

Capability Policy and Procedure



Education is for improving lives and for leaving your community and world better than you found it.

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1. Capability Policy Statement

- 1.1 The Community Academies Trust Capability Procedure applies to all employees who have completed their probationary period and has been developed in accordance with the Trust's ethos and the ACAS code of Practice.
- 1.2 This policy does not apply to newly qualified teachers, who are subject to the 2012 Induction Arrangements for School Teachers regulations: <https://www.gov.uk/government/publications/induction-for-newly-qualified-teachers-nqts>
- 1.2 Our vision can only be achieved with effective performance from all our staff. We also believe that staff benefit from working in an environment where we can all rely on the competence of our colleagues.
- 1.3 Sometimes, for a variety of reasons, employees struggle to achieve a satisfactory level of performance. In responding to such situations the following principles will apply:
 - The responsible manager will acknowledge the situation with the employee at an early stage. The problem is best addressed quickly and becomes harder to resolve the longer it is left.
 - The line manager will ensure that the employee will be treated with courtesy and dignity at all times in the process. Any judgements or discussions about performance will be framed objectively, based on evidence.
 - Staff will be asked to engage with the process in an open and co-operative way.
 - Staff will be offered support, assistance and encouragement as part of a structured process to reach the required standards.
 - However, where despite best efforts the employee is unable to reach the required standards within the stages and timescales set out in this policy and procedure, and then the employee's needs will not outweigh the Trust's wider responsibilities to our students and fellow colleagues.
 - The decision to dismiss on grounds of capability will only be taken where all other actions short of dismissal have been exhausted. This procedure is designed to help and encourage employees to maintain relevant performance by setting out expected standard. It aims to clarify the rights and responsibilities of the Trust, and all employees and to promote fairness and order in any formal action as well as for this to be applied in a consistent, constructive and reasonable fashion.

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2. Diversity Policy Statement

- 2.1 The Trust willingly accepts not only its legal responsibilities but also wishes to embrace best practice in all areas of its work in order to secure equality of both treatment and outcome for all.
- 2.2 The Trust is committed to ensuring that no-one is treated in any way less favourably on the grounds of personal differences such as race; national, ethnic or social origin; gender (including reassigned gender); sexual orientation; religious belief; age; disability; marital status; caring responsibilities or political or other personal beliefs.
- 2.3 We will implement all necessary action and training to ensure that the commitment of the Trust with regards to equality of treatment and outcome are fulfilled and will regularly monitor and review progress made in this respect.
- 2.4 We will ensure that employment and development opportunities are available to those who are, or who become, disabled on an equal footing with those without a disability, adapting jobs wherever possible to make them accessible.

This procedure should therefore be applied in accordance with this policy.

3. Scope

- 3.1 This policy is applicable to all employees of the Trust.
- 3.2 This policy and procedure addresses the situation where an employee is failing to reach a satisfactory level of performance.
- 3.3 Where an employee is unable to discharge their duties because of their health or mental or physical ability, then the Absence Management policy should be followed.
- 3.4 If an employee is able to achieve a satisfactory level of performance but for some reason other than ability is not doing so, then the Disciplinary Policy may be followed.
- 3.5 Judgements about which policy to follow in uncertain cases must be referred for advice to CAT Human Resources .
- 3.6 The term 'line manager' is used as a generic term throughout the procedure. Relevant management structures apply and where applicable the Human ResourceScheme of Delegation.

4. Overview of the Policy

- 4.1 Before the capability policy is invoked, staff are subject to the ordinary management processes surrounding their performance. This means that line

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managers are responsible for setting realistic and measurable standards of performance and for explaining these standards clearly to staff. The performance management policy applies at this stage. Line managers may from time to time have discussions about performance with a teacher and these discussions do not form part of a capability process.

- 4.2 If there is evidence that the employee is falling short of the required standards of work, they will be placed in the first instance on an initial support programme (ISP). Formal capability process should only be invoked where there is clear, triangulated evidence of sustained underperformance that the performance management process has failed to address, following an informal process. Where formal capability is instigated, performance management processes will be suspended.
- 4.3 There are two approaches under the capability procedure:
 - i. **The standard approach**
 - ii. **Fast track approach (To be used in only the extreme cases of underperformance)**
- 4.4 Under the standard approach staff will be placed on a six to ten week initial support programme. This stage is to enable the employee to reach the required standards of work with a structured programme of support and training and development.
- 4.5 At the end of that initial support programme, if performance problems persist, a decision will be taken as to whether formal capability procedures will be introduced.
- 4.6 Staff will only be placed on the fast track procedure where in the case of teaching staff, the level of their performance poses a serious threat to students' education or in the case of non-teaching staff their continued underperformance carries a reputational risk to the Trust or the impact of the underperformance has severe consequences for the Trust.

