CAPABILITY POLICY AND PROCEDURE

Last Reviewed: September 2026
Next Review Date: September 2029

Introduction

The Academy is committed to promoting and achieving equality of opportunity for all students, parents, staff, governors, visitors, and job applicants.

This policy applies to all employees of the Academy (collectively referred to as “you” and “employee” in this policy), apart from recently appointed employees who have not yet successfully completed a probationary period and, with the exception of serious cases where appropriate, Newly Qualified Teachers (NQTs)/Early Career Teachers (ECTs) who have separate support and assessment arrangements in place during their induction period.

The Academy reserves the right not to follow this procedure where an employee has less than six months continuous service.

This policy does not form part of any employee's contract of employment is not intended to have contractual effect and may be amended at any time. Employees will be informed when the policy is updated.

Aims of the Policy

The primary aim of this policy is to provide a framework within which the Academy can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.

The formal capability procedures will only be instigated when there are serious concerns about your performance that informal guidance and support under the appraisal procedure have been unable to address. Concerns over performance will be dealt with fairly and you will be given the opportunity to respond at a hearing before any formal action is taken.

Legislation and guidance

This policy is based on:

- The School Staffing (England) Regulations 2009 (regulation 8)
- The School Staffing (England) (Amendment) Regulations 2012
- The Education (School Teachers’ Appraisal) (England) Regulations 2012 (the Appraisal Regulations)

This policy is based on the Department for Education’s model policy and guidance, and the Acas code of practice on disciplinary and grievance procedures.

When carrying out capability procedures, we will ensure we abide by the Equality Act 2010.

Confidentiality

The Academy aims to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information which is communicated to them in connection with this capability procedure. You and your companion must not make electronic recordings of any meetings or hearings conducted under this procedure.

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and governing board to ensure the quality ensure the operation and effectiveness of the system.

Consistency of treatment and fairness

The governing board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.

The governing board is aware of the guidance and provisions of the Equality Act 2010.

Right to be Accompanied

You are entitled to be accompanied to formal meetings held under this procedure by a trade union representative or appropriate work colleague. If your chosen companion is unavailable at the time of the hearing, you can propose an alternative time within five working days of the originally scheduled date.

If your companion is not available within five working days, the Academy may require you to choose an alternative companion. At a formal hearing your companion can make representations, ask questions, sum up your case, and request an adjournment in order to discuss the case privately with you.

NQTS/ECTs – Action in the event of serious capability concerns

In serious cases it may be appropriate and necessary to instigate capability procedures, which may lead to dismissal before the end of the induction period. If this is the case, for as long as the NQT/ECT remains at the Academy, the induction process will continue in parallel with the capability procedure. The appropriate body will be consulted with prior to any formal capability process commencing and prior to any dismissal taking place.

Identifying Performance Issues

In the first instance, performance issues should normally be dealt with informally between you and your line manager as part of day-to-day management and the appraisal process. Where appropriate, a note of any such informal discussions may be placed on your personnel file. The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement. Informal discussions may help to:

- clarify the required standards.
- identify areas of concern.
- establish the likely causes of poor performance and identify any training needs; and/or
- set targets for improvement and a timescale for review.

If the Academy has serious concerns about your performance, it will undertake an assessment to decide whether there are grounds for taking formal action under this procedure. The steps involved will depend on the circumstances but may include reviewing your personnel file including any job description and appraisal records, gathering any relevant documents, monitoring work, and meeting you to discuss your work.

The Academy may decide to proceed straight to Stage 3 (see below) of this process where the evidence suggests that you may have been grossly negligent such as to potentially warrant dismissal without the need for a final written warning.

Notification of Capability Hearing

If the Academy considers that there are grounds for taking formal action in relation to alleged poor performance, you will be required to attend a capability hearing. The Academy will notify you in writing of its decision to initiate the formal capability procedure and confirm:

- the nature of the performance concerns.
- the purpose of the hearing and who will decide the outcome.
- the time, date, and location of the capability hearing.
- your right to be accompanied at the hearing.
- copies of any supporting evidence or relevant documents that will be used at the capability hearing.
- the stage of the capability procedure that has been reached; and
- the likely outcome if the Academy decides after the hearing that performance has been unsatisfactory.

