

## Silkmore Primary Academy



## TEACHERS' CAPABILITY POLICY

### Procedures & Guidance

September 2017

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## **1 Introduction**

- 1.1 REAch2 Academy Trust is committed to ensuring that issues of capability are dealt with in a fair and consistent way across the Trust.
- 1.2 The procedure has been adopted by the REAch2 MAT Board and by the [insert name of academy] Local Governing Body on the dates shown on the front page. This policy has been consulted on with the recognised teaching staff unions through the REAch2 National Joint Consultative Committee.

## **2 Purpose and Principles of the Policy**

- 2.1 For the purposes of this policy, lack of capability is defined as a situation in which an employee fails consistently to perform his or her duties to a professionally acceptable standard. Capability concerns may be about a single matter or a number of related issues.
- 2.2 The purpose of the policy is to address and resolve problems in capability at the earliest possible stage, in a supportive way that takes account of individual circumstances, whilst the employee continues to carry out their role, so that the teacher's performance is given the opportunity to improve and the problem resolved. Concerns about performance should initially be addressed through support provided within the appraisal process before consideration is given to the capability procedure.
- 2.3 The procedure documented in this policy is designed to help and encourage all staff to achieve and maintain acceptable standards of capability and work performance. However, at the conclusion of the process, capability action, may, at its extreme, lead to dismissal.
- 2.4 The Capability policy will not be implemented unless a support plan has been in place for an agreed period and the employee has been provided with at least 8 weeks of support for their performance to improve under the appraisal process. The capability procedure must be kept entirely separate from initial support provided under the appraisal process.
- 2.5 Managers should consider whether concerns over capability relate to family/personal circumstances or short term health problems. Consideration will also be given to any circumstances within the school environment (please see section 7).
- 2.6 This policy is not intended as a substitute for good management and sound employment practices such as the induction of new staff/ newly promoted staff, good management, and comprehensive appraisal / performance management.

Generally, performance should be discussed regularly as part of the employee's supervision, and underperformance identified and tackled early. Early identification of problems through appraisal will help to avoid formal capability procedures, however, there will inevitably be cases where a more formal and structured approach is necessary.

- 2.7 Timescales should be adhered to wherever possible under the policy, however, where there is a valid reason and there is mutual agreement, timescales can be varied. However, there should not be unreasonable delay in undertaking the procedure.

### **3 Scope**

- 3.1 This policy applies to teachers within REAch2 about whose performance there are serious concerns that the appraisal process has been unable to address. All other staff are covered by the REAch2 Staff Capability Policy.
- 3.2 This policy does not apply to underperformance where the lack of capability is due to ill health or disability. This should be dealt with under the Trust's Ill Health Procedure.
- 3.3 This Policy should not be used in cases of alleged misconduct such as where an employee's failure to perform is due to an act of omission, or a wilful refusal to work satisfactorily. In this circumstance, the Disciplinary Policy should be used.

### **4 Representation**

- 4.1 At all stages of the appraisal and capability processes, employees have the right to be accompanied and/or represented by his/her trade union or professional association representative or by a work colleague. The representative or work colleague may address the meeting and /or interview, and confer with the employee, but may not answer questions on their behalf.
- 4.2 Employees should make their own arrangements to be represented or accompanied. Where the chosen representative or colleague is not available at the proposed time and date of a meeting, the employee may propose an alternative date within 5 working days of the original date. This may be extended in exceptional circumstances. The rescheduled meeting will not cause any unreasonable delay to the process.
- 4.3 Throughout the procedures, wherever possible, the time and date of meetings should be agreed with the employee and their representative.

- 4.4 Where any capability procedure is being considered in respect of a recognised trade union or professional association representative, no action shall be taken unless and until the matter has been discussed by the Head teacher (or a person acting on their behalf), with REAch2 Head of HR and a full-time officer or locally elected officer at the level of the Local Authority of that trade union or professional association.

