



## **CAPABILITY POLICY FOR TEACHING STAFF**

Approved and signed by the Board of Trustees

8/12/16

Renewal date: .....

**November 2016**

**CHANGES**

February 2007:

Policy Implemented

June 2010:

Styling revised in line with corporate guidelines

November 2012:

Revised following teacher's performance standards

January 2015:

New advice regarding attendance revised section reference request

April 2015:

Appendix I guidance notes for employees subject to capability

November 2016:

Adopted by Discovery Multi Academy Trust, with appropriate minor amendments.

## **CONTENTS**

- 1 Introduction
- 2 Scope
- 3 Link to appraising teacher performance policy
- 4 Who is responsible for maintaining standards of performance?
- 5 What are the principles?
- 6 Raising a grievance
- 7 Absence during capability
- 8 Formal meeting with employee
- 9 Formal review meeting
- 10 Hearing with the CEO
- 11 Hearing with Board of Trustees staffing panel
- 12 Right of appeal
- 13 Written records
- 14 Future reference requests

### **Appendix**

Appendix A: Guidance Notes for Employees

## **I INTRODUCTION**

Discovery Multi Academy Trust has a statutory duty to adopt formal policies and procedures for dealing with staff performance issues (School Staffing (England) Regulations 2003). The effective management of schools is underpinned by having a policy and procedure which supports and maintains acceptable standards of performance.

This procedure is primarily concerned with ensuring that any teacher whose standard of performance is unacceptable in one or more areas is clearly informed what standards are expected and receives support towards achieving those standards. This formal process should only be initiated when other support mechanisms in the school have failed to resolve the issues.

This procedure is designed to help the Multi Academy Trust (MAT) maintain the required teacher standards of performance. From a position of knowing what shortcomings in performance have been identified, what improvements are required and in what time frame this policy will allow those who do not maintain expected standards of performance the opportunity to improve. It provides a method of dealing with shortcomings in performance including the provision of reasonable levels of support and monitoring. It provides for matters to be dealt with in a fair and consistent manner.

## **2 SCOPE**

This procedure is informed by Sections 35(8) and 36(8) of the Education Act 2002, and the ACAS Code of Practice on Disciplinary and Grievance Procedures 2009. It has been drawn up following consultation with the recognised Teachers' Professional Associations. It applies to and is designed to help and encourage teaching staff within schools maintain acceptable standards of performance.

The procedure applies to all teachers directly employed by the school. It does not apply to support staff or persons working at the school who are not employees of the school e.g. agency staff, employees of external contractor's or the LA.

This procedure does not apply to matters of:

- misconduct; i.e. where it is clear an employee is capable of performing at a required standard but chooses not to do so, which should be dealt with under the disciplinary procedure adopted by the Board.
- ill health; for which there is a separate procedure adopted by the Board, the ill health procedure should be used if there is good reason to believe that the employees inability to meet set standards of performance is linked to health problems;

## **3 LINK TO APPRAISING TEACHER PERFORMANCE POLICY**

This capability procedure will apply to those teachers (including the CEOs of School and CEO) about whom serious concerns exist regarding their performance and will be initiated where the appraisal process has sought but not been able to address these concerns. The capability process should only be implemented where performance concerns have been identified and the teacher made aware of them and any corrective action, facilitated under the teacher's appraisal process, has failed to bring about the required improvement.

If the appraiser is not satisfied with progress following the review held as part of the appraisal process, the teacher will be notified in writing that the appraisal process will no longer apply and that their performance will be managed under the capability procedure.

## **4 WHO IS RESPONSIBLE FOR MAINTAINING STANDARDS OF PERFORMANCE?**

The Board has overall responsibility for ensuring acceptable standards of performance are maintained. Under the Education Act 2002 School Staffing (England) Regulations 2003, CEOs should be given responsibility for the day to day management and implementation of appraisal and performance management procedures. The Board of Trustees may also delegate authority to the CEO to take disciplinary action up to and including initial decisions to dismiss, following which a right of appeal to a panel of Board Members would be given.