The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time, usually two to seven days, to consider the information provided and prepare for the hearing.

Procedure at Capability Hearings

You must make every effort to attend the hearing and failure to attend without good reason may be treated as misconduct. If you fail to attend without good reason or are persistently unable to attend (for example because of poor health), the Academy may make decisions based on the available evidence including any written representations made by you.

The Academy understands that this procedure may cause you some stress and anxiety and will endeavor to provide appropriate support; however, an indefinite or lengthy delay is likely to prolong the uncertainty and is therefore unlikely to be in the best interests of the Academy its staff or pupils.

The hearing will normally be held by the Headteacher or another member of the Senior Leadership Team and may also be attended by an HR Advisor and/or a notetaker. A Stage 3 hearing (see below) must be held by the Headteacher. The aims of a capability hearing will usually include:

setting out the required standards that the Academy believes you may have failed to meet and going through any relevant evidence that has been gathered.
allowing you to ask questions, present evidence, respond to evidence and make representations.
establishing the likely causes of poor performance including any reasons why previous actions have not led to the required improvement.
identifying whether there are further measures, such as additional training or supervision, which may improve performance.
discussing targets for improvement and a timescale for review; and
if dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.

A hearing may be adjourned if the Academy needs to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

You will be informed in writing of the Academy's decision and the reasons for it, usually within 5 working days of the capability hearing. Where possible this will also be explained to you in person.

Stage 1 Hearing and Outcome

The outcome of the hearing will be communicated to you in writing without unreasonable delay and usually within 5 working days, giving full reasons for the decision and information about the right of appeal (if applicable).

If the specific performance concerns are not upheld, or if the decision maker feels that informal action or support is appropriate in the particular circumstance, you will be informed in writing that no further formal action will be taken.

If it is decided that following a Stage 1 capability hearing, your performance is unsatisfactory, you may receive a first written warning, setting out:

- the areas in which you have not met the required performance standards.
- clear targets for improvement and a period for review.
- any supportive measures, such as additional training or supervision, which will be implemented with a view to improving performance.
- the consequences of failing to improve within the review period, or of further unsatisfactory performance; and
- your right to appeal and how this can be exercised.

Any warning will normally remain active for a period of six to twelve months from the date of the issue of the warning. The outcome letter will confirm the specific length of the active period of the warning. Whilst the warning is active, the capability process can be resumed at the same stage if your performance declines. After the active period, the warning will remain permanently on your personnel file but will be disregarded in relation to future capability proceedings.

The timescale for the review period will depend on the nature and severity of the concerns and other relevant circumstances of the case. During the review period informal meetings will be held between you and your line manager to discuss progress and offer further support.

Your performance will be monitored during the review period, and you will be informed in writing of the outcome if your line manager:

- is satisfied with your performance, no further action will be taken other than to inform you in writing that you have demonstrated the necessary improvement,

and to remind you that the capability process may be resumed if your performance declines whilst the written warning is active.
- is not satisfied, you will be invited to a Stage 2 capability hearing as set out below: or
- feels that there has been a substantial but insufficient improvement, the review period may be extended.

Stage 2 Hearing and Outcome

If your performance does not improve within the review period set out in a first written warning, or if there is further evidence of poor performance while the first written warning is still active, you will be invited to a Stage 2 capability hearing as set out as below, and the hearing will be conducted as set out as below.

The outcome of the Stage 2 hearing will be communicated to you in writing without unreasonable delay and usually within five working days, giving full reasons for the decision and information about the right of appeal (if applicable).

If the specific performance concerns are not upheld, or if the decision maker feels that additional action or support is appropriate in the particular circumstance, you will be informed in writing that no further action will be taken under Stage 2 of the procedure.

