



E04

ESTEEM MULTI-ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE

Contents

1. Introduction	2
2. Purpose	2
3. Application of the policy	3
4. Capability Procedure	3
5. Stage 1 – Transition Meeting (from Informal Capability to Formal Capability meeting).....	3
Timescales.....	5
6. Stage 2 – First Formal Capability meeting.....	5
Timescales.....	Error! Bookmark not defined.
7. Final Formal Review Meeting.....	6
Timescales:.....	6
8. Stage 3 – Final Capability Decision Hearing	6
9. Procedure at the Final Capability Decision Hearing	7
10. Decisions taken by the Final Capability Decision Hearing	7
11. Appeal.....	8
12. References.....	8
13. General Principles Underlying This Policy.....	9
Consistency of Treatment and Fairness	9
Right to be accompanied.....	9
ACAS Code of Practice on Disciplinary and Grievance Procedures.....	9
Sickness.....	10
Grievances.....	10
Retention.....	10
Confidentiality and Professional Relationships	10
Monitoring and Evaluation.....	10
Appendix A: Conduct of Dismissal hearing	11
Appendix B: Performance Improvement Plan.....	14
Appendix C	16
Appendix D: Invitation to attend capability meeting	17
Appendix E: Informal Capability process	18

1. Introduction

The Esteem MAT recognises that academy leaders have a responsibility to ensure that pupils receive the best educational opportunities available to them. They believe that the academies can only be fully effective in delivering a service to their students and the community if they have well trained motivated, committed and competent staff. In support of these aims this policy and procedure set out the arrangements that will apply when staff are experiencing difficulties in meeting the standards that are expected of them.

One of the key elements in ensuring successful learning is the quality of teaching provided. The aim of this policy therefore is to ensure that all teachers are performing to professionally acceptable standards and support staff are fulfilling the expectations of their role in line with their job description. Whilst there are no statutory regulations for support staff regarding performance, the Trust has determined that it is good practice to provide a fair and equitable scheme for all academy-based staff, including Senior Leaders.

It is a statutory requirement for trusts to have a Capability Procedure for leaders at all levels, and a policy, covering all staff, which deals with capability. Capability procedures apply to members of staff whose performance has raised concerns about where progress of students is at risk.

The use of the Capability Procedure within the Trust will be a supportive and developmental process designed to ensure that staff have the skills and support they need to carry out their role effectively. It will help to ensure that staff are able to continue to improve their professional practice and to develop in their professional roles.

The Trust is committed to ensuring consistency of treatment and fairness in the operation of its performance management and capability support processes. The Capability Procedure will be used to address any general concerns that are raised about a staff member's performance and to provide a more tightly focused strategy of support and assessment.

This model policy is compliant with the revised statutory School Staffing Regulations (England) (Amendment) 2012 and applies to all staff across the Trust. It replaces the statutory guidance, 'Capability Procedures for Teachers' that was issued in July 2000. Capability procedures apply only to members of staff about whose performance there are serious concerns which the performance management process has been unable to address.

Standards appropriate to the level of the post need to be applied. Management will determine professional standards against key Trust and Academy level priorities and staff 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.

2. Purpose

The Trust Board believes that the Trust can only be fully effective in delivering a service to pupils and the community if it has well trained motivated, committed and competent staff. In support of these aims this policy and procedure sets out the arrangements that will apply when staff are experiencing difficulties in meeting the standards that are expected of them.

The Capability Procedure will be used to address any general concerns that are raised about a member of staff's performance and to provide a more tightly focused strategy of support and assessment.

3. Application of the policy

This policy is not contractual and applies to all staff employed by the Trust. The Trust holds the right, where an employee holds less than 2 years' service to move away from this procedure. All cases will be managed by a more senior member of staff and in the case of the CEO this will be managed by Trustees.

4. Capability Procedure

This procedure applies to employees whose performance there are concerns about. Notification will be confirmed in writing where standards are not at an acceptable level.

The Capability Policy should only be used in circumstances where the formal performance management process has been unable to address concerns regarding their performance. In exceptional circumstances a very serious concern raised outside the Performance Management/Appraisal process, if validated, could lead directly to a Transition meeting.

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.

Staff who enter the transition process will have it recorded on their personnel file for a period of two years.

