



East Midlands
Education Trust

Staff Capability Policy

Summer 2021

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Contents

1. Introduction	3
2. Initial Monitoring and Support	4
3. Formal Capability Procedure.....	4
Formal Capability meeting	
Monitoring and Review period	
Formal review meeting	
Decision meeting	
Decision to Dismiss	
Appeal	
Appendix A Procedure for formal capability meetings and appeal meetings.....	10
Appendix B East Midlands Education Trust Capability Procedure	11

1. Introduction

- 1.1 The Trustees recognise the importance of supporting all staff to manage their performance to enhance the quality of education provision for pupils in the Trust's Academies and on raising standards. Similarly, they also recognise the need to have a clear, coherent and robust procedure to address concerns about staff performance where they arise.
- 1.2 This policy sets out the procedure to deal with cases where the performance of the member of staff is below the standard expected of their role in the Trust.
- 1.3 Throughout this document, reference to a teacher also includes the Head Teacher.
- 1.4 Whilst it is expected by the Trust that other than in exceptional circumstances members of staff will attend meetings arranged as part of the procedures outlined in this policy, any reference to the right to be accompanied means:
- Where an employee has a right to be accompanied by this policy, they may be accompanied by a work colleague or trade union representative (the 'Companion')
 - Subject to the following paragraph, the Companion shall be entitled to address the hearing to put the employee's case; sum up that case; and respond on the employee's behalf to any view expressed at the hearing. The Companion may also confer with the employee during the hearing.
 - The Companion shall not be entitled to use the above entitlements in a way that prevents the employer from explaining its case or prevents any other person at the hearing from making their contribution to it.
 - The Companion shall not be entitled to address the hearing if the employee indicates during the hearing that they do not wish the Companion to do so, or answer questions on behalf of the employee.
- 1.5 Where a Governor Panel is required at any point in this process, in the first instance the panel should be made up of Governors of the school. However, it is recognised that at times it can be difficult to secure three independent Governors, due to HR processes with multiple steps or in schools that have a small number of Governors. In these cases, it would be acceptable to invite Governors from another school within the Trust to complete the panel.
- 1.6 In some circumstances, such as the need to bring in additional expertise, the school may seek to include a trustee on a panel. Trustees reserve the right to place a trustee on a governor panel if they wish to do so.
- 1.7 In all cases, schools must strive to include at least one member of their Governing Body on panels to share local knowledge of their school with other panel members, where possible.

2 Initial Monitoring and Support

2.1 Teaching Staff

2.1.1 Where performance concerns are identified and before the commencement of the formal capability procedure is considered for teaching staff, the Head Teacher will ensure that the member of staff has been informed of concerns about their performance, and that the Supportive Appraisal process within the Appraising Teacher Performance Policy has been followed.

2.2 Associate Staff

2.2.1 Where performance concerns are identified and before the commencement of the formal capability procedure is considered for associate staff, the Head Teacher will ensure that the member of staff has been informed of concerns about their performance, has been subject to appropriate induction, support and supervision and appraisal procedures and has had access to professional development opportunities relevant to their role and the difficulties identified.

2.2.2 The member of staff will be informed of the arrangements for making judgements about competence during the programme of additional monitoring and support and the timescale over which this will take place. Normally this will be up to a maximum period of one term but may be shorter where there are serious concerns affecting the safety and/or welfare of pupils or where the level of underperformance requires urgent action.

2.2.3 The member of staff will have access to all documentary evidence about their performance and have the opportunity to comment on the evidence.

2.2.4 The member of staff will have a right to be kept fully informed at all stages of the monitoring process and have a right to be present at times of formal review of their progress and to be accompanied by a colleague or representative of a recognised trade union.

2.2.5 Within the specified timescale, the programme of monitoring should have specific and realistic targets for development which, if possible, will be agreed by all parties.

