



David Ross Education Trust

Broadening Horizons

Capability Policy

Introduction

The Trust's vision is to enable and empower people to reach their potential and lead fulfilling lives. In this context the Trust has high expectations of all its employees and recognises that employees should receive a high level of support. The Trust sets out standards of conduct in its policies.

This policy and procedure applies to all employees of the David Ross Education Trust (the Trust). Other workers will be subject to the procedures laid out in any written agreement that exists between the Trust and the worker or the agency through which they work.

The policy statements in this policy must be read in conjunction with the processes provided as appendices.

HR advice should be sought at all stages of capability procedures. Further advice and guidance on this policy can be obtained from your HR Business Partner or from HR Enquiries hrenquiries@dret.co.uk

Policy			
Version	Date Approved by Trustees	Date Released to Academies	Next Review Date
V1.0	July 2016	December 2016	

1. Definition of Capability

- 1.1. Capability refers to an employee's skills, aptitude, ability and knowledge in relation to the job that they are employed to do. Lack of capability will normally lead to unsatisfactory performance and it is therefore important to ensure that any capability issue is identified and rectified quickly.
- 1.2. Capability is different from misconduct, in that it refers to situations where an employee is genuinely trying to perform to the required standard but is incapable of doing so. It is not a deliberate failure to perform, poor attitude, or failure to meet standards as a result of carelessness, or idleness; these matters are matters of misconduct.

2. Deciding whether the matter is one of Capability or Conduct

- 2.1. Sometimes it can be difficult to establish whether the matter relates to a person's conduct or their capability. In these circumstances, the employee's manager will establish the source of the problem through investigation or counselling. There should be no automatic assumption that the matter relates to a person's conduct. In some circumstances, an employee may have both capability and conduct issues. In these circumstances, the manager should keep the issues separate and deal with each issue under the appropriate policy.

3. Possible causes of lack of capability and solutions

- 3.1. In order to effectively manage incapability, managers should attempt to ascertain the cause of the problem. Causes can include:
 - Inadequate or insufficient training, systems, policies and procedures, tools/equipment, supervision/support;
 - A lack of clarity about the job role, objectives, management instructions;
 - Excessively high workloads, Poor working relationships or bullying/harassment, Ill health or personal problems.
- 3.2. Possible solutions, therefore, may include coaching, reviewing systems, policies, procedures, supervision and support, fixing faulty equipment, reviewing workloads, clarifying job roles/instructions, providing additional training to the employee or training their supervisor on particular aspects of people management.
- 3.3. Solutions may also involve dealing with the conduct of other employees.

4. First Steps:

- 4.1. Any concerns around performance should in the first instance be discussed during normal supervision meetings without recourse to this policy or consideration of the appraisal process. Appendix 2 sets out a flow chart of a grievance process.

4.2. Informal Stage

The employee's manager will meet and discuss the alleged poor performance with the employee, in order to:

- Make the employee aware of the issues and the effect on the organisation
- Attempt to establish the cause/s
- Obtain the employee's perspective on the matter
- Clarify expected standards
- Identify and where possible agree solutions
- Identify realistic, measurable targets and the period over which these should be achieved and sustained (normally between 6 and 12 weeks) to achieve a satisfactory improvement in the employee's performance and conclude the process at this stage.
- Confirm what methods will be used to assess the employee's performance

- Confirm when the performance standards will be reviewed and the fact that formal action could be taken if the required improvement is not satisfactorily achieved and sustained. The timescales agreed for monitoring should be documented. Within the overall timescale for improvement there should be regular points for reviewing progress.

An example outline of such a meeting is set out at Appendix 1. A note will be kept of the meeting and the solutions and other outcomes identified. This note will be made available to the employee.

In addition, an action plan should be agreed and copy given to the employee (see Appendix 3 for example action plan).