5. Stage 1 – Transition Meeting (from Informal Capability to Formal Capability meeting)

(NB. For all support staff, this meeting can be amended to reflect the position in the academy but will not be referred to as Transition)

Normally, the period given for improvement will be no more than three months after the date of entry into the Formal Procedure (in exceptional circumstances this period could be extended). The frequency of review meetings during this period will depend on the circumstances of each case. In extreme cases where poor performance is likely to present a risk to the school, staff or children or young people, then the period given for improvement in performance after the date of a formal warning will be no more than four weeks.

A Transition Meeting may be held at any stage of the performance management cycle if the staff member's performance remains a cause for concern as part of the normal performance management procedure. This may include but is not limited to concerns about low expectations of pupils, unsatisfactory progress made by pupils, weak planning and preparation and inadequate classroom and behaviour management skills.

The staff member will have at least five working days' notice of the meeting if the date has not been agreed at an earlier stage in the performance management procedure.

This meeting will be conducted by a Headteacher/Deputy Headteacher/or nominated manager. The meeting allows the staff member to have representation, which may provide new information or a different context to the information/evidence already collected. If the capability procedure refers to the Executive Team, then the meeting may be conducted by their line manager/Chair of Trustees or nominated Trustee.

The meeting will provide an opportunity to review progress towards meeting the targets for improvement.

The process for the meeting will be as follows:

- i. A summary of the concerns will be given at this meeting by the appropriate leadership team member.
- ii. The staff member will be provided with an opportunity to respond.
- iii. 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.
- iv. The staff member, assisted by a trade union representative or accompanied by a work colleague, may make representations regarding their performance and targets set and progress made in meeting the targets.
- v. 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. The staff member would continue to be supported, as described in the Performance Management Policy and a new timescale for improvement set together with a date for a review meeting.
- vi. 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.
- vii. If it is decided that capability procedures will commence, the staff member 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.
- viii. An agreed date will be set for the Formal Capability Meeting and the staff member will receive written notification of the meeting, the evidentiary documents and a copy of the procedures will be supplied to the staff member a minimum of five working days ahead of the meeting.

At the end of the meeting, the Headteacher should;

- Confirm their decision in writing to the employee and any action points made.
- Set up a formal performance improvement plan (PIP) with the employee with a timetable for improvement (usually six weeks). It is important that the Headteacher monitors performance against the improvement plan on a regular basis in order to;
 - i. provide support and guidance to the employee, hopefully to assist them to improve their performance;
 - ii. should an opinion be needed from Occupational Health, the Headteacher should also refer to this in the letter to the employee. It is important that Occupational Health is provided with a thorough and accurate account of the problem.
 - iii. issue a Formal Written Warning to the employee that their performance is below standard and advise them that failure to improve their performance could ultimately lead to dismissal should they continue to fail to meet the standard required;
 - iv. the employee will have the right to appeal against any Formal Warning issued. This should be done within ten working days of receipt of the letter. Any appeal should be to the Chair of Governors. For members of the Exec team this would be the Chair of Trustees. The employee has the right to be represented by their Trade Union or accompanied by a colleague.

The member of staff member will be given a Performance Improvement Plan (PIP) and assigned a coach who will oversee the support during this time. Additionally, weekly tasks, opportunities and meetings will be scheduled and agreed with the member of staff as part of this supportive process.

If following the conclusion of the first formal stages of the support/coaching plan and it is felt that the capability problem remains, or is of a more serious nature, the Headteacher should commence stage 2 of this procedure.

Timescales

- 6 weeks

The same process for convening and reviewing the performance of a member of staff remains the same through each stage and this includes 'formal coaching and support'. See stage 1 for details.

6. Stage 2 – First Formal Capability meeting

The written notification of the meeting, together with the evidentiary documents and a copy of the procedure should be supplied to the staff member a minimum of five working days ahead of the meeting.

This meeting is intended to establish the support necessary to enable the member of staff to reach a consistently good standard to enable them to re-join the performance management process. It will be conducted by Chief Executive for executive team capability meetings and by the Headteacher (or Deputy Headteacher) for all other staff. If the capability procedure refers to the Chief Executive Officer, then the meeting will be conducted by the Chair of Trustees or nominated Trustee.

