



ATHENA
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Athena Learning Trust Trust-wide Staff Capability Policy

Review

Reviewed on: 31st October 2022

Reviewed by: Board

Review Period: 3 years





1. Introduction

This policy applies to all members of staff (including the CEO/Principals) where there are serious concerns regarding performance that the informal performance management process has been unable to address or where the concerns are so serious that they merit immediate consideration within the formal process.

This policy sets out the framework for a clear and consistent consideration of capability and performance of all members of staff, including the CEO/Principals, and for supporting their development within the context of the Trust's plan for improving educational provision and performance, and the standards expected of all staff. It sets out the arrangements that will apply to staff that fall below the levels of competence that are expected of them.

2. Capability Process

- 1st Formal Capability meeting
Monitoring and Review period
Formal review meeting
- 2nd Formal Capability meeting
Monitoring and Review period
- Panel decision meeting
Decision to Dismiss
Dismissal
- Appeal Panel decision meeting

3. General principles

3.1 For anyone reading this document with whom a capabilities procedure is about to start, it is recommended that they are to contact their professional association representative if they are a member of an association such as a trade union.

3.2 This policy is intended for both teaching and support staff.

3.3 Where performance is unsatisfactory and has not improved through an informal process, or where concerns about the impact of poor performance are significant and serious, the individual will be informed in writing that their performance is unsatisfactory and that it will be managed under the Formal Capability process.

3.4 A formal capability meeting will be convened to review the identified ongoing performance concerns and determine what action should be taken. The employee will be informed of the possible outcomes of this meeting, which may include the issuing of a formal warning in respect of the employee's future capability.



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4. Application of the policy

4.1 The Capability Policy should be applied to the CEO, Principals and to all staff employed by the Schools/Trust.

4.2 Stage One – First Formal Capability meeting arrangements

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information regarding the concerns about performance and the possible consequences or outcomes of the meeting. This will ensure the employee is able to prepare their response to 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 member of staff of their right to be accompanied by a companion who may be a workplace colleague or a trade union official. The Principal (or other senior leadership colleague) will discuss the situation with HR and HR or an external adviser will attend all meetings. Arrangements may also be made for a note taker to attend to record the meeting.

4.3 Formal capability meeting

This meeting is intended to establish the facts and determine what action needs to be taken. It will be conducted by the Principal or the appropriate senior teacher/line manager for teachers and support staff, or by the CEO or delegated senior leader in any cases relating to the Principal. The meeting allows for the employee to be accompanied by a suitable work companion or Trade Union representative if they wish.

At the meeting, the employee will be given the opportunity to respond to the concerns held about their performance and to make any relevant representations. This may provide new information or providing a different context to the information/evidence of unsatisfactory performance, as may be relevant to their case.

Having carefully considered all the information presented at the meeting, the person conducting the meeting may determine one of the following conclusions:

- that there are insufficient grounds to substantiate unsatisfactory performance;
- that there are sufficient grounds to substantiate the concerns of unsatisfactory performance.

Where it is concluded that there are insufficient grounds for pursuing the capability issue, it may be determined that it would be more appropriate to continue to address the remaining concerns through the informal performance management process. In such cases, the capability procedure will come to an end.

Where there is insufficient evidence to form a conclusion, the person conducting the meeting may adjourn the meeting if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

In other cases, the person conducting the meeting will:



- identify the professional shortcomings of the member of staff, (for example which of the standards expected of teachers are not being met or where support staff performance falls below that expected);
- 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 person improve their performance; examples of support include the appointment of a mentor, observing best practice in school or at an alternative school, additional training courses etc. Support should be tailored to meet the needs of the individual.
- if appropriate, set out what monitoring will take place, e.g. if, for a teacher, lesson observations will be undertaken and by whom, and if, for instance, a 3rd party will be called upon to provide an external advisor's view of the person. The number, purpose and timings of the observations should also be discussed.
- 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 most cases should be **between four and ten weeks**. It is for the school to determine the set period. It should be reasonable and proportionate to the degree of the unsatisfactory performance, but not excessively long whilst providing sufficient opportunity for an improvement to take place; and
- warn the person that failure to improve within the set period could lead to dismissal. A **formal written warning** may be issued detailing the issues, support measures, actions to be arranged and timescales. In very serious cases, this warning could be a final written warning.

