



Windsor Academy Trust

Capability Policy	
Responsible Committee:	Windsor Academy Trust, Board of Directors
Date revised by Board of Directors:	July 2018
Next review date:	September 2019

1. Introduction

- 1.1 This policy sets out the arrangements that will apply when employees fall below the levels of competence that are expected of them.
- 1.2 This procedure applies to all employees whose performance are of serious concerns and the appraisal process has been unable to address these within an acceptable period of time.
- 1.3 This policy does not form part of any employee's contract of employment and it may be amended at any time following consultation.

1.4 Definitions:

Chief Executive means the Chief Executive of WAT.

Headteacher refers to all or any of the Executive Headteachers, Headteachers, Head of Schools at all or any of the academies within WAT.

Leadership Team refers to any member of the Leadership Group as defined by the School Teachers' Pay and Conditions Document, or a senior member of staff with responsibility for support staff.

Local Advisory Body (LAB) is a key mechanism for local accountability for each academy.

Board of Directors/Directors means the Directors of WAT.

Companion refers to a person chosen by the employee to accompany him/her, who shall be a trade union representative or workplace colleague.

1.5 Roles and Responsibilities:

Capability Review Officer means either: the Chief Executive, a member of the Leadership Team, or a Director (for the Chief Executive).

Determining Officer means the Chief Executive, the Headteacher or a Director.

Appeals panel means the Chief Executive, a Director or panel of not less than two Directors.

2. Formal Capability Procedure

- 2.1 If under the Appraisal Policy, an employee's performance, is not wholly satisfactory, the senior manager, or other person with line management responsibility for the employee, will invite the employee to a formal capability meeting to discuss with the employee the identified poor performance as specifically as possible.

3. Formal Capability Meeting

- 3.1 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 the formal capability meeting. It will also contain copies of any written evidence including the outcome of the feedback received as per paragraph 7.2 of the

Trust's Appraisal Policy; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a companion.

3.2 This meeting is intended to establish the facts. It will be conducted by the Capability Review Officer. 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.

3.3 The Capability Review Officer 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 formal capability procedure will come to an end. The Capability Review Officer 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.

3.4 In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued or ultimately dismissal, the Capability Review Officer will;

- identify the professional shortcomings, for example which of the standards expected of employee are not being met;
- 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 and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but could be between four and ten weeks.
- 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.

3.5 Notes will be taken of formal meetings and a copy sent to the employee. 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. Sickness absence and use of this procedure

4.1 It is important that sickness absence should not delay or avoid the use of formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay. Arrangements will normally be made to seek medical advice from occupational health to assess the employee's health and fitness for continued employment with the Trust.

4.2 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements. WAT may also consider making adjustments to this procedure in appropriate cases e.g. moving from this procedure to procedures used by WAT to terminate the employment of the employee on the grounds of ill health.

4.3 If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, occupational health will normally be asked to assess whether the employee absence through sickness is fit enough to attend a meeting under this procedure. In the event that the employee is deemed not fit to attend a formal capability meeting s/he may present a written submission for consideration and/or be represented by a companion in his/her absence.

5. Monitoring and review period following a formal capability meeting

5.1 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.

6. Formal Review Meeting

6.1 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.

6.2 If the Capability Review Officer is satisfied that the employee has made sufficient improvement, the formal 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.

6.3 As before, 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.

6.4 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 and the procedure and time limits for appealing against the final warning.

6.4 Right of Appeal against a formal written warning

6.4.1 If an employee feels that a decision to issue a final written warning, is wrong or unjust, s/he may appeal in writing against the decision

6.4.2 Appeals against a final written warning shall be restricted to considering the reasonableness of the decision made by the senior manager, any relevant new evidence not previously available to the senior manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted within 5 working days of the formal written warning having been received.

6.4.3 The appeal hearing will be held as soon as practicably possible after receipt of the appeal at an agreed time and place.

6.4.4 The outcome of the appeal will be confirmed in writing as soon as possible and usually within 5 workings days of the hearing.

6.4.5 Pending the appeal the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and his/her progress towards the achievement of these targets may be monitored during this period.

7. Decision Meeting

7.1 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.

7.2 The Determining Officer may be accompanied by a HR representative.

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

7.4 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 whether the notice is to be served or there will be pay in lieu of notice, and their right of appeal.

7.5 Right of Appeal against Dismissal

7.5.1 The employee has a right of appeal against a decision to dismiss.

7.5.2 Appeals against dismissal should be made in writing within 5 working days of the receipt of the written decision, setting out at the same time the grounds for the appeal.

7.5.3 The appeal hearing will be held as soon as practicably possible after receipt of the appeal at an agreed time and place.

7.5.4 The outcome of the appeal will be confirmed in writing as soon as possible and usually within 5 working days of the hearing. There is no right of further appeal against such a decision of the Appeal Panel.

7.5.5 In the event that the Appeal Panel decides not to uphold the decision to dismiss, the notice of dismissal shall be immediately withdrawn and the employee reinstated without loss of pay.

8. Grievances

8.1 Where an employee has a grievance against the way the senior manager has conducted the procedure this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the senior manager is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered.