

# Capability Policy

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Other related policies:	Performance Appraisal Policy
Policy owner:	Sue Northend, Director of HR
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At REAch2, our actions and our intentions as school leaders are guided by our Touchstones.



## Leadership

Finding the leader in all of us.



## Inclusion

Realising the greatness in our difference.



## Learning

Creating exceptional opportunities for learning.



## Enjoyment

Loving what we do.



## Inspiration

Feeling the power of the possible.



## Integrity

Being courageously true to our purpose.



## Responsibility

Unwavering commitment to seeing things through.

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## Policy Overview

### Overarching Principles

The Trust is committed to providing an environment where employees can perform their roles to the best of their ability and is proud of the commitment that exists across the organisation to deliver an outstanding education for all pupils.

This policy has been developed to ensure fair and consistent treatment across the Trust where performance falls below the standards required. Clear guidance about the standards of performance that are expected is provided to employees during conversations with the line manager, in the Staff Code of Conduct and in individual job descriptions. They may be recorded in a document which sets out agreed objectives.

### Intended Impact

The aim of this policy is to ensure high standards of performance from all employees. Where shortfalls are identified, this policy outlines a fair and consistent process to improve the accuracy and quality of work which includes support, guidance and training in order to meet the required levels of performance. This will be achieved by:

- informal advice and support;
- a formal support programme
- the provision of training where it is identified as helpful;
- supporting employees with meeting the standards required and maintaining these standards.

### Scope

This policy covers all members of staff who are employed by REAch2 on a permanent, fixed-term, secondment or temporary post, including Headteachers and deputy Headteachers, except for:

- a) Employees who are in their probationary period where the Probation Policy applies;
- b) Early Career Teachers (ECTs) who are covered by the Induction Policy;
- c) Incapability due to ill health will be managed in accordance with the REAch2 Sickness Absence Management Policy.

It will be applied fairly and in accordance with employment law and REAch2's Equal Opportunities policies.

This policy does not replace the normal day-to-day interaction between an employee and the Headteacher on matters of performance. It should only be used when options such as regular one to one meetings, supervision and annual appraisal meetings have failed to produce a satisfactory level of performance.

## Roles and Responsibilities

### Employee's Responsibilities:

- To have personal responsibility for ensuring they understand the expected standards of work and perform to a satisfactory level;
- To familiarise themselves with the Capability Policy;
- To familiarise themselves with their job description, standards of work required including their terms and conditions of employment, REACh2 policies and any relevant standards or rules relating to their role, or employment;
- To behave in a way that promotes a positive working environment;
- To co-operate with the capability process including being available for meetings, work with allocated resources to achieve the required standards of the role within the required timescales;
- Work to the best of their ability, participating in self-development activities and any such work agreed with their line manager;
- Attend work in accordance with their Contract of Employment and make the best use of their time at work;
- Fully engage in discussions about their role in relation to performance and development, including the appraisal process.

### Line Manager's Responsibilities:

- To make sure that all employees are treated fairly, reasonably and consistently under this policy;
- To ensure that all employees have access to the Capability Policy;
- To ensure that staff are aware of what is expected in their role and standards required, providing clarity over the expected standards of performance and access to reasonable development opportunities to support employees in the delivery of their role;
- Managers should take all reasonable steps to address any performance issues informally in the first instance;
- To implement the Capability Policy and procedure when required. For the avoidance of doubt, if a Headteacher's capability is being managed, their line manager will, with input from the Chair of Governors, implement the procedure;
- To maintain fair, consistent, and objective procedures for matters relating to staff performance and capability;
- To be clear and precise at all times throughout the procedure and ensure that the employee is aware at what stage they are in the process, including the possible outcomes;
- To provide support to employees with every opportunity for them to raise their performance to the required level.

### People Team responsibilities:

- To advise line managers at each stage of the formal procedure, this will include supporting managers with formal support plans, during formal meetings and appeals;
- To support line managers to consider options taking equality, precedence, risk, legal and practical considerations into account before any final decision on appropriate action;
- To monitor the application of the procedure to ensure it is applied in a fair and consistent way across the Trust;
- To monitor and record the outcomes of action taken under the formal stages of the procedure.

