



# **CAPABILITY POLICY FOR SUPPORT STAFF**

**APPROVED BY THE BOARD OF TRUSTEES**

**AUTUMN 24**

**DUE FOR RENEWAL: AUTUMN 2026**

## **CHANGES**

### **April 2013**

New Policy

### **December 2016**

Adopted by Discovery Multi Academy Trust, with appropriate minor amendments.

### **March 2019**

New advice Section 4 Sickness Absence

New advice Section 5 Raising a grievance

Added Appendix A Guidance notes for employee subject to capability

### **July 2019**

Cross-reference to Staff Ill Health Capability Policy

### **July 2022**

Policy reviewed, no changes made

### **July 2023**

Policy reviewed, no changes

### **July 2024**

Policy reviewed, minor changes

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## **I INTRODUCTION**

Discovery Multi Academy Trust has a statutory duty to adopt formal policies and procedures for dealing with staff performance issues (School Staffing (England) Regulations 2003). The effective management of the Trust is underpinned by having a policy and procedure which supports and maintains acceptable standards of performance.

This procedure is designed to help the Trust maintain the required standards of performance, from a position of knowing what shortcomings in performance have been identified, what improvements are required and in what time frame this policy will allow those who do not maintain expected standards of performance the opportunity to improve. It provides a method of dealing with shortcomings in performance including the provision of reasonable levels of support and monitoring. It provides for matters to be dealt with in a fair and consistent manner. This formal process should only be initiated when other support mechanisms in the Trust have failed to resolve the issues.

## **2 SCOPE**

This procedure is informed by Sections 35(8) and 36(8) of the Education Act 2002, and the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015. It applies to and is designed to help and encourage support staff within the Trust maintain acceptable standards of performance.

The procedure applies to all support staff directly employed by the Trust. It does not apply to teachers or persons working for the Trust who are not employees of the Trust e.g. agency staff, employees of external contractors or the LA.

This procedure does not apply to matters of:

- misconduct; i.e. where it is clear an employee is capable of performing at a required standard but chooses not to do so, should be dealt with under a separate, disciplinary procedure adopted by the Board.
- ill health; for which there is a separate policy (Staff Ill Health Capability Policy) adopted by the Board of Trustees, the ill health procedure should be used if there is good reason to believe that the employee's inability to meet set standards is linked to health problems;
- Employees in their probationary period: please refer to the Trust's Probationary Policy.

## **3 GENERAL PRINCIPLES**

Employees will be aware of the Trust's expectations regarding standards of performance and the possible consequences of failing to meet these standards.

A member of support staff who becomes subject to these procedures will be encouraged, at an early stage, to seek advice either from their trade union representative or a work colleague. The Trust welcomes and supports the input and involvement of trade union representatives in these procedures including the right of employees to be accompanied during any formal meeting conducted as part of this process.

Those involved in implementing this procedure will do so fairly and equitably ensuring that the employee is given the opportunity to respond to concerns regarding poor performance and that no decisions are made until all relevant and appropriate information has been considered.

The procedure will be withdrawn when improvements in performance have been both achieved and maintained. The decision to withdraw the procedure will be confirmed in writing.

It is recognised an employee being supported through this procedure is likely to find the situation stressful, and the Chief Executive Officer (CEO) will make the employee aware of the wellbeing services available.

#### **4 SICKNESS ABSENCE**

If a period of absence appears to have been triggered by the commencement of capability procedures, the case will be dealt with in accordance with the Trust's Managing Attendance Policy and will normally be referred to the Trust's Occupational Health Service provider to assess the member of staff's health and fitness for continued employment and the appropriateness of continuing with the procedure. In some cases, it may be appropriate for formal procedures to continue during a period of sickness absence e.g. if the procedure has reached a stage where the absence of the employee would not significantly affect the outcome. Further advice should be sought through the Head of People.

#### **5 RAISING A GRIEVANCE**

Where an employee raises a grievance relating to the way in which concerns about their performance are being addressed, the capability procedure may be temporarily suspended for a short period in order to deal with the grievance. It is recommended that discussion takes place with the Head of People and the employee (normally through their trade union representative or directly if they are not represented) about whether or not the capability procedure should be suspended so that the grievance issues can be dealt with separately under the grievance procedure, or whether the grievance should be raised by the employee at relevant capability interviews, reviews, hearings or appeal.

Suspending the capability procedure because a grievance has been raised would normally take place when:

- There is an allegation that management have failed to follow procedure;
- There is possible discrimination.

#### **6 FORMAL MEETING WITH EMPLOYEE**

The Head of School and/or CEO, with appropriate notice, will meet formally with the employee to discuss the perceived shortcomings and will advise that the capability procedure has been reached.