## **5 WHAT ARE THE PRINCIPLES?**

Staff will be aware of the MAT's expectations regarding standards of performance and the possible consequences of failing to meet these standards

A teacher who becomes subject to these procedures will be encouraged, at an early stage, to seek advice either from their professional association or a work colleague. The MAT welcomes and supports the input and involvement of trade union representatives in these procedures including the right of staff to be accompanied during any formal meeting conducted as part of this process.

Those involved in implementing this procedure will do so fairly and equitably ensuring that the employee is given the opportunity to respond to concerns regarding poor performance and that no decisions are made until all relevant and appropriate information has been considered.

The procedure will be withdrawn when improvements in performance have been achieved and maintained. The decision to withdraw the procedure will be confirmed in writing.

Where the CEO is the subject of the capability procedure, the Chair of Board of Trustees or other designated Board Member, will be responsible for initiating any required actions and for fulfilling duties that would otherwise be undertaken by the CEO. In such cases it is recommended the Chair of Board of Trustees contact their HR Adviser and discuss the circumstances before any action is taken.

It is recognised an employee being supported through this procedure is likely to find the situation stressful, and the CEO will make the employee aware of the wellbeing services available.

## **6 RAISING A GRIEVANCE**

Where an employee raises a grievance relating to the way in which concerns about their performance are being addressed the capability procedure may be temporarily suspended for a short period in order to deal with the grievance. It is recommended that discussion takes place with the school's HR Adviser and the employee (normally through their professional association or directly if they are not represented) about whether or not the capability procedure should be suspended so that the grievance issues can be dealt with separately under the grievance procedure, or whether the grievance should be raised by the employee at relevant capability interviews, reviews, hearings or appeal.

Suspending the capability procedure because a grievance has been raised would normally take place when:

- There is an allegation that management have failed to follow procedure;
- There is possible discrimination.

## **7 WHAT HAPPENS IF AN EMPLOYEE IS ABSENT FOR AN EXTENDED PERIOD DURING THE CAPABILITY PROCEDURE**

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 MAT's **Leave of Absence Policy** and will normally be referred immediately to the MAT's Occupational Health Service provider 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.

Monitoring and assessment under the procedure needs to be based on evidence of performance at work. However, in some cases it may be appropriate for formal procedures to continue during a period of sickness absence for example, if the procedure has reached a stage where the absence of the employee would not significantly affect the outcome.

## **8 FORMAL MEETING WITH EMPLOYEE**

Concerns about a teacher's performance that have not been resolved through the appraisal process will be confirmed in writing by their appraiser along with confirmation that the appraisal process will no longer apply and that their performance will from this point be managed under the capability procedure.

The CEO with appropriate notice will meet formally with the member of staff to discuss the perceived shortcomings and will advise that the capability procedure has been reached.

The employee will be informed in writing of their right to be accompanied by their professional association representative or workplace colleague. During the meeting discussion will take place with the member of staff on ways of providing further opportunity to improve their performance. The meeting will:

- Clarify perceived shortcomings. The member of staff will be given a copy of any documents being used to record areas for improvement, objectives to be achieved, the support and guidance provided and progress being made.
- Seek to agree a formal course of action to effect the required improvement, which will include the provision of support and advice from experienced sources both within and outside of the school. Support arrangements will be kept separate and distinct from monitoring arrangements. In each case individuals with appropriate experience will be selected to undertake these roles. Where the concern relates to the performance of the CEO, support and advice could be provided by the LA or the MAT's HR adviser.
- Set an appropriate period of time for the member of staff to improve and arrange a formal review meeting.

- Inform the member of staff that a continued failure to improve performance could lead to a formal hearing being convened.

At the conclusion of the agreed period a formal review meeting will take place. That meeting will involve the CEO, line-manager (if appropriate) and LA representative/schools HR adviser if required. Where the concern relates to the performance of the CEO, the review meeting will involve the Chair of Board of Trustees, and appropriate LA representative/schools HR adviser if required.

## 9 FORMAL REVIEW MEETING

The employees will be informed of their right to be accompanied by their professional association representative or workplace colleague.

The employee must be given at least five working days written notice of the meeting and confirmation of the nature of the concerns, and any accompanying documents that will be referred to at the meeting, including a further copy of the procedure.

At the meeting and prior to any decision being taken the employee will be given an opportunity to comment on the concerns and to ask any questions.

