



**THE ENQUIRE LEARNING TRUST**  
**CAPABILITY PROCEDURE FOR SUPPORT STAFF AND TEACHERS**  
**Implemented: 1<sup>st</sup> September 2015**

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This procedure has been broken down in to two sections to demonstrate the procedures for both support staff and teaching staff.

The scope and principles apply to both procedures.

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## **1. SCOPE**

This procedure applies to the Enquire Learning Trust (the Trust) including everyone employed within any of the Trust's academies.

## **2. PRINCIPLES**

This procedure should be used when an employee's performance has been identified as falling below an acceptable level. Its purpose is to provide a framework for supporting the employee with an intention of improving their performance. As a last resort, the procedure specifies the circumstances in which the employee may be redeployed to more suitable work or dismissed on the grounds of capability.

Line managers are expected to, as part of their role, provide routine feedback to employees on their performance and address any concerns they may have. This professional dialogue will normally take place outside of the capability procedure and it is important to note that having these discussions does not automatically invoke the capability procedure.

Before this procedure is engaged, the employee should receive feedback from his/her manager setting out the concerns about the employee's performance and how his/her performance can be improved. This procedure is designed to be used when such informal discussions do not lead to the employee improving his/her performance to an acceptable level.

Where an employee's poor performance is believed to be the result of deliberate negligence, or where serious errors have been made by him/her to the detriment of the organisation, the organisation may decide to use the disciplinary procedure instead.

A written record of all meetings conducted under this procedure will be made, either by the person holding the meeting or by an additional person arranged by the organisation to take notes.

If this procedure is going to be invoked (at any stage) a copy of this procedure should be made available to the employee.

## **SUPPORT STAFF CAPABILITY PROCEDURE**

### **3. INFORMAL**

3.1 When concerns around an employee's performance are first realised, the employee's manager will invite the employee to an informal meeting to discuss concerns regarding his/her performance. The discussion at this meeting will be focused around the areas of work for improvement, as well as any support the employee may need to improve performance. The meeting will be conducted by the employee's manager. Following discussion of the problem, the manager may choose to:

- take no further action;
- issue guidance to the employee on what he/she needs to do to improve his/her performance.

3.2 The employee's manager should provide appropriate support for the employee and the employee should be given the opportunity to advise of any specific support they may require.

### **4. STAGE 1 – FORMAL REVIEW**

4.1 Where the informal stage does not lead to a satisfactory improvement in the employee's performance, the employee will be invited to a meeting to discuss the areas of concern. The general areas of concern will be confirmed in writing prior to the meeting.

4.2 The meeting will be convened at a mutually agreed time, date and venue. The employee will be advised of their right to representation by a colleague or trade union representative. They will be advised to seek professional support.

4.3 The purpose of a performance review meeting is to discuss the employee's performance and decide what measures should be taken, with a view to securing the required improvement in the employee's performance. The meeting will be conducted by the employee's manager. Where it is considered appropriate, a member of the HR department may also be present.

4.4 The employee will be given an opportunity to respond to any criticisms of his/her performance and to put forward any explanation he/she may have for the matters identified by the manager as amounting to poor performance.

4.5 The outcome of the meeting may be:

- a decision to take no further action;
- a decision to refer the matter for investigation under the disciplinary procedure; or
- the implementation of a performance improvement program, designed to bring the employee's performance up to an acceptable level.

### **5. PERFORMANCE IMPROVEMENT PROGRAM**

5.1 A performance improvement program is a series of measures designed to help improve the employee's performance. Each measure will ideally be agreed with the employee, although the organisation reserves the right to insist on any aspect of the performance improvement program in the absence of such agreement.

5.2 Each program will be tailored to the particular situation, but will contain the following elements:

#### *Timescale*

The overall timescale in which the necessary improvement must be achieved will be set out, together with the timescale for reaching individual milestones where appropriate. The overall timescales for the performance improvement program will be dependent on the areas of concern, as some concerns may require immediate improvement that can be monitored within a matter of days, whereas some will require monitoring over a longer period of time. The review period during the performance improvement program would not normally be less than 4 weeks or more than 12 weeks.