- 4.3. Some possible solutions are detailed in section 3 above. The solutions should, where possible, be agreed between the employee and the manager. Where it is not possible to reach agreement, the manager will need to carefully assess the situation and decide what solutions are appropriate in the circumstances, taking account of the employee's perspective on the matter.
- 4.4. It is important that after the informal stage, the manager continues to provide day-to-day management and ensures that the employee is appropriately supported to help them achieve and maintain the required standard.
- 4.5. In cases of particularly serious concern, such as where the health and safety of others is being placed at risk or the education of children is in jeopardy, the formal procedure can be commenced immediately without the need for referral to the informal stage.
- 4.6. At the end of the informal stage there will be a review meeting to establish whether sufficient progress has been made. At this meeting there are a range of possibilities including extending the period of assessment, closing the period due to improvements made or progressing to the next level of this procedure if performance is still not satisfactory.
- 4.7. If, despite support being provided during the informal stage of the procedure, the employee is unable to reach and/or maintain the required standard of performance, the manager may convene a performance review meeting. If, having taken account of all the circumstances, the chair of the performance review meeting considers it appropriate, the employee will be placed on the Formal Stage of this procedure. The employee will have the right to be accompanied at this meeting by a Trade Union representative or work colleague.
- 4.8. The employee does have the right to appeal against the decision to move to the Formal Stage. Any appeal should be lodged with HR within 14 calendar days of the date of the decision being communicated.

5. Formal Action

- 5.1. If, despite support the employee is unable to reach and/or maintain the required standard of performance the consequences of failure to do so should be set out in writing to the employee. This will include a notification of a decision to move to the Formal Stage.
- 5.2. At the Formal Stage an action plan will be drawn up setting out what is required by both the employee and the appropriate manager to bring about an improvement in the situation. There will be a development phase that will continue during the period that the formal action is active. This phase will be for the employee to demonstrate sustained improvement and for the manager to ensure they continue to assess the employee's needs, providing tailored support to the individual and continually assessing their capability. Formal action will normally last for between 3 and 6 months and, once successfully completed, will be removed from an employee's Human Resources File.
- 5.3. **Formal Stage and Development Phase**
 - 5.3.1. The decision to move to the formal stage will be confirmed in writing, setting out the nature of the problem, and an action plan (see Appendix 3), detailing the action required of both the employee and the manager, including details of the improvement required,

the targets and timescales for review, clarifying that dismissal may be the outcome of the next stage and notifying the employee of their right of appeal. The action plan should have been discussed in the meeting and should be agreed by both parties.

5.3.2. The action plan will include a development phase, which will continue for the period that the Formal Stage is active (normally between 3 and 6 months). The purpose of the development phase is for the employee to demonstrate sustained improvement and for the manager to ensure they continue to assess the employee's needs, providing tailored support to the individual and continually assessing their capability. Details of this phase, such as supervision meetings, and regular reviews to ensure that support remains appropriate should be planned and set out in the action plan.

5.3.3. At the end of the formal stage there will be a review meeting to establish whether sufficient progress had been made. At this meeting there are a range of possibilities including extending the period of assessment, closing the period due to improvements made or progressing to the next level of this procedure if performance is still not satisfactory.

5.3.4. If, despite support being provided during the formal stage of the procedure, the employee is unable to reach and/or maintain the required standard of performance, the manager may convene a final formal stage meeting. The employee will have the right to be accompanied at this meeting by a Trade Union representative or work colleague.

5.4. Final Formal Stage: Possible Dismissal/Alternatives to Dismissal

5.4.1. If, after the Formal Stage and Development Phase and having been offered appropriate support, the employee is unable to reach and/or maintain the required standard of performance, the manager may convene a further performance review meeting, the arrangements for which are set out below at section 12. The panel for the meeting should consist of two senior members of staff and at least one Governor, where an employee is employed within an Academy. There should also be a HR representative advising the panel. If, having taken account of all the circumstances, the chair of the performance review meeting considers it appropriate, the employee may be dismissed and will have the right to appeal against their dismissal.

