

# Capability Policy and Procedure

## Version 2.3

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<p><b>Monitoring:</b></p>	<p>This policy will be monitored and reviewed by the relevant body in conjunction with union local secretaries on an annual basis.</p>
<p><b>Target Audience:</b></p>	<p>All staff</p>
<p><b>Related Documents:</b></p>	<p>ACAS Code of Practice - Disciplinary and Grievance Procedures Performance Management/Appraisal Policies for Teachers and Associate staff Probationary Procedure Alcohol and Substance Misuse Policy Health and Wellbeing Policy and Procedure Redeployment Procedure Disciplinary Policy and Procedure</p>

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## **POLICY STATEMENT**

The success of The Education Alliance (the Trust) relies on the performance of all its employees and members of its communities. The Trust is committed to providing staff with satisfying roles; appropriate learning and development opportunities; support; clarity of role and objectives and; meaningful feedback. Where staff experience problems in attaining the appropriate standards of work the Trust will endeavour to support them to reach the required standards. The Trust welcomes the support of the recognised Trade Unions in seeking to implement this policy in a fair and consistent manner.

The Employment Rights Act 1996 defines capability as 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality'. Careful recruitment and selection, clarity of role and learning and development opportunities minimise the risk of poor performance. Employees should be clear of the standards and expectations at the Trust and the potential consequences of failing to meet them. Staff have a contractual responsibility to perform to a satisfactory level and they should be given guidance, support and encouragement to do so, alongside honest and constructive feedback. Managers have a responsibility for setting realistic and measurable standards of performance and for explaining those standards carefully to employees.

### **1. PURPOSE**

This policy and procedure must be followed when an employee's ability to perform the duties of their post is giving cause for concern. Lack of capability is highlighted when an employee consistently fails to perform their duties to an acceptable standard. The performance management processes for teachers and associate staff are designed to enable the Trust to effectively drive forward school improvement fairly, consistently and supportively. When staff fail to meet required standards of performance they will be supported initially via the relevant performance management processes. When the performance management framework fails to result in a significant, sustainable improvement it will cease to apply and the Capability Policy and Procedure will be triggered.

The purpose of the Capability Policy and Procedure is to provide a fair and consistent framework to enable managers and staff to:

- Identify constructive action which may be taken to improve performance
- Enable staff to achieve and maintain an acceptable standard of work through constructive action
- Follow a fair and consistent process in managing and improving poor performance

This Policy may also be used to enable and encourage staff to raise concerns regarding their ability to adapt to changes affecting their roles.

This Policy must not be used where inadequate performance is the result of wilful misconduct or negligence. In such circumstances the Trust's Disciplinary Procedure must be used. In accordance with the ACAS Code of Practice for Disciplinary and Grievance Procedures, before any action is taken against an employee who is a trade union representative, except for initial concerns, the matter should be discussed with a full-time official of their trade union, after obtaining the employee's agreement.

### **2. SCOPE**

This Policy is designed to be used for staff who are not achieving the required standards of performance either because they lack the skills and/or aptitude or because their performance has deteriorated.

### 3. ROLES AND RESPONSIBILITIES

The **Board of Directors** is responsible for ensuring this policy is applied fairly and consistently across the Trust alongside holding specific responsibilities relating to the potential dismissal of employees under this policy.

The **CEO and Executive Principals** are responsible for ensuring employees are treated fairly and consistently across the Trust. The CEO and Executive Principals also have specific responsibilities detailed within this policy regarding decision making and the issuing of sanctions.

The **Local Governing Bodies and Heads of School** are responsible for monitoring the application of this policy within their respective schools, ensuring capability issues are managed effectively and other related policies are shared, understood and adhered to by all employees. They are also responsible for ensuring managers, leaders and supervisors have access to appropriate training and development to enable them to apply this policy fairly, consistently and professionally.

The **HR Department** is responsible for overseeing the introduction, implementation, monitoring and review of this policy and will report to the CEO, the Board and Local Governing Bodies as required. The Human Resources Department will provide advice, guidance and support in the implementation of this policy and procedure, acting as a point of contact for managers. The Human Resources Department will ensure that this policy is implemented fairly and consistently, whilst also ensuring that relevant employment legislation and statutory guidance is adhered to.

**Managers** must operate within this policy in a fair, consistent and reasonable way; ensuring confidentiality is protected where possible. It is a manager's responsibility to manage performance issues. Managers must ensure that employees are supported throughout performance management and capability processes appropriately and they must not take any formal action without speaking to the Human Resources Department.