#### *Targets*

The performance improvement program will specify the particular areas in which improved performance is needed and set out how, and on how the employee's performance will be assessed. Where appropriate, specific objectives will be set that will need to be achieved either by the end of the program or at identifiable stages within it.

#### *Support*

The performance improvement program will specify what support will be given by the organisation to support the employee in improving his/her performance. Such support may include training, additional supervision, the reallocation of other duties or the provision of additional support from colleagues.

#### *Feedback*

As part of the performance improvement program, the employee will be given regular feedback from his/her line manager indicating the extent to which the employee is on track to deliver the improvements set out in the program.

5.3 If, at any stage, the organisation feels that the performance improvement program is not progressing in a satisfactory way, a further meeting may be held with the employee to discuss the issue. As a result of such a meeting, the employer may amend or extend any part of the program.

### **Successful Improvement Following Performance Improvement Program**

5.4 Following the successful completion of a performance improvement program, the employee will return to a normal appraisal process. If, at any stage during the following 12 months, the employee's performance again starts to fall short of an acceptable standard, his/her line manager may decide to initiate stage 2 of this procedure or begin again at stage 1 of the procedure.

## **6. STAGE 2 - PROGRESS REVIEW**

6.1 If stage 1 has had the desired affect of improved performance, stage 2 will not be used. However, if following stage 1, the performance improvement program has not led to sufficient improvement in the employee's performance, the manager may take the decision to:

- Extend the review period
- Set a new performance improvement plan
  - Refer to a formal performance improvement hearing

6.2 The decision taken will be confirmed in writing to the employee giving reasons for the decision. If the recommendation is for a hearing to take place, this will be confirmed in writing to the employee advising of the date of the hearing and the respects in which the employee's manager believes that the employee's performance still falls short of an acceptable standard. The employee must also be advised that a possible outcome from the hearing could be dismissal.

## **7. STAGE 3 – DECISION MEETING**

7.1 The employee will be informed in writing of the grounds on which the hearing is being convened. In particular he/she will be told of the respects in which his/her performance remains below an acceptable level. The employee will be advised of their right to be accompanied by a trade union representative or workplace colleague, and will be provided with copies of any relevant documentation that will be used during the meeting.

7.2 The meeting will be conducted by a member of the senior leadership team, accompanied by the employee's line manager and the Trust's HR representative.

7.3 At the meeting, the employee will have the opportunity to respond to any criticisms made of his/her performance and make representations about how the situation should be treated.

7.4 The outcome of the meeting may be:

- A decision to take no further action;
- The issuing of a formal warning and further review period;
- An offer of redeployment to alternative work if available/appropriate; or
- A decision to dismiss the employee.

7.5 Any offer of redeployment will be entirely at the organisations discretion. Such an offer will be made only where the employee will be able to perform well in the redeployed role. It will normally only be offered as an alternative to dismissal in circumstances in which the organisation is satisfied that the employee should no longer continue to work in his/her current role. While the employee is free to refuse any offer of redeployment, the only alternative available will usually be dismissal. If the alternative offer of employment as a resultant of this procedure is of a lower salary, the difference in salary will not be protected.

7.6 If the organisation believes that there is no alternative role available or suitable for the employee, but that he/she has not met an acceptable standard of performance, the organisation may decide to dismiss. Any dismissal will be with either full notice or payment in lieu of notice. The decision to dismiss together with the reasons for dismissal will be set out in writing and sent to the employee. The Trust reserve the right to request that the employee take gardening leave during their notice period.