The employee will be informed in writing of their right to be accompanied by their trade union representative or workplace colleague. During the meeting, discussion will take place with the employee on ways of providing further opportunity to improve their performance. The meeting will:

- Clarify perceived shortcomings. The employee will be given a copy of any documents being used to record areas for improvement, objectives to be achieved, the support and guidance provided and progress being made.

- Seek to agree a formal course of action to affect the required improvement, which will include the provision of support and advice from experienced sources which could be both within and outside of the Trust. Support arrangements will be kept separate and distinct from monitoring arrangements. In each case individuals with appropriate experience will be selected to undertake these roles.
- Set an appropriate period of time for the employee to improve and arrange a formal review meeting.
- Inform the employee that a continued failure to improve performance could lead to a formal hearing being convened.

At the conclusion of the agreed period, a formal review meeting will take place. This meeting will involve the CEO and/or Head of School.

## **7 FORMAL REVIEW MEETING**

The employees will be informed of their right to be accompanied by their trade union representative or workplace colleague.

The employee must be given at least five working days' written notice of the meeting and confirmation of the nature of the concerns, and any accompanying documents that will be referred to at the meeting, including a further copy of the procedure.

At the meeting and prior to any decision being taken the employee will be given an opportunity to comment on the concerns and to ask any questions.

The Head of School and/or CEO will then consider what action should be taken. Following the meeting the CEO will inform the employee both verbally and in writing of their decision. The options at this stage of the procedure are:

The outcome of the review will be either:

- (a) Satisfactory progress; no further action required.
- (b) Some progress; further review needed after specified period
- (c) No significant improvement - move to a formal hearing with the CEO or Staffing Panel.

## **8 HEARING WITH THE CEO**

If after the conclusion of the formal review meeting, it is decided there has been no significant improvement in performance, or that the improvement has not been sustained, arrangements will be made for the member of staff to attend a formal hearing.

If the CEO has not been directly involved in the capability process leading to a hearing and has not made earlier judgements on performance they may convene the hearing. The procedures to be followed at this stage may be varied by mutual agreement. The employee must be advised in writing of the date, time, place of hearing, who will be involved, the specific nature of the shortcomings, including copies of the supporting information and the right to have a representative present. The employee will be given at least five working days' notice of the hearing.

If the CEO **has been directly involved**, then the matter will be referred to a Staffing Panel.

The outcome to the hearing will be either:

- (a) Required improvement in performance achieved; no further action required.
- (b) Some progress towards required improvement achieved but performance remains below acceptable standards; agree a further period of support and monitoring aimed at securing acceptable progress towards performance objectives set and arrange a second review meeting. In addition, consideration may be given to issuing a written warning; this will state the grounds for action to be taken, and that failure to improve may result in dismissal.
- (c) No significant improvement; move to a hearing of the Staffing Panel.

The decision will be confirmed in writing within five working days. If the decision is to issue a written warning the employee will be advised of the grounds for the action taken and, where appropriate, clarification of those areas of work giving cause for concern, objectives which will need to be met to demonstrate appropriate improvement, the timescale for achieving this improvement, the support provided to assist the employee, the date on which a review will be conducted and by whom. The letter will also contain details of their right of appeal.

## **9 HEARING WITH THE BOARD STAFFING PANEL**

If, after the conclusion of the formal review meeting, it is decided that there has been no significant improvement in performance, or that the improvement has not been sustained, arrangements will be made for the employee to attend a formal hearing.

The Board of Trustees will nominate three of its members to form the Staffing Panel. Three different Trustees will also be nominated to form the Appeals Panel. No Trustee will serve on either panel if they have had any previous involvement in the matter or have a pecuniary interest.

The employee will be:

- given at least five working days written notice,
- advised of the right to be accompanied by a workplace colleague or trade union representative,
- informed of the nature of concerns, and provided with all relevant evidence that will be discussed at the hearing.
- The CEO will present the evidence for the areas of concern, the process followed and the support and training given and make recommendations.
- The employee will be given the opportunity to respond.
- The panel of Trustees will consider the evidence regarding the employee's performance and consider the recommendations and determine:
  - (a) Whether sufficient improvement has taken place and withdraw the procedure
  - (b) Consider whether alternative employment is available within the Trust and can be offered to the employee
  - (c) Issue a written or final written warning and give the employee further time to improve
  - (d) Dismiss the employee with notice

The decision must be confirmed in writing within five days of the hearing. If the decision is to issue a written warning or dismissal, then the employee must be notified of their right to appeal.

## **10 RIGHT OF APPEAL**

An employee may lodge a letter of appeal against any formal action taken under this procedure. A letter of appeal should be addressed to the Clerk to the Trustees and forwarded within five working days of the date on which they receive the confirmation of the formal action. The appeal will be heard by the Appeal Panel of Trustees in accordance with the Trust's agreed appeals procedure. The appeal panel will consist of three Trustees who have not taken part in any early stages of the procedure.

