CAPABILITY PROCEDURE FOR TEACHERS

1. Introduction

- The capability procedure will be used where a member of the teaching employees fails to perform his or her duties to an acceptable standard, under the Academy's appraisal arrangements and only after an appropriate support plan has been used under the appraisal policy and the employee has not succeeded in achieving an acceptable level of performance. The primary objective of this procedure will be to remedy performance problems which have failed to be remedied under the Academy's Appraisal Procedure.

1.1. Scope

- This procedure is applicable to all teaching employees, including members of the leadership group. However, capability matters involving Newly Qualified Teachers in their statutory induction period will normally be dealt with through the statutory induction procedures, except where there is judged to be a 'severe risk' to children's welfare or development in which case this Capability Procedure will be applied.

- This procedure does not deal with lack of capability due to ill-health, nor with misconduct, the latter being considered as an act or omission by the employee which is considered to be unacceptable behaviour and will be dealt with under the Academy's disciplinary procedure for conduct. In cases of lack of capability due to ill-health, this will be dealt with under the Company's Ill-Health Procedure.

1.2. Where a request for a reference is received from a potential new employer for a teacher who has applied for a post with a new school or academy the Company or Academy will only provide information about under performance dealt with under this policy in the past two years and will not include any information regarding the use of any support plan used during that period under the Academy's appraisal policy.

2. The Process

This process will be followed after any suspension of the Appraisal Process.
2.1. The Capability Interview

Where, following the failure of a support plan to achieve wholly acceptable performance under the Appraisal Procedure the Academy’s Appraisal Process is suspended, this formal procedure will be invoked.

- The employee will be required to attend a capability interview which will be conducted by an appropriate senior manager. The senior manager could be a Vice Principal where the employee has been subject to previous warnings and termination of employment may potentially be determined. Where the Principal is the subject of the meeting, it will be conducted by a governor or panel of governors delegated by the Chair of Governors or the Chief Executive.

- At least 5 working days prior to the interview the employee will be given written notification of the date, time and place of the interview; his or her right to be accompanied at the interview by a work colleague of his/her choice or a representative of his/her trade union; and sufficient information about the concerns to enable him/her to prepare a response at the meeting. A copy of the evidence that will be considered at the interview will also be supplied to the employee together with the possible sanctions that could be applied if the concerns are substantiated. The employee will also be informed of who will be involved in the interview, including any advisers from or appointed on behalf of The AET Group* HR professional services department.

- At least two working days before the interview, the employee will be required to provide the name and status of the person who will accompany him/her at the meeting and may also submit a written statement or other supporting evidence s/he wishes to have considered.

- Both management and the employee will be entitled to call upon relevant witnesses, but the number of these will be kept to a minimum, consistent with a fair consideration of the case.

- This interview is intended to establish the facts. The interview will allow the employee or his/her representative to respond to concerns about his/her
performance and to identify any contributing factors to the employee’s underperformance such as domestic or health issues and make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

o If new evidence or a new perspective on existing evidence is presented at the interview and it becomes clear that further investigation is necessary, the interview will be adjourned for an appropriate time to allow this to happen.

o The senior manager chairing the interview may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to the address the remaining concerns through a support plan under the Academy’s appraisal process. In such cases the capability procedure will come to an end and not be recorded for the purposes of 1.2 above.

o During the interview, or any other subsequent meeting which could lead to a warning being issued, the senior manager will:

  • identify the poor performance, including which of the standards or expectations of the employee’s role are not being met;

  • give clear guidance on the improved standard of performance needed to ensure the opportunity for the employee to be removed from the capability procedures. This may include the setting of new objectives focused on the specific area/s of deficiency in performance that need to be addressed. It will include any success criteria that are appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made;

  • seek to identify and agree any training needs for the employee and explain any support that will be available to help the employee improve their performance;

  • 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 under normal circumstances
will be between six and ten working weeks. The precise timescale will be reasonable and proportionate and will be what is regarded as sufficient for an appropriate improvement to take place;

- make it clear to the employee that failure to improve within the set period could lead to dismissal (in very serious cases, this could take the form of a final written warning);

- ensure that notes are taken of formal interview/meetings and a copy sent to the employee and any companion. Where a final written warning is issued, the employee will be informed in writing of the matters covered above and given information about the timing and management of the review stage and the procedure and time limits for appealing against the final warning.