The meeting allows the staff member to be accompanied by a work colleague or a trade union representative who has been certified as being competent, by the union, to respond, on behalf of their member, to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the professional areas for development to enable performance standards to be met, (for example, which of the standards expected of teachers are not being met);
- give clear guidance on the improved standard of performance needed to ensure that the staff member has every opportunity to improve their performance. This may include the setting of new 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;
- allow the staff member the opportunity to request an adjournment at any point in order to consider the management proposals and develop alternative or additional suggestions;
- explain any support that will be available to help the staff member to 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 ten weeks will be put in place to enable the member of staff 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 improvement to take place;
- In cases, where the progress of pupils is being seriously jeopardised or where there are serious concerns on the grounds of health and safety, a Final Written Warning may be issued with a four-week period for improvement being given;

- vii. The staff member will be advised formally that failure to improve within a set period could lead to dismissal with notice.

At the end of the meeting the Headteacher will need to;

- Confirm the discussion and action points;
- Set up a final performance improvement programme with the employee, with a timetable set for improvement (usually 6 weeks)
- Issue a Final Written Warning to the employee explaining what will happen if they continue to fail to meet the standard required.
- The employee will have the right to appeal against any Formal Warning issued. This should be done within ten working days of receipt of the letter. Any appeal should be to Chair of Governors. For members of the Exec team this would be the Chair of Trustees. The employee has the right to be represented by their Trades Union or accompanied by a colleague.

Where at the completion of the final period allowed for improvement there has not been acceptable progress, the Headteacher will confirm the intention to convene a Formal Capability Decision Hearing.

Notes of this formal meeting will be taken and a copy sent to the staff member. Where a warning is issued, the staff member will be informed in writing in addition to 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.

There is a right of appeal. Details of the process to appeal should be provided in writing within five working days of the decision being communicated.

Timescales

- 4 – 10 weeks

7. Stage 3 - Final Formal Review Meeting

At the end of the support and monitoring period there will be a Final Formal Review Meeting with the staff member and their trade union or colleague support, at which progress towards improvement will be discussed. If the academy remains dissatisfied, then the staff member will be invited to a Stage 4 final capability decision meeting at which dismissal can be considered. The staff member must be advised that dismissal is a possible outcome of the Stage 4 meeting.

Although it is not a legal requirement, before a decision is made to move towards dismissal, the Trust may discuss the matter with its HR and legal Advisory Service.

Timescales:

- 6 weeks – final PIP

8. Stage 4 – Final Capability Decision Hearing

The Chair of Trustees has formally delegated powers of dismissal to the relevant Headteacher and this hearing will be held by them.

For capability proceedings regarding the Headteacher the Chief Executive Officer, working with trustees, shall have the authority to dismiss and a nominated Trustee(s) will hear any appeal. For capability proceedings regarding the Chief Executive Officer, a nominated Trustee(s) will have the authority to dismiss and any appeal will be to another nominated Trustee(s).

In a case where any person with the power to dismiss is compromised through existing circumstances or, will need to be significantly involved in the investigation – the case will be discussed by the Chief Executive Officer and Chair of Trustees to determine the appropriate course to take in consultation with the Trust HR lead.

9. Procedure at the Final Capability Decision Hearing

As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of their right to be accompanied by a work colleague or trade union representative who has been certified by their union as being competent.

The agenda for this meeting can be found as Appendix A.

The Headteacher will go through the evidence that has been gathered. The employee will be able to respond and present any relevant evidence.

Evidence (saved for additional matters that the employee wishes to raise) is provided through witness statements. The Trust or the employee has the right to call witnesses to the hearing. As such, the Trust or the employee are able to cross examine the witnesses.

The employee will be given full opportunity to ask questions and put forward any mitigating factors which he/she believes are relevant to the hearing.

Once the employee has been afforded an opportunity to explain their position, the Headteacher will either:

- i. Give the decision and explain the reasons for the decision, and confirm as soon as possible in writing; or
- ii. Inform the employee that the decision will be given in writing as soon as possible

The Headteacher may adjourn the hearing if the Trust needs to carry out any further investigations in light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any comments on any new information obtained before a decision is given.