2.2.6 If following the agreed period of monitoring and support the performance of the member of staff remains below the standard required of their role, they will be invited to a final review meeting and informed verbally and in writing that this stage of the process will cease and they will move immediately into the formal capability procedure.

3 Formal Capability Procedure

3.1 This procedure applies only to members of staff about whose performance there are serious concerns that the teacher supportive appraisal process or associate staff initial monitoring and support process has been unable to address. The formal capability procedure will commence at the meeting at the end of the supportive appraisal process outlined in paragraph 3.6.1 of the teacher appraisal policy or paragraph 2.2.6 of this policy in respect of associate staff. The initial formal capability meeting will normally take place within 10 working days of the teachers' final supportive appraisal or associate staff monitoring and support review meeting.

- 3.2 Usually the line manager who has worked with the individual through the teacher supportive appraisal process or the associate staff monitoring process will remain as the Monitoring Officer throughout the formal capability process. They will present the case during the Stage 1 and Stage 2 meetings, and will work with the member of staff during the review periods to offer support and monitor progress.
- 3.3 At least five working days' notice will be given of the initial formal capability meeting. The notification will contain sufficient information about the concerns regarding performance and their possible consequences to enable the member of staff to prepare to answer the case at the initial 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 member of staff of their right to be accompanied by a colleague or a trade union representative. A relevant external professional officer may also be invited to provide advice as appropriate.

Stage 1

3.4 Initial Formal capability meeting

- 3.4.1 This meeting is intended to establish the facts. It will be conducted by the Head Teacher or a nominated member of the senior leadership team, or by the Chair of Governors or the Trust for Head Teacher capability meetings. The meeting will allow the member of staff, accompanied by a Companion if they wish, to respond 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.
- 3.4.2 Having considered all the evidence and relevant information presented at the meeting the person conducting the meeting may conclude that there are insufficient grounds for pursuing the formal capability process and that it would be more appropriate to continue to address the remaining concerns through the supportive appraisal process for teaching staff or informal monitoring and support for associate staff. In such cases, the relevant process will recommence and the formal 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 in which to consider any additional information. Where an adjournment is agreed the meeting will be reconvened within five working days. In such circumstances the timescales outlined in paragraph 3.4.3 below will commence at the date of the reconvened meeting.
- 3.4.3 If performance concerns remain, the meeting will continue. During the meeting, the person conducting the meeting will:
- identify the professional shortcomings, for example which of the standards expected of teachers or performance objectives for associate 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*);
 - explain any support that will be available to help the member of staff 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 but will not exceed a period of twelve working weeks (i.e. two review periods of up to 6 working weeks). In serious cases where the safety, welfare or education of pupils is at significant risk, the timescale may be shortened to a minimum of four weeks (i.e. two review periods of 2 working weeks)
- issue a formal written warning which will include that failure to improve within the set period (between 2 and 6 weeks) could lead to dismissal. In very serious cases, this warning could be a final written warning. Where a final written warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance within the final review period may result in dismissal. Where a final written warning is issued, following the period of monitoring the process will move directly to Stage 3, paragraph 3.6 of this policy.

3.4.4 Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the member of staff will be informed in writing within three working days of the matters covered in the bullet points above and given information about the timing and handling of the review stage.

3.4.5 Where a warning is issued, the member of staff will be given the right of appeal which must be submitted in writing using the appeal form at Appendix C within 5 working days of the receipt of the written warning. The appeal hearing will be heard by a panel of three governors who have had no previous involvement in this stage of the procedure or alternatively the Head Teacher if they have not conducted the initial formal capability meeting. The formal capability procedure will continue pending the appeal hearing which will normally be heard within 10 working days of the receipt of the written appeal. The member of staff will be given a minimum of five working days' notice of the date of the appeal hearing.

Stage 2

3.5 First Monitoring and review period following an initial formal capability meeting

3.5.1 The Monitoring Officer will continue to provide formal monitoring, evaluation, guidance and support during this period. At the end of the first review period the member of staff will be invited to a formal review meeting, the procedure for which is set out in Appendix A. Where the member of staff was previously issued with a final written warning, that meeting will be a decision meeting in line with paragraph 3.6.

