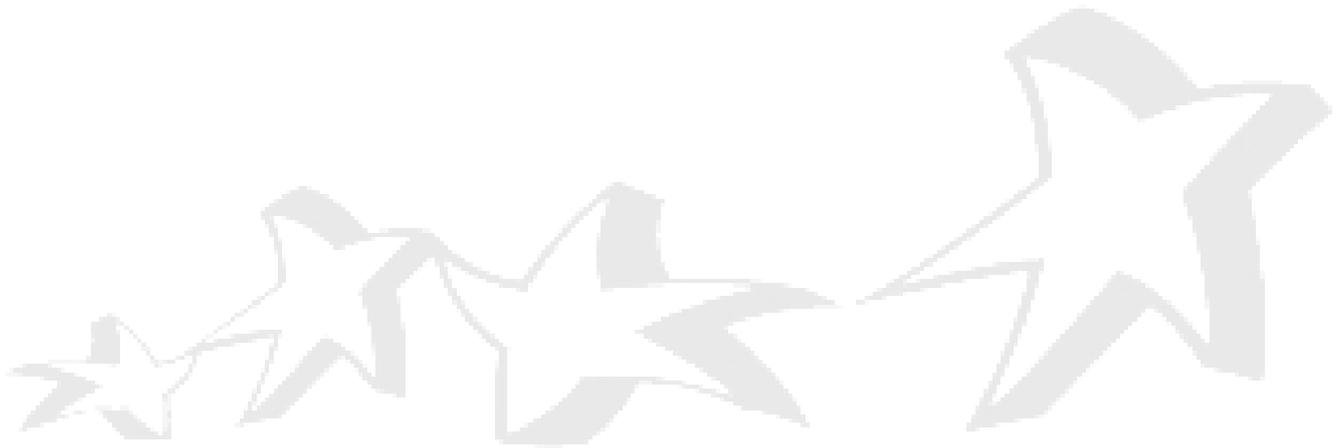




## **TRUST IN LEARNING (ACADEMIES)**

### **CAPABILITY POLICY AND PROCEDURE**



Date Created: January 2015  
 Effective From: January 2015  
 Dated Adopted by the Board: January 2015  
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Date	Page	Change	Purpose of Change
December 2017		No change	

1. Employees covered by this Procedure
2. Formal Procedure
3. Appeals
4. Disabled staff

## 1 Employees Covered by this Procedure

1.1 This Policy and Procedure applies to all employees excluding;

- staff serving a probationary period or extended probationary period who are subject to a separate procedure
- staff undertaking NQT year
- staff on Fixed Term Contract of less than two years

## 2 Formal Capability Meeting

2.1 If the Academy has reasonable belief that there is an issue of Gross Incompetence or that pupils education is in jeopardy they will conduct appropriate investigations and move directly to the decision meeting if the outcome of the investigation suggests further action. A member of staff who is accused of gross Incompetence may be suspended from work on full pay to allow an investigation into the alleged incompetence. Suspension will be kept under review.

### First Meeting

2.2 The member of staff will be advised in writing of the nature of the concern with performance against them, and invited to a meeting. This will be done within 5 working days of the meeting.

2.3 The member of staff is entitled to be accompanied to this meeting by either a trade union representative or a work colleague

2.4 Where possible the timing and location of the meeting will be agreed with the member of staff and sufficient time (five working days) will be given between the written notification and the meeting to allow the member of staff time to prepare

2.5 At the meeting the relevant member of the Senior Leadership Team will explain the areas of poor or unsatisfactory performance to the member of staff and outline the case by briefly going through the evidence that has been gathered.

2.6 The member of staff will then be able to set out their views about their performance and scrutinise the issues raised. They will be able to ask questions, present evidence,

2.7 If a member of staff is unable to attend the meeting and the reason for non-attendance is a valid one then he or she will be invited to another meeting. However where there are no valid reasons for non-attendance then the school reserves the right to inform the member of staff that decisions will be made in their absence should they fail to attend a rearranged meeting without good reason.

2.8 If poor performance is not established at this meeting then the appraisal process will be re instigated.

2.9 If poor performance is established the **resulting action will be a written warning.**

Where capability issues are identified the following will take place.

- identify the professional shortcomings, *for example which of the standards expected of the member of staff are not being met;*
- give clear guidance on the improved standard of performance needed to ensure that the member of staff can be removed from formal capability procedures (*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*) using form at appendix 1.
- explain any support that will be available to help the member of staff 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 but in straightforward cases should normally be 4 working weeks. Where the school believes that additional time for effective support is appropriate up to a further 2 weeks will be issued
- warn the member of staff formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning

2.10 Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the teacher 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.