10. Decisions taken by the Final Capability Decision Hearing

If this hearing finds that a required standard of performance has been achieved during the further monitoring and review period, the Capability Procedure will end and the performance management process will re-start.

If performance continues to fall below the acceptable standards, the Headteacher will make a decision as to whether to dismiss the employee, with notice, on the grounds of lack of professional capability.

The Headteacher also has the power to order a further period of improvement if they believe that there has been some progress and that there is a likelihood of the staff member being able to reach the required standard of performance with additional support and time for improvement. In this case the Headteacher will adjourn the meeting for a period of four working weeks when it will reconvene to consider whether an appropriate standard of work has been achieved or whether to go ahead with consideration of a decision to dismiss the employee with notice.

In some cases, the Trust may at its discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning (which will remain on file for 12 months excluding the summer break).

Examples include:

- i. Demotion;
- ii. Transfer to another department or job;
- iii. A period of suspension without pay;
- iv. Loss of seniority;
- v. Reduction in pay;
- vi. Loss of future pay increment

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 and their right of appeal. Any Appeal will be heard by a panel of up to three governors/trustees.

11. Appeals

All employees have the right of appeal. Appeals must be lodged in writing to the Chair of Governors within five working days of the decision being communicated to the employee (i.e. usually within five working days of the date of the outcome letter). If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity of pay.

The Trust will give the employee written notice of the date, time and place of the appeal hearing. The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the Trust's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.

Where possible, the appeal hearing will be conducted impartially by a more senior manager who has not been previously involved in the case. The employee may bring a companion to the appeal hearing.

The appeal officer may adjourn the appeal hearing if the Trust need to carry out any further investigations in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before a decision is given.

The appeal officer may:

- i. Confirm the original decision;
- ii. Revoke the original decision; or
- iii. Substitute a different penalty

The appeal officer will inform the employee in writing of the final decision as soon as possible. There will be no further right of appeal.

12. References

The Trust complies with The School Staffing (England) Regulations 2009, paragraph 2, Regulation 8. The Trust recognises that it has a duty to other employers to give truthful and balanced references and this is the policy of the Trust, if an employee had been subject to formal capability procedures in the preceding two-year period. For the purpose of clarity, it will be deemed that an individual has entered the formal capability procedures, once they have attended the Transition meeting to consider the move from performance management (informal) to capability (formal) detailed in section 5.

The Trust will provide written details to the request of a governing body or proprietor of an employment requesting a reference of the duration and outcome of the proceedings and the concerns which gave rise to the actions carried out under the Capability Procedure.

13. General Principles Underlying This Policy

Consistency of Treatment and Fairness

The Trustees are committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation. Any member of staff who feels that they are being treated unfairly should raise a concern under the grievance procedures immediately, identifying the nature of the concern.

At the Transition meeting to consider the move from the performance management to capability and all the Review meetings and Hearing, the person leading the meeting should consider:

- i. Sustained and substantial improvement which has meant the member of staff has reached a consistently good standard of work and can re-join the performance management process
- ii. If there has been some progress and there is the likelihood that the staff member will be able to reach the required standard with additional support and time
- iii. Whether there is any risk of: unfair, partial or prejudicial consideration having played a part in reaching this point
- iv. If the Headteacher/Deputy Headteacher/or nominated person are unavailable the case will be given to an alternative manager
- v. Where appropriate the calling and questioning of witnesses may take place.

Right to be accompanied

The employee may bring a companion to any meeting or hearing under this procedure. The companion may be either a trade union representative or a work colleague. The employee must tell the meeting chair who their chosen companion is, in good time before the hearing.

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.

If the choice of companion is unreasonable, the Trust may ask the employee to choose someone else. For example:

- i. If in the Trust's opinion the employee's companion may have a conflict of interest or may prejudice the hearing; or
- ii. If the companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days afterwards.

The Trust may, at its absolute discretion, allow the employee to bring a companion who is not a work colleague or union representative (for example a member of family) if this will help the employee overcome a disability. At a hearing, the companion may make representations to the Trust and ask questions but should not answer questions on the employee's behalf. The employee may confer privately with their companion at any time during a hearing.

ACAS Code of Practice on Disciplinary and Grievance Procedures

The conduct of the formal capability stage will be undertaken in accordance with the provisions of the ACAS Code of Practice.

