



TWO RIVERS  
HIGH SCHOOL



# CAPABILITY PROCEDURE

## Endeavour Multi Academy Trust

Review date: Summer Term 2021

Next Review: Summer Term 2022

## **1. Purpose**

The purpose of this procedure is to ensure that concerns about the standards of professional performance achieved by all staff in schools are dealt with in a systematic and fair way.

The Trust is committed to supporting and retaining individuals who have the right motivation, skill and experience to make a positive contribution to the Trust's success and the delivery of high quality education.

The Trust is committed to achieving this through:

- Setting high standards of expectation consistent with the school community expectations of our Trust and relevant professional standards.
- The application of consistent and fair procedures in accordance with good practice and equal opportunities.
- Adhering to relevant employment legislation and statutory guidance.

## **2. Scope**

This procedure applies to all colleagues including, temporary, fixed term staff and casual staff regardless of length of service. This procedure does not form part of your contract of employment and may be varied from time to time.

This procedure is not intended to deal with the following matters:

- a) discipline and conduct.
- b) staffing reductions, school closures and displacement.
- c) ill health.
- d) professional competence of newly qualified teachers who have not yet successfully completed their initial period of assessment.

Separate procedures exist for dealing with these matters.

This procedure provides a framework for dealing with performance issues. Its main aim is to allow any professional difficulties to be identified, addressed and resolved. These difficulties might relate to any aspect of the colleague's responsibilities. These issues tend to be complex and specific to the individual and therefore it is undesirable to lay down a rigid procedure for dealing with them, particularly in the early stages.

The over-riding requirements are fairness and reasonableness. The colleague is naturally entitled to expect fair treatment, including appropriate guidance and advice from the Executive Headteacher/Headteacher, colleagues and external advisers as appropriate. There can be a conflict of interest in the process of monitoring the performance of a colleague and supporting a colleague in improving their performance. Wherever possible, the person who monitors the performance of the colleague should not be the one who

offers support. However, the procedure has to operate in the context of limited resources and of the nature and requirements of a colleague's job.

No formal action will be taken against an official of a professional association or trade union until a full time official of the association have been notified first.

The Local Governing Board will liaise with the Local Authority and other agencies in the application of this procedure where required.

### **3. Accountabilities**

The Executive Headteacher/Headteacher is accountable for ensuring that managers are appropriately trained to implement this procedure and that a relevant action plan for monitoring and support, has been in place before this procedure is initiated.

#### **Appropriate Manager**

The Executive Headteacher/Headteacher or other senior manager, usually undertakes the role of evaluating and reviewing the performance of staff who are subject to the capability procedure. In the case of Executive Headteacher/Headteacher subject to this procedure, this would usually be the Chief Executive Officer. The person undertaking this role is referred to as the Appropriate Manager for the purposes of this procedure.

#### **Governors**

Governors should not normally be involved with a capability procedure, relating to a colleague, before the dismissal stage. The exception to this is where a governor or governors are involved in considering an appeal against a warning, or in a capability procedure against an Executive Headteacher/Headteacher when the Chief Executive Officer will undertake the monitoring and evaluation of performance supported by an appropriate Professional Lead. It is important to be prepared for the possibility of dismissal. The procedure requires that a sufficient number of impartial governors remain available for the first and appeal committees. Normally at least three governors are required for each committee.

#### **Professional Lead**

An appropriate professional should be appointed to support the Chief Executive Officer and Chair of Governors when undertaking the monitoring and evaluation of performance of an Executive Headteacher/Headteacher. This could be a representative of the Local Authority, a professionally qualified and experienced school leader or external consultant.

## **Professional Advisers**

School Improvement Advisers or other advisers with education or Human Resource experience may advise and where appropriate assist with the process, including classroom observation and providing support and advice at formal meetings.

## **Trade Unions and Professional Associations**

A colleague has an entitlement to be accompanied by a trade union representative or colleague at all formal meetings. If the colleague's chosen companion is not available at the time proposed for the meeting or hearing, a mutually convenient time should be arranged within five working days of the original date.

Schools are advised to consider allowing colleagues to be represented at the informal stage of the procedure, this helps to ensure that appropriate external advice is available and that the relevant action plans for monitoring and support are agreed as appropriate in the circumstances.

## **Colleagues**

All colleagues have a responsibility to maintain high standards of performance. Colleagues are responsible for maintaining an appropriate level of skill and knowledge to fulfil their role and must seek advice and support at an early stage where they experience difficulties in meeting organisational standards of performance.

## **4. Guiding Principles**

The following guiding principles will apply:

**Safeguarding** - The safeguarding of young people is a priority for our Trust. All colleagues must comply with the school's policies and procedures for safeguarding children and vulnerable young adults as well as comply with the relevant statutory guidance on safeguarding.

