

<b>Title</b>	Capability – Teaching Staff
<b>Associated Policies</b>	<ul style="list-style-type: none"> <li>• Performance Management Policy (TPO/STA/17)</li> <li>• Pay Policy (TPO/STA/08)</li> <li>• Single Equality Policy (TPO/EO/01)</li> </ul>

REVIEWED: FEBRUARY 2019

NEXT REVIEW: FEBRUARY 2022

**1. Policy Statement**

- 1.1 All Brooke Weston Trust academies are committed to provide the best education for their students, achieved through high standards of performance from all teaching staff.
- 1.2 This policy sets out the framework for formal capability procedures that will apply when teaching staff, including the Principal, fall below the acceptable levels of performance when informal procedures have been exhausted or conduct that are expected of them which the appraisal, professional development process and informal procedures have been unable to address.
- 1.3 This policy does not form any part of any employee's contract of employment and it may be amended following consultation. The Trust may also vary any parts of this procedure, including any time limits as appropriate in any case.
- 1.4 The policy will be applied in accordance with the Trust's Single Equality Policy.

**2. Who does this policy apply to?**

- 2.1 This policy applies to all Trust teaching staff, with the exception of newly qualified teachers whose performance will be managed through the statutory induction process.

**3. Who is responsible for carrying out this policy?**

- 3.1 The implementation of this policy will be monitored by the Senior Leadership Team and the governors of the Academy and will remain under constant review by Brooke Weston Trust.

**4. What are the principles behind this policy?**

- 4.1 The Trust is committed to ensuring that teachers are given the opportunities to continue to improve their professional practices to ensure they are able to meet required standards and expectations.
- 4.2 If an employee does not demonstrate an acceptable standard of performance or satisfactory progress through performance management procedures (demonstrated by triangulated evidence of sustained underperformance that the appraisal process has been unable to address) the appraiser will notify the employee that they will be managed under the capability procedure in accordance with this policy. Once the formal capability process has been instigated, the performance management processes will be suspended.
- 4.3 The capability policy applies a consistent and equitable framework through which such teaching staff can achieve and maintain a high standard of performance, or ultimately be dismissed if unable to meet the required standards.
- 4.4 The Trust aims to deal with capability matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to the capability procedure.

- 4.5 The employee and anyone accompanying the employee, including witnesses, must not make electronic recordings of any meetings or hearings conducted under this procedure, unless this is required as part of a reasonable adjustment for a member of staff with a disability or impairment.
- 4.6 Failure to observe the confidentiality outlined in paragraphs 4.4 and 4.5 could result in disciplinary action under the Trust's Disciplinary Procedure.

## 5. Procedures

- 5.1 This procedure applies only to teachers and the Principal whose performance is of serious concern and which the performance management process had been unable to address.
- 5.2 Following an informal review (as per 5.15 of the Performance Management Policy), if the appraiser is not satisfied with progress, the employee will be notified in writing that the performance management system will no longer apply and that his/her performance will be referred to a formal review in the form of a formal capability meeting.
- 5.3 Where there are serious concerns to the health and safety of others or there is a risk to the quality of education for students, the formal procedure (see 5.4) can be commenced immediately without referring to the informal stage.

### Formal Capability Meeting

- 5.4 The focus of the capability and subsequent review meetings are to explore ways in which the employee can be supported to improve their level of performance to an acceptable level.
- 5.5 At least seven working days' notice will be given of the formal capability meeting. The senior manager with line management responsibility for the teacher will write to the individual to inform him/her about:
  - The date, time and place of the meeting
  - The basic details of the concerns about the employee's performance and their possible consequences
  - Copies of written evidence and documents to be used in the meeting
  - The employee's right to be accompanied by a representative of his/her trade union or a workplace colleague of his/her choice
  - Names of witnesses to be called
  - His/her right to call witnesses on his/her behalf
  - The name and office of any adviser who will accompany the senior manager to the meeting.
- 5.6 This meeting is intended to establish the facts. It will be conducted by a senior manager nominated by the Principal and for the Principal by an Executive Principal or the CEO of the Trust. The meeting will allow the employee to respond to concerns about their performance and to make any relevant representations. They may provide new information or a different context to the information/evidence already collected.
- 5.7 The senior manager 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 and the appraisal process as outlined in the Trust's Performance Management policy re-start.
- 5.8 The senior manager conducting the meeting may also adjourn the meeting if it is decided that further investigation is required or that more time is needed in which to consider any additional information.

- 5.9 In all other cases the meeting will continue. The senior manager conducting the meeting will:
- Identify the professional shortcomings of the individual, including which of the professional standards are not being met (either individual aspects of the Teacher Standards and/or the standards of professional conduct expected by the individual academy)
  - Ensure that the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations
  - Give clear guidance on the improved standard of performance required, as agreed at the meeting, to ensure that the teacher can be removed from formal capability procedures which may include the setting of new objectives through an action plan focussed on the specific areas of poor performance which need to be addressed. It will include clear success criteria and the evidence that will be used to assess whether or not the necessary improvements have been made
  - Explain any support that will be put in place to help the teacher improve their performance
  - Establish a timetable for improvement and explain how performance will be monitored and reviewed. This timetable will depend on individual circumstances but will be reasonable and proportionate, normally between 4 and 6 weeks, though this can be extended depending on the circumstances.
  - Warn the teacher that failure to improve within the set period could lead to a final written warning which could then lead to his/her dismissal
  - Inform the employee of the right of appeal together with the time limit for appealing
- 5.10 Notes will be taken by a clerk of formal meetings and a copy sent to the employee and any representative in order that they are agreed.
- 5.11 Where a first warning is issued, the teacher must be informed in writing of the matters discussed in 5.9. The employee must also be informed in writing that failure to achieve an acceptable standard of performance within the set timescales may result in a final written warning which could then lead to dismissal.
- 5.12 If the concerns relate to lack of capability which presents a risk to the health, safety and well-being of students, or is likely to result in serious damage to students' education, a shorter timescale may be appropriate. In such cases, the senior manager may exceptionally decide to issue a first and final written warning.