Formal review meeting

3.5.2 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 staff of their right to be accompanied. A relevant external professional officer may also be invited to provide advice as appropriate.

3.5.3 If the person conducting the meeting is satisfied that the member of staff has made sufficient improvement, and that the relevant performance standards are being met and that performance is at the required level, the capability procedure will cease and the appraisal process will re-start (see paragraph 3.11).

3.5.4 If performance concerns remain, the meeting will continue. During the meeting, the person conducting the meeting will:

- reiterate the professional shortcomings, for example which of the standards expected of teachers or performance objectives for associate staff are still 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*);
- explain any support that will be available to help the member of staff 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 but will not exceed a period of six working weeks. In serious cases where the safety, welfare or education of pupils is at significant risk, the timescale may be shortened to a minimum of two weeks.

3.5.5 If no, or insufficient, improvement has been made during the monitoring and review period to demonstrate that the relevant East Midlands Education Trust teacher standards or associate staff performance objectives are being met and that performance is at the required standard, the member of staff will receive a final written warning which will include that failure to improve within the set period could lead to dismissal. Review periods will not be extended if some, but insufficient improvement in performance has been made during the review period.

3.5.6 As before, notes will be taken of the meeting and a copy sent to the member of staff. Where a final written warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance within the final review period may result in dismissal and will be given information about the handling of the further monitoring and review period.

3.5.7 Where a warning is issued, the member of staff will be given the right of appeal which must be submitted in writing using the appeal form at Appendix C within five working days of the receipt of the written warning. The appeal hearing will be heard by a panel of three governors who have had no previous involvement in this stage of the procedure. The formal capability procedure will continue pending the appeal hearing which will normally be heard within 10 working days of the receipt of the written appeal. The member of staff will be given a minimum of five working days' notice of the date of the appeal hearing.

Stage 3

3.6 Second Monitoring and Review Period

3.6.1 At the conclusion of the final period of monitoring the member of staff will be invited to a decision meeting.

Decision meeting

- 3.6.2 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 staff of their right to be accompanied. A relevant external professional officer may also be invited to provide advice as appropriate.
- 3.6.3 If an acceptable standard of performance has been achieved during the further monitoring and review period, and the relevant East Midlands Education Trust teacher standards or associate staff performance objectives are being met, the capability procedure will end and the appraisal process will re-start (see paragraph 3.11).
- 3.6.4 If performance remains unsatisfactory, the member of staff will be notified of the decision that a recommendation to the Governors will be made that the member of staff should be dismissed. The member of staff will be immediately suspended pending consideration of the recommendation for dismissal by a panel of Governors.

3.7 Dismissal Hearing

- 3.7.1 Usually the Head Teacher or nominated member of the senior leadership team who has conducted the Stage 1 and Stage 2 meetings will present the case to the panel of Governors. They may be accompanied and supported in their presentation by the Monitoring Officer.
- 3.7.2 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 staff of their right to be accompanied. A relevant external professional officer may also be invited to provide advice as appropriate.
- 3.7.3 The case will be heard by a panel of three governors with no previous involvement in this stage of the procedure. The procedure for the dismissal hearing is set out in Appendix A.
- 3.7.4 On completion of the dismissal hearing the member of staff will be notified of the decision, which will be confirmed in writing within three working days of the hearing. Where the decision is to dismiss, the member of staff will be informed of the reasons for the dismissal and the date on which the employment contract will end, following the appropriate period of notice.
- 3.7.5 If the decision is not to dismiss, the member of staff will be informed in writing within three working days of the hearing, the suspension to be lifted and arrangements will be made for them to return to work. However, the member of staff will continue to be monitored in line with paragraph 3.11 and may be subject to the formal capability process in the future if performance standards are not maintained.

