



# Capability Policy

September 2022

<b>Date Approved:</b>	Sept 22	<b>Review Date:</b>	Sept 23	<b>Approved by:</b>	The Trust Board
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## 1 POLICY STATEMENT

Fareham Academy recognises that employees should be treated fairly and that managers should not discriminate against employees in the way they manage performance.

This procedure is a framework for dealing with cases of poor performance in a fair and supportive way. It aims to ensure that any employee's ability to achieve acceptable standards of work are addressed clearly, ensure that supervision, training, counselling and support measures are used to assist the employee to reach the acceptable standard and provide a clear procedure for the termination of employment in cases where the employee is not reaching the acceptable standard of performance.

The definition of 'capability' refers to an employee's inability to perform work which is expected as part of their job role to a required standard due to insufficient skill level or aptitude.

Capability and performance management issues which occur while the employee is subject to disciplinary proceedings will usually be heard only after the disciplinary process has been completed. Where the employee's poor performance is related to behaviour rather than lack of application it should be dealt with through the disciplinary procedure.

Where an employee's capability issues are linked to ill-health these cases should be dealt with under the procedures for dealing with absence from work.

Where an employee's capability issues are linked to poor attendance or wilful poor performance these circumstances will be dealt with under the absence management and disciplinary procedures.

Where an employee's poor performance is related to a qualifying disability under the Equality Act 2010, then requirements of the Act require the employer to make reasonable adjustments in the workplace and reasonable adjustments to the job. The employer must also not discriminate.

### **Compliance with Disability Discrimination Law & the Equality Act 2010**

Under the Equality Act 2010 a person has a "disability" if s/he has a physical or mental impairment that has a substantial and long-term adverse impact on her or his ability to carry out normal day-to-day activities.

A disabled person is discriminated against if s/he is treated unfavourably because of something arising in consequence of their ability, and the person discriminating cannot show that the treatment is a proportionate means of achieving a legitimate aim (s.15 Equality Act 2010).

There is also protection for direct and indirect disability discrimination.

The Equality Act 2010 requires the employer to make "reasonable adjustments" where:

- an employer's provision, criteria or practices put a disabled person at a "substantial disadvantage" compared with a person who is not disabled;
- an employer's premises have physical features which puts a disabled person at a substantial disadvantage;
- a disabled employee will be put at a substantial disadvantage if they are not provided with an auxiliary aid.

Where "reasonable adjustments" have been made and the employee demonstrates an inability to perform work which is expected as part of their job role to a required standard due to insufficient skill level or aptitude, then this policy shall be applied fairly and without discrimination.

## **2 AIMS AND SCOPE OF THE POLICY**

- 2.1 All employees have a responsibility to perform to a satisfactory level and will be given every assistance and encouragement to do so.
- 2.2 This policy applies to all staff, including the Headteacher, about whose performance there are serious concerns that the appraisal process has been unable to address.
- 2.3 The Capability Policy is not a substitute for good management practices and will normally only be invoked when attempts have been made informally (e.g. via discussion with the employee) to resolve the poor performance.

## **3 TIMESCALES**

- 3.1 The timescale adopted in each case will be in accordance with the seriousness of the performance concerns. Consideration needs to be given to whether the problem is a specific or broader professional difficulty, whether it is of very recent concern or spanning a longer period of time. Normally, the period given for improvement will be no more than two terms after the date of entry into the formal procedure.
- 3.2 In cases where the education of pupils is jeopardised, the period given for improvement after the date of a formal warning will be no more than four weeks.

## **4 DELEGATION**

- 4.1 The Trust Board has delegated to the Headteacher authority to take action in all cases except those involving possible dismissal of teaching staff and/or severe safeguarding issues. In the event of the Headteacher being the subject of action in relation to capability, the Trust Board will be responsible for the Capability procedure.

## **5 INFORMAL SUPPORTIVE ACTION**

- 5.1 In the first instance, performance issues should normally be dealt with informally between an employee and their line manager. Inherent in the role of all managers in the Academy is the responsibility to monitor the performance of staff and to regularly discuss with them their standards of work. Any failure to achieve a standard of performance should be discussed at the earliest opportunity.
- 5.2 Initial discussions should be regarded as part of normal working routines including the Performance Management Review. The main purpose must be to encourage and help the member of staff to improve in those specific areas which are causing concern. It should be made clear to the individual that they are within the informal stage of the procedure to avoid any confusion with the formal stage.

- 5.3 The formal procedure outlined below should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement.
- 5.4 These discussions and any supportive action should be agreed and documented between the manager and the member of staff and monitored at that level unless there is mutual agreement that enlisting external help or guidance would be beneficial. A copy of any notes made during discussions should be provided to the member of staff.