Managers are encouraged to deal with performance issues promptly, professionally and discreetly, ensuring staff dignity is maintained wherever possible. Managers are encouraged to seek advice from the Human Resources Department even when dealing with matters of inadequate performance informally.

As a high performing Trust it is vital that staff perform to a high standard, striving to continuously learn, develop and improve their performance. Where staff experience difficulties in their ability to perform to the required standards and expectations it is vital that they access the appropriate support, advice, guidance, learning and development opportunities and that they actively seek support at an early stage. The Trust provides employees with access to an independent employee assistance programme (which is reviewed annually), details of which are advertised internally in all schools or are available from the HR Department. **Staff** are expected to ensure they comply with their statutory, mandatory and other identified learning and development requirements and that standards and expectations highlighted within their appraisals are met within appropriate timescales. Staff are encouraged seek the support of their Trade Union Representative as appropriate.

#### **4. EQUALITY AND DIVERSITY**

The Education Alliance is committed to:

- Promoting equality and diversity in its policies, procedures and guidelines
- Ensuring staff are protected from unlawful direct or indirect discrimination resulting from a protected characteristic (e.g. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation)
- Delivering high quality teaching and services that meet the diverse needs of its student population and its workforce, ensuring that no individual or group is disadvantaged

#### **5. VISION AND VALUES**

The Trust's vision is seeking excellence through inspirational leadership, teamwork, innovation and challenge. We work to ensure that all of us achieve our best. Our values are:

- Working together for students
- Generating ideas and sharing outstanding practice
- Promoting independence and interdependence
- Encouraging questioning, feedback and challenge

The Trust has four guiding principles:

- Focus on students to drive decisions
- Believe the team is stronger than the sum of its parts
- Build relationships on trust, respect, honesty and integrity
- See it, own it, make it happen

#### **6. PRINCIPLES**

Staff experiencing difficulties in achieving the appropriate standards of performance will be given help and support by their manager. Dismissal on the grounds of capability will only happen where improvement plans and assistance have been implemented and the outcome is that of inadequate improvement within a reasonable timescale. Staff will have the right of appeal against any decision to dismiss for poor performance. Confidentiality will be maintained and information relating to poor performance will be shared on a 'need to know' basis.

Managers have a duty to continuously monitor the performance of staff they are responsible for, advising, guiding and encouraging staff to attain high levels of performance. Performance should be reviewed formally through the relevant process. Managers are encouraged to deal with inadequate performance on an informal basis initially, wherever possible, at the earliest opportunity. In addressing issues of poor performance, they should be clear, honest, supportive and encouraging, highlighting any learning and development options and seeking advice from the HR Department or the Deputy Headteacher responsible for Teaching and Learning. Managers should ensure employees are aware of the range of support options available to them.

The Human Resources Department must be consulted before any action is taken under this policy.

## **7. OPTIONS**

If employees feel they are unable to carry out their role, duties and responsibilities and a satisfactory improvement is genuinely beyond their ability, the Redeployment Procedure should be initiated to support the employee in preparing for their future in a different type of role, potentially in a different organisation (where suitable alternative employment is not available at the Trust). The Redeployment Procedure should run alongside this policy in those circumstances, providing the employee with additional support wherever possible.

## **8. AUTHORITY TO TAKE ACTION**

Authority to deal with capability issues is delegated in accordance with Appendix 1. Managers must seek advice from the Assistant Headteacher responsible for Teaching and Learning when considering the capability of teachers, and the Human Resources Department at all stages of this policy.

## **9. INFORMAL CAPABILITY REVIEW**

When an employee's performance at work is giving rise to concern and support, learning and development offered through the appraisal/performance management processes has not resulted in the required improvements, this policy and procedure will be invoked. Before any formal action is taken against an employee, any concerns relating to lack of skill, aptitude or ability must be brought to the attention of the Head of School. The Head of School will then review the evidence and will meet with the employee to undertake a pre-capability meeting. Employees are encouraged to discuss this with their Trade Union Representative where applicable.

## **10. FORMAL CAPABILITY PROCESS – STAGE ONE**

At every stage of the capability process the employee will have a right to be accompanied by a trade union representative or work colleague. The manager will be accompanied by a member of the Human Resources Department.

