

This policy is part of the Ebor People Policy Suite

Please refer to Self Service HR for the latest version of this and other Ebor People Policies



EBOR ACADEMY TRUST

Policy Number

27

CAPABILITY POLICY

Ebor Academy Trust works closely with Trade Union Partners to develop and implement a fair and effective suite of people policies. Please seek advice from your trade union representative if you require support with this policy. If you are not a member of a trade union, please visit the Union tab or HR Self-service. Ebor Academy Trust welcomes Trade Unions to support staff throughout the processes associated with this policy.

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David Wheeler

Disciplinary, Grievance, Staff Code of Conduct

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1 Aims

The aim of this policy is to set out a clear and consistent process for use when a member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations. Future development is handled through Staff Development Reviews.

The Trust is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate. The Trust is aware of the guidance and provisions of the Equality Act 2010.

2 Legislation and guidance

This policy is based on the [Department for Education's model policy and guidance](#), and the [Acas code of practice on disciplinary and grievance procedures](#). This policy is non-contractual.

When carrying out capability procedures, we will ensure we abide by the [Equality Act 2010](#).

Related Policies: Disciplinary, Grievance, Staff Code of Conduct

3 Definitions

Lack of capability is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires.
- Confidentiality is essential to protect the integrity of this policy, and all involved must not discuss cases (including via electronic and social media) with anyone who does not have reason to be involved.

4 Roles and responsibilities

Where the member of staff subject to the procedure is the headteacher, the Director of Education will be responsible for coordinating the procedure.

In all other cases the Head Teacher or a nominated member of senior staff will be responsible for coordinating the procedure.

Where appropriate, other members of staff may be asked to provide additional support to the teacher or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

5 Capability procedure

Performance is monitored on a day-to-day basis by line managers with more structured informal discussion taking place as part of maintaining professional standards. The Trust believes that a coaching approach to supporting people to be their best and to deliver the best for our children is directly aligned to our values of Excellence and Opportunity.

Staff development reviews are used as part of continuous improvement, career development and supporting staff to achieve their very best. Staff engagement activities enable staff and managers to identify needs. Both will be subject to review throughout the academic year.

Formal capability procedures will begin when line management support has been unable to bring about satisfactory performance or improvements in the staff member's work. They may also be used where concerns over capability are so significant that they warrant an immediate formal approach.

In some instances, the poor standard of work may relate to conduct. Examples of this could be negligence or clearly identifiable examples of an irresponsible approach to work. In these cases, the Staff Code of Conduct and / or the Disciplinary policy will be used.

5.1 Informal procedures

An informal period of support, put in place and monitored by the line manager, will have generally been active before formal procedures are triggered. Underlying reasons for poor performance will need to be explored and appropriate support should be provided.

Informal support should be documented locally in notes of relevant meetings. These should be referred to if the formal capability process is used.

There is no specific guidance to informal performance improvement however the HR business partner may be able to provide some examples of good practice.

Where an early career teacher (ECT) is subject to capability procedures, we will continue the induction process in parallel with the capability procedure and inform the appropriate body.

5.2 Formal capability meeting

Notification of a formal capability meeting should not come as a surprise, as they will already have been receiving informal support to improve or they will be advised that the matter is serious enough to warrant formal action. Mitigating reasons identified in 5.1 should be considered during the formal capability meeting. The support offered should be taken into account.

The staff member will receive at least 10 working days' notice of the formal capability meeting. The notification will contain:

- The concerns about performance and possible consequences
- Any written evidence
- The time and place of the meeting
- That the staff member has the right to be accompanied by a trade union representative or colleague

Staff are entitled to reasonably request an alternative date if they are not able to attend the original date proposed. The meeting will be re-arranged once to accommodate the availability of those involved.

The formal capability meeting will be conducted by the Head Teacher or the Director of Education (in cases where the matter relates to a Head) or a suitable senior manager.

The purpose of the meeting is to establish the facts, and to allow the staff member to respond to the concerns and make relevant representations. The Ebor standard investigation template must be used if an investigation is needed to ensure that the facts are supported by evidence (see Appendix 3).

5.2.1 Possible outcomes

The meeting may establish that there are no grounds to pursue the capability issue. In this case, the procedure will come to an end and the issues will continue to be addressed through day-to-day line management (see 5.1).