2.2. Monitoring and Review Period following a Capability Interview

A performance monitoring and review period will follow the Capability Interview. Monitoring, evaluation, guidance and support will continue during this period. Following this monitoring and review period, the employee will be invited to a Review Meeting (see paragraph 2.3. below), unless s/he had been issued with a final written warning, in which case s/he will be invited to a Decision Meeting (see paragraph 2.4. below).

2.3. Review Meeting

- As with a Capability Interview, at least 5 working days notice will be given and the notification will give details of the time and place of the Review Meeting and will advise the employee of his/her right to be accompanied by a companion who may be a workplace colleague of his/her choice or a representative of his/her trade union. The employee will also be informed of who will be involved in the interview, including any advisers from or appointed on behalf of The AET Group HR professional services department.

- Both management and the employee will be entitled to call upon relevant witnesses, but the number of these will be kept to a minimum, consistent with a fair consideration of the case.
If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the employee will return to be managed under the appraisal process.

In other cases

- where some progress has been made and the senior manager is confident that with a further period of monitoring an acceptable level of performance will be achieved, it may be appropriate to extend the monitoring and review period;

- where, following the consideration of all the evidence presented at the Review Meeting, no, or insufficient, improvement has been made during the monitoring and review period, the employee will receive a written warning which could take the form of a final written warning.

Notes will be taken of review meetings and a copy sent to the employee and their companion/representative.

Where a final written warning is issued it will include information that failure by the employee to achieve an acceptable standard of performance (within the set timescale), may result in dismissal. The employee will also be given written information about the management of the further monitoring and review period and the procedure and time limits for appealing against the final warning.

At the end of the review period if the required level of performance has still not been achieved the employee will be given notice of the requirement to attend a Decision Meeting with the Principal, to determine the outcome of the further monitoring and review period. If the Principal has had prior involvement the meeting will be conducted by a panel of 3 governors.

### 2.4. Decision Meeting

As with Capability Interview and Review Meetings, at least 5 working days notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of his/her right to be
accompanied by a workplace colleague of his/her choice or a representative of his/her trade union.

- Both management and the employee will be entitled to call upon relevant witnesses, but the number of these will be kept to a minimum, consistent with a fair hearing of the case.

- If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the employee will return to be managed under the appraisal process.

- If following the consideration of all the evidence presented at the Decision Meeting performance has remained unacceptable, a decision will be made that the employee should be dismissed. The employee will be informed in writing as soon as possible of the reasons for the dismissal, the appropriate period of notice, his/her right of appeal and the date on which the employment contract will end if no successful appeal is made.

3. Appeal

- The employee will have the right of appeal against dismissal, a written warning or final written warning. Any appeal must be made in writing within 5 working days of the receipt of the letter of outcome of the relevant meeting and must state the grounds upon which the appeal is made and identify any other factors to be taken into account. Appeal against any warnings will not interrupt the progress of the procedure, unless the appeal decision leads to the matters being reconsidered.

- The appeal hearing will normally be arranged within 10 working days of notification of appeal. Appeal hearings will usually be complete re-hearings in order to consider the reasonableness of the decision made and to examine any new evidence or claims of procedural irregularity. However, where the grounds of appeal are on a narrow procedural point, the Appeal Board may rule on the specific point rather than re-examine the entire case.

- Appeals will be heard by the Company’s Appeal Board where the Principal is the subject of the proceedings, and in all other cases a panel will be established from the local governing body of the academy from governors with no prior involvement in the proceedings.
• Both management and the employee will be entitled to call upon relevant witnesses, but the number of these will be kept to a minimum, consistent with a fair hearing of the case.

• The appeal decision will be conveyed in writing to the employee within 5 working days and will make it clear that there is no further appeal against that decision.

• Where the employee is appealing against dismissal s/he will normally be placed on paid suspension from work pending any outcome of the appeal.

4. Monitoring and Review

• The Director of HR will report on the operation of the procedure to the Chief Executive Officer as appropriate.

• The Principal will report to the Governors’ Personnel Committee on any relevant aspects of the working of the procedure as appropriate.

• The Company will review the procedure every two years.
**Management Guidance**

1. **Introduction**

- The Capability procedure will only be used where there is a failure of performance identified through the Academy’s appraisal processes and the appropriate steps to improve performance through a support plan under the Appraisal Policy has failed to achieve an acceptable level of performance.

- Managers in an Academy have the right and obligation to expect a high quality of performance from employees working at the Academy. This Procedure seeks, where necessary, to bring about improvements in the accuracy, quality or quantity of an employee’s work whilst ensuring that employees are treated consistently and fairly. At every stage, concerns about an employee’s performance will be discussed with that employee who will be advised of any complaints made against him or her and will be given an opportunity to state his or her case before any decisions are made.