5. Initial Support Programme (ISP)

- 5.1 At the start of any capability procedure there will be clear evidence that the employee's performance will be falling short of the required standards.
- 5.2 The employee will be invited to a meeting with the line manager to discuss their performance. The employee should be given a minimum of a day's notice of the meeting. It is beneficial for the meeting to be held as quickly as possible, as this will be an anxious time for the employee and there should be no undue delay. There is no right to be accompanied by a trade union representative or work colleague at this initial meeting or in any meeting held in the initial support programme phase.

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- 5.3 The line manager will review the evidence of inadequate performance at the meeting and discuss reasons why this may have come about.
- 5.4 There are two possible outcomes of the meeting:
- No further action will be taken if there is insufficient evidence of poor performance, or
 - The employee will be placed on an initial support programme to help raise their performance to the required level.
- 5.5 If the employee will be placed on an ISP , the line manager will confirm the aspects of performance that need to be improved, how that improvement will be measured, what support will be put in place to help the employee improve and how often progress will be reviewed.
- 5.6 The line manager will confirm the outcome of the support plan in writing to the employee by the next working day or within a week at the latest. The initial support programme starts when the employee receives their written plan.
- 5.7 Progress against the plan will be regularly reviewed with the employee, ideally in weekly meetings.
- 5.8 The ISP will normally last between 6 - 10 weeks, depending on circumstances.
- 5.9 The final, review meeting in this phase will be a review of the evidence of the employee's progress. There are two possible outcomes of the meeting:
- No further action will be taken if there is evidence that the employee's performance has now reached the required standard, or
 - The employee will be invited to a formal meeting and matters will be progressed to the next stage.
- 5.10 If action ends at this stage, this will be confirmed in writing to the employee. A note will be placed in the employees personnel file. If performance declines within a two-year period after the meeting, the line manager has discretion to reinstate the capability procedure at the point the employee would have been on if there had been no break in the procedure. After this point, all such paperwork will be disregarded.
- 5.11 If the decision is taken to proceed to the formal capability stage, this will be confirmed in writing. It will also be made clear to the employee if they are being placed on the fast track procedure or the normal procedure (see sections 6 and 7 below).

6. Standard Approach

- 6.1 After the initial support programme, if a decision is made to continue formal action under the capability procedure, the employee will be placed on the standard approach unless the level of underperformance requires the fast track approach.

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6.2. An overview of the process:

- **Stage 1**

The employee will be placed on the first review period, **normally of between 6-10 weeks, depending on the circumstances**. At the end of the review period they are given five working days' notice of a formal meeting, where progress will be assessed. If progress is inadequate, they will normally be given a **First Written Warning** and proceed to stage 2. The first written warning will remain on file for 12 months and will be disregarded after 12 months' satisfactory performance.

- **Stage 2**

The employee will be placed on the second review period, **normally of between 6-10 weeks, depending on the circumstances**. At the end of the Stage 2 review period, the employee will be given five working days' notice of a formal meeting, where progress will be assessed. If progress is inadequate, they will normally be given a **Final Written Warning** and proceed to third and final review. A Final Written Warning will remain on file for 24 months and be disregarded after 24 months satisfactory performance.

- **Stage 3 (Capability Hearing)**

The employee will be placed on the third and final part of the process which lasts four weeks and no more than six weeks. At the end of **the review period**, the employee will be given five working days' notice of a formal meeting, where progress will be assessed. If progress is adequate the formal capability process will end and the employee will remain on a Final Written Warning for 24 months which will be disregarded after 24 months satisfactory performance. If progress is inadequate, they may be dismissed. The Trust will consider all options short of dismissal prior to making the decision to dismiss.

6.3 One or more review meetings will take place in each phase to review improvement. Each review meeting will be recorded. It is recommended that meetings are held weekly or at the least fortnightly.

6.4 At each formal meeting the line manager will review the evidence of the employee's performance with them. The employee will be invited to explain any mitigating circumstances.

6.5 The meeting will then be adjourned while the line manager comes to a decision. Wherever possible the employee will be advised of the decision as soon as possible on the same day as the meeting.

