



# Beacon Academy Trust

A COMPELLING VISION FOR SUCCESS

# Capability Procedure (Support Staff)

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**General principles underlying the procedure.**

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**Adoption by Local Governing Body:**

With delegation of Authority to dismiss given to the Headteacher/Principal

Capability of staff can be managed by senior managers at the discretion of the Headteacher/Principal

The Trust: BMAT Academies

Date of Implementation:

Signature of Chair of Trust: .....

Signature of Headteacher/Principal: .....

## 1. Introduction

- 1.1 The performance of support staff in Beacon Multi Academy Trust (BMAT) “the Trust” is monitored and managed on a day to day basis by the Headteacher/Principal (and other designated managers) and through performance management.
- 1.2 However, where there are serious concerns about performance or where the development/support has failed to address performance problems, the capability procedure should be used.
- 1.3 For the purposes of this procedure, lack of capability is defined as a situation where a member of staff or the fails consistently to perform his or her duties to a professionally acceptable standard.
- 1.4 The Trust is required to establish the following committee:

- **Appeals Committee** – to hear appeals against any warnings or dismissal decision as a result of capability.

The quorum for both is at least three Governors, to be chosen from those appointed by the Trust. No member of either Committee should have been involved in the procedure prior to the formal stage. It is strongly recommended that a Human Resources Advisor is requested to support any Committee.

## 2. General procedures

- 2.1 At every stage of the procedure the Headteacher/Principal (or other designated manager) should clearly identify and specify:
  - The expected performance standards
  - The improvements required and how these will be measured
  - A timetable for monitoring and review
  - Any support which will be put in place

This should be discussed with the member of staff concerned and always confirmed in writing.
- 2.2 The member of staff’s performance should be closely monitored throughout any review period and they should be given feedback on their progress and be invited to comment.
- 2.3 The member of staff has the right to be accompanied by their Trade Union representative or Professional Association representative or a work colleague and should be strongly advised to exercise this right.

- 2.4 If the member of staff's chosen representative is not available at the time proposed for any meeting or hearing, one alternative date will be set, normally no later than 5 school days from the original date.
- 2.5 The Headteacher/Principal is advised to consult with the Human Resources Advisor before taking action.
- 2.6 Where the Headteacher/Principal intends to implement this procedure, s/he should ensure that the member of staff concerned is provided with a copy.
- 2.7 The member of staff has the right of appeal against any warning issued as part of the procedure and also the right of appeal against dismissal by reason of capability.
- 2.8 In exceptional cases, the Headteacher/Principal (or other designated manager) may foreshorten or miss out a stage of the procedure. For example:
  - Where a member of staff's performance falls far short of an acceptable standard and where support and guidance fail to produce any significant improvement
  - Where the member of staff's lack of competence is leading to the education of pupils being jeopardised.

Where it appears that this may be necessary, the Headteacher/Principal or line manager should ensure that the employee and his/her Trade Union or Professional Association representative are advised of this at the earliest possible stage.

- 2.9 Members of staff cannot raise a grievance to complain about, or object to the fact that The Trust may take action under this procedure. The only exception would be if the grievance is that the action amounts to, or would amount to discrimination, bullying or harassment. In such cases, consideration should be given to suspending the capability procedure for a short period whilst this is looked into. The decision about whether or not to suspend the capability procedure, and for how long, is at the sole discretion of the Headteacher/Principal, who should consult a HR Advisor.
- 2.10 Where the capability concerns a trade union representative, this should be discussed at the earliest opportunity with the Branch Secretary/Convenor or full time official, who should be invited to accompany the individual to any meetings under the Procedure. Advice must be sought from the HR Advisor before commencing any action under the procedure.
- 2.11 While it is recognised that the capability procedure can be distressing and may sometimes lead to a member of staff feeling unwell, it is in everyone's

best interest to conclude matters as quickly as possible. The Trust will work with the member of staff to achieve this. If sickness absence appears to have been triggered by the commencement of the capability procedure, the member of staff will be referred immediately to an Occupational Health Adviser to assess their fitness for participating in the procedure. Where a member of staff remains off sick, this will be dealt with in accordance with the Sickness Absence Procedure.

### **3 First capability meeting**

#### **Prior to the meeting**

- 3.1 If the member of staff's performance is unsatisfactory and has not reached the required standard despite target setting, monitoring and support as part of the process, they will be required to attend a capability meeting.
- 3.2 The meeting will be conducted by the Headteacher/Principal or another designated manager.
- 3.3 The member of staff will be given at least 5 school days notice, in writing, of the time, date and location of the meeting. The letter should also:
  - Specify the nature and details of the unsatisfactory performance;
  - Include a copy of any evidence which is to be considered at the meeting;
  - Confirm the member of staff's right to be accompanied by a Trade Union or Professional Association representative or a work colleague;
  - Inform the member of staff of who will be involved in the meeting;
  - Give an indication of the possible sanction which could be imposed if the concerns are found to be substantiated.
- 3.4 If a member of staff intends to be represented or accompanied at the meeting (by their Trade Union representative or Professional Association representative or a work colleague), they must supply the name and status of their representative no later than 2 school days before the meeting.
- 3.5 If the member of staff intends to submit a written statement or other supporting written evidence they may do this either directly or through their representative no later than 2 school days before the meeting.