The employee will be asked to attend a first stage capability meeting to discuss concerns regarding their performance. 5 working days notice of the meeting will be given in writing and will include details of the unsatisfactory performance, the nature of the proposed discussion and their right to be accompanied at the meeting. The areas of concern must be discussed in a constructive way. The manager must reiterate their concerns in clear and unambiguous terms, providing recent examples of the areas of poor performance and also providing examples of the arrangements put in place to support the employee in striving to improve their performance. The employee must be given the opportunity to share their point of view and to raise matters which may have a bearing on their performance. The meeting should be conducted in a constructive, honest, respectful and supportive atmosphere and employees will be encouraged to share their views, ideas and solutions.

If the reason for unsatisfactory performance is identified as a potential medical issue, the HR Department will refer the employee to the Trust's health provider for further assessment, guidance and support that can be considered when structuring the improvement plan.

The manager should seek to ensure that the employee understands the gap between their current level of performance and the required standard. The manager should then seek to understand from the employee the reasons for their poor performance and they should encourage and support the employee in considering ways in which their performance may be

improved (e.g. further learning or development; mentoring; feedback). The manager should work with the employee in developing a mutually agreed improvement plan wherever possible (which may include options such as further learning and development; mentoring; shadowing; adjustments; increased support/supervision arrangements; increased observations).

The employee must be informed that they will be supported with the aim of improving their performance to a satisfactory sustainable level, but that if their performance does not improve to a satisfactory level they may eventually be dismissed. The impact of their poor performance must be shared with them. The outcome of the meeting must be recorded in writing and provided to the employee within 5 working days of the date of the meeting. It must include:

- Clear, concise details of the areas of performance that are deemed as unsatisfactory
- The standards expected and the associated timescales
- Details of the improvement plan (including actions, timescales and monitoring arrangements)
- Consequences if the employee fails to achieve the required standards of performance (e.g. potential dismissal, further training etc)
- Date and time for a review meeting
- Details of support that will be offered

## **11. STAGE TWO**

The stage one review meeting would normally take place 6 working weeks after the first formal meeting, although the period may be longer where circumstances determine a longer review period to be acceptable. The manager chairing the meeting will review the previous meetings discussion, improvement plan and outcomes. Performance over the review period will be discussed, alongside achievement of the improvement plan and impact (e.g. has progress against the improvement plan resulted in a satisfactory/improved standard of performance). A member of the Human Resources Department should attend the review meeting.

If the employee has achieved their improvement plan and their performance has reached a satisfactory level, they will be advised that as long as they sustain their improved level of performance, no further action will be taken under this policy and their performance will be managed via the performance management process. If there is doubt that they will be able to sustain their improved performance, or the improvement is borderline satisfactory, the improvement plan and review period may be extended for an additional 4 week period. The decision and the rationale for the decision will be detailed in a letter that must be sent to the employee within 5 working days of the date of the meeting.

If there is no/insufficient improvement in their performance, there may be a period of up to 5 working days before entering into stage two of the formal capability process. The manager will then discuss with the employee the gap between their current standard of performance at work and the required level. The employee will be encouraged to explain why their standard of performance remains at an unsatisfactory level and to consider the support they require to enable them to achieve the required standard. The original improvement plan will be reviewed and amended and the employee will be informed of the expectations and the potential consequences of not reaching the required standard of performance within the revised timescale. A further review period of 6-8 working weeks will be set alongside the revised improvement plan and a letter will be sent to the employee within 5 working days of the meeting confirming:

- Clear, concise details of the areas of performance that are deemed as unsatisfactory
- The standards expected

- Details of the improvement plan (including actions, timescales and monitoring arrangements)
- Consequences if the employee fails to achieve the required standards of performance
- Date and time for a review meeting
- Details of support that will be offered

The review meeting should take place within 6-8 working weeks after the stage two capability meeting. The Chair of the meeting will review the previous meetings discussion, improvement plan and outcomes. Performance over the review period will be discussed, alongside achievement of the improvement plan and impact (e.g. has progress against the improvement plan resulted in a satisfactory/improved standard of performance). A member of the Human Resources Department should attend the review meeting.

If the employee has achieved their improvement plan and their performance has reached a satisfactory level, they will be advised that as long as they sustain their improved level of performance, no further action will be taken under this policy and their performance will be managed via the performance management process. If there is doubt that they will be able to sustain their improved performance, or the improvement is borderline satisfactory, the improvement plan and review period may be extended for an additional 4 week period. The decision and the rationale for the decision will be detailed in a letter that must be sent to the employee within 5 working days of the date of the meeting.

If there is no/insufficient improvement in their performance the meeting will close and a final capability meeting will be arranged, with the potential for the employee to be dismissed.