6.6 If a First or Final Written Warning is issued, the line manager should use the remainder of the formal meeting to:

- Identify the professional shortcomings

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- Give clear guidance on the improved standard of performance needed to end the capability procedure
 - Explain the support that will be available - if any further support is required after the intensive measures that were put in place in the initial support programme
 - Explain how performance will be monitored over the following four weeks
 - Agree a date for the final formal meeting where progress will be evaluated
 - Make it clearly understood that failure to improve may lead to dismissal.
- 6.7 Except at the final formal meeting (where the employee is at risk of dismissal), at the two earlier formal meetings the line manager can decide either to end the procedure at that stage or to award a warning and to proceed to the next stage. The decision will be confirmed in writing to the employee after every stage along with the reasons for the decision.
- 6.8 The employee will have ten working days to appeal from the date of receipt of the letter after each formal meeting. Action under the procedure will continue while an appeal is being heard.
- 6.9 If action ends at the end of the first or second stage, this will be confirmed in writing to the employee. A note will be placed in their personnel file. If performance declines within a two-year period after the meeting, the line manager has discretion to reinstate the capability procedure at the point the employee would have been on if there had been no break in the procedure. After two years, all such paperwork will be disregarded.
- 6.10 The final formal meeting where the employee faces dismissal will be chaired by the Headteacher, or relevant member of staff in line with the Human Resource Scheme of Delegation and a member of CAT HR must also be in attendance.
- 6.11 If the decision is made at the final formal meeting to dismiss the employee, the decision will be confirmed to the employee in writing, along with the reason for it. The effective date of termination will be the date when the letter is written, if that is later than the date of the formal meeting. Dismissal will be with contractual notice, which will not normally be worked.

7. Fast Track Procedure (To be used in only the extreme cases of underperformance)

- 7.1 Staff will be placed on the fast track procedure, where the level of their performance poses a serious threat to students' education a significant threat to the reputation of the Trust or a significant business risk. The main differences between the standard stage of formal action under the capability procedure and the fast track procedure are that the fast track procedure has one less formal stage and does not include an initial support programme.

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- 7.2 In deciding whether an employee should be placed on the fast track procedure advice must be taken from CAT Human Resources.
- 7.3 The employee will be given five working days' written notice of a meeting and notified of their right to be accompanied by a trade union representative or work colleague.
- 7.4 At the meeting the line manager will review the evidence of the employee's under performance with them. The employee will be invited to explain any mitigating circumstances.
- 7.5 The meeting will then be adjourned while the line manager comes to a decision. Wherever possible the employee will be advised of the decision as soon as possible on the same day as the meeting.
- 7.6 There are two possible outcomes of the meeting:
- The procedure is ended at this stage if the line manager believes that the mitigating circumstances that gave rise to the underperformance can be rectified satisfactorily so that performance will reach the relevant standard
 - The employee is awarded a Final Written Warning. This warning will remain live on the employee's file for 24 months.
- 7.7 If a Final Written Warning is issued, the line manager should use the remainder of the formal meeting to:
- Identify the professional shortcomings
 - Give clear guidance on the improved standard of performance needed to end the capability procedure
 - Explain the support that will be available - if any further support is required after the intensive measures that were put in place in the initial support programme
 - Explain how performance will be monitored over the following four weeks
 - Agree a date for the final formal meeting where progress will be evaluated
 - Make it clearly understood that failure to improve may lead to dismissal.
- 7.8 The employee will then be given **four to a maximum of six working weeks** to reach the required level of performance. Progress towards meeting the required standards will be reviewed weekly with the employee.
- 7.9 The decision must be confirmed to the employee in writing, giving the reasons for the decision. The employee will have ten working days to appeal from the date of receipt of the letter. Action under the procedure will continue while an appeal is being heard.
- 7.10 The next phase will then last for a **further four to a maximum of six working weeks**. Progress towards meeting the required standards will be reviewed weekly with the employee.

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- 7.11 The final, review meeting in this will be a review of the evidence of the employee's progress. There are two possible outcomes of the meeting:
- No further action will be taken if there is evidence that the employee's performance has now reached the required standard, or
 - The employee will be invited to a formal Capability Hearing.
- 7.12 If action ends at this stage, this will be confirmed in writing to the employee. A note will be placed on their personnel file. If performance declines within a two-year period after the meeting, the line manager has discretion to reinstate the capability procedure at the point the employee would have been on if there had been no break in the procedure. After two years, all such paperwork will be disregarded.
- 7.13 If the decision is taken to proceed to the next stage, this will be confirmed in writing. The employee will be given five working days' written notice of a meeting and notified of their right to be accompanied by a trade union representative or work colleague. The letter will also enclose evidence that their performance has not met the required standard in the previous phase.
- 7.14 The final Capability Hearing will be chaired by the Headteacher, or relevant member of staff in line with the Human Resource Scheme of Delegation and a member of CAT HR must also be in attendance. At the meeting the panel will review the evidence of the employee's performance with them. The employee will be invited to explain any mitigating circumstances.
- 7.15 The meeting will then be adjourned while the panel reaches its decision. Wherever possible the employee will be advised of the decision as soon as possible on the same day as the meeting.
- 7.16 There are two possible outcomes of the meeting:
- The procedure is ended at this stage if performance has now reached the relevant standard, or
 - The employee is dismissed on the grounds of lack of capability
- 7.17 The decision will be confirmed to the employee in writing. The effective date of termination will be the date when the letter is written, if that is later than the date of the formal meeting. Dismissal will be with contractual notice, which however will not normally be worked. The employee will have ten working days to appeal from the date of receipt of the letter.

