

The Cam Academy Trust
Staff Capability Policy

To be read in conjunction with the Performance Management Policy

Approved in consultation with the Audit and Risk Committee on behalf of the Trust Board:	12 May 2015 24 February 2021
Consulted on with recognised trade unions:	10 March 2021
Reviewed:	September 2017 – Reviewed without changes March 2021 - Full document review March 2023 - Reviewed with one change - Reference to NQT changed to ECT
Next review:	March 2025
Responsible Officer:	Trust HR Manager
Category – 1	Version - 2

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Capability Policy

This policy applies to all teachers and the Headteacher and all support staff employed at our Schools as defined in paragraph 1 below.

1. Definitions

- 1.1. "Headteacher" also refers, where appropriate, to any other title used to identify the Headteacher.
- 1.2. "Employee" refers to any member of the school staff employed to work solely at a Trust school.
- 1.3. "Senior manager" refers to any member of the Leadership Group, as defined by the School Teachers' Pay and Conditions Document, or a senior support employee in cases involving support staff, delegated by the Headteacher, to deal with a capability matter under these procedures. A senior manager may only make a decision to issue a sanction up to and including a final written warning.
- 1.4. If the Headteacher, following consultation with the Chair of Governors/Trust, considers that there is no senior manager to whom they can reasonably delegate a specific capability matter, then the Headteacher will take the role of the senior manager for that specific case and the role of the "Headteacher", under this procedure, will be performed by a "Disciplinary Committee" of the Local Governing Body/Trust. The "Disciplinary Committee" will not consist of less than three governors, (except in circumstances provided for in the Secretary of State's guidance on the Staffing Regulations), none of whom will have had previous involvement in the case.
- 1.5. Where the capability being reviewed is that of the Headteacher, the role of the Headteacher will be undertaken by appropriate governors as indicated.
- 1.6. "Lack of capability" is defined as a situation in which an employee fails to consistently perform their duties to a wholly satisfactory standard of performance over a period of time.

2. Purpose

- 2.1. This policy sets out the framework for:
 - 2.1.1. Supporting their development within the context of the School's plan for improving educational provision and performance
 - 2.1.2. The standards expected of employees in their respective roles
 - 2.1.3. The arrangements that will apply if employees fall below the levels of competence that are expected of them
- 2.2. This policy does not form part of any employee's contract of employment, and it may be amended at any time following consultation. We may also vary any parts of this procedure, including any time limits, as appropriate in any case.

3. Application of the Policy

- 3.1. This policy sets out the formal capability procedure and applies to all school employees* (including the Headteacher) with the exception of early career teacher who will have their performance managed through the induction process. Concerns about the employee's performance will have been identified under the performance management process, but the employee has been unable to address these to a satisfactory standard. This capability process will not apply to early career teachers, who have their performance managed through the induction process.

*Where an employee has transferred into the Trust and has enhanced terms that are subject to TUPE then the enhanced terms will continue to apply.

4. Pre-capability Support Plans

- 4.1 Where a member of staff is considered to be under-performing, the Headteacher or Line Manager could instigate a pre capability support plan. A meeting would then be arranged with the staff member to outline the structure of the support plan and timeline for improvement, usually 6 weeks. It should be made clear to the staff member that if improvement is not made, formal capability may be invoked.

Capability Procedure

1. Formal Capability Meeting

1.1. This procedure applies only to employees about whose performance there are concerns and where the performance management process has been unable to address. If an employee's performance is not wholly satisfactory, the senior manager, or another person with line management responsibility for the employee, will invite the employee to a formal capability meeting to discuss their alleged poor performance as soon as possible.

1.2. The senior manager will write to the employee at least 10 working days in advance to inform them about:

- The date, time and place of the meeting
- The basic details of the concerns raised with the employee about performance during the process of performance management.
- The employee's right to be accompanied by a representative of their trade union or a workplace colleague of their choice (not a relative)
- The titles of enclosed copies of any documents to be used at the meeting
- Names of any witnesses to be called
- Their right to call witnesses on their behalf
- The name and office of any adviser who will accompany the senior manager at the meeting

An extra copy, together with any enclosures, will be provided for their companion.