- This Procedure gives full delegated powers to any Panel, the Principal or other authorised manager within its processes.

- Where the outcome of a meeting under this procedure may result in a written warning the employee will be entitled to be accompanied at the meeting by a workplace colleague of his/her choice or a representative of his/her trade union.

2. **Interpretation**

- Any question as to the interpretation or application of this procedure shall be determined by the Company.

- In the procedure the following expressions have the meanings assigned to them:
  - “chair” shall be taken to refer to a person chairing a panel of Governors or the Board of Governors itself;
  - “manager” or “management” shall be taken as reference to any person exercising his/her managerial responsibilities including Governors who are managing a process involving the Principal;

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*AET Group comprises of Academies Enterprise Trust (AET), London Academies enterprise Trust (LAET) and Unity City Academy (UCA)*
“normal pay” means normal contractual salary as determined by reference to the contract of employment of individuals concerned;

“receipt” shall be deemed to be the end of the second day after postage;

“an academy term” shall be taken to mean the normal notional term length indentified in the Burgundy Book;

“working days” shall mean the days Monday to Friday and shall include the days on which any communication is sent and received.

3. Roles and Responsibilities

3.1. The Company

Appeals will be heard by the Company’s Appeal Board where the Principal is the subject of the proceedings. Managers and Governors should seek advice from advisers with education and human resources experience and where appropriate, seek assistance with the process.

3.2. Governors

Governors should not normally be involved in the capability procedure before the dismissal stage. The exceptions are:

- in a capability procedure against the Principal, when the Chair of Governors will depute a member(s) of the Board of Governors to carry out the role of the manager in implementing the capability procedure;

- in cases of appeals against warnings or dismissal, when a member of the Company will hear the appeal.

Normally at least three Governors are required to sit on an Employees Disciplinary Committee, but this can be reduced to two in circumstances where this number is not reasonably practicable.

Appeals against warnings and dismissal will be heard by a panel from the local governing body of the academy from governors with no prior involvement in the proceedings. This will normally consist of three governors and a minimum of two.
3.3. Management

- Those in management positions are expected, through their delegated authority, to:
  - ensure there are clearly defined job descriptions and expectations;
  - ensure that standards of work are established and monitored in a consistent and fair manner;
  - ensure that information is communicated to and understood by employees;
  - ensure appropriate induction and training for all employees;
  - develop appraisal initiatives;
  - identify professional performance problems and give them appropriate consideration and support at the earliest possible stage;
  - implement the capability procedure in a timely, fair and reasonable manner as appropriate;
  - take all reasonable steps to provide appropriate aids and adaptations where employees have a disability.

- Although the Principal will normally implement the capability procedure, it may, and at the discretion of the Principal, be delegated to an appropriate senior manager either in part or in its entirety. In such circumstances the authorised manager will be empowered to issue warnings up to a final written warning, at which stage the manager must involve the Principal. Where differences of opinion arise, the Principal’s decision will prevail.

3.4. Employees

- It is the responsibility of each employee to:
  - achieve a satisfactory standard of work performance;
  - take all reasonable steps to maintain and update his or her appropriate level of skill and knowledge;
o seek help with any work problems;

o co-operate with any investigation by management into his or her capability and with the capability procedure where implemented;

o demonstrate the level of commitment required to effect improvement where his or her performance is unsatisfactory.

Employees subject to the capability procedure shall be advised to seek advice from their Professional Association or Trade Union at the earliest opportunity.

4. Monitoring Arrangements

- Monitoring of an individual employee’s performance shall include observations of a range of relevant duties and functions.

- An objective record of all observations shall be kept and used to assist with the evaluation of performance.

- Those monitoring performance shall offer structured feedback and instruction to help the employee improve performance. If a training course, observation of good practice, or other assistance from a colleague would be helpful, these shall be arranged as soon as possible, but should not unreasonably interrupt the timing of the procedure.

- At interviews and review or monitoring meetings, the employee has the right to receive explanations of assessments of, and to discuss matters relating to, his/her capability before any decisions are reached.

5. Written Records

- All relevant documentation shall be made available to the employee and his or her representative at the earliest reasonable stage.