8. Right of Appeal

- 8.1 Where an employee is dissatisfied with the outcome of a formal capability meeting or hearing the employee can appeal in writing against the decision within 10 working days of receiving written notification of the decision. The employee's appeal, must clearly state their grounds for appealing.
- 8.2 An employee may appeal on the following grounds:

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- They believe a finding or sanction is unreasonable
 - New evidence has come to light
 - They believe the capability process was procedurally flawed
- 8.3 The appeal hearing will not be in the nature of a re-hearing but will be before a new panel.
- 8.4 To be quorate the Appeal Panel must consist of at least the same number of member as at the original meeting or hearing, and where appropriate, Local Governing Body members not previously involved and who have no prior knowledge of the case.
- 8.5 If, having heard the relevant parties at the appeal, the Chair of the Appeal Panel decides to uphold the appeal, they may withdraw the warning or replace it with a different warning. The sanction must not be enhanced.
- 8.6 Where an appeal against dismissal is not upheld, the date of termination will be the date on which the employee was originally dismissed. During the appeal stage the employee will be treated as being continuously employed for the whole period, including the period between dismissal and reinstatement.
- 8.7 The decision of the appeal panel will be final. The employee must be notified in writing within five days of the appeals panel hearing.

9. Staff who are absent through illness during the procedure

- 9.1 Absence which is triggered by the capability procedure, and which management believe is likely to be long term, is covered by the Absence Management Policy and referred immediately to Occupational Health to assess whether the employee is fit for continued employment. Reasonable steps should be made to enable the employee to attend formal meetings where their performance will be evaluated, but where the employee is unable to attend, these may proceed in the employee's absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the evaluation should be provided in the letter confirming the decision taken. Advice should be sought from CAT Human Resources in such circumstances.

10. References

- 10.1 When providing references or responding to reference requests, the Trust has a responsibility to comply with The School Staffing (England) Regulations 2012, paragraph 2, Regulation 8.
- 10.2 The Trust recognises that it has a duty to other employers to give truthful and balanced references and it is the policy of the Trust that any references provided will state, in accordance with the above regulation, if an employee had been subject to formal capability procedures in the preceding 2 year period.

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- 10.3 For the purposes of clarity, it will be deemed that an individual has entered the formal capability procedures, once Formal Proceedings begin.

11. Right to Trade Union Representation

- 11.1 An employee has the right to be accompanied and supported, during each of the formal stages of the Capability procedure where action may be taken including appeal, by a fellow employee or an accredited Professional Association/Trade Union representative.
- 11.2 The role of the Professional Association/Trade Union representative or work colleague is to:
- Confer with the employee before and after the formal meeting, hearings and appeal
 - Assist the employee in preparing their mitigation
 - Respond on behalf of the employee to any views expressed during formal meeting, hearings and appeal
 - Present and sum up the employee's case, as agreed with the employee
 - Ask for adjournment if necessary

The Professional Association/Trade Union representative or work colleague is not permitted to:

- answer questions on behalf of the employee, unless the employee has expressed consent
 - address the meeting if the employee indicates that they do not wish them to prevent the case from being explained
 - prevent any other person at the meeting from making their contribution
- 11.3 The employee should provide the name of their representative in advance. If the chosen representative is unavailable at the time of the meeting/hearing, the employee may request a postponement (once) to a time that is convenient to all parties within a reasonable timescale not normally exceeding 5 working days.
- 11.5 An employee will not be subject to any detriment by the Trust for having acted as a companion in capability proceedings.

12. Role of CAT Human Resources

- 12.1 Prior to placing any employee on a capability procedure the advice of CAT Human Resources must be sought. They should be kept informed of the progress of all

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capability cases and must attend any formal meeting where dismissal is a possibility, to give advice to the panel.

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