If it is determined that there are grounds for formal action, the meeting should continue as follows:

- Explain the expected standards that are not being met
- Give clear guidance on the standard of performance needed to end the procedures
- Explain the support available to help the staff member improve their performance

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- Set out the timetable for improvement and explain how performance will be monitored and reviewed (see Appendix 1).
- Formally warn the member of staff that failure to improve within the set period could ultimately lead to dismissal

The meeting may be adjourned if further investigation is needed, or if more time is needed to consider additional information and evidence.

5.2.2 After the meeting

The staff member will be sent a copy of the meeting notes. If formal action has been issued, the staff member will also receive:

- A written record of the bullet points above
- A copy of the performance improvement plan
- Information about the procedure and time limits for appealing via the Ebor standard appeal process.

5.2.3 Monitoring and review period

A performance monitoring and review period consisting of formal monitoring guidance and support will follow the formal capability meeting. This will be shown in the performance improvement plan. The length of the monitoring period will be one term unless agreed otherwise as part of the improvement plan

The member of staff will be invited to a formal review meeting to establish whether their performance has now reached an acceptable standard.

5.3 Formal review meeting

At least 10 working days' notice will be given of the formal review meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a trade union representative or colleague

The member of staff is entitled to reasonably request an alternative date if they are not able to attend the original date proposed. The meeting will be re-arranged once to accommodate the availability of those involved.

If the person conducting the meeting is satisfied that the staff member has made sufficient improvement, the capability procedure will cease.

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 by an agreed period and issue a final written warning. Further failure to achieve an acceptable standard of performance within the set timescale may result in dismissal.
- A Decision Meeting will be scheduled to determine whether sufficient improvement has been made. This date will be reflected in the Performance Improvement Plan.

OR

- If no or insufficient improvement has been made during the monitoring and review period, the staff member will be referred directly to a Decision Meeting to determine the next steps. Notes will be taken of formal meetings and a copy sent to the member of staff along with details of any warnings which have been issued.

5.4 Decision meeting

At least 5 working days' notice will be given of the decision meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

If an acceptable standard of performance has now been achieved, the capability procedure will end and however any warnings will remain on file and may be considered in future capability meetings should standards not be maintained. If no warning has been issued the matter is closed with no further action.

If the staff member's performance has not improved to a sufficient standard, a decision, or recommendation to the CEO, may be made that the staff member should be dismissed. If the CEO approves the dismissal:

The staff member 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
- Their right of appeal through the standard Ebor appeal process.

If dismissal is not approved then the issued warnings will remain on file and may be considered in future capability meetings should standards not be maintained.

5.5 Dismissal

The power to dismiss staff in the Trust has been assigned to the Chief Executive Officer (CEO) and may be delegated to the Director of Education in order to maintain objectivity or where the CEO is unavailable. Staff will be dismissed with notice or payment in lieu of notice if appropriate.

6 Right to appeal

Staff have the right to appeal decisions made throughout this policy by using the Ebor standard appeal process. See Appendix 2.

7 Confidentiality

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and to quality assure the operation and effectiveness of the system.

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Appendix 1: Performance Improvement Plan (PIP)

This template can be used as part of the process of supporting staff who are underperforming. It records the improvement objectives and notes, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, job description or appropriate improvement needs of the member of staff concerned.

NAME OF STAFF MEMBER	NAME OF MONITORING MANAGER	DATE OF MEETING

OBJECTIVE 1:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

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OBJECTIVE 2:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

OBJECTIVE 3:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

Other support provided

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MENTOR/COACH ALLOCATED	YES/NO (IF YES GIVE NAME)
Counselling to be provided	Yes/No
Occupational health referral to be made	Yes/No
[Insert any other support provided]	
Formal review date	

SIGNED BY MEMBER OF STAFF	SIGNED BY MONITORING MANAGER	DATE

Appendix 2: **Ebor Standard Appeal Process**

[CLICK THIS LINK TO DOWNLOAD THE EBOR STANDARD APPEAL PROCESS](#)

Appendix 3: **Ebor Investigation Template**

[CLICK THIS LINK TO DOWNLOAD THE EBOR INVESTIGATION TEMPLATE](#)