## **6 FORMAL CAPABILITY HEARING**

- 6.1 If, subject to paragraph 5.4 below after taking informal action to improve performance there has been no significant improvement in performance or the improvement has not been sustained, a formal capability hearing will be arranged with a senior manager or the Headteacher. The employee will be notified of the concerns over their performance, the reasons for those concerns and the likely outcome if the Academy decides that performance has been unsatisfactory.
- 6.2 The senior manager or Headteacher will meet formally with the member of staff to discuss the perceived shortcomings and will advise that the formal stage of the capability procedure has been reached.
- 6.3 Employees are entitled to be accompanied by a colleague or their trade union representative at any formal capability meeting and will be given reasonable notice of the meeting. Individuals should confirm before the meeting whether or not he/she will be accompanied
- 6.4 The Academy reserves the right to forgo undertaking informal action to address performance concerns in circumstances which it deems appropriate
- 6.5 Where the concern relates to performance of the Headteacher, the Chair of Trustees will be responsible for bringing those concerns to the Headteacher's attention and for commencing a formal process.
- 6.6 During the meeting discussion will take place with the member of staff on ways of providing further opportunity to improve his/her performance. The meeting will: -
- 6.6.1 Clarify perceived shortcomings. The member of staff will be given a copy of any documents being used to record areas for improvement, targets to be achieved, the support and guidance provided and progress being made.
  - 6.6.2 Seek to agree a course of action to affect the required improvement, which could include the provision of support and advice from sources both within and outside of the Academy.
  - 6.6.3 Set an appropriate period of time for the member of staff to improve and arrange a further meeting to review progress.
- 6.7 Having considered the matter, the senior manager or Headteacher may announce the decision orally to the member of staff or may reserve making a decision and notify the parties in writing of his/her decision within a reasonable time frame.

## **7 STAGE 1 HEARING: FIRST WRITTEN WARNING**

- 7.1 Following a first stage capability hearing, the Academy may decide to issue a first written warning, setting out:
- 7.1.1 The areas in which the employee has not met the required performance standards.

7.1.2 Targets for improvement.

7.1.3 Any measures, such as additional training or supervision, which will be taken with a view to improving performance.

7.1.4 A period for review.

7.1.5 The consequences of failing to improve within the review period, or of further unsatisfactory performance.

7.2 The warning will normally remain active for six months. After the active period the warning will remain permanently on an employee's personnel file but will be disregarded in deciding the outcome of any future capability proceedings.

7.3 The Academy will monitor performance during the review period and will confirm:

7.3.1 if there has been sufficient improvement and no further action will be taken;

7.3.2 if there has not been sufficient improvement and the matter may be progressed to a Stage 2 capability hearing; or

7.3.3 if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

## 8 **STAGE 2 HEARING: FINAL WRITTEN WARNING**

8.1 If performance does not improve within the review period set out in a first written warning, or if there is further evidence of poor performance the Academy may decide to hold a Stage 2 capability hearing.

8.2 Following a Stage 2 capability hearing, if the Academy decides that performance is unsatisfactory, it will issue a final written warning, setting out:

8.2.1 the areas in which the employee has not met the required performance standards;

8.2.2 targets for improvement;

8.2.3 any measures, such as additional training or supervision, which will be taken with a view to improving performance;

8.2.4 a period for review; and

8.2.5 the consequences of failing to improve within the review period, or of further unsatisfactory performance.

8.3 A final written warning will normally remain active for 12 months. After the active period, the warning will remain permanently on an employee's personnel file but will be disregarded in deciding the outcome of future capability proceedings.

8.4 The Academy will monitor performance during the review period and will write to confirm the outcome:

8.4.1 If there has been sufficient improvement, no further action will be taken;

8.4.2 If there has not been sufficient improvement, the matter may be progressed to a Stage 3 capability hearing; or

8.4.3 If the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

## **9 STAGE 3 HEARING: DISMISSAL OR REDEPLOYMENT**

9.1 The Academy may decide to hold a Stage 3 capability hearing if it has reason to believe:

9.1.1 performance has not improved sufficiently within the review period set out in a final written warning;

9.1.2 performance is unsatisfactory while a final written warning is still active; or

9.1.3 performance has been grossly negligent such as to warrant dismissal without the need for a final written warning.

9.2 Following the hearing, if the Academy concludes that performance is unsatisfactory, it may consider a range of options including:

9.2.1 Dismissal.

9.2.2 Redeployment into another suitable job at the same or a lower grade (with the employees salary being safeguarded for a maximum of 3 years).

9.2.3 Extending an active final written warning and setting a further review period (in exceptional cases where it believes a substantial improvement is likely within the review period).

9.2.4 Giving a final written warning (where no final written warning is currently active).

9.3 Dismissal will normally be with full notice or payment in lieu of notice, unless performance has been so negligent as to amount to gross misconduct, in which case dismissal may be without notice or any pay in lieu.

## **10 APPEAL**

10.1 If the member of staff wishes to appeal against a decision under this policy, they may appeal in writing to the Headteacher, stating their full grounds of appeal, within one week of the date on which the decision was sent or given to them. The appeal will be dealt with impartially and, where the Headteacher dealt with the earlier capability process, the appeal will be dealt with by the Trust Board.

10.2 The Academy will hold an appeal meeting, within a reasonable time of receiving a written appeal. Employees have a right to bring a companion to the meeting.

10.3 The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light.

10.4 The Academy will confirm its final decision in writing, within a reasonable timeframe. This is the end of the procedure and there is no further appeal.