## **5 Equal Opportunities**

- 5.1 The capability policy must always be applied fairly and in accordance with employment law and REAch2 Equalities policies. The application of this policy will not directly nor indirectly discriminate against members of staff on the grounds of their gender, age, disability, gender re-assignment, marital or civil partnership status, pregnancy, maternity status, race (including colour, nationality and ethnic or national origins), religion or belief, or sexual orientation.
- 5.2 The application of this policy will not directly nor indirectly discriminate against members of staff on the grounds of trades union membership or activities

## **6 Responsibilities**

- 6.1.1 Head teachers/Line Managers are responsible for implementing the procedure when required.
- 6.2 Where a Head teacher's capability is being managed, the Executive Team are responsible for implementing the procedure when required.
- 6.3 Employees are responsible for performing the duties of the post to the best of their abilities and in accordance with any specified regulations or performance standards (for example Teachers' Standards). Managers will ensure that all employees have a clearly defined and agreed job description, reviewed on a regular basis, to ensure that all employees know what is expected of them.

## **7 Process**

- 7.1 Whenever perceived lapses from acceptable standards of work performance arise, either through the appraisal process or otherwise, they should initially be discussed with the employee concerned by their teacher's immediate line manager.
- 7.2 Consideration must be given that cause(s) of difficulty may be due to one or more of the following:

- the knowledge and technical skills required for the post are changing but the teacher has not acquired these new skills and knowledge:
  - circumstances outside the school are affecting the teacher's work performance, some of which may be temporary as a result of family/personal issues or short-term health problems.
  - circumstances within the school environment, for example redeployment or new or additional responsibility or perceived inadequate management support or unreasonable demands, are affecting the teacher's work performance.
- 7.3 Where, following the failure of a support plan to achieve satisfactory performance under appraisal/performance management procedures, the appraisal process is suspended and the formal process is invoked.

### **Formal Process (Stage 1 Support, Monitoring and Review)**

#### **8 Evidence**

- 8.1 If an employee has not raised their performance to a satisfactory level through the support plan, the evidence collected as part of the support plan process will be utilised by the Head teacher/ Line Manager in order to reach a decision on next steps.
- 8.2 If, in the most serious cases, the circumstances are such that an employee has been moved directly onto the Capability process, then significant time must be allowed for evidence to be gathered by a nominated member of the SLT (other than the Head teacher/Line Manager).
- 8.3 The employee must be advised that their performance is under review as part of formal Capability procedures
- 8.4 Once the information is gathered and the extent of the problem established the member of the senior leadership team will make a recommendation to the Principal (or line manager) based on the evidence gathered as to which of the following options is most appropriate.
- a) No further action necessary if performance is at satisfactory standard
  - b) Arrange additional support through the appraisal procedure without using the formal procedure; or
  - c) Arrange a formal interview (formal approach for more serious cases or where informal approach has not brought about desired improvements).

## **9 Invite to meeting**

9.1 If a decision has been made under 8.2 C) above then the employee will be invited

to a meeting with at least 5 working days' written notice as outlined in 4.2. Wherever possible the time and date of meeting should be agreed with the employee and their representative.

The notification will include:

- Sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting
- Copies of any written evidence connected to the concerns
- The details of the date, time and place of the meeting
- Advice to the employee of their right to be represented/accompanied by a trade union official or Locally Elected Officer or work colleague.
- The names of those who will be at the meeting and their role

## **10 Formal Capability Meeting**

10.1 Both management and the employee are entitled to call relevant witnesses.

10.2 This meeting is intended to establish the facts following a full and fair discussion with the employee having the right to put their point of view. It will be conducted by the Head teacher/ line manager. If the capability concerns are regarding a HT, the meeting will be conducted by the Executive Principal. If the concerns are regarding the Executive Principal, the meeting will be conducted by the Deputy Chief Executive of REAch2.