The CEO will then consider what action should be taken. Following the meeting, the CEO will inform the employee both verbally and in writing of their decision. The options at this stage of the procedure are:

The outcome of the review will be either:

- (a) Satisfactory progress; no further action required, the capability procedure will cease and the appraisal process will re-start.
- (b) Some progress; further review needed after specified period, the timetable for improvement will depend on the circumstances of each individual case.
- (c) No significant improvement - move to a formal hearing with the CEO or Board of Trustees Staffing Panel

## 10 HEARING WITH THE CEO

If after the conclusion of the formal review meeting, it is decided there has been no significant improvement in performance, or that the improvement has not been sustained, arrangements will be made for the member of staff to attend a formal hearing.

If the CEO has not been directly involved in the capability process leading to a hearing and has not made earlier judgements on performance they will convene the hearing. The procedures to be followed at this stage may be varied by mutual agreement. The employee must be advised in writing of the date, time, place of hearing, who will be involved, the specific nature of the shortcomings, including copies of the supporting information and the right to have a representative present. The member of staff will be given at least five working days' notice of the hearing.

If the **CEO has been directly involved** then the matter will be referred to a Board of Trustees Staffing Panel hearing.

The outcome to the hearing will be either:

- (a) Required improvement in performance achieved; no further action required, the capability procedure will cease and the appraisal process will re-start.
- (b) Some progress towards required improvement achieved but performance remains below acceptable standards; agree a further period of support and monitoring aimed at securing acceptable progress towards performance objectives set and arrange a second review meeting. In addition consideration may be given to issuing a written warning; this will state the grounds for action to be taken, and that failure to improve may result in dismissal.
- (c) No significant improvement; Issue a written or final written warning and give the employee further time to improve

The decision will be confirmed in writing within five working days. If the decision is to issue a written warning the member of staff will be advised of the grounds for the action taken and, where appropriate, clarification of those areas of work giving cause for concern, objectives which will need to be met to demonstrate appropriate improvement, the timescale for achieving this improvement, the support provided to assist the employee, the date on which a review will be conducted and by whom. The letter will also contain details of their right of appeal.

## **II HEARING WITH BOARD OF TRUSTEES STAFFING PANEL**

If, after the conclusion of the formal review meeting, it is decided that there has been no significant improvement in performance, or that the improvement has not been sustained, arrangements will be made for the member of staff to attend a formal hearing.

The Board will nominate three of its members, who are not staff members, to form the Staffing Panel. Three different Board Members will also be nominated to form the appeals panel. No Board Member will serve on either panel if they have had any previous involvement in the matter or have a pecuniary interest. Where the Chair of Board of Trustees acts as critical friend to the CEO, he/she will not sit on either panel.

The employee will be:

- given at least five working days written notice,
- advised of the right to be accompanied by a workplace colleague or professional association representative,
- informed of the nature of concerns, and provided with all relevant evidence that will be discussed at the hearing.
- The CEO will present the evidence for the areas of concern, the process followed and the support and training given and make recommendations.
- The employee will be given the opportunity to respond.
- The panel of Board Members will consider evidence regarding the employee's performance and any recommended actions and determine whether:
  - (a) Sufficient improvement has taken place and withdraw the procedure.
  - (b) Alternative employment is available within the school and can be offered to the employee.

- (c) To issue a written or final written warning and give the employee further time to improve.
- (d) Dismiss the employee with notice.

The decision must be confirmed in writing within five days of the hearing. If the decision is to issue a written warning or dismiss then the employee must be notified of their right of appeal.

## **12 RIGHT OF APPEAL**

An employee may lodge a letter of appeal against any formal action taken under this procedure. A letter of appeal should be addressed to the Clerk to the Board of Trustees and forwarded within five working days of the date on which they receive the confirmation of the formal action. The appeal will be heard by the appeals panel of the Board, in accordance with the MAT's agreed appeals procedure.

The appeal panel will consist of Board of Trustees who have not taken part in any early stages of the procedure.

The member of staff will be given at least five working days' notice of the hearing.

The decision of the appeal panel will be confirmed in writing within five working days.

If the appeal is upheld the letter will only convey the grounds for the action taken.

If the decision is not to uphold the employee's appeal, the letter will confirm the grounds on which the panel reached their decision.

