



Capability Policy

Document provenance

This policy was approved by Trustees as follows –

E-ACT Board of Trustees - Personnel Committee Date: September 2018

Frequency of review: Three years Next review date: September 2021

ELT Owner: Director of Corporate Services Author: National HR Officer

Summary of changes at last review:

- Limited changes
- Clarifies that appeals panel will consist of a minimum of three members and must be an odd number.
- Review frequency increase from two years to three

Related documents:

- Grievance Policy
- Disciplinary Policy
- Code of Conduct

This policy will be interpreted and applied in accordance with the employers' duty to respect the rights of employees under the Human Rights Act, particularly the rights to freedom of speech, privacy, freedom of religion and belief and the right to freedom of association.

Recognised trade unions have been consulted on this policy.

1. Introduction and purpose

- 1.1 The aim of this policy is to support all employees of E-ACT to perform their duties to an acceptable standard and to ensure that capability issues are dealt with in a fair and consistent manner. It sets out the support, advice and guidance available to staff when capability issues are identified and sanctions applicable if there is not an acceptable improvement in performance.
- 1.2 E-ACT reserves the right to have HR representation (from our external HR provider) at any meetings held in relation to any of the procedures outlined below. They must also be invited to attend the Decision Meeting. This will ensure that advice is available on procedural issues and any employment legislation matters.
- 1.3 **The relevant HR Consultant must be informed in writing by email prior to any formal capability process commencing to ensure adherence to this policy. This HR service holds all up-to-date template letters in relation to this policy and it is essential that you make contact to ensure you are using the appropriate templates.**

2. Scope

- 2.1 This procedure applies only to staff about whose performance there are serious concerns from a range of sources that the appraisal process has been unable to address. The procedure reflects the ACAS Code of Practice on disciplinary and grievance procedures and E-ACT's governance arrangements. This policy does not apply to employees during their probation period.

3 Responsibilities

- 3.1 The following responsibilities (including attendance at formal capability meetings, point 6) apply in relation to this policy:
 - the Headteacher where capability proceedings relate to an academy member of staff (educational not operational), or his/her nominee.
 - The Regional Director of Education where capability proceedings relate to a Headteacher, or a member of the Regional Education Team
 - The Regional Director of Operations where capability proceedings relate to a member of the Regional Operations Team or academy operational support staff
 - The relevant Executive Leadership Director where capability proceedings relate to a member of their national team, including a Regional Director
 - The Chief Executive where capability proceedings relate to member of the Executive Leadership Team

4. General principles underlying this policy

4.1 ACAS Code of Practice on Disciplinary and Grievance Procedures

- 4.1.1 The policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

4.2 Confidentiality

4.2.1 The capability process will be treated with confidentiality and appropriate sensitivity. However, the desire for confidentiality does not override the need for the Headteacher, Regional Directors and Executive Leadership Team to quality-assure the operation and effectiveness of the appraisal process system. Any references provided for a member of staff who has undergone capability proceedings whilst within E-ACT will be reported.

4.3 Consistency of treatment and fairness

4.3.1 E-ACT 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 staff.

4.4 Grievances

4.4.1 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. The capability procedure may, however, continue or resume if the employee seeks unreasonably to delay the consideration of the grievance. Where the grievance and capability cases are related, it may be appropriate to deal with both issues concurrently.

4.5 Sickness

4.5.1 If 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 E-ACT's Absence Management policy and will be referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures.

5. Transition from appraisal process

5.1 The Capability Procedure covers all staff within E-ACT Academies, Regional and National Teams. Where the term "performance management process" is used in this document, the reference is to either the formal appraisal policy as that applies or, for those staff not covered by such a formal policy, the reference is to normal supervisory day-to-day processes that are expected to be in place. In either case, the transition phase must be covered before formal capability procedures can be started.

5.2 If the manager carrying out the appraisal process has not been satisfied with progress, the member of staff will be notified in writing that strategies for improvement under the appraisal procedure have not been successful and that their performance would now be managed under the E-ACT Capability Procedure. The underperformance must have been demonstratively serious and persistent despite the provision of appropriate support.

6. Formal capability meeting

6.1 At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns around performance and their possible consequences to enable the member of staff 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 represented by a companion who may be a colleague or a trade union official or a trade union representative.

6.2 This meeting is intended to establish the facts. It will be conducted in line with the responsibilities at 3.

6.3 The meeting allows the member of staff, represented by a companion, 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.

6.4 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 if they, for example, decide that further investigation is needed, or that more time is needed in which to consider any additional information.

