

EQUITAS ACADEMIES TRUST



CAPABILITY POLICY

Review Date: June 2026
To be Reviewed: June 2027
Agreed: Equitas Leadership Team
Policy Lead: HR Advisor

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CAPABILITY POLICY

1. INTRODUCTION

- 1.1 Equitas Academies Trust is committed to providing high quality teaching and learning. Through our workforce the Trust aims to provide opportunities for all our pupils, whatever their ability. Each employee will therefore be given support to ensure they are able to develop the skills they need to carry out their role, to help them continually improve their performance and to develop to their full potential, which will in turn help improve outcomes for our young people.
- 1.2 Having an effective performance management process in place is one of the ways we can support our employees and deal with performance matters as they arise. This involves effective day-to-day supervision, carrying out appraisals, providing development opportunities and operating a fair and reasonable capability process.
- 1.3 This policy sets out the arrangements that will apply when an employee falls below the levels of competence and performance that are expected of them and there is serious underperformance which the Appraisal Policy has been unable to address. The aim is to improve performance and provide the opportunity for employees to respond before formal action is taken.
- 1.4 This policy has been designed to comply with the Employment Rights Act 1996 (as amended), relevant employment legislation, and the ACAS Code of Practice on Disciplinary and Grievance Procedures. It complies with the requirement for all schools including academy trusts to have a policy that deals with capability of staff.
- 1.5 This policy has been agreed and formally adopted by the Trust Board.
- 1.6 This policy does not form part of any employee's contract of employment and may be amended at any time following consultation with staff.
- 1.7 This policy is intended to ensure that any action taken in relation to capability is reasonable, proportionate, and procedurally fair.

1a. LEGAL FRAMEWORK

This policy reflects obligations under:

- Employment Rights Act 1996
- Equality Act 2010
- ACAS Code of Practice on Disciplinary and Grievance Procedures
- Health and Safety at Work etc. Act 1974

Equitas Academies Trust will follow fair process standards in all capability cases. Where there is conflict between this policy and statutory provisions, legislation will take precedence

2. SCOPE AND PURPOSE OF THIS POLICY

- 2.1 The purpose of this policy is to provide a framework within which Equitas Academies Trust can work with employees to improve and maintain satisfactory standards of performance where serious concerns have been raised.
- 2.2 This policy will be applied where there is serious underperformance, and informal support as set out in the Appraisal Policy has been provided and the required improvement has not been made. Where there are capability (performance) concerns relating to an employee who is in their probationary period, this will be managed in accordance with the probationary policy. However, the principles set out in this policy will still apply. This policy does not apply to cases involving sickness absence or misconduct. In those cases, reference should be made to the appropriate policy or procedure.
- 2.3 This policy applies to all employees of the Trust, including teaching staff, support staff, and leadership roles, excluding those who are in the probationary period. On successful completion of the probationary period, employees' performance management will be covered by this policy. It does not apply to agency workers. Standards of performance will be assessed against the relevant professional expectations for the role, including Teachers' Standards, support staff standards, Headship standards, or role-specific objectives

3. INFORMAL DISCUSSIONS

3.1 In line with the Appraisal Policy, in the first instance line managers must seek to resolve performance issues informally and as early as possible, as part of normal day to day management and appraisal process.

3.2 Where performance concerns are ongoing, it may not be appropriate to deal with matters through the informal procedure and matters should commence at the formal stages. Advice must be sought from HR before commencing any procedures.

