



# CAPABILITY POLICY AND PROCEDURE

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Reviewed by the SLT MAT Board

“The Trustees of the Southport Learning Trust are committed to safeguarding and promoting the welfare of children and young people at every opportunity and expect all staff and volunteers to share this commitment”

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## 1. Policy Formation

This policy sets out the Southport Learning Trust capability procedure and applies only to employees where there are serious concerns regarding performance that the appraisal process has been unable to address. The policy is reviewed annually and consulted on with staff and Trade Unions.

## 2. Informal Procedure

It is part of the normal duties of a Headteacher and other Managers within the Trust schools to monitor the competence of their staff and to attempt to improve it by informal advice, support and encouragement. Nothing in this procedure is intended to inhibit informal action of this nature. The importance of supportive action before any formal procedures are involved must be stressed.

The informal procedure begins with a meeting between the appropriate Manager and member of staff to identify areas of concern and agree an action plan to move forward.

The member of staff may ask their union representative or colleague to attend. The meeting should establish:

- That the individual understands the standards of work required and understands where they are not meeting them;
- That the standards set are achievable;
- Whether the role completed by the individual has changed significantly. This may involve checking that the job description for the role is up to date;
- Any health or personal issues which may be affecting the individual's performance. A decision may be taken to refer the individual to occupational health;
- Whether there is a training issue;
- The support that can be offered to the employee;
- Timescales being given for the informal procedure;
- A date for the next review;
- That failure to improve could result in formal action under this policy which could ultimately lead to dismissal;

Agreements reached at this meeting will be put in writing to ensure that both parties have clarity.

If following the review period, the individual has met the required standard the employee will be informed in writing that no further action will be taken. A decision may also be taken to extend the informal review if the

employee has improved but not yet met the required standards. Failure to make the necessary improvement will result in the formal procedure being invoked

### **3. Movement to the Formal Capability Procedure**

At least ten working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. Employees are entitled to request an alternative date which is within five days of the original date.

### **4. Formal Capability Meeting**

This meeting is intended to establish the facts. It will be conducted by the Headteacher or Deputy/Assistant Headteachers for employees of the Trust school. If the individual works for the Central Services Team the meeting will be conducted by their Line Manager. If the capability meeting concerns the Headteacher, it will be conducted by the Chair of the LGB (Local Governing Board) and the Executive Headteacher. If the capability meeting concerns the Chief Executive Officer, it will be conducted by the Chair of Trustees.

The meeting allows the employee, accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent, to respond to 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.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to address through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting, for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the professional shortcomings e.g. which of the standards expected of teachers are not being met;
- give clear guidance on the improved standard of performance needed to ensure that the employee 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 the necessary improvement has been made;
- 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 in straightforward cases could be between four and twelve working weeks. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place; and
- warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

### **5. Monitoring and review period following a Formal Capability Meeting**

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a

formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

## **6. Formal review meeting**

As with formal capability meetings, at least ten 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 their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease, and the appraisal process will re-start. In other cases:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.

As before, notes will be taken of formal meetings 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 that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The employee will be invited to a decision meeting.

## **7. Decision Meeting**

As with formal capability meetings and formal review meetings, at least ten 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 their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

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 performance remains unsatisfactory, a decision will be made that the employee should be dismissed.

The employee will be informed as soon as possible 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.

## **8. Decision to Dismiss**

The power to dismiss staff in a Trust school rests with the school Headteacher. The power to dismiss a Headteacher of a Trust School rests with the Executive Headteacher. The power to dismiss a member of the Central Services Team lies with the Division Lead.

## **9. Dismissal**

In the event the decision to dismiss has been taken, the school Headteacher/Executive Headteacher/Division Lead will dismiss the employee with notice.

## **10. Appeal**

If the employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days of the decision, setting out at the same time 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 employee.

The appeal will be dealt with impartially and, wherever possible, by governors who have not previously been involved in the case.

The employee will be informed in writing of the results of the appeal hearing as soon as possible.

## **11. General Principles Underlying this policy**

### **ACAS Code of Practice on Disciplinary and Grievance Procedures**

The Capability Policy and Procedure will be implemented in accordance with the provisions of the ACAS Code of Practice.

## **12. Confidentiality**

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher, Divisional Lead and governing body to quality-assure the operation and effectiveness of the appraisal system. The Headteacher/Divisional Lead or appropriate colleague might review all employees' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The Headteacher/Divisional Lead might also wish to be aware of any pay recommendations that have been made.

## **13. Consistency of Treatment and Fairness**

The Trust is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

## **14. Definitions**

Unless indicated otherwise, all references to "employee" include the Headteacher.

## **15. Delegation**

The Scheme of Delegation will apply and should be adhered to in all circumstances.

## **16. Grievances**

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Reference should be made to the Staff Grievance Policy and Procedure. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

## **17. Sickness**

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the Trust's Staff Attendance Management Policy and will be referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

## **18. Links**

This policy has been reviewed and amended using the following documents: -

- DFE Teacher appraisal and capability – A model policy for schools (Revised March 2019)