

# Capability Policy

## **Adoption Arrangements**

All statutory policies in the Trust are ultimately the responsibility of the Trust Board. To enable it to discharge this responsibility appropriately and in collaboration with the constituent schools, the Trust Board will

1. set a full Trust wide policy,
2. set a 'policy principles' document (a framework within which Headteachers develop a full and appropriately customised policy),
3. or delegate to Headteachers or LGBs the power to develop their own policy.

<b>Approval Body:</b>	<b>Chief Executive Officer</b>
<b>Adopted:</b>	<b>November 2017</b>
<b>Leadership Grp Responsibility:</b>	<b>HR Director</b>
<b>Review period:</b>	<b>3 years</b>
<b>Date of next review:</b>	<b>October 2020</b>

**This is a Level 1 Policy against the Trust Governance Plan.**

This procedure was adopted by the Trust Board, for implementation in Tenax Schools Trust on the date above and supercedes any previous policy or policies on the management of Capability.

## Capability Procedure

This procedure should be read in conjunction with the Appraisal and Performance Management Policy, which details the initial stages of support provided when concerns about performance arise. This procedure applies only to employees, including teacher and headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.

This procedure does not apply to support staff during probationary periods as any performance (or conduct) concerns should be dealt with as part of the supervision and induction for new staff.

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a companion who may be a workplace colleague, a trade union official, or a trade union representative who has been accredited/certified by their union as being competent.

### Formal capability meeting

This meeting is intended to establish the facts. It will be conducted by the Chief Executive Officer, or suitably qualified person appointed by the Chief Executive Officer (for headteacher capability meetings) or a headteacher or line manager (for other employees). The meeting allows the employee, accompanied by a companion if they wish, 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.

The person conducting the meeting 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 appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting 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.

In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify and provide evidence of the professional shortcomings, for example which of the standards expected of teachers are not being met; or in the case of support staff, the areas of their job that are not being completed to the standards expected by the academy.
- give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures. Such guidance 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 the support that will be available to help the employee improve their performance;

- set out the timetable for improvement and explain how performance will be monitored and reviewed. It is for the Academy to determine the set period, and may be between four to ten weeks. The timetable will depend on the circumstances of the individual case but in straightforward cases could be a school term (based on a six term academic year). The time period should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place. It is anticipated that, other than in cases of the most serious professional shortcomings, a review period will be not less than one term (based on the Trust's six term academic year).
- warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning. Written outcome letters will normally be provided within five working days of the warning being issued.

#### **Monitoring and review period following a formal capability meeting**

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The employee 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 below).

#### **Formal review meeting**

As with formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been accredited/certified by their union as being competent.

If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal 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, the employee will receive a final written warning.

Notes will be taken of formal meetings and a copy sent to the employee. The final written warning will mirror any previous warnings that have been issued. Where a final 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 and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The employee will be invited to a decision meeting.

### **Decision meeting**

As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been accredited/certified by their union as being competent.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start. If performance has remained unsatisfactory, a decision will be made that the employee should be dismissed or required to cease working at the school.

Before the decision to dismiss is made, the academy will discuss the matter with the Chief Executive Officer or other suitably qualified designate, and the Human Resources Director.

The employee will be informed 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 their right of appeal.

### **Decision to dismiss**

The power to dismiss employees in this school has been delegated to either, the Headteacher, or to the Local Governing Board, in consultation with a representative of the Tenax Schools Trust.

### **Dismissal**

Once the decision to dismiss has been taken, the Trust will dismiss the employee giving their relevant contractual notice.

### **Appeal**

If an employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within seven working days of receipt of the written decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the employee.

The appeal will be dealt with impartially and, wherever possible, by managers, members of the Local Governing Board, or representatives of the Tenax Schools Trust who have not previously been involved in the case.

The employee will be informed in writing of the results of the appeal hearing as soon as possible, but normally within five working days.

The decision of the Appeal Panel is final.

## **General principles underlying this policy**

### **ACAS Code of Practice on Disciplinary and Grievance Procedures**

This policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

### **Confidentiality**

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher, Local Governing Board or Trust representative to quality-assure the operation and effectiveness of the capability and performance management system.

### **Consistency of treatment and fairness**

Tenax Schools Trust is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled employees. The Trust, and Local Governing Board are aware of the guidance on the Equality Act issued by the Department for Education.

### **Definitions**

Unless indicated otherwise, all references to “employee” include the headteacher.

References to “working days” shall be taken to mean the 195 days of Directed Time for teachers. For employees working “year round”, working days shall be taken to mean any of the 365 days per year, excluding weekends and Bank Holidays. For all other staff, working days shall be taken to mean Monday to Friday for each of the weeks per year the employee is contracted to work.

One term is taken to mean each of the six terms in the academic year (formerly “half terms”)

### **Grievances**

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

### **Sickness**

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school’s absence policy and the employee may be referred to the Trust’s Occupational Health provider. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

### **Monitoring and Evaluation**

The Local Governing Board and headteacher will monitor the operation and effectiveness of the school's appraisal and capability arrangements in this Academy. To ensure parity within the Trust, this may also be monitored by representatives of Tenax Schools Trust.

### **Retention**

The Local Governing Board and headteacher will ensure that all written appraisal and capability records are retained in a secure place for six years and then destroyed.