5.4.2. The chair of the panel must have considered alternatives to dismissal and be able to explain why these were not pursued if they decide to dismiss the employee.

5.4.3. In exceptional circumstances the Chair of the panel may consider re-deployment to a lower graded post as an alternative to dismissal (without pay protection). Senior Managers sitting on the panel would normally include Principals or Academy Head Teachers.

6. Right to be Accompanied

6.1. At all meetings under the formal action section of this policy and procedure, the employee has the right to be accompanied by a Trade Union Representative or Work Colleague. It is the employee's responsibility to arrange their own representation. The Trust encourages staff to be accompanied.

7. Failure to Attend Meetings

7.1. If the employee concerned fails to attend without good reason the meeting or hearing may take place in their absence if they have failed to attend once before. An employee may nominate a representative to attend in their absence.

7.2. If a meeting or hearing is arranged but appropriate representation cannot be obtained, the employee may request the meeting or hearing be rescheduled and they should provide to the manager details of alternative dates and times over the five days following the original date of

the meeting or hearing that they and their representative will be available. Failure to do so may mean the meeting or hearing being rescheduled in the absence of information on the employee and their representative's availability.

- 7.3. Appropriate weight shall be given to the evidence of any witness that fails to attend a meeting/hearing and their reasons for non-attendance will be taken into account, if known.

8. Grievances

- 8.1. During the application of this policy and procedure, if a grievance is raised that relates to the employee's capability issues or their management, the Trust will consider how best to proceed. The Trust recognises the merit of resolving all issues as quickly as possible and will therefore normally attempt to deal with both matters at the same time under this procedure and, if necessary, consider appointing an alternative, neutral manager.
- 8.2. The Trust may also consider suspending the capability procedure for a short time whilst the grievance is dealt with under the Grievance Procedure, where applicable.
- 8.3. HR advice regarding grievances should be sought and reference should be made to the Grievance Procedure in relation to matters that are specifically excluded from its scope.

9. Witnesses and Observers

- 9.1. If the manager is relying upon evidence from a witness, the witness's statement should also be supported by their attendance at the performance review meeting. It is the manager's responsibility to arrange the attendance of their witnesses.
- 9.2. If the employee concerned and their representative wish to call witnesses at the performance review meeting, they will be responsible for arranging witnesses' attendance. The Academy will assist in facilitation of any witness requirements.
- 9.3. Observers may be present at meetings, for example, for training purposes. However, it will be at the discretion of the Chair whether to admit observers to the performance meeting, with the agreement of all parties. Observers will not be permitted to contribute to the meeting.

10. Documents to be used at Performance Review Meetings

- 10.1. Both the manager and the employee and their representative may submit documents for use at the performance review meeting/appeal hearing.
- 10.2. The HR advisor to the panel will collate documents from either party and distribute accordingly. These documents will be distributed to all attendees within five working days of the meeting/hearing. The documents submitted by the manager at a performance review meeting should include all the evidence gathered, including witness statements, examples of unsatisfactory work, notes of investigation meeting(s) and evidence of having completed earlier stages of the procedure. This information, together with the rationale for the panel's decision, should also be submitted by the manager at an appeal hearing.

11. Final Stage Performance Review Meetings

- 11.1. The procedure to be followed at a final formal stage performance review meeting is detailed in Appendix 4.
- 11.2. The final formal stage performance review meeting will be chaired by a manager who has not been previously involved in this process, who will be assisted by a member of the HR team. Specialist advisors to the panel may be appointed, for example, if the chairperson is from a non-teaching background and the matters being examined may require specialist teaching advice.

