



EBOR ACADEMY TRUST

Policy Number

27

Capability: Managing Poor Performance

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Ebor Academy Trust Diversity and Inclusion Statement:

We act as one organisation working as one school, many sites and supporting each other to achieve the best we can. We are dedicated to fostering a school environment where diversity and inclusion shape every aspect of the educational and professional journey. By celebrating differences and promoting equity, we ensure that every member of our Trust is valued for who they are and we aim to ensure that they feel a sense of belonging through overcoming challenges and celebrating successes together.

1. POLICY PURPOSE

As part of Ebor Academy Trust's commitment to Excellence and Opportunity, it is anticipated that line managers will routinely engage with staff in coaching and development conversations in order to celebrate success or to help staff overcome challenges in their working life. There may be times where work does not meet the required standard and some informal support and direction is sufficient to raise standards to the required level. However, there are times when a more structured and directive approach to performance management is needed and the Managing Poor Performance policy should be used.

Ebor Academy Trust is committed to providing high-quality education to its pupils, which can only be achieved when its employees perform their job well. Therefore it is vital that poor performance is identified and tackled with fairness and objectivity, as promptly as possible so that Ebor's high standards of education, operational efficiency and environment are maintained.

Where poor performance is identified, it will generally be addressed through appropriate support, facilitated by the individual's line manager. However, if sufficient improvement is not made through informal support, or if significant or sustained concerns arise, the formal procedures from this Policy will apply.

2. POLICY PRINCIPLES

For the purposes of this policy, poor performance is defined as follows:

Where a member of staff is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner, either due to a lack of ability, inadequate training or lack of experience. Such failings will be addressed through this policy, with steps taken to improve performance. Where such steps prove unsuccessful the member of staff may have their employment terminated on the grounds of lack of capability to do their job.

The intended outcomes from this policy are:

- To support underperforming staff to improve their job performance to meet required standards
- Enable the Trust to deal with cases of underperformance as quickly and effectively as possible
- Promote fairness and transparency by providing written procedures that are specific, clear and applied consistently

- Consider individual circumstances which may affect staff performance and require referral to additional sources of support outside of the scope of this policy.

The application of this policy will be based on the following principles:

- Where a concern is identified, the line manager will discuss the matter sensitively with the individual and work collaboratively with them to support them to improve. The manager should signpost staff to other sources of support if needed. This may include employee assistance services or Education Support Network. The line manager can seek advice from HR as needed.
- Capability is assessed by reference to the skills and aptitude relevant to the position compared to that held by the employee and their competence to perform their duties and responsibilities. The application of these and the subsequent outcomes are the indicators of overall performance and if standards are not met, the matter should be addressed through this policy.
- There are some exceptions which should be referred to other Trust policies. If poor performance is the result of negligence, unacceptable attitude to work, lack of effort or deliberate or wilful action, the Disciplinary policy should be followed. Cases of ill-health should be dealt with through the Trust's Sickness Management Policy.

3. ROLES AND RESPONSIBILITIES

The Trust will:-

- Set clear targets for the Trust and its schools, which can then be cascaded down to each team member.
- Take all reasonable steps to try to avoid capability problems amongst staff by ensuring that there are clear and robust practices in place around recruitment, performance management, job design and work allocation, induction, appraisal and ongoing professional development.

Line Managers will:

- Include discussion around performance in conversations and coach and support people to do their very best. This can include identifying areas for improvement and should be an ongoing process.
- Ensure that roles are clearly defined through up to date, accurate job descriptions and that standards of performance are clearly articulated through one-to-one meetings, team meetings and appraisals.
- Discuss concerns about performance with the relevant member of staff honestly and promptly and with a view to facilitating improvement informally. Local notes from these discussions will be retained and referred to if required as evidence at a later stage.
- Ensure that they understand how to facilitate this policy, seeking support from HR as needed.

- Where an individual's performance does not improve following informal discussions, make HR aware of the situation and take advice about how the issue should be progressed.
- Ensure that their team members have access to the appropriate time, support and development to enable them to succeed in their work.

HR will:-

- Provide advice and guidance to managers to enable them to implement this policy.
- Attend any meetings held under the formal hearing stage and support any outcomes as needed.
- Collate data on the use of this policy and on the outcomes of meetings under the formal stage.
- Undertake periodic review of the policy with Trust managers and trade union colleagues.

Staff will:-

- Act on the constructive feedback given by colleagues and managers with the aim of continuously improving performance.
- Play an active part in discussions, providing as much information as possible and engaging in the support and other interventions available to ensure they deliver their roles to the required standard.
- Act openly, asking for help and/or support at work if needed, using all available channels of support within the Trust and its connections.