4.4 A Capability Action Plan should be agreed and forwarded to the member of staff who is subject to this procedure.

4.5 Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning has been issued, the person will be informed in writing of the matters covered in the bullet points above, information on the timing and handling of the review stage, confirmation of the employee's right of appeal against the warning and the procedure and time limits for appealing. It is recommended that a review date be agreed at this stage in order to ensure that all parties are aware of the proposed timescales.

4.6 In exceptional cases where the Principal/Line manager has identified a clear link between the individual's performance and serious detrimental effects upon the school or on student outcomes or performance, the Principal may issue a **Final Written Warning** and move immediately to a final review period.

5. Ofsted Subsidiary Guidance for teaching members of staff

5.1 Lesson observations made by Ofsted inspectors **must not** be used by the school to make judgements about performance of an individual teacher. Performance should be judged fairly over a period of time, whilst a single Ofsted observation is a snapshot in time and therefore it is not realistic to base judgements on such limited assessments, without taking into account the employee's performance in general over a reasonable period.

6. Monitoring and review period following a formal capability meeting

6.1 A performance monitoring and review period of between four and ten weeks will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. All monitoring, evaluation, guidance and support should be agreed and recorded in the Capability Action Plan.

6.2 At the end of the review period, in most cases the member of staff will be required to attend a further formal review meeting (the date of which may have been agreed at the 1st Formal Capability meeting). However, in exceptional cases where the employee received a final written warning at Stage One, they will be required to attend a decision meeting (see below).

6.3 Prior to the formal review meeting, the manager conducting the meeting will need to consider the employee's progress during the course of the review period. If there is a concern for continued unsatisfactory progress, this should be made clear to the employee in advance of the meeting, including the likelihood of any further sanction that may be issued.

7. Formal Capability Review meeting

7.1 As with the first formal capability meeting, at least five working days' notice in writing will be given. The written notification will give details of the time and place of the meeting and will advise the person of their right to be accompanied at the meeting by a companion who may be a workplace colleague, or a trade union representative. Additionally, the letter will inform the employee of the possible outcome in respect of any further sanction that may be issued. As with the first formal capability meeting, the Principal/Manager may arrange for an HR Advisor to accompany them at the meeting. Arrangements may also be made for a note taker to attend to record the meeting.

7.2 At the meeting, the employee will have the opportunity to respond to the ongoing 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, as may be relevant to their case.

7.3 Having carefully considered all the information presented at the meeting, the person conducting the meeting may determine one of the following conclusions:

- that there are insufficient grounds to substantiate unsatisfactory improvement or continued unsatisfactory performance;
- that there are sufficient grounds to substantiate the concerns that there has been unsatisfactory improvement and the performance continues to be of a concern.



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7.4 If the person conducting the meeting is satisfied that the member of staff has made sufficient improvement, the Capability Procedure will cease and the Performance Management process will re-start.

7.5 If some progress has been made and the person conducting the hearing is satisfied that there is capacity to continue to improve, it may be appropriate to extend the monitoring and review period at Stage One.

7.6 If it is concluded that there has been insufficient or no improvement and the employee's performance continues to be a concern, the employee may be issued with a final written warning and Stage 2 of the Capability Procedure will be invoked. As before, a copy of the notes of the formal review meeting will be provided to the member of staff.

8. Stage Two Capability Review Meeting

8.1 Stage 2 of the Procedure is invoked where there has been insufficient improvement following the completion of the Capability Action Plan and review period undertaken at Stage 1 of the Procedure.

8.2 In such circumstances, the employee would have been issued with a final written warning at the formal capability review meeting at the conclusion of Stage 1. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale, **normally between four & ten weeks**), may result in dismissal.