10.3 At the meeting, the concerns regarding the employee's performance will be put to them and the employee will be able to respond to those concerns ask questions, make comments and make any relevant representations.

10.4 Minutes will be taken of all formal meetings

10.5 The employee may provide new information or a different context to the evidence already collected. In this case, if it becomes clear that further investigation is required, the manager conducting the meeting will adjourn the meeting for an appropriate time to allow this to happen.

10.6 A decision should be made after all the facts and any representations from the employee have been considered. The Headteacher or line manager should adjourn the meeting briefly to consider the appropriate action before delivering a decision to the employee.

10.7 The manager conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will cease, and record of the process will be expunged from the personnel file. The management will confirm this in writing to the employee. No reference to the capability process will be made by the management.

10.8 If a decision is made to continue with the formal capability procedure then the manager will :

- Identify the underperformance
- Identify what action (including support provided under the appraisal process) has been taken to date and what the outcome was
- Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures at the earliest opportunity (this may include the setting of new reasonable and achievable 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)
- Discuss with the employee the possibility of redeployment to another role
- Seek to agree with the employee and their representative the support that will be available to help the employee improve their performance. If no agreement is reached then the Head teacher (or line manager) will determine the nature of the support.
- Support may include training and will always be constructive and not limited to monitoring or observations.
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable for this will depend on the circumstances of the individual case. In this Trust, the standard set review period is normally 6 weeks, however, in exceptional circumstances it could be up to 8 but no less than 4. This would follow discussion and the seeking of agreement of the employee. The period will be reasonable and proportionate and should provide sufficient opportunity for an improvement to be made. The criteria and timing for measuring the



success of the new target/s should also be clear and explicit, In addition, there should be a review towards the progress of the targets at the half-way-point of the time period allowed.

- Agree the date of the review meeting.
- Where it is felt that some but insufficient progress is being made, the person conducting the meeting will also inform the employee formally that although significant progress has been made, it is insufficient to bring the capability process to an end, and as a result, a further extension of the process will take place.
- The employee will also be informed formally that, in the worse case, dismissal may result.
- In very serious cases, where performance issues have been dealt with previously under the formal capability procedure, this could be done via a final written warning (advice must be sought from REAch2 HR where this is being considered). The employee will also be informed where this is the case.

10.9 The minutes, and a copy of the programme of action shall be sent to the employee within 5 working days of the meeting together with a copy for the representative, if applicable. The employee and the rep may then correct the minutes if they believe they are inaccurate or incomplete. A record of this should be attached to the original minutes.

1.10 Where a warning is issued, the employee 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.

## **11 Monitoring and Review Period following a capability meeting**

11.1 A performance monitoring and review period will take place following the formal capability meeting. This will be in adherence with the timescales set out above and determined at the initial formal capability meeting. Monitoring, evaluation, guidance and support will continue to be sympathetic and supportive during this period. Following this period, the employee will be invited to a Formal Review Meeting (see Section 11 below) unless s/he had been issued with a final written warning (under section 9.8) in which case s/he will be invited to a Decision Meeting.

## **12 Formal Capability Review**

12.1 At least 5 working days written notice will be given of the Formal Capability Review meeting and the notification will include the following:

- Date and time of the meeting
- Venue
- The employee's right to be accompanied/represented by a trade union official or locally elected Officer or work colleague.

The meeting will be conducted by the Head teacher/ Line manager.

- 12.2 Wherever possible the time and date of meeting should be agreed with the employee and their representative.
- 12.3 If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will restart.
- 12.4 If some progress has been made and there is confidence that more is likely, a further monitoring and review period will be set of between 4-8 weeks. Whatever time period is agreed at the meeting must be realistic in terms of helping the teacher to meet the agreed targets.
- 12.5 If no or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning before a further monitoring and review period is set. Agreement will be sought regarding the time period and further support will be at the meeting, taking on board the views of both parties. If agreement cannot be reached the view of the Head teacher/ Line Manager will be implemented.
- 12.6 If no or insufficient improvement has been made and the employee has already received a final written warning, they will be invited to a Decision meeting to consider their continued employment on the grounds of capability. The employee will be given at least 10 working days' notice of the Decision meeting. Sympathetic consideration will be given to any reasonable request for postponement in order to allow representation or where there are other extenuating circumstances. The same rights to representation will apply here as to the other stages of the Capability process.
- 12.7 Minutes will be taken of the meeting and a copy of these will be sent to the employee. Where a final written warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in