#### **The meeting**

- 3.6 At the meeting, the Headteacher/Principal or manager should set out the specific concerns regarding the member of staff's performance, together with any evidence to support this, referring as appropriate to how this was dealt with under the and any support that has been offered.

The member of staff and their representative will then be given an opportunity to give their response, and to present their case. This may provide new information or a different context to the information/evidence already collected.

Having considered all the statements and evidence presented, The Headteacher/Principal or manager may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through day to day management and supervision. In such cases, the capability procedure will come to an end.

- Specify the nature and details of the unsatisfactory performance;
- Include a copy of any evidence which is to be considered at the meeting;
- Confirm the member of staff's right to be accompanied by a Trade Union or Professional Association representative or a work colleague;
- Inform the member of staff of who will be involved in the meeting;
- Give an indication of the possible sanction which could be imposed if the concerns are found to be substantiated.

- 3.7 If the member of staff intends to be represented or accompanied at the meeting (by their Trade Union representative or Professional Association representative or a work colleague), they must supply the name and status of their representative no later than 2 school days before the meeting.
- 3.8 If the member of staff intends to submit a written statement or other supporting written evidence they may do this either directly or through their representative no later than 2 school days before the meeting.
- 3.9 At the meeting, the Headteacher/Principal or manager should set out the specific concerns regarding the member of staff's performance, together with any evidence to support this, referring as appropriate to how this was dealt with under day to day supervision and any support that has been offered.
- 3.10 The member of staff and their representative will then be given an opportunity to give their response, and to present their case. This may provide new information or a different context to the information/evidence already collected.
- 3.11 Having considered all the statements and evidence presented, The Headteacher/Principal or manager may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through day to day supervision. In such cases, the capability procedure will come to an end.

- 3.12 The Headteacher/Principal or manager 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.
- 3.13 In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the Headteacher/Principal or manager will:
- Confirm the standards of performance which are not being met;
  - Give clear guidance on the improved standard of performance needed to ensure that the member of staff 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 or not the necessary improvement has been made);
  - Explain any support that will be available to help the member of staff 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. In extreme cases where the education of pupils is jeopardised, the period given for improvement after the date of a formal warning should be no more than 4 school weeks. In very serious cases, this warning could be a final written warning.
  - Warn the member of staff formally that failure to improve within the set period could lead to dismissal.

### **Following the meeting**

- 3.14 A letter summarising the content and outcome of the meeting should be sent to the member of staff within 5 school days of the meeting taking place. If no further action is to be taken under the procedure, this should be confirmed to the member of staff, explaining that performance will be monitored through the day to day supervision. If this is not the case, the letter should clearly set out all the points covered in section 3.10 above. The member of staff will be responsible for forwarding a copy to their representative.
- 3.15 Where a warning is issued, the member of staff must be informed of the duration of the warning (normally one year) and of their right to appeal (please see section 7 below).

#### **4 Monitoring and review process**

- 4.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period.
- 4.2 The length of the monitoring period will depend on the circumstances of the individual case. In extreme cases where the education of pupils is jeopardised, this should be as soon as possible, within a reasonable period of time.
- 4.3 The member of staff will be invited to a second capability meeting, unless they were issued with a final written warning, in which case they will be invited to a capability hearing (please see section 6 below.)

#### **5 Second capability meeting**

##### **Prior to the meeting**

- 5.1 The Headteacher/Principal or manager should write to the member of staff concerned, giving at least 5 school days notice of the formal review meeting. The letter should advise the member of staff:
- Of the purpose of the meeting (i.e. to formally review the member of staff progress/improvement in the areas of performance and/or targets set at the first capability meeting;
  - Of any evidence which is to be considered at the meeting (including a copy of any written evidence);
  - Of their right to be accompanied by a Trade Union or Professional Association representative or a work colleague;
  - Who will be involved in the meeting;
  - That should the meeting find that no or insufficient improvement has been made, the likely outcome will be a final warning.
- 5.2 If the member of staff intends to be represented or accompanied at the meeting (by their Trade Union representative or Professional Association representative or a work colleague), they must supply the name and status of their representative no later than 2 school days before the meeting.
- 5.3 If the member of staff intends to submit a written statement or other supporting written evidence they may do this either directly or through their representative no later than 2 school days before the meeting.

### **The meeting**

- 5.4 At the meeting, the Headteacher/Principal or manager should summarise the performance improvements/targets which were set at the first capability meeting and review how far these have been met by the member of staff concerned, considering evidence to support this. This should include the outcomes of any interim meetings at which progress was reviewed.
- 5.5 The member of staff and their representative will then be given an opportunity to give their response, and to present their case.
- 5.6 If the Headteacher/Principal or manager is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.
- 5.7 In some circumstances, if the member of staff has made some improvement and the Headteacher/Principal or manager feels that the performance problems can be eliminated within a reasonable time, s/he may extend the monitoring and review period;
- 5.8 Where there has been no improvement or insufficient improvement in the member of staff's performance, the Headteacher/Principal or manager may, depending on the severity of the performance issues and the circumstances:
- Issue a final warning (which will normally be of 1 year's duration) **OR**
  - Move to a capability hearing (which could lead to dismissal) - see section 6.

