may not be practicable, in which case all parties will be informed in writing within 5 working days. An explanation of the decision and the right of appeal (if applicable) will also be given. The decision will be confirmed in writing to the employee.

\*Management representative and HR representative



Flow Chart of Process



