



BOHUNT
EDUCATION TRUST

Staff Capability Policy

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1. Aims

The aim of our staff capability policy is to set out a clear and consistent process for when any member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

2. Legislation and guidance

This policy complies with the Department for Education's model policy and guidance and the Advisory, Conciliation and Arbitration Service (ACAS) code of practice on disciplinary and grievance procedures, as well as the Bohunt Education Trust funding agreement and articles of association.

When undertaking capability procedures, we will ensure that we abide by the Equality Act 2010.

3. Policy Statement

The primary aim of this procedure is to provide a framework within which the Chief Executive, Governors, Headteacher, Head of School, Leadership Team and Subject Leaders can work with staff to maintain satisfactory performance and standards and to encourage improvement where necessary.

4. Definitions

Lack of capability is defined as:

A staff member failing to perform their role at the level of competence expected of them and that their job requires.

References to 'staff' include the Headteacher, teachers and support staff, unless indicated otherwise.

Support staff subject to a 6-month probationary period at the start of their employment, will follow the Probationary Policy and Procedure during this time.

NQT staff will not be subject to the Capability Procedure during their NQT year.

5. Roles and Responsibilities

The Bohunt Education Trust Scheme of Delegation will dictate who is responsible for overseeing a capability procedure. Where appropriate, other members of staff may be asked to provide additional support to the member of staff or to assist in monitoring the effectiveness of the policy.

6. Identifying Performance Issues

Performance issues should normally be dealt with via an informal support process, with support from the line manager or relevant staff member. Where appropriate, any such informal discussions should be recorded and notes placed in the staff member's personnel file. The formal procedure should be used in instances of more serious capability issues.

6.1 Medical / Personal Issues

Consideration will be given for members of staff, where by poor performance may be related to an existing medical condition, including existing disabilities. In collaboration with a line manager, we may consider reasonable adjustments to your working arrangements, including duties that may help to support improvements to performance.

Changes to personal circumstances, that may impact on performance, should be discussed in confidence with the line manager or HR dept if deemed more suitable.

6.2 Confidentiality

Any individuals involved with any form of procedure to support a colleague's performance, will treat all information as confidential.

Names of witnesses may be kept confidential if deemed necessary.

The capability processes will be treated confidentially. However, the desire for confidentiality does not override the need for the Headteacher and governing board to quality assure the operation and effectiveness of the system.

7. Capability Procedure

Performance will be monitored on a day-to-day basis by line managers, including:

- informal conversations
- learning walks/lesson observations
- regular 1-1 meetings
- observations and feedback
- sharing of good practice

Capability procedures will begin when the line management support and performance management process have been unable to bring about satisfactory performance or improvement in the staff member's work.

7.1 Stage 1 - Informal

This will be monitored and put in place by the line manager, and will have already occurred before any formal capability procedure begins. Evidence of this will be provided by the line manager/other relevant staff before the process begins.

Informal discussions/support may help to:

- clarify the required professional standards
- identify areas of concern
- establish the likely cause of poor performance and identify training needs

- set targets for improvement, with specific time scales for review

Support offered during the informal period, may include:

- mentoring
- training
- classroom observations/feedback
- advice
- sharing of exemplar work/ good practice

Staff would not normally be dismissed for performance related matters without previous interventions. However, in instances of gross negligence, dismissal without previous interventions may be appropriate. Gross Negligence is defined as an act marked by total disregard for the rights and/or safety of others, and with complete indifference to the consequences of the act.

If following informal support, if there are grounds to proceed with formal capability procedures, an assessment will be undertaken. This assessment will include reviewing the staff member's personnel file, including looking at the evidence of support that has already been put in place, as well as feedback from line managers/ relevant staff members, performance management documents, and lesson observation paperwork (if applicable). All of which will be undertaken in a confidential manner.

7.2 Stage 2 - Formal Capability Procedure

In normal circumstances, at least 5 working days' notice will be given for any formal capability meeting. Notice will be given in writing, which will include:

- time and place of meeting
- information regarding the right to bring a colleague or union representative to any formal meeting
- the concerns in relation to performance
- any written evidence gathered
- copies of witness statements, which may be anonymised if deemed necessary
- possible consequences, following capability procedures
- who will accompany the line manager (this will usually be an HR representative or another member of School Leadership)

The meeting will be conducted as per the BET Scheme of Delegation.

The purpose of the meeting is to establish the facts and to allow the staff member to respond to the concerns and make relevant representations.

If the staff member or their support representative are unable to attend the meeting, this must be communicated immediately, explaining the reasons for their absence. In normal circumstances, and if the request to rearrange is deemed reasonable, an alternative meeting time will be scheduled. Persistent failure to attend meetings, may result in the meeting going ahead in the absence of the staff member, using the evidence available. Persistent failure to attend, could also be treated as misconduct in itself.