4. POLICY CONTEXT:

- In the first instance, action should be taken under the informal stage of this policy. It is anticipated that most cases of poor performance will be resolved at this stage with no further action required. If there are safeguarding concerns or repeated examples of poor performance which continue despite informal action, the manager may move directly to the formal process, using evidence of previous interventions to justify the decision. .
- Employees have the right to be accompanied by their trade union representative or a workplace colleague at all stages of the process. If the representative cannot attend on the proposed date, the employee must suggest a reasonable alternative time and date not more than five working days after the original date. If the representative is continually unavailable, the process may proceed without representation so long as the decision is justified and supported with appropriate evidence.
- The person chairing any meetings under this Policy must not be involved in the monitoring of the individual's performance or have any declared interest or connection to the employee.

- If a concern or grievance is raised regarding any matter being dealt with under this Policy, it should be considered promptly and resolved within this process. Issues should only be referred to the Resolving Issues at Work policy where they are not related to the performance issues being considered.
- This policy applies to all employees of the Trust except those who are within their probationary period and teachers in the induction period of Newly Qualified Teachers (NQTs), unless serious capability issues occur. This policy will also apply to an employee who is a trade union representative. However, the school will discuss the matter with an official employed by the union at the commencement of the procedure, after obtaining the employee's agreement.
- Details of any cases arising under this policy and any documents pertaining to them will be treated in strict confidence and any records kept in accordance with the Trust's data protection policies.

5. INFORMAL ACTION

Where an employee exhibits an inability to perform their duties satisfactorily, the line manager will take action to resolve the matter informally.

A meeting will take place between the line manager and the member of staff and notes will be taken for future reference. The member of staff may bring a Trade Union Representative or colleague to support them (but not speak for them) in the meeting. The nature and date of the meeting will be recorded and a Performance Improvement Plan agreed with the member of staff indicating the nature of their unsatisfactory performance and how such performance can be improved to the required standard. The template in Appendix 1 should be used to record the Performance Improvement Plan along with details of progress and other key discussion points.

At this meeting the line manager will agree performance standards with the member of staff, and a time period (not exceeding 12 weeks) over which improvement will be expected. They will also agree how the individual's performance will be monitored and set dates for milestone meetings where a discussion will take place to establish progress and / or the need for different or additional support. There must be a minimum of one milestone meeting within the improvement period.

At the end of the period specified in the Performance Improvement Plan, a review meeting with the line manager will be convened to evaluate performance. The possible outcomes are as follows:

- i. If **sufficient progress has been made**, such that the employee is performing at a level that indicates there is no longer a possibility of formal capability procedures being invoked, the employee will be informed of this and the process will terminate at this stage. Notes of discussions and outcomes will be held on file.
- ii. If **significant progress** has been made, such that the employee might reasonably be expected to achieve the required standard of performance within a short time period,

then the monitoring period under the Performance Improvement Plan may be extended.

This should only happen once and will usually be for a maximum of four weeks. Notes of discussions and outcomes will be held on file once the process is completed.

- iii. If **no, or insufficient improvement** has been made over the period, the employee will be advised of this at the review meeting. The individual will also be notified that their performance will be managed under the formal stage of the Managing Poor Performance Policy. They will be invited to a formal capability meeting which will be confirmed in writing within 5 working days of the meeting.

6. FORMAL ACTION

- The first stage of the formal process is that the individual will be invited to attend a formal capability meeting.
- An individual will be given a minimum of ten working days' notice of any formal capability meeting. In addition to providing the time, date and venue of the meeting, the communication will also contain the nature of the issues to be discussed, explaining how the person's performance is not reaching the required standard, as previously discussed. Any evidence to be considered at the meeting will also be sent with the letter, so that the individual has the time to be able to consider their response. The communication will make it clear that this is a meeting under the formal stage of the Policy. The member of staff will be advised of their right to be accompanied by a workplace colleague or recognised trade union representative.
- A formal capability meeting will usually be chaired by the line manager's manager, or another person of similar seniority in the Trust. The chair should seek advice from HR where needed and in exceptional circumstances, HR may attend the meeting to provide a higher level of support and advice.

7. FORMAL CAPABILITY MEETINGS

The purpose of the meeting is to:

- Discuss the issues of under-performance which have been identified and ensure there is common understanding regarding the areas of concern and the standard of performance which is required.
- Consider any mitigation or other factors affecting the employee's performance.
- Determine the next steps in the formal process and, if applicable, agree a further formal action plan including timescales, targets and standards and how these will be monitored.