dismissal. They will be provided with written information about the further monitoring and review period as in section 12.4 and the procedure and time limits for appealing against the final written warning.

- 12.8 At the end of the further monitoring and review period, the employee will be invited to a decision meeting.

### **13 Decision Meeting**

13.1 At least 10 working days written notice must be given to the employee of the Decision

Meeting, and the notification will include the following:

- Date and time of the meeting
  - Venue
  - The employee's right to be accompanied/represented by a trade union official or locally elected officer or work colleague
- 13.2 Wherever possible the time and date of meeting should be agreed with the employee and their representative.
- 13.3 The meeting will be conducted by a panel of three governors not previously involved in the case. The three governors should be independent, and could be from schools other than the school where the employee works
- 13.4 If an employee fails to attend the Decision meeting, it will be held in their absence, unless the Meeting panel agree to postpone the meeting following receipt of valid reason for absence.
- 13.5 The meeting panel will have before them copies of all relevant papers that will be referred to in the meeting, including any submitted by the employee. Any evidence the employee wishes to present, should be made available to the panel at least 2 working days before the meeting date. If this is not possible, it could be considered on the day.
- 13.6 At the meeting, the panel will consider whether the employee's performance falls below the standard required. They will also satisfy themselves whether adequate support mechanisms have been offered to the employee, and ensure that all reasonable alternatives to dismissal, such as redeployment have been exhausted.
- 13.7 Where the panel feel that acceptable improvement has been made, and an acceptable standard of performance has been achieved during the

process, the capability process will end and the appraisal process will restart. The manager will confirm this in writing to the employee. No future reference to the capability procedure will be made by the management.

13.8 Where performance is deemed to have improved, but not quite reached the required standard, and where there is confidence that following a further monitoring period it will reach an acceptable standard, then a further monitoring period of no more than 4 weeks will be put in place. There will be a further Decision meeting following that period.

13.9 Where the panel believe that no/insufficient progress has been achieved nor will it be following an extended monitoring period, the employee will be informed that they will be dismissed from their employment with the Trust on the grounds of capability. The employee will be informed of the date on which the employment contract will end, the appropriate period of notice and of their right to appeal.

13.10 The employee will receive a copy of the notification as above, in writing.

## **14 Appeal**

14.1 An employee can appeal against any formal action taken against them as a result of this procedure if they feel it is wrong or unjust. The appeal must be made in writing and sent to the Chair of the Decision Meeting Panel. The appeal must be made in writing and received within 10 working days of receipt of the notification of the formal action taken against them.

14.2 The appeal letter must set out the grounds for appeal. A template letter including the normal grounds of appeal is provided at Appendix 1

14.3 The appeal will be heard without unreasonable delay and the employee must be given 5 working days' notice of the date of the Appeal Hearing. This can be rearranged in line with conditions set out relating to the other meetings in this process.

14.4 The appeal will be heard by a panel of three governors including at least 1 MAT Board member with no previous involvement with the case. The three governors

must be independent, and could be from schools other than the school where the employee works

- 14.4 Arrangements, notification and production of documentation, the right to representation and the procedure for the appeal will be the same as those for the Decision Meeting
- 14.5 Appeals will normally be re-hearings in order to consider the reasonableness of the decision made and to examine any new evidence or claims of procedural irregularity. However, where the grounds of appeal are on a narrow procedural point, the Appeal panel may rule on the specific point rather than re-examine the entire case
- 14.6 The employee will be informed in writing of the outcome of the Appeal Hearing as soon as possible.
- 14.7 There is no further right of appeal against the sanction/dismissal.