#### **Sickness Absence and Capability**

- 5.13 It is important that sickness absence should not delay or avoid the use of formal capability procedures. It is in the interest of all parties to address concerns about poor performance without undue delay. The Trust will adopt a sympathetic approach wherever possible but reserves the right to proceed with formal capability procedures notwithstanding staff sickness or other absence. Arrangements will normally be made to seek medical advice from an occupational health adviser to assess the health and fitness for continued employment at the Academy or by the Trust.
- 5.14 Consideration will be given to whether poor performance may be related to a disability and if so whether there are any reasonable adjustments which could be made to the employee's working arrangements including changing duties or providing additional equipment or training.

#### **Monitoring and Review following Formal Capability Meeting**

- 5.15 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The teacher will be invited to a formal review meeting, unless he/she were issued with a final written warning, in which case they will be invited to a decision meeting (see 5.28).

#### **Formal Review Meeting**

- 5.16 At least seven working days before the formal review meeting a written notification of the meeting will be given to the employee together with details of the meeting as outlined in 5.5 above. The formal review meeting will follow a similar procedure to the formal capability meeting as outlined in 5.9 above.
- 5.17 If the senior manager conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the performance management process outlined in the Trust's performance management policy will re-start.
- 5.18 In cases where:
- Some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period.
  - No or insufficient progress has been made during the monitoring and review period, the teacher will receive a final written warning.

- 5.19 Notes will be taken of formal meetings and a copy sent to the member of staff and any representative.

- 5.20 Where a final written warning is issued, the employee 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 also be given information about the handling of the further monitoring and review period and procedure and time limits for appealing against a final written warning.

#### **Right of Appeal against a Formal Written Warning**

- 5.21 If an employee feels that a decision to issue a first and/or final written warning is wrong or unjust, he/she may appeal in writing against the decision.
- 5.22 Appeals against a 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 to the Clerk within five working days of the formal written warning being received.
- 5.23 All appeal hearings will be held as soon as possible after receipt of the appeal at an agreed time and place.
- 5.24 The employee must submit any evidence which he/she wishes to present at least five working days prior to the hearing.
- 5.25 For Academy staff, the appeal will be heard by the Appeal Panel of Governors. The number of governors on the appeal panel will be not less than **two**. The number of governors or directors will be not less than **two**. The panel may be advised by a person engaged for the purpose by the Governing Body. The panel can either:
- Confirm the warning
  - Reduce the final warning to a warning
  - Cancel the warning

The employee will be informed in writing of the decision of the Appeals Panel as soon as possible.

- 5.26 The same arrangements for notification and the right to be accompanied will apply for an Appeals Panel as for the formal capability and review hearings outlined in 5.5 above.
- 5.27 Pending any 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 will be monitored during this period.

#### **Decision Meeting**

- 5.28 Following the capability review meetings and within the agreed timescale for progress to be made, a decision meeting will take place to determine the next steps.
- 5.29 As with formal capability meetings and formal review meetings, at least seven working days' notice will be given in writing together with details of the meeting as outlined in paragraph 5.5. This meeting will be conducted by the Principal.
- 5.30 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 outlined in the Trust's performance management policy will re-start.
- 5.31 If progress has been made and there is confidence that wholly satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review period rather than to dismiss. The final written warning will be extended for a short specified assessment period.
- 5.32 If performance remains unsatisfactory, a decision will be made that the employee should be dismissed.

#### **Dismissal**

- 5.33 The decision to dismiss staff from an Academy rests with the Principal.
- 5.34 Once the decision to dismiss has been taken, the Trust will dismiss the teacher with immediate effect.
- 5.35 The employee will be informed in writing 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 whether there will be pay in lieu of notice and of the right to appeal.
- 5.36 If a teacher feels that a decision to dismiss them or other action taken against them is wrong or unjust, they may appeal in writing within five working days to the CEO of the Trust against the decision, setting out at the same time the grounds for their appeal.

#### **Right of Appeal against a Decision to Dismiss**

- 5.37 The CEO of the Trust will convene an appeals panel. Appeal hearings will be held without reasonable delay after the receipt of the appeal and will be conducted in accordance with the procedure outlined in paragraphs 5.25, except that the Panel shall consist of at least **three** governors from across the Trust and not less than two, **none** of whom have had any previous involvement in the case.
- 5.38 In this case, the panel are to consider whether the employee's performance falls below the required standard, to determine whether adequate support mechanisms have been offered to the employee and to ensure all other reasonable alternatives to dismissal have been exhausted.
- 5.39 The teacher will be informed in writing of the results of the appeal hearing as soon as possible after the date of the hearing.

## **6. Policy Review**

- 6.1 This policy will be monitored annually as part of the Academy's internal review process and reviewed on a three year cycle.