## Policy In Detail

For the purposes of this policy, 'Capability' refers to the skills, ability, aptitude and knowledge the employee has in relation to the job that they are employed to do. Lack of capability is defined as a situation in which an employee fails consistently to perform their duties to a professionally acceptable standard.

Unsatisfactory performance can arise for a number of reasons and may be due to an employee's lack of knowledge, skills or aptitude for the position to which they are appointed. If an employee does not meet the required standard of performance any consequent action will be based on:

- a) Evidence that the employee is incapable of performing their duties satisfactorily.
- b) Evidence that the employee knew of and was given reasonable support and assistance to overcome the shortfalls.

A failure to meet objectives alone is not enough to warrant initiating capability procedures.

This procedure is not intended as a substitute for sound employment practices, such as the induction of new/newly promoted employees and comprehensive performance management. Generally, performance should be discussed regularly as part of the employee's supervision and under-performance identified and addressed early. Early identification of problems through performance review conversations and the appraisal process will help to avoid formal capability procedures. However, there may be cases where a more formal and structured approach is necessary.

### **Disciplinary vs Capability**

A distinction should be drawn between the procedure for capability and the procedure for disciplinary issues.

Capability applies to those situations where an employee's performance is unacceptable because they are unable to perform their duties to the required level due to lack of ability, skill, experience or inadequate training.

Disciplinary issues apply to those situations where the employee is capable but chooses not to perform to the required standard. These will be managed through the Disciplinary Policy, not capability procedures.

HR advice should be sought prior to proceeding and throughout either procedure.

Under the Equality Act 2010 a person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse impact on their ability to carry out normal day-to-day activities. Before a line manager commences capability proceedings with an employee with a disability, due consideration should be made of whether the performance concerns relate to the disability and if so, whether any reasonable adjustments can be made.

### **Informal Procedure**

Every effort should be made, wherever possible, to address any performance issues informally. In many cases, the right word at the right time and in the right way may be all that is needed.

If a line manager remains concerned about an employee's performance, the concern will be raised as part of normal management processes in the first instance, such as a one-to-one meeting or performance appraisal meeting. In such circumstances, the line manager should explain where the performance falls below standard, identify where possible the cause of the problem and discuss with the employee appropriate means of support for improving performance.

Where inadequate improvements are made and under-performance persists, the line manager should invite the employee to a meeting to discuss their performance, as set out in the REAch2 Appraisal Policy.

The objective is to provide support and guidance in such a way that the employee's performance improves.

Support will be offered as soon as possible without waiting for the annual appraisal process.

The line manager will meet with the employee to:

- provide clear feedback about the nature and seriousness of the concerns and explain the standards expected;
- give the employee the opportunity to comment on and discuss the concerns with an opportunity to explore the reasons for underperformance;
- agree an action plan in consultation with the employee, and set clear objectives (for example coaching, training, in-class support, mentoring) that will help to address the specific concerns;
- be clear on how progress will be monitored and when it will be reviewed;
- identify a timeframe for performance to improve (the amount of time will depend upon the seriousness of the concerns, a period of between four and eight working weeks).
- explain the implications and process if no, or insufficient improvement is made, including potential implications on pay progression and their role;
- set a date for a meeting to review progress at the end of the support period.

An employee may be accompanied by a trade union representative as this is the best opportunity to avoid the matter becoming formalised. The meeting will be summarised in a Support Plan and progress will continue to be monitored as part of one to ones and the appraisal process over an agreed time for the employee's performance to improve.

During this monitoring period the employee will be given regular feedback on progress in writing which may be in the form of an updated Support Plan, and arrangements will be made to modify the support programme if appropriate.

The outcome of the informal support period including the various review dates will be documented and shared with the employee, in writing within 5 working days of the informal discussions. A copy of the Support Plan should be held on the employee's personal file.

If insufficient progress is made, the formal stages of this policy may apply. There is no appeal against the informal procedure set out in this policy.