3.8 Appeal

- 3.8.1 The member of staff will be given the right of appeal which must be submitted in writing using the appeal form at Appendix C within five working days of the receipt of the written warning. The appeal hearing will be heard by a panel of three governors who have had no previous involvement in Stage 3 of the procedure.

- 3.8.2 The member of staff will be given a minimum of five working days' notice of the date of the appeal hearing which will normally be held within the formal notice period, if possible within 20 working days of the dismissal hearing. Notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied. A relevant external professional officer may also be invited to provide advice as appropriate.
- 3.8.3 The member of staff will be notified in writing of the results of the appeal hearing within three working days of the date of the decision.

3.9 Sickness

- 3.9.1 If the member of staff takes a period of long term sickness absence while subject to either informal monitoring or the formal capability procedure, the case will be dealt with by taking account of the Trust's Managing Attendance of Staff Policy. The individual will be referred immediately to the occupational health service to assess their health and fitness and for advice about engagement with the member of staff during their period of absence. Other than in exceptional circumstances monitoring and/or formal capability procedures will continue during a period of sickness absence.

3.10 Grievances

- 3.10.1 Where a member of staff raises a grievance about the process while the capability procedure is ongoing, the grievance will be dealt with urgently in accordance with the Trust's grievance procedure. Other than in exceptional circumstances, the capability procedure will not be suspended unless the grievance is upheld following completion of the grievance procedure.

3.11 Transfer back to the Appraisal Process

- 3.11.1 Where at any stage in the capability procedure it is decided that the level of performance of the member of staff against the relevant teacher standards or associate staff performance objectives has reached the required level expected of them, the formal capability procedure will cease and the monitoring of the performance of the member of staff will be dealt with under the Trust's relevant appraisal policy. However, for a period of 12 months following the return to the appraisal process, the member of staff will have appropriate additional classroom observation and other monitoring of performance and will receive support if necessary.
- 3.11.2 During this period there will be regular reviews of performance against the required standards. If at the end of the twelve months' period the performance of the member of staff has been sustained to the required standard, normal appraisal arrangements will be applied. However, if during the twelve months' period the performance of the member of staff is not sustained and drops below the required standard the member of staff will move straight back into the Trust's capability procedure at an appropriate point which may be equivalent to, but not exceed the stage at which they were previously in the capability procedure.

Appendix A Procedure for formal capability meetings and appeal meetings

A1 Formal Capability Meetings

1. Monitoring Officer presents the case including any relevant witnesses.
2. Questions from member of staff and/or Companion.
3. Questions from the Head Teacher/nominated member of the senior leadership team.
4. Member of Staff (or Companion) presents their case including any relevant witnesses.
5. Questions from the Monitoring Officer.
6. Questions from the Head Teacher/nominated member of the senior leadership team.
7. Monitoring Officer sums up.
8. Member of Staff (or Companion) sums up.
9. Both parties withdraw.
10. Head Teacher/nominated member of the senior leadership team decision.
11. All parties reconvene. Decision given.
12. Decision confirmed in writing within three working days – including notice of right to lodge an appeal within five working days of receipt of the written notification of the decision.

A2 Appeal Hearings/Dismissal Hearing

1. Head Teacher and/or Monitoring Officer presents the case including any relevant witnesses.
2. Questions from member of staff and/or Companion.
3. Questions from the Panel.
4. Member of Staff (or Companion) presents their case including any relevant witnesses.
5. Questions from the Head Teacher and/or Monitoring Officer.
6. Questions from the Panel.
7. Head Teacher and/or Monitoring Officer sums up.
8. Member of Staff (or Companion) sums up.
9. Both parties withdraw.
10. Panel decision.
11. All parties reconvene. Decision given.
12. Decision confirmed in writing by the chair of the panel within three working days – including notice of right to lodge an appeal against a dismissal decision within five working days of receipt of the written notification of the decision. Following an appeal hearing there is no further right of appeal.

