



**FAIRCHILDES
ACADEMY
COMMUNITY
TRUST**

**FAIRCHILDES ACADEMY COMMUNITY TRUST
CAPABILITY PROCEDURE – SUPPORT STAFF**

2022

CAPABILITY PROCEDURE – Support Staff

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1. Aims

1.1 The FACT Board of Trustees has agreed this Policy and as such, it applies to all support staff employed at the Academies within the Trust. This procedure will apply in full to employees on satisfactory completion of their probationary period.

1.2. In some cases, it may be difficult to distinguish between a performance problem caused by lack of capability, negligence or misconduct. If in doubt, advice will be sought from FACT's HR provider.

1.3 For the purpose of this procedure, lack of capability is defined as a situation in which an employee fails consistently to perform his or her duties to a professionally acceptable standard.

1.4 This procedure does not cover the normal day-to-day supervision where a headteacher/line manager may have to counsel, train, appraise or otherwise discuss with an employee instances of poor performance. It is intended to cover those cases where an employee's work performance is below the required standard through lack of capability.

1.5 If an employee commences sick leave whilst subject to the capability procedure the capability procedure will continue unless medical advice reveals an underlying medical condition

in which case the situation will be considered in the light of the facts and circumstances of the particular case.

2. Introduction

2.1 Managing poor work performance is one of the most difficult tasks a manager or supervisor has to tackle, yet it is vital to the success of the schools. Efficiency and service delivery may be affected and safety could be placed at risk by an employee's incompetence or negligence. In addition, relations with the school's stakeholders and members of the community may be affected, or even damaged, where standards are not being met.

2.2 Headteachers and line managers have a responsibility to manage work performance and any problems that arise. These guidelines are designed to give a framework for tackling poor performance with good management practice and by following a defined procedure. The relevant employment legislation and case law have been taken into account in the development of this procedure.

2.3 Addressing poor performance of workers is necessary for the efficient operation of the Trust and the delivery of high quality, value for money services. This procedure:

- Allows headteachers/line managers to address issues of unsatisfactory performance and seek improvements;

- Ensures that employees covered by the procedure are treated fairly and consistently;
- Encourages all employees to achieve and maintain high standards of job performance;
- Supports the delivery of high quality services;
- Helps to safeguard the integrity and good reputation of the school and the Trust.

2.4 If an employee has any difficulty at any stage of the procedure because of a disability, or wishes to inform management of any medical condition they consider relevant, they should discuss the situation with their headteacher/ line manager as soon as possible.

3. Performance Development

3.1 Employee performance should be managed routinely, by appraisals, one-to one meetings, a mid-year review and an annual performance discussion. Initial concerns about performance should be addressed as soon as possible as part of this process, with appropriate support being provided and reasonable timescales given for improvement.

3.2 If performance does not improve to a satisfactory level, this would need to be raised and addressed as soon as possible. Examples of not meeting performance targets will need to be provided and the measures taken to support the employee in improving their performance will need to be demonstrated. The Capability Procedure may be invoked where the employee's performance is unsatisfactory or where there are other performance concerns not related to the objectives.

3.3 When concerns arise in relation to capability that are not related to performance objectives or competencies the procedure may be followed, with new objectives added to the employee's performance objectives in relation to the areas causing concern.

3.4 Where the Capability Procedure is invoked, the normal performance cycle under the appraisal process will be suspended.

4. Link with other Procedures

4.1 Unsatisfactory performance due to sickness or health issues will be addressed under the Sickness procedure. Where poor performance is due to misconduct, the Disciplinary Procedure will apply.

4.2 Grievances raised during the capability process will normally be dealt with as part of this procedure. If the employee raises the complaint only after the capability proceedings have finished and it is on substantial new grounds then it will be necessary for the employee grievance procedure to be completed in full.

5. Accredited Trade Union Officials

Normal performance standards apply to officials' conduct as employees but action under this procedure should not be taken without inviting the involvement of the appropriate professional Trade Union Official or that official's nominated representative.

6. Representation

6.1 Employees have the right to be accompanied by a certified Trade Union official or a work colleague at all formal meetings of this procedure. Employees are responsible for arranging their own representation. It is suggested that employees who are members of a recognised trade union contact their union representative if subject to action under this procedure.

6.2 Employees may not be represented by a person who may prejudice the fairness of the process or who may have a conflict of interests.

6.3 Employee representatives can address formal meetings and assist employees in presenting their case. However, questions directed at employees should be answered by the employee concerned.

7. Timescales and Definition of a Working day

7.1 For the purposes of the operation of this Support Staff Capability Procedure, timescales are expressed in working days. For term time only support staff a working day should be reckoned as a day that a school is open for pupils. Where capability issues arise just before a school holiday, arrangements to resolve the matter speedily should be discussed between the parties. An intervening school holiday should not of itself be a cause for an undue delay in resolving the matter.

For all year round staff a working day is defined as Monday to Friday calendar days. The following timescales (in working days) should be adhered to:

- Written notice of first formal review meeting – 10 working days
- Written notice of final formal meeting – 10 * working days (*NB this may require longer if the case is complex and involves a substantial volume of paperwork)
- Written notice of outcome of formal meetings and reviews – 5 working days
- Written notice of employee's intention to appeal – 10 working days following receipt of the decision
- Written notice of appeal hearing – 10 working days
- Written notice of outcome of appeal hearing – 5 working days

NB Warnings about work performance should be given individually. A general warning given to all employees is of limited weight and limited duration. Warning the employee that their job is at risk is a necessary part of this process. The employee

must be left in no doubt that unless their work performance improves to the required standard they could be dismissed. The warning is issued by the headteacher/line manager but it is not a disciplinary sanction and cannot be taken into account in any disciplinary matter.