7.7 The Trust will confirm the decision in writing within five working days of the hearing.

7.8 Where an employee is dismissed in accordance with this procedure, he/she will have a right of appeal.

## **8. APPEAL**

8.1 An employee has a right of appeal against a formal decision issued under this procedure, whether it be a formal warning or dismissal. A request for an appeal should be sent in writing to the Head Teacher/Principal and set out the grounds on which the employee believes that the decision was flawed or unfair. The request should be sent within ten working days of the employee receiving written confirmation of the sanction imposed on him/her by the organisation.

8.2 An appeal hearing will be convened to consider the matter. It will be chaired by the Head Teacher/Principal together with a representative from HR. In the event that the Head Teacher was involved in the decision hearing, the appeal will be heard by three members of the Governing Body. If the academy do not have three governors available to attend the hearing, they are able to call upon governors from other academies within the Trust. The employee will be advised of their entitlement to be accompanied by a fellow employee or trade union official.

8.3 At the hearing, the decision to impose the sanction will be reviewed and the employee will be entitled to make representations about the appropriateness of that decision.

8.4 The result of the hearing will be either to confirm the sanction, or substitute any outcome that was available to the panel conducting the hearing at which the decision was imposed on the employee. The outcome of the appeal will be confirmed to the employee in writing within ten working days of the hearing, explaining the grounds on which the decision was reached. The outcome of the appeal will be final.

8.5 If the decision to dismiss is overturned, any salary lost between the point of dismissal and reinstatement will be paid to the employee.

## **TEACHING STAFF CAPABILITY PROCEDURE**

This procedure applies to any teacher or Head Teacher whereby there are serious concerns regarding their performance that have been unresolved within the appraisal process.

### **9. INFORMAL STAGE**

9.1 When concerns around an employee's performance are first realised, the employee's manager will invite the employee to an informal meeting to discuss concerns regarding his/her performance. The discussion at this meeting will be focused around the areas of work for improvement, as well as any support the employee may need to improve performance. The meeting will be conducted by the employee's manager. Following discussion of the problem, the manager may choose to:

- take no further action;
- issue guidance to the employee on what he/she needs to do to improve his/her performance.

9.2 The employee's manager should provide appropriate support for the employee and the employee should be given the opportunity to advise of any specific support they may require.

### **10. STAGE 1 – FORMAL CAPABILITY MEETING**

10.1 At least five days written notice will be given of the formal capability meeting. The notification letter will include:

- Sufficient information about the concerns with the teachers performance, in order to ensure the teacher is able to prepare to answer the case.
- Information about the consequences of the poor performance and what the process entails.
- Copies of any written evidence.
- Details of the date, time and location of the meeting.
- Confirmation of the teachers right to be accompanied by a trade union representative or workplace colleague.

10.2 This meeting is intended to establish the facts and for teachers will be conducted by a member of the senior leadership team, or for a Head Teacher, a Director of the trust or Chair of Governors. For the purposes of this policy, the person conducting the meeting is referred to as the chair.

10.3 The meeting allows the teacher to respond to the concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected, which would then be considered by the chair.

10.4 Following consideration of all information available to them, the chair may conclude that there are insufficient grounds for pursuing the capability issue. The outcome may therefore be that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The chair may also adjourn the meeting if they decide that further investigation is needed, or that more time is needed in which to consider any additional

information.

10.5 Where the chair feels there is sufficient grounds to pursue the capability issue, the meeting would continue. During the meeting the chair will:

- Identify the professional shortcomings (e.g. which of the standards expected of the teacher are not being met).
- Give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures. This may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made.
- Explain any support that will be available to help the teacher improve their performance and seek any requested support that the teacher feels may assist them.
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but will normally range between four and ten weeks. The timescale set should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.
- Issue a formal warning advising that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning. If a final written warning is issued, the monitoring and review period would be set but at the end of the review period they would be invited straight to a decision meeting rather than a formal review meeting.

10.6 Notes will be taken of formal meetings and a copy sent to the teacher. Where a warning is issued, the teacher will be informed in writing with a summary of the reasoning behind this. The letter will also include confirmation of the next steps to be taken under this policy and details of how to appeal against the written warning (as well as timescales for this).