8.3 The final written warning will acknowledge any previous warnings that have been issued and will also confirm the areas of insufficient improvement in respect of the Action Plan agreed at Stage 1. The letter will also confirm arrangements for the further monitoring and review period, the employee's right of appeal and the procedure and time limits for appealing against the final warning.

8.4 As before, an updated action plan should be put in place including a support package, continued monitoring and assessment arrangements including any lesson observations if appropriate and a review date should be scheduled.

9. Monitoring and Review

9.1 The employee's performance against the agreed standards and objectives as set out in the Stage 2 updated Capability Action Plan should be monitored during the review period and then formally reviewed on the date previously agreed. This review meeting should be minuted.

9.2 The review meeting can, as previously, reach a number of conclusions. If it is determined that sufficient progress has been made, it may be appropriate to agree to end the capability process. If it is determined that some, but insufficient, progress has been made, it may be appropriate to extend the review period. However, if no or insufficient progress has been made, the matter should be referred to the Panel to make representation to consider the question of the employee's continued employment at the Trust board.



10. Trust Board's Decision meeting

10.1 The Panel's decision meeting will consider the case of the continued unsatisfactory performance where there is insufficient or no progress in improvement and serious concerns for the employee's capacity to improve in the future.

10.2 **At least ten working days' written notice** will be given of the meeting. The written notification of the meeting 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 workplace colleague or trade union representative. The letter will include all documents to be referred to in respect of the case and a copy of the Capability Procedure. Additionally, the letter will inform the employee of the possible outcome, which may include dismissal.

10.3 The Panel will convene a committee of three Trustees/Governors. The Principal/Line Manager (as appropriate) will be required to attend the meeting to present the background to the case, including all the relevant information relating to the management of the capability process. The meeting should be formally minuted..

10.4 As with the previous formal meetings convened under this Procedure, the Principal/Manager may arrange for an HR Officer to accompany them at the meeting, and may also arrange for the Panel to be advised by HR/an external advisor.

10.5 At the meeting, the employee will have the opportunity to respond to the ongoing concerns about their performance. This may provide new information or a different context to the information/evidence already collected, as may be relevant to their case. The employee will have the right to question the information and make representations as to why they should not be dismissed, including any mitigating circumstances. The member of staff has the right to be accompanied by either a workplace colleague or a trade union official.

10.6 Both parties will then be given an opportunity to sum up their case. No new information can be introduced during the summing up stage.

10.7 The panel will then adjourn to reach a decision. The panel may wish to take appropriate legal or HR advice before the decision to dismiss is made.

10.8 Wherever possible the panel will re-convene the meeting to announce the decision to all parties after the adjournment. If the Panel's deliberations are likely to take a considerable period of time, as an alternative it may be sensible for the parties to be allowed to leave and the decision confirmed in writing. The decision will be confirmed in writing within 5 working days.

11 Dismissal

11.1 If the decision to dismiss has been taken, the panel will dismiss the person with notice. Where the dismissed employee is a teacher, the notice issued will be in accordance with the notice terms of the School Teachers' Pay and Conditions Document. Where the dismissed employee is not a teacher, the notice issued will be in accordance with the notice terms of their contract of employment.



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12. Appeal

12.1 If the 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 ten days of receipt of the decision in writing. The written appeal letter should also confirm the grounds for appeal. Appeals will be heard without unreasonable delay by an appeal panel.

12.2 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 member of staff.

12.3 The appeal will be dealt with impartially and, wherever possible, by an appeal panel who have not previously been involved in the case.

12.4 The member of staff will be informed in writing of the outcome of the appeal hearing as soon as possible. The decision of the appeal panel is final.

13. 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. However where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

14. 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 referred as soon as possible 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, and after seeking advice from OH, it may be appropriate for formal procedures to continue during a period of sickness absence, however performance monitoring can only be undertaken when the employee is fit to return to work.