



CAPABILITY POLICY FOR SUPPORT STAFF

Approved and signed by the Board of Trustees
8/12/16

Renewal date:

NOVEMBER 2016

CHANGES

April 2013:
New Policy

November 2016:
Adopted by Discovery Multi Academy Trust, with appropriate minor amendments.

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I INTRODUCTION

Discovery MAT 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 the MAT is underpinned by having a policy and procedure which supports and maintains acceptable standards of performance.

This procedure is designed to help the MAT maintain the required 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. This formal process should only be initiated when other support mechanisms in the MAT have failed to resolve the issues.

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 applies to and is designed to help and encourage support staff within the MAT maintain acceptable standards of performance.

The procedure applies to all support staff directly employed by the MAT. It does not apply to teachers or persons working for MAT who are not employees of the MAT e.g. agency staff, employees of external contractors 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, should be dealt with under a separate, disciplinary procedure adopted by the Board.
- ill health; for which there is a separate procedure adopted by the Board of Trustees, the ill health procedure should be used if there is good reason to believe that the employees inability to meet set standards is linked to health problems;
- Employees in their probationary period: please refer to the MAT's **Probationary Policy**.

3 GENERAL PRINCIPLES

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

A member of support staff who becomes subject to these procedures will be encouraged, at an early stage, to seek advice either from their trade union or a work colleague. The MAT welcomes and supports the input and involvement of trade union representatives in these procedures including the right of employees 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 both achieved and maintained. The decision to withdraw the procedure will be confirmed in writing.

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.

4 SICKNESS ABSENCE

If a period of long term absence appears to have been triggered by the commencement of capability procedures, the case may be referred to Occupational Health or the Fit for Work scheme.

5 RAISING A GRIEVANCE

Where an employee raises a grievance during a capability procedure the process may be temporarily suspended in order to deal with the grievance. Where the grievance and capability concerns are related it may be appropriate to deal with both issues concurrently. It is recommended that discussion takes place with the MAT's HR Adviser and the employee (normally through their trade union 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.

6 FORMAL MEETING WITH EMPLOYEE

The CEO or Head of School, with appropriate notice, will meet formally with the employee 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 trade union representative or workplace colleague. During the meeting, discussion will take place with the employee on ways of providing further opportunity to improve their performance. The meeting will:

- Clarify perceived shortcomings. The employee 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 which could be both within and outside of the MAT. 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.
- Set an appropriate period of time for the employee to improve and arrange a formal review meeting.
- Inform the employee 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. This meeting will involve the CEO and Head of School.

7 FORMAL REVIEW MEETING

The employees will be informed of their right to be accompanied by their trade union 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.
- (b) Some progress; further review needed after specified period
- (c) No significant improvement - move to a formal hearing with the CEO or Governors Staffing Panel.

8 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 may 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 employee 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 Staffing Panel.

The outcome to the hearing will be either:

- (a) Required improvement in performance achieved; no further action required.
- (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; move to a hearing of the Board Staffing Panel.

The decision will be confirmed in writing within five working days. If the decision is to issue a written warning the employee 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.

9 HEARING WITH THE BOARD 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 employee to attend a formal hearing.

The Board of Trustees will nominate three of its members, who are not employee's 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.

The employee will be:

- given at least five working days written notice,
- advised of the right to be accompanied by a workplace colleague or trade union 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 the evidence regarding the employee's performance and consider the recommendations and determine whether to:
 - (a) Sufficient improvement has taken place and withdraw the procedure
 - (b) Consider whether alternative employment is available within the MAT and can be offered to the employee
 - (c) 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 dismissal, then the employee must be notified of their right to appeal.

10 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 of Trustees in accordance with the

MAT's agreed appeals procedure. The appeal panel will consist of Board Members who have not taken part in any early stages of the procedure.

The employee will be given at least five working days' notice of the hearing. In maintained MATs a LA representative and, in the case of VA MATs, a Diocesan representative will be invited to attend. 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 falls 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 paragraph 7.

11 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

12 FUTURE REFERENCE REQUEST

In receiving a reference request for an employee who has been subject to formal capability the MAT will:

- (a) advise in writing whether or not that employee, in the preceding two years, been the subject of the procedures established by the Board of Trustees if so,
- (b) provide written details of the concerns which gave rise to this, the duration of the proceedings and their outcome.