1.3. This meeting is intended to establish the facts. It will be conducted by a senior manager delegated by the Headteacher (or the Chair of Governors for the Headteacher). The meeting will allow the employee 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.

1.4. The senior 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 the performance management process. In such cases, the capability procedure will come to an end.

1.5 The senior manager may also adjourn the meeting if it is decided that the alleged unsatisfactory performance requires further investigation, or that more time is needed, in which to consider any additional information. In other cases, the meeting will continue. Where further investigation is required an appropriate and suitably trained investigating officer will be appointed. An investigation should be carried out as promptly as possible but may need longer dependent on the availability of people involved and the complexity of the investigation. If the investigation is protracted, the employee will be kept informed of progress.

1.6. During the meeting, or any other meeting which could lead to a formal warning being issued, the senior manager will:

- In the case of a teacher, identify the poor performance, including which of the teacher standards is not being met
- Ensure the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations
- Establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement
- 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 and clearly defined objectives, as agreed with the employee, that are weighted and focused on the specific area/s of poor 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.
- Identify whether there are further measures which may improve performance and explain any support that will be considered and planned to help the employee, e.g. in-service training, visits to other schools, discussion with appropriate colleagues or professionals, mentoring.
- 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 will be reasonable and proportionate, between six and ten weeks in normal circumstances, and will provide sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of any support and training required, and sufficient time to establish whether performance has improved.
- Warn the employee formally that failure to improve within the set period could lead to a final written warning which could then lead to their dismissal
- For teachers, warn the employee that failure to improve within the set period could have implications on pay progression.
- Inform the employee of the right of appeal
- Agree with the employee and any companion the date of the formal review meeting

1.7 Notes will be taken of formal meetings and a copy sent to the employee and any companion within 5 working days. Where a first warning is issued, the employee will be informed in writing of the matters discussed in 1.6 above. They will also be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in a final written warning, which could lead to dismissal if wholly satisfactory performance is not achieved, together with the time limit for appealing against the first written warning.

- 1.8 If the concerns relate to a lack of capability that poses a risk to the health, safety or wellbeing of children, or is likely to result in serious damage to pupils' education, this should be clearly evidenced; the shorter timescale may be appropriate in this instance. In such cases, the senior manager may exceptionally decide to issue a first and final written warning, if to do otherwise would expose pupils to serious risk in terms of their health, safety, wellbeing or educational prospects. Definitive evidence should be available to support this course of action.

2. Sickness Absence and the use of this Procedure

- 2.1. It is important that sickness absence should not delay or avoid the use of formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay. Arrangements will normally be made to seek medical advice from an Occupational Health Adviser to assess the employee's health and fitness for continued employment at the school. Any referral to OH will comply with Access to Medical Records Act 1988 and the Data Protection Act 2018.
- 2.2. Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing the employee's duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases e.g. moving from this procedure to procedures used by the school to terminate the employment of the employee on the grounds of ill health. For the purpose of this paragraph, where an employee's capability is linked to ill health, these cases will be managed under the [Staff Absence Policy](#).
- 2.3 If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the Occupational Health Adviser will normally be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure. In the event that the employee is deemed not fit to attend a formal capability meeting they may present a written submission for consideration and/or be represented by a companion in their absence.

Note: Occupational Health reports are provided to the employee in advance of the employer.

3. Performance Monitoring and Review Period Following a Formal Capability Meeting

- 3.1. A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Following this monitoring and review period, the employee will be invited to a formal review meeting (see paragraph 4 below), unless they had been issued with a final written warning, in which case they will be invited to a decision meeting (see paragraph 6 below).