### **Following the meeting**

- 5.9 A letter summarising the content and outcome of the meeting should be sent to the member of staff within 5 school days of the meeting taking place. If no further action is to be taken under the procedure, this should be confirmed to the teacher, explaining that performance will be monitored through day to day management.
- 5.10 Where a final warning is issued, the member of staff must be informed:
- Of the duration of the warning (normally one year);
  - That failure to achieve an acceptable standard of performance within the set timescale, may result in dismissal (following a capability hearing – see section 6 below);
  - Of the procedure and time limits for appealing against the final warning (see section 8).

- 5.11 The member of staff will be responsible for forwarding a copy of the letter to their representative

## **6 Capability Hearing**

### **Prior to the hearing**

- 6.1 As the Headteacher/Principal has delegated authority to dismiss, s/he will convene and chair the capability hearing and issue correspondence accordingly as set out below.
- 6.2 The Headteacher/Principal should write to the member of staff concerned, giving at least 5 school days notice of the capability hearing. The letter should advise the member of staff:
- Of the purpose of the hearing (i.e. to consider the member of staff's capability and whether their employment at the The Trust should continue);
  - Of any evidence which is to be considered at the hearing (including a copy of any written evidence);
  - Of their right to be accompanied by a Trade Union or Professional Association representative or a work colleague;
  - Who will be involved in the hearing;
  - That should the hearing find that the member of staff's performance is unacceptable, the likely outcome will be dismissal.
- 6.3 If the member of staff intends to be represented or accompanied at the hearing (by their Trade Union representative or Professional Association representative or a work colleague), they must supply the name and status of their representative no later than 2 school days before the hearing.
- 6.4 If the member of staff intends to submit a written statement or other supporting written evidence they may do this either directly or through their representative no later than 2 school days before the hearing.

### **The hearing**

- 6.5 At the hearing, the Headteacher/Principal should set out the specific concerns regarding the member of staff's performance, together with any evidence to support this, referring as appropriate to previous capability meetings held with the member of staff, targets set, support offered and degree of improvement or lack of improvement.

- 6.6 The member of staff and their representative will then be given an opportunity to give their response, and to present their case. This may provide new information or a different context to the information/evidence already collected.
- 6.7 Having considered all the available evidence and the member of staff's case, if the Headteacher/Principal feels that dismissal is not warranted, existing warning will remain in place. And this should be confirmed verbally to the teacher and then in writing.
- 6.8 If the Headteacher/Principal decides that dismissal is warranted, s/he will confirm this to the teacher, verbally and then in writing.

### **Following the hearing**

- 6.9 The letter confirming the decision of the meeting should be sent to the member of staff within 5 school days. The letter should:
- Summarise the issues discussed at the capability hearing;
  - Confirm the decision of the hearing.

If the decision was to dismiss, the member of staff must be informed of their last day of service, their right to appeal and the necessary time limits for this (see section 7 below).

- 6.10 The letter to the member of staff confirming dismissal must be authorised and signed by the Headteacher/Principal.
- 6.11 Dismissal will normally be with notice.

## **7 Appeals against warnings or dismissal**

- 7.1 A member of staff may appeal against any disciplinary action taken against him/her by giving notice in writing setting out their grounds for appeal within 5 school days (or 10 school days in the case of dismissal) to the Chair of the Trust, who will arrange for a meeting of the Appeal committee to be convened as soon as reasonably practicable (and normally within 15 school days) and inform all concerned of the date, time and place of the hearing at least 10 school days beforehand.
- 7.2 At an appeal hearing, the member of staff and the Headteacher/Principal shall each be entitled to appear and to be assisted. The member of staff may be accompanied/represented by a representative of a Professional Association, Trade Union or a work colleague. The Headteacher/Principal may be assisted by a HR Advisor.

- 7.3 The purpose of the appeal is to review the decision taken by the Headteacher/Principal, not to re-hear the case. The Appeal Committee may ratify, nullify or reduce the severity of the disciplinary action taken by the Headteacher/Principal. The comments of the Appeal Committee may be recorded alongside any warning it ratifies, nullifies or reduces.
- 7.4 The member of staff should be notified by the Chair of the Appeal Committee, in writing, of the outcome of the appeal within 10 school days. If this is not possible, the Chair of the Trust should write to the member of staff and give them an indication of when they will be notified of the outcome.
- 7.5 The Appeal Committee's decision will be final and may be either to uphold or reject the appeal.
- 7.6 If the Appeal Committee upholds the appeal it may either nullify or reduce the severity of the disciplinary sanctions (for example, a successful appeal against dismissal may result in the employee being reinstated, with a final warning).

## **8 Records**

- 8.1 Details of any formal action, including any warnings, should be retained on the member of staff's personal file. Warnings should be disregarded after the expiry of their life (normally one year).