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 Staff Attendance Management Policy and will normally be referred to the Trust Occupational Health provider to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or 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 will always be taken into account before a decision is reached.

Grievances

Where a member of staff raises a grievance during the performance management or capability process, the performance management or capability process may be temporarily suspended in order to deal with the grievance. Where the grievance and performance management or capability cases are related it may be appropriate to deal with both issues concurrently.

Retention

All written performance management records are retained in a secure place in line with Esteem's Retention and Disposal Policy.

Confidentiality and Professional Relationships

The performance management and capability processes will be treated with confidentiality. Only the staff member's line manager or, where they have more than one, each of their line managers will be provided with access to the staff member's plan recorded in their statements. This will be done only when it is necessary to enable the line manager to discharge their line management responsibilities. Staff members who are involved in providing support for their colleagues will have the same duty of confidentiality with regard to the information provided to them.

The process of gathering evidence for performance review should not compromise normal professional relationships between staff. The Chair of Trustees recognise that the performance management reviewer will consult with, and seek to secure the agreement of, the staff member before seeking information from other colleagues about the work of the staff member.

Monitoring and Evaluation

The Trust will provide the Trustees with a written report on the operation of this policy annually.

A report on whether there have been any appeals or representations on an individual or collective basis on the grounds of alleged discrimination will also be provided.

Appendix A: Conduct of Dismissal hearing

- The Chairman of the Panel will introduce those present and explain the purpose of the hearing, also the procedure to be followed. The procedure will allow for short adjournment should either party wish a brief period for deliberation during proceedings.
- The Headteacher or designated Senior Leader will present a statement of the case regarding the reasons for the employee being unable to achieve satisfactory levels of performance. Documentary evidence may be referred to and witnesses called.
- The employee (or representative) will have the opportunity to question the Headteacher and witnesses.
- The panel will have the opportunity to question the Headteacher and witnesses.
- Each witness will leave the proceedings after questioning.
- The employee (or representative) will present a statement of case and may call witnesses in support.
- The Headteacher will have the opportunity to question the employee and witnesses.
- The panel will have the opportunity to question the employee and witnesses.
- Each witness will leave the proceedings after questioning.
- The Headteacher will summarise the case introducing no new evidence.
- The employee (or representative) will summarise the case, introducing no new evidence.
- The Headteacher and employee will leave the proceedings whilst the Panel considers its decision and recommendations. Should the Panel wish to ask further questions both parties will return notwithstanding that the Panel may only wish to ask questions of one of the parties.
- On reaching a decision, the Chair will recall the parties and advise them of the outcome.
- The employee will be advised of the outcome in writing.
- Employee informed of right to appeal which must be within 10 days from receipt of the outcome letter.

Appendix B: Performance Improvement Plan.

NB: RAG'd at the end of the cycle

Name of staff member	Name of Appraiser	Date of meeting
Objective 1:		
Teachers' 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
Review date		
Signed by member of staff	Signed by appraiser	Date

Appendix C

NB: RAG'd at the end of the cycle

Date			
Staff Member			
Coach/mentor			
Target	Actions	Support	Review

Appendix D: Invitation to attend capability meeting

Private and Confidential

[name and address]

[Date]

Dear [name]...

RE: Managing Capability - Formal

In accordance with the Managing Capability Procedure, a meeting has been arranged for [date, time and place] to discuss...[Be specific about the reason e.g. linked to the teacher or leadership standards/Job Description]

You are entitled to be accompanied by a Trade Union representative or a colleague if you wish. Please see the Capability Policy for more information.

Please acknowledge receipt of this letter by signing and returning the attached copy.

Yours sincerely,

Headteacher

I confirm that I, the above named, acknowledge receipt of this letter.

Signed	Date

Appendix E: Informal Capability process (Within Performance Management Policy)

Staff performance is reviewed in a number of ways, to provide evidence of their impact on learning:

- Work scrutiny, Lesson observations and learning walks, and the results of pupil and parent voice activities are all part of our ongoing review of teaching and learning.

Any one of these evidence bases may raise a concern which could lead to a information gathering exercise, pulling together varied evidence to fairly assess performance across a full range of indicators.