2.11 This constitutes a formal warning and represents the first stage of a formal procedure. A copy of the "Written Warning" will be kept on the personal file. The warning will remain live for the purposes of this procedure until specified remedial action has been completed to the satisfaction of the relevant senior leader.

### **3.0 Monitoring and review period following a formal capability meeting**

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 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).

## 4. Formal Review Meeting

### Final Written Warning - Second Meeting

4.1 If the standard of performance remains poor or unsatisfactory or the member of staff has failed to comply or act upon any of the action points a further meeting will be arranged. 5 working days' notice will be given between written notification and the meeting.

4.2 Again the member of staff will be entitled to reply to the issues raised. They will be able to ask questions, present evidence.

4.3 Following the second meeting if it is decided that a lack of capability is established, in relation to job role and responsibilities, the member of staff will be fully informed in writing of the areas where their performance does not meet the acceptable level. They will also be informed of the expected improvement in performance that needs to take place and the time period during which the improvement needs to be made this will normally be 4 working weeks. The member of staff will be informed that if no improvement in performance takes place then he or she may be dismissed. Where appropriate, the School will offer and arrange for suitable counselling and/or staff development to take place. If it is decided that a lack of capability is not established no further action will ensue and the member of staff will revert to the appraisal process.

4.4 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 this is at the discretion of the relevant senior leader.

4.5 Where lack of capability is established this constitutes a formal final warning and represents the second stage of a formal procedure. A copy of the Final Written Warning will be kept on the personal file. The warning will remain live for the purposes of this procedure until specified remedial action has been completed to the satisfaction of the relevant manager.

4.6 Monitoring of performance during the specified time period will take place and conducted by an appropriate member of the management team appointed for this purpose.

### Issue of Warnings

4.7 Written and final written warnings will be confirmed to the member of staff in writing not longer than five working days after a formal meeting. The warning will state:

- the purpose of the meeting
- the decision of the manager
- the level of warning that is being issued
- any expected improvements to performance required and the timescale for meeting these improvements
- the employee's right to appeal against the decision and the method of lodging an appeal

Both letters will indicate the consequences of failing to meet the required standards, i.e. move to final warning or dismissal.

## 5 Decision Meeting

### Dismissal

5.1 If the actions recommended at the previous meetings have not produced the desired changes in performance or the member of staff is not improving at a sufficient rate after two warnings or the member of staff has failed to comply or act upon any of the action points, then a further meeting (**Decision Meeting**) will be arranged. Five working days' notice will be given between written notification and the meeting

5.2 The member of staff will be entitled to reply to the issues raised. They will be able to ask questions, present evidence, call relevant witnesses and question any witnesses.

5.3 This meeting will be heard by the Headteacher/CEO with the authority to dismiss a member of staff and supported by two members drawn from the Local Governing Body of the appropriate school. After hearing the case and subject to the panel being satisfied that sufficient effort has been made to assist the member of staff to achieve the acceptable level of performance then the person will normally be dismissed.

### Issue of Notice of Dismissal

5.4 The decision to dismiss will be confirmed to the member of staff in writing not longer than five working days after the final meeting.

The dismissal notice will state the:

- purpose of the final meeting
- decision of the Senior Post Holder hearing the case
- date of dismissal and notice arrangements
- right to appeal against the decision and the method of lodging an appeal

5.5 A member of staff may request at any stage of this procedures to be considered for another job. In these circumstances the member of staff will be encouraged to talk to Human Resources support with regard to career counselling, redeployment opportunities and to be supplied with all current job vacancies.

### Appeal

If a member of staff feels that a decision to dismiss them, *or* other action taken against them, 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 in accordance with the TiLA Appeals Procedure. 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, notes will be taken and a copy sent to the teacher.

The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case.

The member of staff will be informed in writing of the results of the appeal hearing as soon as possible.

## **6 General Principles Underlying this Policy**

### **ACAS Code of Practice on Disciplinary and Grievance Procedures**

The Capability Policy and Procedure will be implemented in accordance with the provisions of the ACAS Code of Practice.

### **7 Confidentiality**

The capability process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head teacher and governing body to quality-assure the operation and effectiveness of Policy.

### **8 Consistency of Treatment and Fairness**

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

### **9 Definitions**

Unless indicated otherwise, all references to member of staff include the head teacher.

### **10 Delegation**

Normal rules apply in respect of the delegation of functions by governing bodies, head teachers and local authorities.

### **11 Grievances**

Where a member of staff 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.

### **12 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 school's absence policy and will be e.g. referred immediately to the occupational health service 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 monitoring and/or formal procedures to continue during a period of sickness absence.

### **13 Monitoring and Evaluation**

The local governing body and head teacher will monitor the operation and effectiveness of the school's policies.