**Equitable and Fair** – We are committed to equality and diversity and will make reasonable adjustments to the application of this policy and procedure in line with our equal opportunities commitment.

**Consistent and Objective** – All managers have a duty to ensure that they and all of the colleagues they are responsible for are aware of, and comply with, the Trust's policies and procedures. Managers are also responsible for making sure that colleagues know when they are not achieving or maintaining the expected standards of performance.

## 5. Informal Stage

Where concerns regarding underperformance have been raised evidence should be collected and presented to the colleague for discussion in order to identify informal support at an early stage.

An appropriate manager will consider the evidence and the context within which it was collected and pursue one of three options:

- a) drop the matter because there is little or no under-performance.
- b) provide informal support to improve performance where under-performance (example types of support can be found at *Appendix 1*).
- c) initiate the formal procedure where the under-performance is sufficiently serious to implement a formal process immediately, after authorisation from a more senior manager.

The manager will discuss the problem areas with the colleague, who must be informed before the meeting that it is proposed to implement the informal stage of the procedure and that (s)he may be accompanied by a trade union or other representative as appropriate.

The meeting will indicate:

- a) what is required of the colleague.
- b) what agreed support will be provided.
- c) how future performance will be reviewed and over what agreed period.
- d) that the formal procedure will be initiated if there is insufficient improvement.

This will be confirmed in writing to the member of staff within five working days. The meeting should be supportive and avoid creating undue stress for the colleague.

Throughout the informal stage, those monitoring the performance should offer feedback and instruction to help the colleague improve performance. If training courses or assistance from other colleagues would be helpful, these should be arranged as soon as possible but should not interrupt the timing of the procedure.

After a period of review (which will not normally be less than 4 weeks) a firm conclusion should be reached.

The options will be either to:

- a) drop the matter.
- b) extend the informal period.
- c) initiate the formal stage of this procedure.

## **6. Link with Other Policies and Procedures**

**Grievance Policy** – In exceptional circumstances a colleague may raise a grievance about the Executive Headteacher/Headteacher or manager during the course of a capability procedure. If the grievance is unrelated to the capability procedure, the matter should be investigated in accordance with the Trust's Grievance Procedure and should not delay the progress of the capability procedure.

However, depending on the circumstances it may be appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the colleague has been mistreated and consideration should be given to bringing in another manager to deal with the capability case. Any records should be passed to the new manager and, if appropriate, the capability procedure should be continued within the same timetable.

**Managing Attendance at Work Policy** - Absence which is triggered by the capability procedure, and which management believe is likely to be long term, should be referred immediately to the occupational health adviser to assess whether the colleague is fit for continued employment. Short absences should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the colleague to attend formal meetings, but where the colleague is unable to attend, these may proceed if the absence is protracted and the operation of this procedure is a substantial factor in the illness. If the colleague is absent from such meetings a full account of the evaluation should be provided in the letter confirming the decision taken.

## **7. Formal Stage**

### **First Formal Meeting**

The appropriate manager will prepare a report on his/her concerns with the colleague's performance and arrange a meeting to discuss this with the colleague. The colleague has a right to be represented at all formal meetings and should be strongly advised to be accompanied by a trade union representative or colleague. The colleague will be given notice of the first formal meeting and a copy of the manager's report at least five working days beforehand.

The first formal meeting may provide new information or put a different interpretation on evidence collected. If it becomes clear that further investigation is needed the interview should be adjourned for an appropriate length of time to allow this to happen.

Having discussed the report with the colleague, the manager will adjourn the meeting to consider how to proceed. If the person conducting the meeting is satisfied that the colleague has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.

In other cases, the appropriate manager will decide to:

- a) provide continued support (except where already undertaken without improvement).
- b) issue a first written warning.
- c) issue a final written warning.

The first option is only relevant where new information, a different interpretation on the information collected, or further investigation suggests that the matter is not as serious as it first seemed. If some progress has been made and there is confidence that sufficient progress is likely, it may be appropriate to extend the monitoring and review period. The second and third options are relevant to any case where the manager remains seriously concerned about the standard of performance. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- a) identify the professional shortcomings, for example which of the standards expected of teachers or support staff are not being met.
- b) give clear guidance on the improved standard of performance needed to ensure that the colleague can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made).
- c) explain and agree the support that will be available to help the colleague improve their performance.
- d) set out the timetable for improvement and explain how performance will be monitored and reviewed. **The timetable will depend on the circumstances of the individual case and will be appropriate and realistic in light of the targets which are being set.** This will usually be between four and ten weeks and should not be longer than one term. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.

- e) warn the colleague formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

A letter will be sent to the colleague within five working days following the first formal meeting, recording the result of the investigations, the main points discussed at the meeting, confirming the decision and (where a warning is issued) giving information about the handling of the first formal assessment stage of the procedure. The letter will also indicate that the colleague has a right of appeal against a written or final written warning. Appeals must be sent to the Clerk to Governors in writing within five working days of receipt of the outcome letter; the appeal will take place within 10 working days of notification of the appeal.