Where the outcome to the above hearings fall short of dismissal and concerns regarding performance remain the employee will be informed of;

- those areas of work that continue to be a cause for concern,
- the targets which will need to be met to demonstrate appropriate improvement,
- the timescale for achieving this improvement,
- the support provided to assist the employee,
- the date on which a review will be conducted and by whom.

In these circumstances the above procedure will recommence from Section 8.

## **13 WRITTEN RECORDS**

A record of the documentation relating to each stage of the process will be retained and will include:

- details of the shortfall in performance standards
- the employee's views
- names of participants, their role, findings and actions taken
- the reason for actions taken
- whether an appeal was lodged
- outcome of the appeal
- subsequent developments

- notes of any formal meetings

## **14 FUTURE REFERENCE REQUESTS**

Where a teacher, CEO of School or CEO applies for a teaching post at another school, the Board of Trustees must, on request, advise in writing whether the teacher, CEO of School or CEO has, in the preceding two years, been subject to capability procedures. If this is the case, they must provide written details of the concerns which gave rise to capability procedures, the duration of the proceedings and their outcome.

## **APPENDIX A: GUIDANCE NOTES FOR EMPLOYEES**

These notes are intended to assist employees who have been asked to meet with their CEO or another senior member of staff to discuss shortcomings in one or more areas of performance. The following questions and answers provide a useful summary of the main issues commonly raised about the capability process.

### **1. What is the purpose of the procedure?**

To support you so that you become capable of performing all aspects of your job to the current standards required by the school.

### **2. What is wrong with my performance?**

It will be explained to you where your performance is falling short of the expected standard, and what is required. It may be an area of your job for which you have already identified difficulties in undertaking successfully or it may be that you have been unaware that you have not been achieving the standard required. You will have the opportunity to ask questions to ensure that you understand what is required.

### **3. I work hard and always do my best - what more can I do?**

It is not being suggested that you are not committed to doing a good job. However, your CEO will want to discuss the way you do your work and provide guidance on how you can become more effective.

### **4. What responsibility does my CEO have in this?**

Your CEO is accountable for ensuring staff perform their work to the standards required in the school. She/he has a duty to draw your attention to any areas of your work where improvement is required. She/he equally has a responsibility to arrange the support which can reasonably be provided to you to enable you to improve your work.

### **5. What will I have to do?**

The chances of a successful outcome to the procedure will be highest if you:

- listen carefully to the criticism offered
- ask questions to check your understanding of what is being said and required
- take full advantage of support offered
- explain to your CEO any difficulties you are finding in doing what is required and, if possible, make your own suggestions about what would help you to improve.

### **6. What is meant by “support”?**

Depending on the aspect of performance being worked on, it can take many forms.

Some examples are:

- counselling/coaching
- review of commitments and responsibilities
- availability of suitable materials/resources
- attendance at off the job training sessions
- opportunities to see good practice within your academy or other appropriate establishments

### **7. How will I know how I am doing?**

Your CEO will make arrangements for your work to be monitored and will discuss with you who will do the monitoring and how it will be done. You will be given a period of time during which to improve your performance (with support) and will know in advance the date when you will meet again with your CEO to review your progress.

### **8. Who will know about this?**

The application of the procedure to you will be a confidential matter between you and your CEO. There may be arrangements for other staff to give you guidance or coaching but they will not be given confidential information exchanged between you and your CEO.

### **9. I am worried/embarrassed about this. Does it mean my career is ruined?**

It is natural to feel concerned and uncomfortable when performance is criticised. But most jobs today are demanding and requirements change over time that it is not uncommon for employees to experience difficulties at some time. This does not mean that after a period of support you will not go on to become as successful, or more successful than you have previously been in your working life.

### **10. Who can I talk to about this?**

You may wish to talk to your professional association or trade union, who will have experience of the operation of this type of procedure. In the formal stage you may be accompanied by a trade union representative or other representative of your choice at any of the review discussions with your manager.

### **11. How will I know when I am no longer subject to this procedure?**

Your CEO will confirm to you when your performance meets the required standard and the procedure is being suspended or withdrawn. If your CEO considers that you are performing satisfactorily but needs to see evidence that you can maintain this, she/he may in the first instance suspend the procedure for a period of time before withdrawing.