7.2.1 Possible Outcomes

The meeting may establish that there are no grounds to pursue the capability issue. In this instance, the procedure will cease and the issue will continue to be addressed through the performance management process.

The meeting may be adjourned if further investigation is needed, or if more time is needed to consider additional information presented.

7.2.2 Procedure of capability meeting

The person conducting the meeting will:

- explain the expected standards that are not being met, based on the teacher's standards (if applicable), the staff member's career stage expectations and/or job description
- give clear guidance on the standard of performance needed to end the procedures
- explain the support available to help the staff member improve their performance
- set out the timetable for improvement and explain how performance will be monitored and reviewed
- ensure the staff member is aware that failure to improve within this timetable of support could eventually lead to dismissal

7.2.3 After the meeting

The staff member will be sent formal meeting notes. If a formal written warning has been issued, the staff member will also receive:

- a written record of the bullet points above – what was discussed/agreed action during the meeting
- information about the timing and handling of the review stage
- information about the procedure and time limits for appealing against the warning

First written warnings will normally remain active for six months from the end of the review period, after which time it will be disregarded for the purposes of the capability procedure.

After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future capability procedures.

7.3 Monitoring and review period

A performance monitoring and review period consisting of formal monitoring guidance and support will follow the formal capability meeting.

Line managers are advised to use formal recording processes in order to monitor performance (see appendix A)

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 7.4, below).

7.4 Stage 3 - Formal review meeting

At least 5 working days' notice will be given in writing of a formal review meeting, and will include:

- the time and place of the meeting
- that the staff member has the right to be accompanied by a work colleague or trade union representative
- who will accompany the line manager (this will usually be an HR representative or another member of School Leadership)

If the person conducting the meeting is satisfied that the staff member has made sufficient improvement, the capability procedure will cease and the performance management 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, including the period of time the written warning is still active, the staff member will receive a final written warning

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 written 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.

They will be given information about the further monitoring and review period, the procedure and time limits for appealing against the final warning.

Final written warnings will normally remain active for a period of 12 months from the end of the review period. After the active period, the final written warning will remain permanently on the staff member's personnel file but will be disregarded in deciding the outcome of any other future capability proceedings.

The staff member will be invited to a decision meeting.

7.5 Stage 4 - Decision meeting

At least 5 working days' notice will be given of the decision meeting, and will explain:

- the time and place of the meeting
- that the staff member has the right to be accompanied by a work colleague or trade union representative
- who will accompany the line manager (this will usually be an HR representative or another member of School Leadership)

If an acceptable standard of performance has now been achieved, the capability procedure will end and the performance management process will re-start.

If the staff member's performance does not improve to a sufficient standard, a decision or recommendation to the governing board may be made, suggesting that the staff member should be dismissed or required to cease working at the school.

The staff member will be informed as soon as possible of:

- reasons for the dismissal
- date on which the employment contract will end
- appropriate period of notice
- right of appeal

7.6 Stage 5 - Dismissal

The power to decide whether members of staff should no longer work at the school will be in line with the BET Scheme of Delegation.

Dismissals will normally be with full notice and payment in lieu of notice, unless your performance has been so negligent as to amount to gross misconduct, in which case we may dismiss you without notice or any pay in lieu.

8. Right to appeal

If a staff member feels that a decision to dismiss them is wrong or unjust, they may appeal in writing against the decision within 5 working days of the decision, clearly stating the full grounds of their appeal and if they are submitting any new evidence in support of this appeal.

Appeals will be heard without unreasonable delay and at an agreed time and place.

The same arrangements for notification and statutory right to be accompanied will apply as with formal capability and review meetings.

Notes will be taken and a copy sent to the staff member.

The appeal will be dealt with impartially and by senior leaders or governors who have not previously been involved in the case, as per the BET Scheme of Delegation (see appendix B)

Following the appeal hearing, the panel may:

- confirm the original decision
- revoke the original decision
- substitute a different penalty

The staff member will be informed in writing of the results of the appeal hearing, in normal circumstances within 10 working days. Where possible, we will explain this to you in person. There will be no further right of appeal.

Appendix A - Capability action plan template

This template can be used as part of the process of supporting a member of staff who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, appropriate to the career experience of the member of staff concerned.

Name of staff member	Name of Appraiser	Date of meeting

Objective 1:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

Objective 2:

Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

Objective 3:

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Other support provided

Mentor/coach allocated	Yes/No (If yes give name)
Counselling to be provided	Yes/No
Occupational health referral to be made	Yes/No
[Insert any other support provided]	
Formal review date	

Signed by member of staff	Signed by appraiser	Date

Appendix B - BET Scheme of Delegation for capability procedures –

Please refer to the BET website: <http://www.bohunttrust.co.uk/statutory-info/governance/>

Appendix C - Capability Flow Chart

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