



Capability Policy

Insert name of Academy

Policy reviewed by Academy Transformation Trust on	07/07/2014
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This policy links to:	Located
<ul style="list-style-type: none"> • Appraisal Policy • Attendance (sickness absence) Policy • Equal Opportunities Policy 	e.g Intranet

REVIEW DATE: July 2015

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1 Introduction

- 1.16 Academy Transformation Trust is committed to providing and supporting the provision of high quality teaching and learning for our pupils in our academies. Our aim is that every Academy Transformation Trust academy is a centre of excellent teaching, providing opportunities for every pupil whatever their ability. Our workforce is at the heart of delivering this which means we want all our employees to be given every support to develop to fulfil their potential in their job, thereby improving outcomes for our young people.
- 1.26 Our aim is to continually develop and improve performance, guiding employees through their careers with Academy Transformation Trust. Having an effective performance management process in place is one of the ways we can support our employees and deal with performance matters as they arise. This involves effective day-to-day supervision, carrying out appraisals, providing development opportunities and operating a fair and reasonable capability process. As an academy within Academy Transformation Trust, we understand that managing and improving performance not only helps the employee but also the pupils and ultimately Academy Transformation Trust's academy community as a whole.
- 1.36 Revised appraisal arrangements for teachers came into force with effect from 1 September 2012. They are set out in the Education (School Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations) which have replaced the Education (School Teacher Performance Management) (England) Regulations 2006 (the 2006 Regulations).
- 1.46 The Appraisal Regulations set out the principles that apply to teachers in all maintained schools and unattached teachers employed by a local authority, where they are employed for one term or more.
- 1.56 Academy Transformation Trust in agreement with the Local Governing Body has decided to implement these Appraisal Regulations with regards to teachers in the Academy as the 2006 Regulations are no longer in place from 1 September 2012.
- 1.6 Academy Transformation Trust in agreement with the Local Governing Body has decided use the principles of the Appraisal Regulations and apply them to support staff employed within the academy, to ensure consistency across all academy employees.

2 Purpose and application of the policy

- 2.1 This policy sets out the arrangements that will apply when an employee falls below the levels of competence and performance that are expected of them. Consideration will be given to any known mitigating factors (including health conditions) which might explain a temporary dip in performance and similar consideration should continue to be given to such circumstances in relation to this procedure.
- 2.2 The policy sets out the formal capability procedure which applies to employees about whose performance there are serious concerns that the appraisal process has been unable to address. This part applies both to teachers (except Principals) and support staff.
- 2.3 It is expected that transition from appraisal to this policy will only apply when the appraisal process has failed to secure improvements in performance where concerns are raised.

3 Capability Procedure (applicable to all employees)

- 3.1 This procedure applies only to employees about whose performance there are serious concerns that the appraisal process (including the feedback meeting and any informal review period) has been unable to address. This procedure will only be applied when all informal support as set out in the appraisal policy has been provided and been exhausted.
- 3.2 At least five working days' written notice will be given of the formal capability meeting. The notification will contain sufficient information about the performance concerns and their possible consequences (including either issuing a warning or dismissal) to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or an accredited trade union representative.
- 3.3 Where a trade union official, including a school based representative, is subject to the disciplinary/grievance/capability procedure The Trust will inform an accredited representative or the secretary of the Teacher Union or their full-time official before commencing formal disciplinary/capability/grievance proceedings.

Formal capability meeting

- 3.4 This meeting is intended to establish the facts. It will be conducted by the Principal or other senior employees delegated this responsibility by the Principal. At the meeting the concerns regarding performance will be put to the employee and the employee will be able to respond to those concerns and to make any relevant representations. This may provide new information or a different context to the information/evidence already

collected. The procedures are to be implemented with the intention of supporting the staff in achieving the required standards.

