

# Capability Policy For All Staff

## September 2024

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EKC Schools Trust Capability Policy

## **1. Introduction and Purpose**

EKC Schools Trust is committed to continually improving the quality of education and the effectiveness of the Trust for all our pupils.

This policy sets out the principles and framework for consistent and fair treatment to support any employee who is experiencing difficulties performing to the required standard in their post.

This procedure applies to all Trust employees other than staff in their probationary period. It considers the DfE guidelines published in July 2024 regarding Teacher Capability.

All line managers will receive training on managing competency issues fairly and consistently.

In cases of gross incompetence, it may be necessary to temporarily suspend an employee immediately from their role. This will only occur in rare circumstances where the level of incompetence has a potentially serious impact/risk on pupils, staff and/or the wider organisation and only following advice from the EKCST HR Advisor.

An employee has the right to be represented and accompanied by a trade union official, trade union representative, or workplace colleague at any stage of the formal capability procedure.

## **2. Informal Stage**

It is important to recognise that many issues of competency can and should be resolved without recourse to this policy's formal procedure.

As soon as a concern is identified, the line manager should discuss it in a supportive environment with the employee. The employee should have the opportunity to openly discuss any work or home-related issues which they believe are impacting their performance. A realistic timescale for improvement with clear objectives, together with the support needed, should be agreed and signed in the form of an action/improvement plan between both parties. Typically, the informal stage Support Plan will cover a period of six weeks, and during this period, it is expected that significant improvement will be made. The support may take various forms, including coaching, mentoring, and work shadowing other colleagues and specialists.

Continued monitoring and assessment should take place for a period of time, depending on the requirements to improve performance. It is anticipated that in the vast majority of cases, no further action other than normal line management meetings will be necessary.

## **3. Formal Stage**

Where the levels of improvement agreed above, despite support, are not met, then the line manager should arrange a formal meeting to take place to discuss and consider the ongoing performance concerns.

Given the informal stage set out above, this should not come as a surprise to the individual concerned.

At least five working days' notice will be given for a formal capability meeting. The notification will contain sufficient information about the performance concerns and the possible consequences to enable the individual to prepare to answer the case at the meeting. Individuals are entitled to request an alternative date where they or their representative are unable to attend the original date proposed.

The employee has the right to be accompanied by a Trade Union representative or workplace colleague at the meeting.

The formal meeting is intended to establish the facts. It will be conducted by the Headteacher or a delegated member of SLT, or for Headteachers and Executive members, by the CEO. For the CEO, this would be conducted by a panel of Trustees.

The employee should be reminded of the previous informal discussions and actions and told of the continuing shortcomings. The meeting should allow the individual to respond to the concerns about their performance and present any relevant representations and mitigation. They may provide new information or a different context to the information/evidence already collected. During the meeting, evidence shall be presented by the line manager and witnesses may be called where appropriate and necessary. The individual and their representative will be allowed to ask questions, present their own evidence, and rely on their own witnesses where appropriate and necessary, and will be permitted to respond to evidence and ask questions.

The Chair of 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 and informal support. In such cases, the formal capability procedure will end.

The Chair may also adjourn the meeting, for example, if they decide that further investigation is needed or that more time is needed to consider any additional information.

In other cases, the meeting will continue, during which the Chair will:

- 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 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 any support that will be available to help the Employee improve their performance.
- set out the timetable for improvement considering the employee's personal circumstances. This may include any medical conditions, working pattern, wellbeing support needs, or disabilities protected by the Equality Act 2010. The timetable will depend on the circumstances of the individual case, but in straightforward cases, it will typically be a six-week period. (The school/department will fairly determine the set period, which is reasonable and proportionate and provides sufficient opportunity for an improvement to take place).
- explain how performance will be monitored and reviewed.
- advise the employee formally that failure to improve within the set period could ultimately lead to dismissal.

Notes will be taken of formal meetings and a copy sent to the employee and their representative. 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.

#### **4. 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 6)

#### **5. Formal Review Meeting**

As with all formal capability meetings, at least five working days' notice will be given. The notification will give details of the time and place of the meeting and 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 certified by their union as competent.

Employees are entitled to request an alternative date when they or their representatives are unable to attend the original proposed date.

If the Chair 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, extending the monitoring and review period may be appropriate.
- If insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning that sets out the areas where performance standards have not been met, targets for improvement, any measures (training and supervision) to improve performance, a period for the review, and the consequences of not meeting expected performance standards.

As before, notes will be taken of formal meetings, and a copy will be sent to the employee and their representative.

The final written warning wording will mirror any previous warnings. 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. The employee will be 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-making meeting.

#### **6. Decision Meeting**

As with all formal capability meetings and formal review meetings, at least five working days' notice will be given. The notification will give details of the time and place of the meeting and 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 certified by their union as 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 restart.

If performance remains unsatisfactory, a decision will be made that the final written warning should be extended (where possible or appropriate), or the employee should be dismissed or required to cease working at the school/department.

Redeployment into an alternative role may be considered where appropriate and possible and should be discussed with the HR Advisor and relevant School Leaders/Executives/CEO.

Before the decision to dismiss is made, the school will discuss the matter with the appropriate senior leader/Executive in the Trust. 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.

## **7. Decision to Dismiss**

The power to dismiss staff in an EKCSST school rests with the Headteacher and for Headteachers and members of the central team, including Executives, the decision rests with the CEO. If the Trust is considering dismissing the CEO, this decision lies with Trustees.

Once the decision to dismiss has been made, the Headteacher or CEO/Trustees will confirm the dismissal in writing to the employee and their representative. This will be with notice or pay in lieu of notice.

## **8. 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 five 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 the right to be accompanied will apply to formal capability and review meetings. As with other formal meetings, notes will be taken, and a copy will be sent to the employee and their representative. The appeal will be dealt with impartially by School Leaders/Governors/Trustees 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.

## **9. General Principles Underlying this Policy**

The policy will be implemented in accordance with the provision of the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Everyone involved in applying this policy will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled employees. The Trust is aware of the guidance in the Equality Act 2010 issued by the Department for Education.

## **10. References**

If a teacher has been subject to formal capability procedures in the previous two years as stated in The School Staffing (England) (Amendment) Regulations 2012 and the Staffing and employment advice for schools, this must be disclosed to new potential school employers when requested.

For equity and fairness, EKCSST applies the same principle to all Trust staff who have been subject to a formal capability procedure in the previous two years and who are applying for similar roles in an educational setting.

## **11. Confidentiality**

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and Governing Body/Trustees to quality assure the operation, fairness, and consistency of the policy.

## **12. 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, including as part of the capability process, it may be appropriate to deal with both issues.

## **13. Sickness**

If long-term sickness absence appears to have been triggered by the commencement of monitoring performance at any stage of the procedure or a formal capability procedure, the case will be dealt with in accordance with the Trust's absence policy. This should include a referral 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 procedure. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

## **14. Monitoring and Evaluation**

The Trust will monitor the operation and effectiveness of this policy. This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

## **15. Retention**

The Headteacher/Executives/CEO and Governing Bodies/Trustees will ensure that all written capability records are retained and stored securely in line with their Retention Policy.

## **16. Review of Policy**

This policy will be reviewed annually unless directed by statutory regulation, associated guidance, or related policy changes.