3.3 Informal discussions should:

- 3.3.1 Explain the nature of the concerns (providing specific examples as appropriate,)
- 3.3.2 Set out the expected standards of performance in line with Teachers/ Support Staff Standards/Headteacher Standards,
- 3.3.3 Establish the likely causes of underperformance and identify key actions required by the employee and manager to support improvement e.g. reasonable job adjustments, professional development, coaching and other sources of support,
- 3.3.4 Set targets and timescales for improvement and review dates using the informal Capability Support Plan template (Appendix 1). Where possible dates will be agreed between the employee and manager,
- 3.3.5 Four calendar weeks (excluding school holiday periods) should be sufficient time for progress to be made and reviewed,
- 3.3.6 Explain the possible consequences of not achieving the required improvement in performance,
- 3.3.7 The manager may consider a range of actions including the provision of advice and guidance, training, coaching, work shadowing or other informal action,
- 3.3.8 The manager should confirm the outcome of any informal discussion in writing to the employee and retain any notes of these informal discussions for reference purposes,
- 3.3.9 Where there is sustained improvement, the matter will be considered resolved and this should be confirmed in writing to the employee.

3.3.10 Where there is insufficient improvement progression to formal stages of this policy should be considered.

4. NOTIFICATION AND PROCEDURE FOR FORMAL MEETINGS

4.1 An employee will be given at least five working days' written notice to attend any formal meeting under this procedure.

4.2 The written notification will also contain:

4.2.1 Sufficient information about the performance concerns and their possible consequences (including the possibility of issuing a warning or dismissal) to enable the employee to prepare to answer the case at the formal meeting.

4.2.2 Copies of any written evidence

4.2.3 Copies of witness statements and details of witnesses attending (if appropriate)

4.2.4 Details of the time and place of the meeting

4.2.5 Your right to be accompanied (see 4.4)

4.3 Formal meetings will be conducted by the CEO/Headteacher, line manager or other senior employee delegated this responsibility by the CEO/Headteacher.

4.4 An employee has the right to be accompanied by a trade union representative or workplace colleague, in accordance with statutory rights to any formal meeting under this procedure. Employees are entitled to request an alternative date which is within five days of the original date, which may be because their representative is unable to attend the meeting.

4.5 The employee's line manager may attend the meeting to present the management case. Relevant witnesses may be called by the person conducting the meeting. Such a request should be provided in writing at least 2 days prior to the meeting with details of why such a witness should be called. The person conducting the meeting shall determine who shall be called as a witness and may request a written statement is provided instead of attendance.

4.6 A formal meeting under this procedure will:

4.6.1 Establish the facts and identify performance shortcomings, including which of the standards expected not being met;

4.6.2 Allow the employee to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected;

4.6.3 Consider whether there are any underlying factors affecting performance, including disability, health conditions, workload, or personal circumstances, and whether reasonable adjustments are required;

4.6.4 Identify what action (including support provided) has been taken to date and what the outcome was;

4.6.5 Give clear guidance on the improved standard of performance needed to ensure the employee can be removed from the formal capability procedure. This may include setting new objectives;

4.6.6 Where appropriate, identify and explain any support, including training, that will be available to help the employee improve performance;

4.6.7 Where appropriate, warn the employee formally that failure to improve within the set period could lead to dismissal or other serious implications such as no pay progression; and

- 4.6.8 Confirm the timescales for the monitoring and review period which will follow a formal meeting where a warning is issued. The timetable will depend on the circumstances of the individual case but the period will be reasonable and proportionate ensuring that the arrangements minimise the impact on workload for all parties involved, and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support will continue during this period.
- 4.7 The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required.
- 4.8 If at any stage the person conducting the meeting is satisfied that there are insufficient grounds for perusing the capability issue or after a review period the employee has made sufficient improvement, the capability procedure will cease and the performance management process will re-start.
- 4.9 Following a formal meeting, the matters covered in 4.6 and any other relevant points will be confirmed in writing. Where a warning has been issued the letter will set out the length of the monitoring and review period and the procedure and time limits for appealing against the warning. If under performance occurs again within a reasonable period after the end of the live period of the warning, the Trust reserves the right to deal with the matter at the same stage of the procedure and not return to earlier stage (including not returning to the Appraisal policy).
- 4.10 Minutes will be taken of all formal meetings, and you will be sent a copy following the meeting.
- 4.11 No decision will be made until the employee has had a full and fair opportunity to respond to the concerns