Formal procedures should only start after the performance-related process within the Appraisal Policy has been exhausted and performance is still not at the required level.

In cases of particularly serious concern, such as where the health and safety of others may be at risk, the formal procedure may be started immediately without the need for the informal stage.

## **Formal Procedure**

If, after informal support, performance continues to fall short of the required standard, the formal procedure will apply. The focus of the formal procedure will still be on supporting the employee to improve their performance. Before starting any formal procedure, an appropriate member of the People Team must be consulted by the employee's line manager for advice on the process and for support.

Employees have the right to appeal at each stage of the formal process against written warnings that may be issued to them, as well as any dismissal that may result.

## **Right to be accompanied**

Employees have the right to be represented at all formal meetings under this procedure by a recognised trade union representative or a workplace colleague. The representative cannot answer questions on behalf of the employee.

A companion is allowed reasonable time off from duties, without loss of pay, but no one is obliged to act as a companion if they do not wish to do so.

The school may, at its absolute discretion, allow the employee to bring a companion who is not a work colleague or trade union representative if this will help the employee overcome a disability and providing there is no conflict of interest.

It is the responsibility of the employee to arrange for their representative to attend. Employees who are unable to attend any formal meeting because their trade union representative or work colleague cannot attend, may offer a reasonable alternative date for the meeting to be held. The proposed alternative date must be within five working days of the original date.

## **Formal Review Meeting**

At each stage of the process the employee will be invited to a formal meeting with their line manager, with at least five working days' written notice. Wherever possible, the time and date of meeting should be agreed with the employee and their representative.

The written notification will include:

- Sufficient information relating to the concerns about performance and their possible consequences to enable the employee to provide a response at the meeting;
- Copies of any written evidence connected to the concerns;
- The details of the date, time and place of the meeting;
- Advice to the employee of their right to be represented/accompanied by a trade union representative or work colleague;
- The names of those who will be at the meeting and their role.

In the meeting, the employee and / or their representative will be given the opportunity to respond and may provide new information / evidence or challenge evidence collected. If it becomes clear that further investigations are needed, the meeting should be adjourned for as long as necessary to complete the further investigations.



The decision of the manager may be communicated to the employee at the end of the formal meeting, following an adjournment, or will be confirmed as soon as is reasonably possible following the meeting. The formal support plan, including the set timescales along with the decision, together with the reasons for any warning, the duration of the warning, and the right of appeal, will also be confirmed in writing to the employee as soon as reasonably practical.

Notes will be taken of all formal meetings and a copy sent to the employee.

### **First Formal Review Meeting**

The first formal review meeting initiates the formal stage of the capability procedure.

At the meeting, the manager will clarify where the employee's performance is falling short of the required standards. Detail should be provided to the employee of what the required standards are in relation to the job description. Explore further with the employee any reasons for their unsatisfactory performance, as well as establishing appropriate training and additional support mechanisms, that will assist in improving the employee's performance.

The first formal meeting is likely to progress to the implementation of a formal Support Plan, this may include, but is not limited to:

- Setting of objectives focused on the specific areas of underperformance that need to be addressed;
- Clear success criterion that is understandable to the employee to enable them to achieve the targets set;
- Evidence that will be used to assess whether or not the necessary improvements have been made;
- Ongoing support that will be provided
- Timings specified for improvement and an explanation of how performance will be monitored and reviewed. The timetable will depend on each individual plan however, it should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.

The formal Support Plan will cover a period of between four and eight working weeks, depending on the role, nature of improvement needed and training / support to be provided, allowing sufficient time for improvements to take place.

There are three possible outcomes at the First Formal Review Meeting:

1. No further action\* or
2. Additional informal support \* or
3. Commencement of the first formal review period

The manager's decision should be made after all the facts and any representations from the employee have been considered, and with advice from the People Team.

\* Options 1 and 2 are only relevant where new information, a different slant on the information collected, or further investigation suggests that the matter is not as serious as it first seemed or there is no case to answer.