- Agree appropriate support arrangements for the employee including relevant training and guidance if required, and how this will be provided, as well as any personal support such as counselling, that may be beneficial.
- A note taker should be invited to the meeting to ensure that an accurate record is kept and to allow the chair to maintain focus on the meeting process. Notes will be held locally on file and a copy will be shared with the member of staff within 5 working days of the meeting.
- The line manager may 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.

The possible outcomes of the formal capability meeting are as follows:

a) Insufficient grounds for pursuing a capability issue

- Where the manager chairing the meeting believes there are insufficient grounds for pursuing the formal capability issue and that it would be more appropriate to continue to address the remaining concerns through the informal process, then the employee will be notified and this will be confirmed to them in writing within 5 working days of the meeting.

b) Sufficient grounds for pursuing capability

- Where there is a continued concern about the standard of performance, a formal support plan and review period will be instigated (see appendix 1 for a template). A formal action plan will be developed with the employee who will contribute their views on any support they may need. The individual may discuss this with their trade union representative or workplace colleague through an adjournment of the meeting.
- The timescale for improvement will be reasonable and proportionate, providing them with sufficient opportunity for improvement to take place. The timescale may also reflect the amount of time and support an employee has already received. It is not anticipated that the timescale will exceed 6 weeks and there will be at least one milestone meeting which will be set at the start of the improvement period.
- The implications of failing to make the required improvement will be discussed with the employee and they will be notified that failure to improve within this timescale could ultimately lead to dismissal. They will also be notified of any impact of the process on their pay.

The employee will be issued with a letter following the meeting which details the discussions held, the outcome reached and if applicable, the full details of any formal action, including the date of the formal review meeting.

8. FORMAL REVIEW MEETINGS

- At the end of the review period, a meeting will be held to assess performance against the action plan. Where possible, the meeting will be chaired by the person who chaired the original formal capability meeting.
- The employee will be asked to demonstrate what steps they have taken and the improvements against the plan they believe they have made. They may also wish to discuss any mitigating circumstances or personal factors which they feel are relevant to their performance at work.
- The line manager will discuss the employee's progress against the action plan and may ask other staff involved in undertaking monitoring and providing support under the plan to attend the meeting to provide feedback.
- Once all relevant information has been considered, the manager chairing the meeting will confirm if the employee's performance has reached the required standard or not.
- The possible outcomes of the formal review meeting are as follows:

a) Improvement to the required standard

If the level of performance is considered to be satisfactory and sustainable then the capability procedure will end and usual monitoring will ensue.

By agreement with the employee, it may be appropriate to continue some of the support arrangements which were put in place under the action plan, to ensure that the employee can sustain their improvement or even develop further.

If the employee's performance subsequently dips within a timescale appropriate to the job role and work cycles (not normally less than a term), the manager may determine that the employee will return to the formal stage of the Managing Poor Performance Policy. In such cases, the Head Teacher will arrange a formal capability meeting to discuss the concerns with the employee and their representative. At this meeting the Head Teacher may determine either that the employee will be subject to a further formal review period or progress directly to a capability hearing.

b) Significant improvement made but standards not fully achieved

If the employee has demonstrated significant improvement but has not reached the required standard but there is a realistic probability that they will be able to do so in a reasonable timescale, a further period of support and monitoring will take place with an updated formal action plan, followed by a further formal review meeting and subsequent decision. At this further stage it is likely that the decision taken will be either that improvement has been made to the required standard or there has been a failure to reach the required standard, with a third period of support and monitoring being appropriate only in exceptional cases.

c) Failure to reach the required standard

If the employee has failed to show sufficient improvement towards achieving the targets to satisfy the manager that they are capable of achieving and maintaining the required standards of performance in the post, the case will be referred to a Capability Hearing.

The decision and main points of the formal review meeting will be recorded in a letter issued to the employee within 5 working days of the meeting.