## **15 General Principles underlying this policy**

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

This policy will be implemented in accordance with the provisions of the ACAS Code of Conduct

**15.2 Confidentiality** - The capability process will be treated confidentially. However, the desire for confidentiality does not override the need for the Head teacher/ line manager and (where relevant) the LGB to quality assure the operation and effectiveness of the performance management system.

**15.3 Delegation** - Normal rules of the Scheme of Delegation apply in respect of delegation of functions by the LGB and Head teachers

**15.4 Grievances** - where an employee raises a grievance during the capability process, the capability process 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.

**15.5 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 REAch2 Sickness Absence Policy and the employee will be referred immediately to the Occupational Health Service to assess the employee's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. Consideration must be given to the period

of absence being excluded from the period given for support, monitoring and review)

**15.6 Monitoring and Evaluation** - The LGB and HT (or Line Manger and Trust Board where relevant) will monitor the operation and effectiveness of the Performance management arrangements. They will report on these to the MAT Board and REAch2 Trust Board as required. In developing, applying and evaluating this policy we will monitor the impact on different groups of people with protected characteristics

in line with the Trust's Equal Opportunities Policy. This will ensure that all actions taken are undertaken fairly.

**15.7 Retention** - The LGB and Head Teacher (or Line Manger and Trust Board where relevant) will ensure that all written capability records are retained in a secure place. It is the manager's responsibility to ensure that HR has a copy of all relevant documents. All records will be kept in accordance with the Data Protection Act 1998 and will be kept no longer than necessary.

## Appendix 1

### Template Appeal Letter

[Name]

[Address]

[Date]

[Date]

[Date]

]

Dear [Insert name]

**Appeal against outcome of [Insert title/details] under the [Insert School Name and Relevant Procedure]**

I would like to appeal against the outcome of the [insert details] held on [insert date] on the following grounds:

	<b>Grounds for Appeal</b>	<b>Mark</b> <b>Y - Yes or</b> <b>X - No</b>
1	There were procedural irregularities which may have prejudiced the decision	

2	The Panel took into account and relied upon irrelevant evidence, facts or factors, which may have materially affected their decision	
3	The Panel failed to take into account and rely upon relevant evidence, facts or factors, which may have materially affected their decision	
4	Criticisms concerning the employee's [Insert procedure title e.g. capability concerns] were not adequately investigated or sufficiently substantiated	
5	New evidence or information has come to light	
6	The Panel's decision was unreasonable given the evidence and facts, mitigating circumstances including the employee's length of service	

**A. Please enter details of appeal under each or the relevant applicable sections below, clearly labelling any documents referred to and attaching as Appendices with this document.**

**1. There were Procedural Irregularities which may have prejudiced the decision**  
[Insert Details or N/A if

Section does not apply]

**2. The Panel took into account and relied upon irrelevant evidence, facts or factors, which may have materially affected their decision**

[Insert Details or N/A if Section does not apply]

**3. The Panel failed to take into account and rely upon relevant evidence, facts or factors, which may have materially affected their decision**



[Insert Details or N/A if Section does not apply]

**4. Criticisms concerning the employee's [Insert procedure title e.g. capability concerns] were not adequately investigated or sufficiently substantiated**

[Insert Details or N/A if Section does not apply]

**5. New evidence or information has come to light**

[Insert Details or N/A if Section does not apply]

**6. The Panel's decision was unreasonable given the evidence and facts, mitigating circumstances including the employee's length of service which were presented at the hearing**

[Insert Details or N/A if Section does not apply]

**B. Summary/Conclusion**

[Insert details]

**C. Outcome Sought**

[Insert Details]

Yours Sincerely,

Name\_\_\_\_\_

Signature\_\_\_\_\_ Date\_\_\_\_\_