The employee should be made aware during this meeting that an outcome to the Capability Policy and failure to improve within the set period, could lead to dismissal. In very serious cases, this warning could be a final written warning.

In addition to the formal Support Plan, the manager may decide to issue a first written warning or final written warning. Formal warnings should only be issued at this meeting if there are very significant concerns about performance. As an outcome to the formal meeting, a first written warning issued will remain on the employee's file for a period of 6 months and a final written warning for a period of 12 months.

### **Monitoring and Review**

Throughout all stages of the capability procedure, regular performance monitoring and reviews should be apparent, to track progress or shortfalls. These are not formal meetings, the aim is to check in with the employee, to provide feedback and to encourage positive steps, provide regular monitoring and evaluation of performance, as well as support for the employee, as agreed. It is expected that the any action plan will cover a period of between 4-8 working weeks, depending on the role, nature of improvement needed and training / support to be provided, allowing sufficient time for improvements.

The employee should receive regular feedback and support throughout the monitoring and review stages.

### **Second Formal Review Meeting**

At the end of the formal support plan, the employee should be invited to a second formal review meeting to discuss the progress made and to review any improvements in performance.

The meeting will follow the same process as with the first formal review meeting, in that the line manager will meet with the employee to review progress. Where the date of the meeting was not specified at the first formal review meeting, the employee should be given five working days' written notice and notified of the right to be represented by their trade union representative or work colleague.

The manager's decision should be made after all the facts and any representations from the employee have been considered, and with advice from the People Team.

- a) If the expected standard of performance has been achieved during the formal Support Plan and through the monitoring and review period, the capability procedure will end.
- b) If some progress has been made and there is confidence that further progress is likely to be made, it may be appropriate to extend the process with a further monitoring and review period (a further formal review meeting will need to take place at the end of any extended/further review period).
- c) If insufficient improvement has been made during the formal Support Plan and throughout the monitoring and review period, the employee will receive a final written warning and they will move to the next stage, a capability hearing (Decision Meeting).

Following this meeting, the manager should write to the employee within five working days recording the main points discussed and confirming the decision.

## Capability Hearing

Where, following the second formal review meeting, it is decided that the employee's performance remains unsatisfactory and shows no sign of improving, the matter will be referred to a capability hearing. The hearing will be conducted by a panel comprising at least three senior managers and governors with no previous involvement in the matter, selected from line managers / headteachers, senior REAch2 employees, academy Governors and a member of the People Team.

An invitation to the meeting should be sent via letter and should also include:

- the recommendation which will be made by the head teacher;
- a written statement of the concerns to be presented to the committee;
- any supporting papers which will be referred to during the hearing and the names of any witnesses to be called;
- evidence of the support previously provided to the employee;
- the names of the members of the committee and others who will be at the meeting;
- the employee's right to be accompanied by a trade union representative or workplace colleague;
- an outline of actions which might follow, making it clear that dismissal is a potential outcome of the meeting.

The employee will receive a copy of the full formal Support Plan and any supporting documentation. They will be given 10 days' written notice of the hearing in order for them to prepare and arrange representation.

The date of the hearing can be postponed for up to 5 working days if the employee's representative is not available. Sympathetic consideration should also be given to other extenuating circumstances. Where the employee is unable to agree to the rescheduled date or does not attend, then the meeting may be held in their absence.

The employee must submit any new evidence that they wish to present to the panel at least five working days prior to the hearing.

The purpose of the meeting will be for the panel to consider whether the employee's performance falls below the standard that is required, to satisfy themselves whether adequate support has been offered to the employee and to ensure that all reasonable alternatives to dismissal, such as redeployment, have been exhausted.

Where the panel determines that acceptable improvement has been made, and an acceptable standard of performance has been achieved during the process, the capability process will end and the manager will confirm this in writing to the employee. The manager will explain to the employee the importance of sustaining this level of performance. If unsatisfactory performance reoccurs during the following 12 months, the formal capability procedure will recommence at the first formal review meeting stage.