- 11.3. The chairperson and their advisors (this includes HR and any specialist advisors in attendance, as detailed above) will all equally be able to participate in proceedings. However, the responsibility for making the final decision will rest with the chairperson.
- 11.4. The chairperson will also be responsible for ensuring the procedure followed is fair and that the circumstances of the matter are appropriately established to enable them to reach an appropriate decision. The HR representative will be able to provide further advice on these points. The meeting chairperson is responsible for the conduct of the meeting and may at any stage decide to adjourn/adapt proceedings to ensure fairness and clarity on any points.
- 11.5. The chairperson will fully consider all the information presented to them by the employee and their representative and the manager, together with relevant advice from the panel advisor/s in deciding whether to take formal action, no action or to make other recommendations, for example to improve practice or the working environment. In some exceptional circumstances, this may include a recommendation to discuss the possibility of redeploying the employee with their agreement;

12. Alternative Sanctions to Dismissal

- 12.1. If the panel decides that dismissal is warranted, they may as an alternative to dismissal consider the following

12.2. Deferral of Incremental Pay Progression

If there are significant weaknesses in performance that have not been resolved despite opportunities for appropriate training/development and support, pay progression may be deferred until the problems are resolved.

- 12.3. Significant weaknesses are defined as those that prevent an employee with a normal work load from demonstrating consistently, across a recognised normal workload, the knowledge and skills specified under the essential requirements of the role without additional supervision and support appropriate to the post.

12.4. Demotion

Staff who are unable to perform at that level may be offered a different role without pay protection if, despite being afforded appropriate opportunities to enable them to perform at the higher level, they cannot do so. This option can only be pursued with the agreement of the individual concerned.

- 12.5. Relinquishing of Additional Responsibilities. In the case of teaching staff the Trust may consider removal of additional responsibilities such as TLRs.

13. Appeals against Dismissal

- 13.1. Where formal action is taken, the employee concerned has the right to appeal against the decision within 21 calendar days of the date of the letter confirming the outcome of the hearing, using the Appeal Proforma at Appendix 5, which should be submitted to HR. Both the employee's intention to appeal and their detailed grounds for the appeal must be submitted at this stage. Failure to do so may mean that an appeal is not heard.
- 13.2. The purpose of an appeal hearing is normally to review the decision made by the performance review meeting. However, in some exceptional circumstances, for example, where the appellant identifies new evidence that came to light after the performance review meeting or where the appeal panel has a reasonable belief that the appellant has established a prima-facie case that the performance review meeting may have been unfair because of procedural irregularities, an appeal may take the form of a re-hearing.

- 13.3. The decision on whether to hear a full or part appeal re-hearing rests with the appeal hearing panel.
- 13.4. New evidence may only be submitted at an appeal re-hearing and both parties may only call witnesses to an appeal re-hearing. Requests for a rehearing and the grounds for such a request should be submitted by the appellant along with their grounds for appeal.
- 13.5. The procedure to be followed at an appeal review hearing is detailed in Appendix 6 and that for an appeal re-hearing is detailed in Appendix 7.
- 13.6. The appeal hearing panel shall consist of a panel of three Senior Managers supported by a HR representative. This panel may include Governors or Trustees. The Panel should not have been involved in the preceding stages of the procedure. The Panel will be advised by the Head of HR (or their nominated representative). Specialist advisors to the panel may be appointed, for example, if the panel is from a non-teaching background and the matters being examined may require specialist advice.
- 13.7. The panel and their advisors (this includes the HR advisor and any specialist advisor in attendance, as detailed above) will all equally be able to participate in proceedings. However, the responsibility for making the final decision will rest with the panel.
- 13.8. The panel will also be responsible for ensuring the procedure followed is fair and that the circumstances of the matter are appropriately established to enable them to reach an appropriate decision. The HR representative will be able to provide further advice on these points.
- 13.9. The panel will fully consider all the information presented to them by both the employee and their representative and the manager, together with relevant advice from the panel members and advisor/s in deciding whether to uphold the decision of the performance review meeting panel.
- 13.10. The panel may decide to uphold or overturn the decision of the performance review meeting panel and may reduce or increase the level of sanction and/or remove or add other requirements, for example, redeployment, training, development, or some other intervention, as detailed above in section 12.
- 13.11. The appeal hearing panel is responsible for the conduct of the meeting and may at any stage decide to adjourn/adapt proceedings to ensure fairness and clarity on any points.
- 13.12. The decision of the appeal hearing panel will be final and the employee will have no further recourse to have the matter further examined under any Trust procedures.