6. Representation

- A employee has a legal entitlement to be accompanied by a workplace colleague of his/her choice or a representative of his/her trade union at all meetings where the outcome may be a disciplinary warning or dismissal. This includes hearings
and appeals. If the employee’s chosen companion is not available at the time proposed for any meeting or hearing, the companion may offer an alternative date which should not normally be later than 5 working days from the original date. If the alternative date is not suitable to the employer a further date should be identified following consultation with the employee.

7. **Timing of Process**
   - Any potential problems over arranging meetings should be avoided by the establishment of agreement, at the earliest possible stage of the procedure.
   - The implementation of the procedure should not be subject to undue delay, but should recognise the need to accommodate time for training courses and other such assistance to impact on the employee’s performance.

8. **Warnings**
   - Except in circumstances identified in 1.2 of the Capability Policy, written warnings will be disregarded for capability purposes, once acceptable performance has been achieved, after the following maximum periods:
     - 2 terms for a written warning;
     - 3 terms for a final written warning.

9. **Appeals**
   - All appeals will take the form of a hearing, at which the employee will have the right to attend, and to be accompanied. Key points for hearings will include:
     - no view should be reached until the representations from all parties have been taken into account;
     - those hearing cases will report any attempts to influence them and declare as early as possible any issues which could be perceived as undermining their impartiality;
     - all proceedings should be regarded as confidential and only the final decision should be reported to third parties.
• Appeals should normally be restricted to considering:
  • the reasonableness of the decision made, based on the evidence presented by both parties to the appeal hearing;
  • any new evidence accepted as relevant by the appeal committee and presented at the appeal hearing;
  • procedural irregularities.
• Where an appeal is upheld, the matter should be referred back to the manager to be reconsidered or for further appropriate action.
• Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

10. Dismissal

• In making a decision to dismiss an employee on the grounds of lack of capability the Employees Disciplinary Committee should consider:
  • the extent of the concerns, relevant evidence gathered during the appraisal and capability processes and the representations made by the manager and the employee;
  • whether the appraisal and capability procedures have been followed and applied in a fair and reasonable manner;
  • the advice of any advisers.

• The procedure for dismissal and dismissal appeal hearings shall be the same as for appeals against formal warnings as outlined above.

11. Sickness Absence

• Sickness absence should be treated sympathetically and in accordance with the Academy's sickness absence management policy.

• While such absences should not impede unduly any capability procedure, this will depend upon the level of evidence available regarding the employee’s performance and each individual case will need to be assessed on its merits.
- Where appropriate, advice should be sought immediately from an Occupational Health Adviser on cases of sickness absence which may unreasonably impede the discharge of the capability procedure.

- Reasonable steps should be taken to enable the employee to attend meetings and hearings held under the Capability Procedure. Any employee claiming inability to attend on health grounds must provide a medical certificate stating that s/he is physically incapable of attending and/or that s/he is unable, on mental grounds, to participate reasonably in the proceedings.

- Where sufficient evidence is available, meetings under the process may proceed in the employee’s absence, if a delay would otherwise unreasonably compromise the maximum time set aside for the procedure. In such cases a full account of any evaluation of the employee’s performance should be provided in a letter confirming the decisions taken. Full consideration must be given to any written submission made by or on behalf of the employee.

- In cases of other forms of absence, consideration will be given to whether the relevant principles above should be applied.

12. Grievances

- In exceptional circumstances a employee may raise a grievance about the behaviour of the Principal or other manager during the course of implementing the capability procedure.

- Normally, however, a grievance cannot be brought purely on the grounds that the capability process has been invoked, unless, for example, there is reason to suppose that the process has been commenced maliciously or prosecuted in an oppressive manner.

- Depending on the circumstances it may be appropriate to suspend the capability procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the employee has been mistreated and consideration should be given to bringing in another manager to deal with the capability case.
• It follows, therefore, that the grievance procedure is not necessary where the employee simply wishes to challenge the assertion that they are lacking in capability or the application of the capability procedures since these matters will be dealt with within the capability process, including the right of appeal.
APPENDIX

Glossary and Status of the Policy and Guidance

Glossary

Throughout this policy and guidance (where applicable), the terms shown below will have, or include, the following meanings:

- **Principal** includes Headteachers where these are in post;
- **Vice-Principal** includes Deputy Headteachers where these are in post;
- **Company** refers to the AET Group; **Department** refers to the Department for Education and/or its predecessors and successors;
- **Line Manager** includes any members of teaching and support employees with management responsibility for other employees.

Status

This policy and/or guidance does not form part of any employee’s contract of employment, unless otherwise stated, and it may be amended at any time.