Where the panel believes that no/insufficient progress has been achieved, nor will it be following an extended monitoring period, the employee will be informed that they will be dismissed from their employment with the Trust on the grounds of capability. The employee will be informed of the date on which the employment contract will end, the appropriate period of notice and of their right to appeal.

Where possible, consideration will be given to alternatives to dismissal, such as redeployment or demotion to a lower graded role by mutual agreement. This will depend on the circumstances of the school or service area.

Where possible the panel's decision will be communicated to the employee at the meeting. The decision will be confirmed in writing within five working days and the employee advised of their right to appeal against the decision, the timescale for appeal, to whom it should be addressed and that they are entitled to be represented by their trade union representative or work colleague at any appeal hearing.

## **Appeals**

An employee has the right of appeal against any formal meeting outcome and appeals must be made in writing within ten working days of receipt of the written confirmation of the meeting / hearing outcome. The appeal must be addressed to the Director of People and clearly state the grounds for appeal, together with details of any new evidence they wish to present.

Appeals should not unnecessarily delay progression of the formal capability procedure. Any monitoring or supportive action being taken will continue whilst the appeal is being processed (and count towards any monitoring periods / timescales previously agreed).

The appeal will be heard within 15 working days of the appeal being received in writing and the employee will be given at least 5 working days' notice of the appeal hearing.

The Appeal Panel will comprise at least three senior managers, selected from line managers / headteachers, senior REAch2 employees, academy Governors and a member of the People Team. None of the Appeal Panel will have any previous involvement.

Appeals against capability action will usually be considered by the panel in relation to one or more of the following grounds:

- The procedure. The grounds of appeal should detail how procedural irregularities prejudiced any decision.
- The facts. The grounds of appeal should detail how the facts do not support the decision or were misinterpreted or disregarded. They should also detail any new evidence to be considered.
- The decision. The grounds of the appeal should state how the level of action taken was unreasonable and unjustified.
- The purpose of the appeal hearing is to review the decision to give a written warning or to dismiss. An appeal hearing will result in one of the following outcomes:
  - The appeal is upheld and any sanction imposed in the original hearing is withdrawn;
  - The appeal is not upheld but a lesser sanction is considered;
  - The appeal is not upheld and the original sanction remains in place.

An appeal hearing cannot increase the sanction imposed on the employee and, where an appeal against dismissal is successful, reinstatement will be from the original date with no break in employment continuity.

The Chair the appeal panel will communicate the decision in writing to the employee within ten working days of the appeal hearing.

This is the final stage and there is no further right of appeal following a decision.

## Relevant Information

### Sickness Absence

If long term sickness absence appears to have been triggered by monitoring or by a formal capability procedure, the case will be dealt with in accordance with the REAch2 Sickness Absence Management Policy and the employee will be referred immediately to the Occupational Health Service to assess the employee's health and fitness for the appropriateness or otherwise of continuing with monitoring or formal procedures. Any periods of absence should be excluded from the period for support, monitoring and review.

### Grievance

Where an employee raises a grievance during the capability process, the capability process may be temporarily suspended in order to deal with the grievance. This is not necessarily always the case and the decision to delay the process depends on the nature of the grievance. This decision will be made by the line manager, unless the grievance is against the line manager in which case it will be made by the next, more senior line manager. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

### Record Keeping

Managers and panels must keep written records of meetings and discussions relating to the capability procedure. Written records must be signed and dated by all parties. Written confirmation of the outcome of any meetings will be sent to the employee and their representative within five working days for their information and a copy kept on the employee's personal file in accordance with the REAch2 Data Retention Policy.

Records should include: the nature of the inadequate performance; what was decided and actions taken; the reason for the actions; whether an appeal was lodged; the outcome of the appeal and any subsequent developments.

### Equality Monitoring

To ensure that we are meeting our public sector equality duty we will monitor annually the impact of this policy by reference to the protected characteristics of employee's (age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex and sexual orientation). The results will be shared (anonymised where appropriate) with the recognised trade unions.

## Policy Review

The Capability Policy will be reviewed **every three years** or sooner, taking into account any legislative changes.

Any changes made to this policy will be communicated to all relevant stakeholders.