- 3.58 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.
- 3.68 During a formal capability meeting, the person conducting the meeting will:
- Identify performance shortcomings
 - Identify what action (including support provided) has been taken to date and what the outcome was
 - Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures at the earliest opportunity (this may include the setting of new objectives focused on the specific weaknesses 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 any support that will be available to help the employee improve their performance
 - Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable for this will depend on the circumstances of the individual case. In this academy, the standard set review period is normally six to eight weeks however, in exceptional circumstances it could be appropriate for the period to fall within the range of four to ten weeks, following discussion and seeking to agree with the staff member. The period will be reasonable and proportionate and should provide sufficient opportunity for an improvement to be made.
- and finally,
- Inform the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure, this could be done via a final written warning.
- 3.78 Minutes will be taken of all formal meetings and a copy sent to the employee.
- 3.8 Notes of the meeting, including the programme of action shall be sent to the teacher within five working days of the meeting together with a copy for the teacher's representative, if applicable.
- 3.98 Where a warning is issued, the employee will be informed in writing of 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.

Monitoring and review period following a formal capability meeting

- 3.10 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the performance monitoring and review period, the employee 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 below).

Formal review meeting

- 3.11 As with the formal capability meeting, at least five working days' written notice will be given of the formal review meeting and as with the formal capability meeting the intention of the process is to identify ways of supporting the staff in achieving the required standards. The notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative. The meeting will be conducted by the Principal or other senior employees delegated this responsibility by the Principal.
- 3.12 If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.
- 3.13 In other cases
- If some progress has been made and there is confidence that more is likely, a further monitoring and review period will be set as under 3.5 above;
 - If no improvement has been made during the monitoring and review period, the teacher will receive a final written warning before a further monitoring and review period is set
- 3.14 As before, minutes will be taken of formal meetings and a copy sent to the employee. Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. At the end of the further monitoring and review period, the employee will be invited to a decision meeting.

Decision meeting

- 3.15 As with the capability meeting and the formal review meeting, at least five working days' written notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative. The Decision meeting will be a panel of three governors not previously involved in the case which could include the Principal.

- 3.164 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 re-start.
- 3.174 If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be imposed. There will be a further decision meeting at the end of that extended monitoring and review period.
- 3.184 If performance remains unsatisfactory, a recommendation by the Local Governing Body, will be made to Academy Transformation Trust that the employee should be dismissed or required to cease working at the academy.
- 3.194 The employee will be informed as soon as possible of the dismissal and the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal. This notification will then be set out in writing.

Decision to dismiss

- 3.204 The power to dismiss employees in this academy rests with Academy Transformation Trust as the employer.

Dismissal

- 3.214 Once the decision to dismiss has been taken, the employee will be dismissed with notice. A letter confirming this should be issued.

Appeal

- 3.224 If an employee feels that a decision to dismiss them, or other action taken against them including warnings (as set out above), is wrong or unjust, they may appeal in writing against the decision within five working days' of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, minutes will be taken and a copy sent to the employee.
- 3.234 The appeal will be dealt with impartially and, wherever possible, by a panel of three governors who have not previously been involved in the case in line with the academy's arrangements for who can hear appeals.
- 3.24 The employee will be informed in writing of the results of the appeal hearing as soon as possible.
- 3.254 There is no further right of appeal against the sanction/dismissal within the academy.

4 General Principles Underlying This policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

This policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The capability process will be treated confidentially. However, the desire for confidentiality does not override the need for the Principal and Local Governing Body to quality-assure the operation and effectiveness of the performance management system.

Consistency of Treatment and Fairness

Academy Transformation Trust and the Local Governing Body are committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled teachers. The Local Governing Body is aware of the guidance on the Equality Act issued by the Department for Education.

Delegation

Normal rules apply in respect of the delegation of functions by Local Governing Bodies and Principals.

Grievances

Where an employee raises a grievance during the capability procedure the capability 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.

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 academy's Attendance (Sickness Absence) Policy and the employee will be referred immediately to the occupational health service to assess the employee'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 monitoring and/or formal procedures to continue during a period of sickness absence.

Monitoring and Evaluation

The Local Governing Body and Principal will monitor the operation and effectiveness of the academy's performance management arrangements and report to Academy Transformation Trust as required. In developing, applying and evaluating this policy we will monitor the impact on different groups of people with protected characteristics in line with the academy's Equal Opportunities Policy. This will ensure that what we do is done fairly.

Retention

The Local Governing Body and Principal will ensure that all written capability records are retained in a secure place. It is the manager's responsibility to ensure HR has a copy of all relevant documents. All records will be and kept no longer than is necessary in accordance with the Data Protection Act 1998.