## **8. First Formal Assessment Stage**

The colleague's performance will be subject to a first formal assessment stage of no longer than one term. This involves regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the colleague.

Monitoring and evaluations of performance will be undertaken, alongside a programme of guidance and support. Regular feedback and review should take place in order to provide opportunity for improvement throughout the assessment stage.

If the period at this stage is of 10 weeks or more, there will be a mid-stage evaluation of progress involving the manager, the colleague and his/her representative. This mid-stage evaluation gives an opportunity for the withdrawal of any additional support provided in the first period, if the evaluation has shown satisfactory progress by the colleague up to that point. Alternatively, it allows for escalation or adjustment of the support, if insufficient progress is demonstrated.

If, at any point during this stage, the circumstances suggest a more serious problem, the review period may be curtailed and the procedure will move to a second Formal Meeting.

## **9. Second Formal Meeting**

The manager will prepare a report on his/her concerns with the colleague's performance and arrange a second formal meeting to discuss this with the colleague. The colleague has a right to be represented at all formal meetings and should be strongly advised to be accompanied by a trade union representative or workplace colleague. The colleague will be given notice of the second formal meeting and a copy of the manager's report at least five working days beforehand.



Having discussed the report with the colleague, the manager will adjourn the meeting to consider how to proceed. If the manager is satisfied that the colleague has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.

In other cases:

- a) If some progress has been made and there is confidence that sufficient progress is likely, it may be appropriate to extend the monitoring and review period.
- b) If performance is judged to be unsatisfactory a final written warning should be issued. Formal monitoring, evaluation, guidance and support should continue for a second assessment stage. Arrangements for this should be explained at the meeting. The colleague will be told explicitly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal. The decision and main points of the meeting should be recorded in a letter to the colleague. The letter will also indicate that the colleague has a right of appeal against a written or final written warning. Appeals must be sent to the Clerk to Governors in writing within five working days of receipt of the outcome letter; the appeal will take place within 10 working days of notification of the appeal.

## **10. Second Formal Assessment Stage**

The colleague's performance will normally be subject to a second formal assessment stage of four weeks. This involves regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the colleague.

The procedure is the same as for the first formal assessment stage. If performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure will cease and this will be confirmed in writing.

If performance is unsatisfactory, the colleague should be informed that the matter will be referred to a committee of the Local Governing Body.

## **11. First Committee Stage – consideration of dismissal**

The Local Governing Board should set up a committee. This must hear the representations and recommendations brought by the appropriate manager conducting the capability procedure, and any representations that the colleague may wish to make. The Local Governing Board should also set up an Appeal Committee to hear any appeal against a dismissal decision.

None of the governors on the First Committee should be on the Appeal Committee.

The appropriate manager will prepare a report to the first committee summarising the concerns with the colleague's performance and the outcomes during the assessment stage(s).

The colleague will be given notice of the date of the meeting and a copy of the appropriate manager's report at least five working days beforehand. The colleague has the right to be accompanied by a trade union representative or workplace colleague. The procedure for the meeting is attached as *Appendix 2*.

The Committee may decide:

- a) to drop the matter because it is not satisfied that there is under-performance.
- b) to allow a further period for improvement.
- c) to dismiss the colleague with appropriate notice.

The Committee's decision will be confirmed in writing and within five working days. It will include the reasons for the decision and the colleague's right of appeal.

### **Right to be Accompanied**

You have the right to be accompanied by a trade union representative or workplace colleague at any meeting or hearing which forms part of the formal capability procedure.

The representative/colleague may address the meeting/hearing, to put and sum up your case, respond on your behalf to any views expressed at the meeting and confer with you during the hearing. They may also request an adjournment and ask questions of anyone present. The companion does not, however, have the right to answer questions on your behalf, address the hearing if you do not wish it or prevent the hearing from progressing.

Under this procedure, you do not have the right to be accompanied by anyone else (such as a spouse, partner, other family member or legal representative).

However, it would not normally be reasonable for you to insist on being accompanied by a someone whose presence would prejudice the hearing nor for you to ask to be accompanied by someone from a remote geographical location if someone suitable and willing was available on site.

Where appropriate, eligible colleagues, for example those with disabilities or language difficulties, may have the attendance of a supporter or interpreter.

## Action against Trade Union Representatives

Disciplinary action against a TU representative can lead to a serious dispute if it is seen as an attack on their functions. Whilst normal disciplinary standards apply to a TU representative's conduct as a colleague, the relevant full-time official should be notified of any action (including suspension) that the employer proposes to take. All reasonable efforts must be taken to ensure that disciplinary action is not taken against a TU representative until the relevant full-time official has had an opportunity to be present at any stage of the formal procedure.