Advice should be sought from FACT's HR provider on this and all other aspects of dealing with an employee's poor performance.

8. Formal Reviews

8.1. At least 10 working days before a formal meeting, the employee will be given, in writing:

- The time date and venue for the meeting;
- The reason for the meeting, including an outline of the concerns and a summary of any action taken to date;
- Copies of any documentation to be relied on at the meeting;
- Notification of his/her right to be represented;
- The opportunity to submit any relevant documents that the employee intends to rely on.

(This must be provided 3 working days prior to the formal meeting.)

8.2 Management will seek a mutually agreeable date and time for formal meetings with the employee's representative where this is known. Where an employee's representative cannot attend at the time proposed for the hearing management will be obliged to postpone the hearing to an alternative time and date suggested by the employee provided that:

- a) the alternative time is reasonable; and
- b) it falls within the five working days following the day originally proposed in the notice of the hearing. If the employee fails to attend a formal meeting the manager may proceed in the employee's absence.

8.3 Meetings under the formal stages of this procedure will usually be triggered through the appraisal process and associated one-to-one meetings or where there are other performance concerns not related to these processes. In exceptional circumstances, a formal meeting may also be triggered where a serious performance issue arises suddenly e.g. through a disciplinary or complaint investigation.

8.4 First Formal Review

8.4.1 A first formal meeting will be held where an employee's performance has been rated unsatisfactory as mentioned in paragraph 3.3 or 3.4.

8.4.2 At the meeting, the headteacher/ line manager will:

- Set out the standards of performance expected of the employee and explain how the employee's performance has fallen short and the impact that this is having on service delivery;

- Confirm what action has been taken to date to seek an improvement in performance.
- Invite the employee to explain their side of the situation.

8.4.3 Where a performance concern is confirmed the headteacher/line manager will set a review period and an action plan in discussion, and if possible in agreement, with the employee which details:

- Suitable targets and timescales for an improvement in the employee's performance. Timescales should not normally exceed 3 months or be shorter than 4 weeks;
- Any appropriate measures to assist and support the employee in making the necessary improvement; and
- Inform the employee that a meeting under the Final Formal Review will be arranged if, during or at the end of the review period, the required improvement has not been made;
- Any other action to be taken.

8.4.4 After the meeting the headteacher/line manager will confirm the outcome in writing. Where a performance concern is confirmed, the letter will include a written caution of the possible consequences if performance does not improve to the required level.

8.4.5 The headteacher/line manager will meet with the employee during the review period to monitor progress, advise the employee accordingly and decide whether or not any further support or assistance should be applied.

If, at the end of the review period, there has been a satisfactory improvement in the employee's performance the employee will be advised of this in writing and reminded of the need to sustain the improvement.

8.5 Final Formal Review

8.5.1 A final stage meeting will be arranged where:

- Performance has not improved to the headteacher/ line manager's satisfaction following the first formal review, or
- An employee's performance, having improved satisfactorily after the first formal review, later becomes unsatisfactory within the following 12 months.

8.5.2 Meetings at the Final Formal Review will be with a Senior Manager or members of the Academy Committee. A member of staff of FACT's HR provider should be invited to be present at meetings under the final review to give advice on the application of the procedure.

8.5.3 To ensure fairness throughout the procedure, different governors must participate at the formal panel and appeal panel meetings.

8.5.4 The presenting manager (normally the headteacher/ line manager who undertook the review at the First Stage) will be invited to:

- Set out the standards of performance expected of the employee;

- Explain how the employee's performance has fallen short and the impact that this is having on service delivery;
- Explain what action has taken place to allow the employee the chance to improve their performance;
- Give an assessment of the employee's performance following the review;
- Consider any representations made by or on behalf of the employee and any statement of intent they may wish to make about their future performance.

8.5.5 Where it is considered that the employee's performance is unacceptable, that sufficient opportunity to improve has been given, that there is no reasonable likelihood of the required standard of performance being met within a reasonable time, and that adequate warning has been given of the possible consequences, a decision may be made to either redeploy the employee into another suitable job at the same or lower grade or give the employee notice of dismissal. Where the job is of a lower grade, this will be without a salary protection.

8.5.6 Where it is felt that the employee should be given a further opportunity to improve their performance, a final review period may be set. This will be accompanied by a final caution that employment is at risk unless a satisfactory improvement is made. The final review period should not normally last longer than 3 months or be shorter than 4 weeks. If the required improvement is not met, the meeting will be reconvened to consider dismissing the employee on the grounds of capability.

9. Appeals

9.1 Employees may appeal against a decision to:

- Give a formal caution;
- Terminate employment.

9.2 Appeals may only proceed on the following grounds:

a) The proper procedure was not followed in which case the appeal panel will consider whether this materially affected the decision.

b) The decision reached and/or the sanction given was unreasonable considering the information provided.

c) New evidence, which was not reasonably available at the time, has become available.

9.3 Appeals must be submitted in writing within 10 working days, from the date of receiving written confirmation of the outcome and must specify the grounds of appeal.

9.4 Appeals against dismissal or action short of dismissal will be heard by Senior Manager(s) or members of the Academy Committee, who has had no previous involvement in the case. A member of staff of FACT's HR provider should be invited

to be present at appeal hearings to give advice on the application of the procedure. The appeal decision is final.

9.5 Decisions made at the Final Stage are not stayed pending the outcome of an appeal.

Employees who are dismissed will be removed from the payroll and reinstated, with no loss of continuity of pay, if their dismissal is over-turned on appeal.

Date of review: January 2022

Policy approved by/on: Board of Trustees, 9th February, 2022

Date of next review: January 2024