## **12. FINAL CAPABILITY MEETING**

Wherever possible, the meeting should be arranged at a mutually convenient date, time and place. The arrangements must be confirmed in writing with the capability issues clearly stated and the evidence to be presented by the line manager enclosed. The relevant information should be circulated at least 5 working days in advance of the meeting and the employee's response should be submitted at least 1 working day before the meeting.

The line manager will present to the panel (see appendix 1) the gap between the employee's current standard of performance at work and the required level. The panel will review the action taken under this policy and procedure to date and the implementation and impact of the improvement plan. The employee will be encouraged to explain why their standard of performance remains at an unsatisfactory level and to consider the support they require to enable them to achieve the required standard.

If the panel view the support to date to be unsatisfactory or the level of expectation to be unreasonable, the panel may recommend an extended period of support (between 6-8 working weeks) with a revised improvement plan. The individual's capability would be monitored by their line manager and if it didn't result in a satisfactory and sustainable improvement the case may be referred back to a final capability meeting.

If the employee's performance is deemed to be unsatisfactory and it is recognised that the additional support and clarity provided both informally and as detailed in improvement plans has been appropriate and yet has failed to result in a sufficient and sustainable improvement, the outcome of the final capability meeting may be dismissal. Dismissal would be on the grounds of capability and this would be confirmed in writing within 5 working days of the meeting. The written confirmation would remind the employee of their right of appeal and their

right to be accompanied at an appeal hearing. If the employee is dismissed, appropriate payment in lieu of notice will be paid.

### **13. APPEAL**

The employee has the right of appeal against dismissal. Appeals must be made in writing to the Director of Human Resources within 10 working days of receipt of the letter.

An appeal hearing will be arranged and the purpose of the hearing will be for an independent panel to review the decision to dismiss and the rationale for the decision, not to re-hear the case. However, the Appeals Panel will receive copies of the submissions made at the final capability meeting (from both the manager and the individual and/or their representative). It is the decision of the Appeals Panel whether or not new information can be introduced at the appeal hearing, and the panel will consider the reasons for the information not being submitted at an earlier stage. The Appeals Panel will consider the specific factors which the employee expresses have been dealt with unfairly, such as:

- An inconsistent, inappropriate or excessively harsh decision
- Extenuating circumstances
- Bias of the Chair of the final capability meeting
- Unfairness in the conduct of the hearing
- New evidence subsequently coming to light
- Failure to follow the capability process

The outcome of an appeal can be either an upholding of the original decision or a new decision with a lesser sanction. Where an appeal against dismissal fails, the effective date of termination will be the date on which the employee was originally dismissed. The Appeals Panel decision is final and the employee will have exhausted internal processes at that point.

### **14. UNSUSTAINED IMPROVEMENT**

If an employee's performance improves, but is not sustained for a period of 12 months the employee will be invited to a review meeting at the same stage of the process they had reached when formal capability processes ceased. (This will be a documented meeting). For example, if the improvement occurred at stage one, but then deteriorated within a 12 month period (from the date of the letter confirming the outcome of the capability meeting) the employee would be invited to a stage one review meeting.

### **15. MONITORING COMPLIANCE WITH AND EFFECTIVENESS OF THE POLICY**

Effectiveness and compliance of this Policy will be monitored by the HR Department. The Governing Body will monitor the outcomes and impact of this policy on a regular basis in conjunction with local union secretaries.

### **16. ASSOCIATED DOCUMENTATION**

- Disciplinary Procedure
- Appraisal and Performance Management Policies for Teachers and Associate Staff
- Alcohol and Substance Misuse Policy
- Governance handbook

- Health and Wellbeing Policy and Procedure
- Redeployment Procedure

## **17. REVIEW**

This Policy and Procedure will be reviewed within two years of the date of implementation.

### Authority to Take Action

Action	Authority	Appeal
Stage One Formal Meeting	Manager with delegated authority	
Stage One Review Meeting	Manager with delegated authority	
Stage Two Formal Meeting	Manager with delegated authority	
Stage Two Review Meeting	SLT/Executive Board member	
Final Capability Meeting / Dismissal	As per the Scheme of Delegation	3 Members of the Board of Directors

**\*Refer to governance handbook for scheme of delegation**

A final capability meeting/dismissal hearing for the CEO will have a hearing panel consisting of 3 members of the Board, with appeals to a panel made up of 3 members of the Board that were not involved in the original hearing. For Executive Principals, Heads of School, Assistant Heads, Deputy Heads or Directors, the hearing panel will consist of 2 members of the Board and the CEO.

## Appendix 2

### Capability Flow Chart