4. Formal Review Meeting

- 4.1. At least 5 working days before the date for the formal review meeting a written reminder will be given to the employee together with details of the meeting as set out in paragraph 1.2 above.
- 4.2. The formal review meeting will follow a similar procedure to that identified for the formal capability meeting as set out in paragraph 1.6 above.
- 4.3. If the senior manager (Chair of Governors for the Headteacher) is satisfied that the employee has made sufficient improvement, the formal capability procedure will cease, and the performance management process will re-start.
- 4.4. In cases:
 - Where some progress has been made and there is confidence that more is likely, it may be appropriate to agree an extension to the monitoring and review period;
 - Where no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.
- 4.5. Notes will be taken at the formal review meeting and a copy will be sent to the employee and any companion.
- 4.6. Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and will be given information about the further monitoring and review period and the procedure and time limits for appealing against the final written warning. The date the decision meeting will be agreed with the employee and any companion.
- 4.7. At this stage, rather than refer the matter to a decision meeting, consideration could be given to the employee being given a different range of duties or an alternative post. In agreement with the employee, this may include transfer to a post suited to the employee's capabilities. If this post is at a lower salary level, the substantive lower salary would apply.

5. Right of Appeal against a Formal Written Warning

- 5.1. If an employee feels that a decision to issue a first and/or final written warning, is wrong or unjust, they may appeal in writing against the decision
- 5.2. Appeals against a written warning shall be restricted to considering the reasonableness of the decision made by the senior manager, any relevant new evidence not previously available to the senior manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Clerk to the Governors within 5 working days of the formal written warning having been received.

- 5.3. All appeal hearings will be held as soon as possible after receipt of the appeal at an agreed time and place.
- 5.4. The appeal will be heard by an Appeal Committee. The number of governors/trustees on the Appeal Committee will not be less than three. The panel may be advised by a person engaged for the purpose by the Local Governing Body/Trust. The panel can either confirm the warning, reduce a final warning to a warning, or cancel the warning. The employee will be informed in writing of the results of the appeal hearing as soon as possible.
- 5.5. The same arrangements for notification and the right to be accompanied by a companion will apply for an appeal hearing as for the formal capability and review meetings and, as with those meetings, notes will be taken and a copy sent to the employee and any companion.
- 5.6. Pending any appeal the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and their progress towards the achievement of these targets may be monitored during this period.

6. Decision Meeting

- 6.1. At least 5 working days before the date of the decision meeting a reminder will be given in writing together with details of the meeting as in paragraph 1.2 above. The meeting will be conducted by the Headteacher (Governor/Trust Panel for the Headteacher).
- 6.2. If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end, and the performance management process will re-start.
- 6.3. If progress has been made and there is confidence that wholly satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review period rather than to dismiss. The final written warning will be extended for a short specified assessment period.
- 6.4. If performance has remained unsatisfactory, a decision will be made that the employee will be dismissed. The employee will be informed in writing 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 whether the notice is to be served or there will be pay in lieu of notice, and the right of appeal.
- 6.5. Except in agreed circumstances, any formal warnings should be disregarded for capability purposes after a specified period of satisfactory performance. These periods are 6 months for a first written warning and 12 months for a final written warning.

7. Right of Appeal against a Decision to Dismiss

- 7.1. The employee has a right of appeal to the Appeals Committee against a decision to dismiss.
- 7.2. The number of governors/trustees on the Appeal Committee will not be less than three, none of whom will have had any previous involvement in the case.

- 7.3. The employee's notice of appeal should be sent to the Clerk to the Governors within 5 working days of receipt of the written decision to dismiss, setting out the grounds of appeal.
- 7.4. Appeal hearings should be held as soon as possible after receipt of the appeal and will be conducted in the same way as appeals referred to in paragraph 5 above.

8. Notice of Dismissal

- 8.1. Following a decision to dismiss, the Local Governing Body will notify the employee in writing that they will be dismissed, whether with notice or with pay in lieu of notice in accordance with the decision of the Headteacher (or Chair of Governors).
- 8.2. In the event that the Appeal Committee decides not to uphold the decision to dismiss, the employee shall be informed immediately, and the notice of dismissal shall be immediately withdrawn.

9. Grievances Arising During the Process

- 9.1. Where an employee has a grievance against the way the senior manager has conducted the procedure, this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the senior manager is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered.

10. Trade Union Officials

- 10.1. Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

11. Confidentiality

- 11.1. Our aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure. Records are held on file for no longer than necessary and in compliance with the Data Protection Act 2018.
- 11.2. The employee, and anyone accompanying the employee (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure without prior permission. Failure to observe confidentiality could be a reason for disciplinary action under the Trust Disciplinary Policy.