5. FORMAL CAPABILITY MEETING (STAGE 1)

- 5.1 If we consider that there are serious performance concerns, you will be invited to a formal capability meeting to establish the facts and give you the opportunity to respond before formal action is taken.
- 5.2 Potential outcomes of this meeting are:
 - 5.2.1 it is determined that your performance does meet required standard and no further action is taken. You revert to the appraisal Policy.
 - 5.2.2 A written warning may be issued where appropriate following consideration of all evidence. A Monitoring and Review Period will follow as set out in 5.5
- 5.3 Where a warning is issued at stage 1, this will usually be a first written warning. However, in very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure, and there are still concerns, this could be a final written warning. The implications in relation to pay progression will be set out in writing.
- 5.4 The warning will normally remain active for up to 12 months but may vary depending on the circumstance from the end of the monitoring and review period. During this time any further performance concerns will be considered at the next stage of the process (stage 2). After the active period the warning will remain on your personnel file but will be disregarded in deciding

the outcome of any future capability proceedings, subject to the provision of 4.9 above (not returning to earlier stage).

Monitoring & Review Period (1):

- 5.5 The standard set length of the monitoring and review period following the formal capability meeting in this Trust is normally four weeks. Monitoring periods will be reasonable and proportionate to the performance concerns and may vary depending on the role and circumstances. The Trust will ensure monitoring arrangements are manageable and do not create excessive workload.
- 5.6 At the end of the monitoring and review period you will be invited to a formal review meeting, unless you were issued with a final written warning in which case you will be invited to a decision meeting.

6. FORMAL REVIEW MEETING (STAGE 2)

6.1 Potential outcomes for this formal review meeting at Stage 2 are:

- 6.1.1 If the person conducting the formal review meeting decides that sufficient progress and improvement has been made, then the capability procedure will cease and the performance management process will continue.
- 6.1.2 If the person conducting the formal review meeting decides that some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period to a maximum of four additional weeks.
- 6.1.3 If no, or insufficient improvement has been made during the monitoring and review period, you will receive a final written warning. A further Monitoring and Review Period will follow in accordance with 5.5.
- 6.2 The warning will normally remain active for 12 months from the end of the further monitoring and review period. During this time any further performance concerns will be addressed at the next stage of the process (stage 3). After the active period the warning will remain on your personnel file but will be disregarded in deciding the outcome of any future capability proceedings, subject to the provision of 4.9 above (not returning to earlier stage).

Monitoring & Review Period (2):

- 6.3 At the end of the further monitoring and review period, you will be invited to a decision meeting.
- 6.4 At this stage and by agreement with you, instead of progressing to a decision meeting it may be appropriate to consider whether there is an appropriate vacant post and if so whether this may be more suited to your capabilities. If there is a vacant post which we agree with you is suitable, this would be a permanent change in role and if the alternative post is at a lower

salary level, the substantive lower salary would apply. The capability procedure would cease on commencing in the new post and the appraisal process would re-start.

7. DECISION MEETING (STAGE 3)

7.1 The decision meeting will usually be conducted by the Headteacher or CEO if they have not previously been involved or a panel of Trustee's not previously involved in the case, which could include the Headteacher / CEO. Dismissal is a possible outcome of a decision meeting.

7.2 Potential outcomes of this formal review meeting at stage 3 are:

7.2.1 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.

7.2.2 If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be imposed. There will be a further decision meeting at the end of that extended monitoring and review period.

7.3 If performance is deemed unsatisfactory and before dismissal is considered, the Trust will ensure that:

7.3.1 Appropriate support has been provided

7.3.2 Reasonable time for improvement has been given

7.3.3 Alternatives to dismissal have been considered (including, redeployment)

7.3.4 Equality and reasonable adjustment duties have been met

7.4 If performance remains substandard and of serious concern, dismissal may be considered following a fair and reasonable process. You should be dismissed with notice. Normal delegation rules apply to the power of dismissal.