The employee will be given at least five working days' notice of the hearing. The decision of the Appeal Panel will be confirmed in writing within five working days. If the appeal is upheld the letter will only convey the grounds for the action taken.

If the decision is not to uphold the employee's appeal, the letter will confirm the grounds on which the panel reached their decision.

Where the outcome to the above hearings falls short of dismissal and concerns regarding performance remain the employee will be informed of;

- those areas of work that continue to be a cause for concern,
- the targets which will need to be met to demonstrate appropriate improvement,
- the timescale for achieving this improvement,
- the support provided to assist the employee,
- the date on which a review will be conducted and by whom.

In these circumstances the above procedure will recommence from paragraph 7.

## **11 WRITTEN RECORDS**

A record of the documentation relating to each stage of the process will be retained and will include:

- details of the shortfall in performance standards
- the employee's views
- names of participants, their role, findings and actions taken
- the reason for actions taken
- whether an appeal was lodged
- outcome of the appeal
- subsequent developments
- notes of any formal meetings

## **12 FUTURE REFERENCE REQUEST**

In receiving a reference request for an employee who has been subject to formal capability the Trust will:

Advise in writing whether or not that employee, in the preceding two years, has been the subject of the procedures established by the Board of Trustees;



## **APPENDIX A**

### **GUIDANCE NOTES FOR EMPLOYEES**

These notes are intended to assist employees who have been asked to meet with their Head of School or another senior member of staff to discuss shortcomings in one or more areas of performance.

The following questions and answers provide a useful summary of the main issues commonly raised about the capability process.

#### **1. What is the purpose of the procedure?**

To support you so that you become capable of performing all aspects of your job to the current standards required by the Trust.

#### **2. What is wrong with my performance?**

It will be explained to you where your performance is falling short of the expected standard, and what is required. It may be an area of your job for which you have already identified difficulties in undertaking successfully or it may be that you have been unaware that you have not been achieving the standard required. You will have the opportunity to ask questions to ensure that you understand what is required.

#### **3. I work hard and always do my best - what more can I do?**

It is not being suggested that you are not committed to doing a good job. However, your Head of School will want to discuss the way you do your work and provide guidance on how you can become more effective.

#### **4. What responsibility does my Head of School have in this?**

Your Head of School is accountable for ensuring staff perform their work to the standards required in the Trust. They have a duty to draw your attention to any areas of your work where improvement is required. They equally have a responsibility to arrange the support which can reasonably be provided to you to enable you to improve your work.

#### **5. What will I have to do?**

The chances of a successful outcome to the procedure will be highest if you:

- listen carefully to the criticism offered
- ask questions to check your understanding of what is being said and required
- take full advantage of support offered
- explain to your Head of School any difficulties you are finding in doing what is required and, if possible, make your own suggestions about what would help you to improve.

#### **6. What is meant by “support”?**

Depending on the aspect of performance being worked on, it can take many forms. Some examples are:

- counselling/coaching
- review of commitments and responsibilities
- availability of suitable materials/resources

- attendance at off the job training sessions
- opportunities to see good practice within your school or other appropriate establishments

### **7. How will I know how I am doing?**

Your Head of School will make arrangements for your work to be monitored and will discuss with you who will do the monitoring and how it will be done. You will be given a period of time during which to improve your performance (with support) and will know in advance the date when you will meet again with your Head of School to review your progress.

### **8. Who will know about this?**

The application of the procedure to you will be a confidential matter between you and your Head of School. There may be arrangements for other staff to give you guidance or coaching but they will not be given confidential information exchanged between you and your Head of School.

### **9. I am worried/embarrassed about this. Does it mean my career is ruined?**

It is natural to feel concerned and uncomfortable when performance is criticised. But most jobs today are demanding, and requirements change over time that it is not uncommon for employees to experience difficulties at some time. This does not mean that after a period of support you will not go on to become as successful or more successful than you have previously been in your working life.

### **10. Who can I talk to about this?**

You may wish to talk to your trade union representative, who will have experience of the operation of this type of procedure. In the formal stage you may be accompanied by a trade union representative or work colleague of your choice at any of the formal review discussions with your manager. The Trust will also provide you with the contact details of our support and wellbeing services.

### **11. How will I know when I am no longer subject to this procedure?**

Your Head of School will confirm to you when your performance meets the required standard and the procedure is being suspended or withdrawn. If your Head of School considers that you are performing satisfactorily but needs to see evidence that you can maintain this, they may in the first instance suspend the procedure for a period of time before withdrawing.