## 12. Appeals

Following the issue of a formal warning, a final formal warning or a decision is to dismiss, the colleague has the right of appeal to the Appeals Committee.

A colleague wishing to appeal must notify the Clerk to Governors in writing, within five working days of the written notification of the outcome, of their intention to appeal.

It should include:

- a) the grounds of appeal which may include:
  - I. Facts disputed
  - II. Procedural fault or principles not followed
  - III. Previous evidence not fully investigated
  - IV. Evidence not previously considered
  - V. Level of warning not considered to be appropriate
- b) whether they wish to be represented or accompanied at the meeting of the Appeal Committee and, if so, by whom.
- c) whether they propose to call witnesses at the meeting and, if so, who those witnesses are.
- d) whether they wish to introduce any additional documents not used previously. If so, these should be included with the letter of appeal.

The appeal will take place within 10 working days of notification of appeal. The procedure for the meeting is attached as *Appendix 3*.

The appeal will be heard by a manager more senior manager or panel of governors who have not been involved in any prior decision making. The appeal manager or panel may be supported by a specialist adviser; the adviser has no decision-making powers.

### **13. Data Protection**

The Trust will comply with the provisions of the Data Protection Act 2018. Employee data will be processed by the Trust in accordance with the principles of that legislation, as necessary for the performance of the employee's contract of employment and/or the conduct of the Trust's business. The Trust will ensure that personal information about an employee, including information in personnel files, is securely retained.

Minutes of formal meetings will be given to you for your information and copies of notes, letters and action plans should be retained on file.

## Examples of possible support

1. Advice and encouragement from management, colleagues and identified professional support.
2. Assigning a mutually agreed mentor.
3. Opportunities to observe exemplar practice of others in the colleague's own school or at another school.
4. Opportunities to review own practice and adapt and implement improvements accordingly.
5. Support of experienced staff/subject managers/Executive Headteacher/Headteacher advisers to lead lessons or team teach or to advise on management processes (Teachers/Teaching Assistants).
6. Specific training or other opportunities for professional development.
7. Attendance at courses aimed at rectifying specific weaknesses.
8. Seeking appropriate medical advice where ill health appears to be a contributory factor.
9. Consideration of redeployment, changes to role and/or responsibilities, changes to working pattern, suitable adaptations as appropriate.
10. Consideration of and adaptation of present commitments if at all practicable (e.g. by the voluntary relinquishing of additional responsibilities and associated responsibility payments).
11. In school workshops/coaching for example on class management or pupil behaviour (Teachers/Teaching Assistants).
12. Observation of particular, agreed issues within the classroom or workplace and appropriate supportive feedback.
13. Opportunities to enhance the individual's status, e.g. specialist teaching in a primary school, leading sessions on areas of expertise, additional non-contact time to carry out specified responsibilities as appropriate.
14. Advice on curriculum and lesson planning procedures.
15. Advice on teaching and learning styles.

**Note: the agreed support should indicate the improvement it is intended to secure.**

## First Governors' Committee Meeting Procedure

1. Introduction by Chair: explanation of procedure.
2. Appropriate Manager should amplify the report prepared recommending the dismissal of the colleague.
3. The Appropriate Manager may present witnesses.
4. Colleague (or representative) may ask questions of Appropriate Manager and witnesses.
5. Colleague (or representative) should put case against dismissal.
6. Appropriate Manager may ask questions of colleague and witnesses.
7. The Committee may ask questions of Appropriate Manager, colleague and witnesses.
8. Appropriate Manager to sum up case.
9. Colleague (or representative) to sum up case.
10. Parties to retire. (Professional Adviser may remain with the Committee to offer advice.)
11. The Committee will consider the case and notify the parties of their decision. This may be conveyed verbally, at the conclusion of the hearing or soon after. The decision will then be confirmed in writing by no later than five working days after the meeting.
12. This procedure may be varied by agreement of all the parties.

## Appeal Governors' Committee Meeting Procedure

1. Introduction by Chair: explanation of procedure.
2. Colleague (or representative) should put their grounds of appeal, including any new evidence that is to be presented.
3. Appropriate Manager may ask questions of colleague (or representative).
4. The Appropriate Manager should summarise the original report recommending the dismissal of the colleague and respond to the grounds of appeal as appropriate.
5. Colleague (or representative) may ask questions of Appropriate Manager.
6. The Committee may ask questions of Appropriate Manager and colleague.
7. The Chair should summarise the facts for meeting.
8. Parties to retire. (Professional Adviser may remain with the Appeal Committee to offer advice.)

The Appeal Committee will consider the case and notify the parties of their decision. This may be conveyed verbally, at the conclusion of the hearing or at a later date. The decision will then be confirmed in writing by no later than five working days after the meeting.

This procedure may be varied by agreement of all the parties.