## **11. MONITORING AND REVIEW PERIOD**

11.1 A performance monitoring and review period will follow the formal capability meeting. The review period will depend on the particular circumstances but will be between four to twelve weeks. Formal monitoring, guidance and support will continue during this period. The review period would normally be a minimum of eight weeks unless the severity of the concerns poses a serious threat to the education of the teachers' pupils. If setting a review period of four weeks the manager should first consult with the trust HR representative to ensure the timescale is appropriately evidenced.

11.2 Following the review period, the teacher will be invited to a formal review meeting.

11.3 Note: If the teacher was issued with a final written warning at the first formal capability meeting, they would be invited to a decision meeting and the formal review meeting stage would be bypassed.

## **12. STAGE 2 – FORMAL REVIEW MEETING**

12.1 As with formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise

the teacher of their right to be accompanied by a trade union representative or workplace colleague.

12.2 At the meeting, the chair and teacher will review the documents and evidence from the first formal meeting, along with any evidence, evaluations or monitoring documents from the review period that demonstrate an improvement in performance or lack of.

12.3 If the chair is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. In other cases:

12.4 Generally, there are three potential outcomes from the formal review meeting. These are:

- If sufficient improvement has been made, the capability procedure will cease and the appraisal process will re-start.
- If some progress has been made and there is confidence that more progress is likely, the monitoring and review period will be extended.
- If there has been no (or insufficient) improvement, the teacher will receive a final written warning.

12.5 As before, notes will be taken of the formal meeting and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing detailing:

- The areas of performance still causing concern
- The improvement required in order to cease further action
- The timescales in which a further review period will take
- Time limits for appealing against the final written warning
- Confirmation of the consequences if sufficient improvement is not made.

12.6 Following a final review period (utilising the same review periods as above), the teacher will be invited to a decision meeting.

### **13. STAGE 3 – DECISION MEETING**

13.1 As with other meetings within this policy, at least five working days' notice will be given and the notification will provide details of the time and place of the meeting and of their right to be accompanied by a trade union representative or workplace colleague.

13.2 The decision meeting will normally be held by a panel of three governors, as it is expected that the Head Teacher will have been previously involved in the capability process. The trust will, where required, call upon governors from other academies within the trust where it is not possible to pull together an appropriate panel from the specific academy (i.e. where the only governors available are staff governors).

13.3 All relevant documentation and evidence collated throughout the capability process will be provided to the teacher at least five working days' before the meeting.

13.4 At the decision meeting, all relevant documentation will be reviewed and discussed. The possible outcomes following the decision meeting are:

- If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal

- process will re-start.
- If some level of improvement has been made and there is confidence that this will continue further, another monitoring and review period could be set.
  - If performance remains unsatisfactory, a decision could be made to dismiss the teacher from their post.

## **14. DISMISSAL**

14.1 If the decision is made to dismiss the teacher from their post, they must be informed in writing as soon as possible after the decision meeting, but no later than five working days' after. The dismissal letter will advise of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

14.2 The decision to dismiss sits with the Head Teacher, a panel of three governors or a Director of the trust.

14.3 Once the decision to dismiss has been taken, the chair will advise that the teacher is dismissed with notice.

## **15. APPEAL**

15.1 If a teacher wishes to appeal against any decision within this procedure, they may appeal in writing against the decision within ten working days of the decision, setting out the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the teacher.

15.2 The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case. If it is not appropriate or possible to arrange a panel of governors from the academy, the trust reserves the right to call upon governors from any other academy within the trust.

15.3 The appeal will seek to review the case and the decision that was ultimately taken to establish whether the correct procedure was followed and that the decision was reasonable within the circumstances.

15.4 The teacher will be informed in writing of the outcome of the appeal hearing as soon as possible afterwards but they should receive this no later than ten working days later.

**Please note: This procedure will be periodically reviewed to ensure it's effectiveness. Any amendments will be agreed at the Trust's JCC.**