If it is decided following a Stage 2 capability hearing that your performance is unsatisfactory, you may receive a final written warning, setting out:

- the areas in which you have not met the required performance standards.
- clear targets for improvement and a period for review.
- any supportive measures, such as additional training or supervision, which will be implemented with a view to improving performance.
- the consequences of failing to improve within the review period, or of further unsatisfactory performance; and
- your right to appeal and how this can be exercised.

Any warning will normally remain active for a period of twelve to twenty-four months from the date of the issue of the warning. The outcome letter will confirm the specific length of the active period of the warning. Whilst the warning is active, the capability process can be resumed at the same stage if your performance declines. After the active period, the warning will remain permanently on your personnel file but will be disregarded in relation to future capability proceedings.

The timescale for the review period will depend on the nature and severity of the concerns and other relevant circumstances of the case. During the review period informal meetings will be held between you and your line manager to discuss progress and offer further support.

Your performance will be monitored during the review period, and you will be informed in writing of the outcome if your line manager:

- is satisfied with your performance, no further action will be taken other than to inform you in writing that you have demonstrated the necessary improvement, and to remind you that the capability process may be resumed if your performance declines whilst the written warning is active.
- is not satisfied, you will be invited to a Stage 3 capability hearing as set out below: or
- feels that there has been a substantial but insufficient improvement, the review period may be extended.

Stage 3 Hearing and Outcome

The Academy may decide to hold a Stage 3 capability hearing if it has reason to believe that your performance:

- has not improved sufficiently within the review period set out in a final written warning.
- is unsatisfactory while a final written warning is still active; or
- has been grossly negligent such as to potentially warrant dismissal without the need for a final written warning.

You will receive written notification of the hearing as set out as below, and the hearing will be conducted as set out as below.

If the specific performance concerns are not upheld, or if the decision maker feels that additional action or support is appropriate in the particular circumstance, you will be informed in writing that no further action will be taken under Stage 3 of this procedure.

If it is decided at or following the Stage 3 hearing that your performance is unsatisfactory, the potential outcomes are as follows:

- dismissal.
- redeployment into a suitable available job at the same or a lower grade if agreed with the employee.

- extending an active final written warning and setting a further review period (in exceptional cases where there is reason to believe that a substantial improvement is likely within the review period); or
- final written warning (where no final written warning is currently active).

The outcome of the hearing will be communicated to you in writing without unreasonable delay and usually within five working days, giving full reasons for the decision and information about the right of appeal.

You will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence, or in any case involving recently appointment where you have not yet completed your probationary period, dismissal without previous warnings may be appropriate.

Dismissal will normally be with full notice or payment in lieu of notice, unless your performance has been so negligent as to amount to gross misconduct, in which case, you may be dismissed without notice or any pay in lieu.

Right to Appeal

If you feel that a formal decision (first/final written warning or dismissal) about poor performance under this procedure is wrong or unjust can appeal in writing to the Headteacher stating full reasons and grounds for appeal, within five working days of the decision being communicated in writing.

The appeal hearing will be conducted by a senior manager who has not been previously involved in the case. The original decision maker will usually be present. Where the original decision was made by the Headteacher the appeal will be heard by a single Governor (for a written warning) or a panel of two Governors (for a dismissal decision).

You will receive written notice of the date, time and place of the appeal hearing which will normally be held within a reasonable period of time following receipt of the appeal. You will be entitled to bring a companion to the appeal hearing (see below). If you appeal against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful, you will be reinstated with no loss of continuity or pay.

The appeal hearing will be a review of the fairness of the original decision in light of the procedure that was followed and any new information that may have become available. You will be given a full and fair opportunity to put forward your grounds for

appeal together with any supporting evidence. The appeal will however only consider the relevant grounds of appeal and will not be a full re-hearing.

The hearing may be adjourned if the Academy needs to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The outcome of the appeal hearing may be to:

- confirm the original decision.
- revoke the original decision; or
- substitute a different (but not a higher) penalty.

You will be informed in writing of the final decision including reasons for the decision as soon as possible, and usually within five working days of the appeal hearing. The appeal decision is the final stage of Academy's Capability Procedure.

There will be no further right to appeal.