14. Review of this Procedure

- 14.1. This procedure will be reviewed every three years by the Human Resources Department in conjunction with Staff Side Representatives. It may be reviewed earlier subject to changes in legal requirements etc.

Appendix 1: Outline of Capability Meeting

The following is an example outline of an initial, informal stage meeting:

- You were given the option of being accompanied at this meeting (are you happy to go ahead)
- Explain that the meeting is to discuss the employee's job performance and that the meeting is to provide counselling where appropriate. The meeting will be of an investigatory nature, and not part of the disciplinary procedure.
- At the meeting, clearly state the nature of the shortfall in performance and explain the consequences for the Trust when an employee does not fulfil their role.
- Give the employee specific examples of where their performance has alleged to have fallen below the required standard or where tasks have not been completed on time or satisfactorily.
- Remind the employee that this is intended to be a supportive processes.
- Seek the employee's agreement regarding the alleged problem with certain aspects of their performance.
- Ask the employee what they believe the root cause of the problem is.
- Consider any mitigating factors put forward, for example problems in the employee's personal life.
- Restate what is expected in terms of their job description and standards of performance, outputs and targets. Do not assume that the employee knows everything that is expected of them (it may be useful to have JD at this meeting).
- Ask the employee's opinion on what they can do to achieve improvement in performance.
- Seek to agree specific action points with the employee, the details of which will depend on whether or not any specific cause of the alleged unsatisfactory performance has been identified.
- Agree a timescale for the improvement to be achieved (informal: normally between 6 and 12 weeks & formal: normally between 3 and 6 months).
- Arrange training and support where appropriate.
- Schedule a follow-up meeting(s) to review the employee's performance and make sure that the meeting takes place.
- Keep a record of the meeting and what has been agreed and write up and agree an action plan with a copy to the employee (see Appendix 3)

Appendix 2: Flowchart of the Capability Management Procedure

Day to day management before we get to informal capability stage is expected to have occurred

INFORMAL STAGE

Meet to discuss the poor performance with the employee, in order to:

- Clarify expected standards and identify gaps
- Identify solutions
- Identify realistic, measurable targets and the period over which these should be achieved, setting out a written action plan
- Agree a review period (normally between 6 & 12 weeks)
- Discuss the consequences of failure to improve/sustain improvement
- Agree a written action plan (see Appendix 3)

Issues Resolved/Extension to informal stage with further review/No Improvement

PERFORMANCE REVIEW MEETING: FORMAL STAGE MEETING

Line manager, HR, TU representative & employee meet to discuss the poor performance, in order to:

- Review performance against the agreed action plan and standards set at informal stage.
- Consider effectiveness of support given and what additional assistance can be offered
- Agree action plan and clarify length of formal stage (normally between 3 & 6 months)
- Explain the consequences of failure to improve/sustain improvement could lead to dismissal.

Issues Resolved/Extension to informal stage with further review/No Improvement

PERFORMANCE REVIEW MEETING: FINAL FORMAL STAGE:

Line manager, panel chair, HR, TU representative & employee meet to discuss the poor performance in order to consider:

- Dismissal or range of alternatives (panel).
- Possible Redeployment/Downgrading/Other Alternatives to Dismissal/Dismissal as a Last Option]

Appendix 3

SAMPLE ACTION PLAN/Framework

Target Area	Expected Standard/level of Proficiency (for teaching staff refer to teacher standards)	Gap	Agreed Actions	Who Will Provide Support?	Timescale	Review Date	Date to Achieve Expected Standard/Level of Proficiency

Appendix 4:

Procedure at a Final Stage Performance Review Meeting

At a final stage performance review meeting the following procedures shall be observed:

- The manager shall present the evidence in the presence of the employee and their representative and may call witnesses.
- The employee and/or her/his representative shall have the opportunity to ask questions of the manager and their witnesses.
- The members of the performance review meeting panel shall have the opportunity to ask questions of the manager and witnesses.
- The employee and/or their representative shall put their case in the presence of the manager and may call witnesses.
- The manager shall have the opportunity to ask questions of the employee, their representative and their witnesses.
- The members of the panel shall have the opportunity to ask questions of the employee, their representative or their witnesses.
- All parties shall have the opportunity to re-examine her/his witnesses on any matter referred to in their cross examination by members of the panel, the employee/their representative or the manager.
- The manager and the employee or their representative shall have the opportunity to sum up their cases if they so wish.
- The employee and/or their representative shall have the right to speak last. In their summing up neither party may introduce any new matter.
- Nothing in the foregoing procedure shall prevent the panel from questioning witnesses, management and employee as appropriate to clarify issues or seek supplementary information, manage the conduct of the participants or to amend proceedings to ensure fairness, clarity and the ability to hear the matters appropriately.
- If at the outset, the employee concerned accepts that their performance is not at the required standard and does not contest the evidence presented by the manager, the panel may decide, with the agreement of all parties, to amend the procedures and hear evidence that is solely relevant to the level of sanction, for example, on mitigating circumstances and the seriousness/consequences of the underperformance, in order to determine the appropriate outcome.
- The panel may, at its discretion, adjourn the meeting in order that further evidence may be produced by either party or for any other reason.
- If further evidence is produced then both parties will have the opportunity to test the evidence put before the panel.
- The manager, the employee and their representative shall withdraw while the panel deliberates.
- Witnesses will only be present whilst giving their evidence and will leave the meeting immediately afterwards.
- The panel shall deliberate in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.

Appendix 5:

Appeal Pro-forma

Important: You are required to complete this form and send it to the Head of HR within 21 calendar days of the date of the letter confirming the outcome of the performance review meeting.

Please State The Grounds Of Your Appeal GROUNDS FOR APPEAL

Please continue on a separate sheet if necessary

Please State Your Name, Address & Telephone Number(s):

Name:

Address:

Phone number:

Please state your job title, grade and your department/locality

Job Title:

Grade:

Department:

Academy:

If a representative has agreed to act for you in this case, please provide their details below:

Name of Representative:

Union or Organisation:

Address:

Phone number:

Please note you are advised to consult your representative before submitting this completed form.

Signed:

Date:

Once you have formally lodged your Appeal, it will be acknowledged in writing within two working days.

PLEASE ADDRESS APPEAL TO HR DEPARTMENT

Appendix 6:

Procedure at an Appeal Review Hearing

At the hearing of a review of the decision made following a performance review meeting, the following procedures should be observed:

- The appellant and/or their representative shall put their case in the presence of the Trust's representative.
- The Trust's representative and members of the Appeal Panel shall have the opportunity to ask questions of the appellant and/or their representative.
- The Trust's representative shall state the Trust's case in the presence of the appellant and their representative.
- The appellant and their representative and members of the Appeal Panel shall have the opportunity to ask questions of the Trust's representative.
- The Trust's representative and the appellant or their representative shall have the opportunity to sum up their cases. In their summing up neither party may introduce any new matter.
- Nothing in the foregoing procedure shall prevent members of the Appeal Panel from seeking to clarify any points from either party, managing the conduct of the case presenters or amending proceedings to ensure fairness, clarity and the ability to hear the matters appropriately

Appendix 7: Procedure at an Appeal Rehearing

See appendix four with the appellant stating their case first.

Appendix 8: Authority to Conduct Final Stage Performance Review Meeting

The following officers will have the authority to dismiss under this procedure are listed as dismissing officers in the Disciplinary Policy:

- The Chief Executive
- Directors
- Heads of Service
- Principals/Head teachers
- Chair of Governors