9. CAPABILITY HEARING

- The Capability Hearing will be convened to consider the continued employment of the member of staff and will be held with a panel consisting of no fewer than three members, which will comprise of Trust staff of sufficient seniority (e.g. Head Teachers, Executive Head Teachers), trustees or members of the local governing body who have had no prior involvement in the case. The hearing panel will be advised by a member of the HR team and an administrator will also take notes. If the employee fails to attend the capability hearing without good reason, the panel will decide whether to proceed in the employee's absence or to reconvene the hearing at another time. Before such a decision is taken, attempts should be made to contact the employee to ascertain the reason for their absence. HR will advise the panel on the point of consideration when making the decision to proceed.
- The employee will be notified of the hearing in writing and given at least 10 working days' notice. The notification letter will confirm:
 - a) The arrangements for the hearing, including the date, time, location and who will be present
 - b) The fact that the hearing is being held under the Trust's Policy of Managing Poor Performance and how a copy of this can be accessed by the employee
 - c) The employee's right to be accompanied by a trade union representative or workplace colleague
 - d) That a possible outcome of the hearing will be the termination of the individual's employment
 - e) In addition, the employee will also be provided with any documentary evidence which will be considered at the hearing regarding the identified areas of underperformance and the actions which have been taken including under the formal action plan.
- Other staff involved in a monitoring or supporting role within the capability process may be asked to attend the hearing if required to answer questions or prest information. The employee and their representative will be asked to present their views at the hearing. Should the employee wish to have any written evidence considered by the panel then this must be submitted to the Panel Chair at least 48 hours prior to the hearing.
- At the hearing the panel will consider all the evidence relating to the case, reviewing the actions taken and support provided at previous stages, the impact of the employee's performance on other employees and service delivery and any information and mitigation provided by the employee. Length of service, prior achievements, employee record and any mitigating circumstances will be considered by the panel as part of the decision making process.
- The possible outcomes of the capability hearing are as follows:

a) Improvement to the required standard

If the level of performance is considered to be satisfactory and sustainable then the capability procedure will end and usual monitoring will ensue.

By agreement with the employee, it may be appropriate to continue some of the support arrangements which were put in place under the action plan, to ensure that the employee can sustain their improvement or even develop further.

If the employee's performance subsequently dips within a timescale appropriate to the job role and work cycles (not normally less than a term), the manager may determine that the employee will return to the formal stage of the Managing Poor Performance Policy. In such cases, the Head Teacher will arrange a formal capability meeting to discuss the concerns with the employee and their representative. At this meeting the Head Teacher may determine either that the employee will be subject to a further formal review period or progress directly to a capability hearing.

b) Significant improvement made but standards not fully achieved

In this case a formal warning will be issued to the member of staff to ensure that they understand the implication of further failure to improve. If the employee has demonstrated significant improvement but has not reached the required standard but there is a realistic probability that they will be able to do so in a reasonable timescale, a further period of support and monitoring will take place with an updated formal action plan, followed by a further formal review meeting and subsequent decision. At this further stage it is likely that the decision taken will be either that improvement has been made to the required standard or there has been a failure to reach the required standard, with a third period of support and monitoring being appropriate only in exceptional cases.

- a) **Failure to reach the required standard** - In such cases the employee is likely to be dismissed with notice, on the grounds of incapability – see para 9. below.

The employee will be notified of the decision of the capability hearing in writing within 5 working days of the meeting. In the event of failure to reach the required standard, the letter will specify the reasons for dismissal, the arrangements for notice and the right of appeal.

10. NOTICE

- A member of staff who is dismissed will normally be entitled to contractual notice or pay in lieu of notice. However there are exceptional circumstances where staff members may be liable to be dismissed without notice and without pay in lieu of notice. The Director of People and Culture (or a member of the HR team with their designated authority) must be consulted before a decision is made to dismiss without notice in order to ensure that it meets the criteria for gross misconduct.

11. APPEALS

- Appeals will be heard by an appeal panel. The panel should contain three people, comprising members of the local governing body, trustees, or senior managers, none of whom have been involved in any previous action or decision connected with the case. The Panel hearing the appeal has the authority to uphold or dismiss the appeal.
- HR representation will be available to advise the appeal panel.
- The appeal will only be heard on the basis of new evidence, where it can be demonstrated that processes were not correctly followed or where it can be demonstrated that discrimination has taken place.
- Staff members must lodge an appeal in writing to the Director of People and Culture within **10 working days** of receiving written confirmation of the formal warning or notice of dismissal, setting out the reasons for their appeal. Notification of the arrangements for the appeal will be the same as with formal capability and review meetings. As with other formal meetings, notes will be taken and a copy sent to the member of staff within 5 working days of the meeting.
- The appeal will take the form of a review of the meeting at which the sanction was issued. The Chairperson from that meeting will present the reasons for reaching their decision, including a response to the staff member's grounds for appeal, and the staff member and their representative will set out their reasons why they believe the decision is wrong.

APPENDIX 1 PERFORMANCE IMPROVEMENT PLAN (PIP)

Employee name:	Line manager name:	Mentor name (if applicable):
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Reason for the PIP:

Overall aims of the PIP:

Methods of support:

Key meeting dates:

Key Issue	Areas for improvement	Timescale	Actions to be taken	Additional support /resources required	Monitoring /Assessment arrangements and timetable for achievement to review	Success Criteria

Any other relevant information, e.g. plan of support etc.