6.5 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 the professional or work shortcomings, for example, which of the standards expected 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);
- identify and attempt to agree 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 but will normally be between six and ten weeks unless there are exceptional circumstances. The period set should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place. Every effort will be made to agree the timescale and any points of disagreement about the timescale will be recorded. Adjustments to normal working arrangements may be required for the duration of the review period where the education or health, safety and welfare of students is regarded as being at risk
- Inform the member of staff, formally, that failure to improve within the set period could lead to further action under this Policy up to and including dismissal. In very serious cases, this warning could be a final written warning which would invoke an assessment period not exceeding six weeks.

6.6 Notes will be taken of formal meetings and a copy sent to the member of staff within two working days. Where a warning is issued, the member of staff 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.

7. Monitoring and review period following a formal capability meeting

7.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. 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 below). If at any point during this stage the evidence suggests a more serious problem, a decision may be taken to move directly to a final written warning.

8. Formal review meeting

8.1 At least ten working days' notice will be given of a formal review meeting and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be represented by a companion who may be a colleague, a trade union official or a trade union representative.

8.2 If the person conducting the meeting is satisfied that the member of staff has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. 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. The timetable will depend on the circumstances of the individual case but will normally be between six and ten weeks other than in exceptional circumstances where this process may need to be shorter. If no, or insufficient improvement has been made during the monitoring and review period, the member of staff will receive a final written warning. The timetable will depend on the circumstances of the individual case but will normally be between six and ten weeks other than in exceptional circumstances where this process may need to be shorter.

8.3 As before, notes will be taken of formal meetings and a copy sent to the member of staff within two working days of the meeting.

8.4 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 which will include a final evaluation meeting and the procedure and time limits for appealing against the final warning. Where performance remains unsatisfactory, the member of staff will be invited to a decision meeting.

9. Power to dismiss

The power to dismiss is granted to the following post holders:

- The Headteacher has the power to dismiss education academy based staff
- The Regional Education Director has the power to dismiss Headteachers and members of the Education Regional Team
- The Regional Operations Director has the power to dismiss members of the Operational Regional and academy support staff
- The Regional Director of Education and/or the CEO has the power to dismiss Regional Education Directors
- The Chief Operating Officer and/or the CEO has the power to dismiss Regional Directors of Operations

- The Executive Leadership Team has the power to dismiss members of the national team.
- The CEO has the power to dismiss any staff.

10. Decision meeting

- 10.1 At least ten working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be represented by a companion who may be a colleague, a trade union official, or a trade union representative. If the choice of companion is not available at the time a meeting is scheduled, the employee may propose an alternative time for the meeting to take place and so long as the alternative time is reasonable and within five working days after the original scheduled date, we will postpone the meeting.
- 10.2 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 remains unsatisfactory, a decision will be made that the member of staff will be subject to a sanction under this policy. Sanctions could include: compulsory additional training; redeployment; or dismissal
- 10.3 Where dismissal is the outcome the member of staff 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.

11. Appeal

- 11.1 If a member of staff feels that a decision to dismiss them, or other formal action taken against them, is wrong or unjust, they may appeal in writing against the decision within ten working days of the 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 represented 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 member of staff within five working days of the meeting taking place.
- 11.2 The appeal will be dealt with impartially. The panel will consist of a minimum of three members and must be an odd number.
- 11.3 Dismissals of academy-based staff will normally be chaired by the Regional Education Director or Regional Operations Director (subject to the Regional Director not having had any prior involvement in the case) and, wherever possible, two members of the Ambassadorial Advisory Group.
- 11.4 Dismissal of Regional and National team members will be heard by an appeals panel chaired by a member of the Executive Leadership Team who has not previously been involved in the case and, wherever possible, two members of the Ambassadorial Advisory Board or trustee Board.
- 11.5 Dismissal of Headteachers, Regional Directors and Executive Leadership Team members will be heard by an appeals panel of three trustees.

- 11.6 The member of staff will be informed in writing of the results of the appeal hearing within five working days of the meeting.

12. Retention of records

- 12.1 E-ACT will ensure that all written records are retained in a secure place. As part of the application of this policy, E-ACT may collect, process and store personal data in accordance with our data protection policy. We will comply with the requirements of the Data Protection Legislation (being (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998). Records will be kept in accordance with our Staff Privacy Notice and in line with the requirements of the Data Protection Legislation.

13. Monitoring and compliance

- 13.1. The Headteacher, Regional Directors and the Executive Leadership Team will monitor the operation and effectiveness of the capability process through regional performance meetings.

14. Review

- 14.1 This policy will be reviewed every three years' in consultation with recognised trade unions.