Eastwood Park Academy Trust



Capability Policy

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# 1.0 Definition

The minimum standard expected of all employees is the satisfactory performance of the tasks as set out in their job description, to the level set out in the person specification for that job and any standards applicable to the role.

The performance of staff is monitored and managed on a day to day basis by line managers and through the [Performance Management Policy](http://intra-e-web/Staff/Policies/Sickness_Absence_Management_PROCEDURE_Sept_08.docx).

The [Capability Policy](http://intra-e-web/Staff/Policies/Sickness_Absence_Management_PROCEDURE_Sept_08.docx) sets out arrangements that will apply where an employee’s performance falls below the minimum standard of competence that is expected of them. A summary of the procedure is set out at **Appendix A.**

# 2.0 Capability Procedure

## 2.1 Monitoring Period under the Performance Management Procedure

Where evidence emerges that an employee’s performance has fallen below the minimum standards expected of them, this will be discussed with the employee under the [Performance Management Policy](http://intra-e-web/Staff/Policies/Sickness_Absence_Management_PROCEDURE_Sept_08.docx). The line manager or other appropriate manager, will:

* Set out the nature and seriousness of the concerns.
* Confirm any previous discussions/support.
* Give the employee the opportunity to comment on and discuss the concerns.

A monitoring period will usually be set in which the line manager will:

* Set targets for future performance (in addition to existing performance management targets).
* Agree any further support with the employee.
* Make it clear how, and by whom, progress will be monitored and when it will be reviewed.
* Explain the consequences and process if no, or insufficient, improvement is made.

The period of monitoring will normally be between 4-8 working weeks; the precise length being determined by the seriousness of the issues and individual circumstances. Exceptionally, an extension of up to 4 weeks may be granted, where there has been significant improvement or where there has been significant absence during the monitoring period.

## 2.2 Formal Capability Procedure

In the most severe cases, and where there has been insufficient improvement following any monitoring period, the Performance Management Process will be suspended and the Formal Capability Procedure will be invoked.

The employee will be called to a Formal Capability Meeting conducted by an appropriate manager. This will be the Principal where there have been previous warnings and dismissal is therefore a possible outcome. Where the Principal is the subject of the procedure, the meeting will be conducted by CEO. Where the CEO is the subject of the procedure, the meeting will be conducted by Chair of Trustees.

The employee will be given at least five working days' notice, in writing, of the date, time and place of the meeting. When given this notice, the employee will be:

* Informed of the nature and details of the concerns.
* Informed of his/her right to be accompanied at the meeting by a representative.
* Supplied with a copy of the evidence which is to be considered at the meeting.
* Given an indication of the possible penalty which could be imposed if the concerns are found to be substantiated, e.g. a formal warning or termination of employment by dismissal where previous warnings have been issued.
* Informed who will be involved in the meeting, including the name of any advisers.

Not later than two working days before the meeting the employee:

* Must supply the name and status of his/her representative.
* May submit a written statement or other supporting written evidence if s/he wishes, either direct or through his/her representative.

At the meeting the concerns will be explained to the employee and they will have the opportunity to make representations. An employee is entitled to be accompanied by a trade union/professional association representative, colleague, friend or other appropriate person, at all stages of the formal procedure. The employee must make his/her own arrangements for this.

## 2.3 Outcomes

Where the concerns are substantiated the following decisions may be made:

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| **Substantiated Nature of Concerns** | **Outcome/Decision** |
| Where there is serious concern about the standard of performance or there has been insufficient progress following a period of monitoring (4-8 weeks). | Written warning (normally for one year) and a continuation of the formal monitoring period for a further 4-8 weeks. |
| Where the concerns are particularly serious or there has been insufficient progress following a previous warning or period of monitoring (4-8 weeks). | Final Written Warning (normally for one year) and a formal monitoring period for a further 4-8 weeks. |
| In the most serious cases where there has been:  a) No progress following a previous warning/period of monitoring.  b) Insufficient progress following a final written warning. | Dismissal with notice. Employees will normally be placed on paid suspension for the period of notice, pending any appeal. |

Where a warning is determined, the employee will be informed, normally at the end of the meeting, and in any case, in writing, of:

* The nature and seriousness of the concerns.
* The improvement in performance that is required during the formal monitoring period to remove them from the formal process (i.e. through set targets).
* The support that will be available to help the member of staff improve.
* The end date of the formal monitoring period and how performance will be monitored during this period, including any review dates.
* The fact that any pay progression due at the next pay review is likely to be withheld.
* The consequences of failure to improve to the required standard.
* In the case of a formal warning or dismissal the employee will also be notified of his/her right of appeal.

In the case of dismissal, employees will normally be placed on paid suspension for the period of notice, pending any appeal by them.

## 2.4 Appeals

An employee has a right of appeal against any warning/dismissal. An employee may forego his/her right to appeal.

Notice of any appeal must be given in writing to the Principal, or in the case of the Principal, the CEO, or in the case of the CEO, the Chair of Trustees, within five working days of receipt of the written notification by the employee of the outcome of the formal meeting, clearly stating the grounds upon which the appeal is made.

Appeals will be heard the Disciplinary Appeals Committee. The decision of those hearing the appeal is final, subject to the employee’s rights at law.

The procedures and conduct of appeals shall be the same as for formal meetings.

## 2.5 Records

Notes of formal meetings and appeal hearings will be taken and shared with the employee as soon as possible after the meeting/hearing. The employee has the right to challenge the accuracy of any minutes and to have these recorded.

Except as necessary as a reasonable adjustment, no-one may record meetings or hearings, except for the Clerk, to assist with producing the minutes, where permission is given by all parties.

Details of any formal action, including any warnings will be retained on the employee’s personal file. Warnings will be disregarded after the expiry of their life.

Details of any current capability procedures and/or warnings, will be referred to when responding to an employee reference request.

## 2.6 Timing/Location of Meetings/Hearings

Employers are obliged to deal with performance issues without undue delay. It is expected that employees and their representatives will assist in this aim.

Where possible, timings of formal meetings and appeal hearings will be agreed with the employee and his/her representative and will normally take place during the working day.

Employees and their representatives should make themselves available to attend meetings within a reasonable period of time. If, however, the employee’s chosen representative is not available, for a reason that was not reasonably unforeseeable, at the time proposed for any meeting or hearing, one alternative date will be set, normally no later than five working days from the original date.

Where possible, meetings and hearings will be held at a mutually convenient location, which meet any special needs of attendees and which may sometimes be away from the normal place of work, where this is considered to be appropriate.

Reasonable time off with pay will be granted to employees who are acting as representative for an employee who is subject to the capability process.

## 2.7 Grievances raised during Capability Procedures

If an employee raises a grievance during the course of the capability procedure, related to the case, the grievance will normally be dealt with as part of the Formal Capability Meeting/Appeal. If appropriate, given the nature of the grievance, the capability process may be temporarily suspended in order to deal with the grievance.

## 2.8 Ill Health during Capability Procedures

While it is recognised that capability procedures can be distressing and may sometimes lead to an employee feeling unwell, the Governing Body believes that it is in everyone’s best interest to conclude matters as quickly as possible and will work with the employee to achieve this.

If sickness absence appears to have been triggered by the commencement of the capability procedure, the case will be referred immediately to an Occupational Health Adviser to assess the employee’s fitness for participation in the capability. Where an employee remains off sick, the matter will subsequently be dealt with in accordance with the [Sickness-Absence Policy](http://intra-e-web/Staff/Policies/Sickness_Absence_Management_PROCEDURE_Sept_08.docx).

# Appendix A