7.5 You will be informed in writing as soon as possible of the dismissal, the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and the employee's right of appeal.

8. APPEAL

8.1 If you feel that the decision to dismiss you or other action taken against you (including warnings) is wrong or unjust, you may appeal. You should appeal within five working days in writing to the Human Resources Advisor or Headteacher, setting out the grounds for appeal

within five working days of the decision. The appeal will review both the decision and the process followed, where appropriate, the appeal may result in a rehearing.

8.2 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 accompanied by a companion will apply as set out in section 4.4.

8.3 The appeal will be dealt with impartially and, wherever possible, by a panel of three trustees who have not previously been involved in the case in line with the Trust's arrangements for appeals.

8.4 If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful, you will be reinstated with no loss of continuity or pay.

8.5 You will be informed in writing of the results of the appeal hearing as soon as possible. Following the appeal hearing the panel may: (a) confirm the original decision; (b) revoke the original decision; or (c) substitute a different penalty.

8.6 There is no further right of appeal against the sanction or dismissal within the Trust.

9. SICKNESS

9.1 If at any stage long term sickness absence appears to have been triggered at any stage of this procedure, the case will be dealt with in accordance with the Trust's Sickness Absence policy.

9.2 The employee will be referred immediately to the occupational health service to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

9.3 If an employee is absent on long term leave such as maternity leave, shared parental leave, bereavement leave etc then the process will be paused and reinstated at an appropriate time upon the employees return.

10. GENERAL PRINCIPLES UNDERLYING THIS POLICY

Confidentiality

10.1 The capability process will be treated confidentially. However, it needs to be recognised that, in supporting employees through this process, some degree of information sharing is likely to be necessary to quality-assure the operation and effectiveness of the process.

Consistency of Treatment and Fairness

10.2 Equitas Academies Trust and the Trust Board are committed to ensuring consistency of treatment and fairness. The Trust will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled employees. The Trust Board are aware of the guidance on the Equality Act issued by the Department for Education.

Grievances

10.3 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.

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Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently, and at the same meeting.

Retention and data protection

10.4 The Trust Board and CEO/Headteachers will ensure that all written records are retained in a secure place. As part of the application of this policy, the Trust may collect, process and store personal data in accordance with our data protection policy. We will comply with the requirements of **Data Protection Legislation** (being the UK General Data Protection Regulation and Data Protection Act 2018) and any implementing laws, regulations and secondary legislation, as amended or updated from time to time. Records will be kept in accordance with our Workforce Privacy Notice, our Retention and Destruction Policy and in line with the requirements of the **Data Protection Legislation**.

11. INCREMENTAL PROGRESSION

11.1 Pay progression will be paused for staff who are subject to any stage of the formal capability process.

11.2 Pay progression will be reinstated at the point of the employee successfully exiting the formal capability process and backdated to the start on the academic year.

12. REVIEW OF POLICY

12.1 This policy is reviewed and where appropriate amended annually by the Trust. We will monitor the application and outcomes of this policy to ensure it is working effectively.

Reviewed and approved by:	Date approved:	Next review date:
Equitas Leadership Team	June 2026	June 2027

APPENDIX 1 – CAPABILITY SUPPORT PLAN

Employee Name:		Date of commencement of Plan:			
		Date of reviews:			
		Name of mentor:			
Objective:					
Targets must be based on Teachers/Support Staff/Headteacher Standards					
Target	Improvement Required-	Support	How this will be evaluated	Weekly Review Comments	Progress towards target being achieved/not achieved/partially achieved
Target 1:					
Target 2:					
Target 3					
Above has been agreed.					
Signature:		(Employee)	Date:		
<u>Comments</u>					

Signature:	(Head Teacher/Line Manager)	Date:
<u>Comments</u>		