

# Capability Policy

Audience:	All REAch2 Employees
Ratified:	REAch2 HR Committee 12 May 2020
Other related policies:	Performance Appraisal Policy Disciplinary Policy Grievance Policy
Policy owner:	Sue Northend, HR Director
Review frequency:	Every 2 Years



At REAch2, our actions and our intentions as school leaders are guided by our Touchstones.

- Integrity** We recognise that we lead by example and if we want children to grow up to behave appropriately and with integrity then we must model this behaviour
- Responsibility** We act judiciously with sensitivity and care. We don't make excuses, but mindfully answer for actions and continually seek to make improvements
- Inclusion** We acknowledge and celebrate that all people are different and can play a role in the REAch2 family whatever their background or learning style
- Enjoyment** Providing learning that is relevant, motivating and engaging releases a child's curiosity and fun, so that a task can be tackled and their goals achieved
- Inspiration** Inspiration breathes life into our schools. Introducing children to influential experiences of people and place, motivates them to live their lives to the full
- Learning** Children and adults will flourish in their learning and through learning discover a future that is worth pursuing
- Leadership** REAch2 aspires for high quality leadership by seeking out talent, developing potential and spotting the possible in people as well as the actual

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## Policy Overview

### 1. Overarching Principles

REAch2 Academy Trust is committed to ensuring that issues of capability are dealt with in a fair and consistent way across the Trust. This policy ensures that a mechanism is in place to help employees achieve and maintain a high standard of performance.

The Capability Policy will be applied fairly and in accordance with the Appraisal Policy as well as employment law and REAch2 equalities policies. The application of this policy will not directly or indirectly discriminate against any members of staff on any grounds.

The policy will be reviewed at least every two years by REAch2, in consultation with the trade unions at a national level and on any Trust or legislative changes.

#### 1.1 Intended Impact

The aim of the policy is to ensure high standards of performance from all employees in order to provide exceptional opportunities for learning

### 2. Roles and Responsibilities

#### 2.1 Employee's Responsibilities

To perform the requirements of their job to a satisfactory level and in line with the appropriate standards.

To achieve this, employees are expected to:

- Work within allocated resources and specified regulations to achieve all the requirements of their role to the required standard and within the required timescales;
- Work to the best of their ability and participate in self-development activities and as agreed with their line manager;
- Attend work in accordance with their Contract of Employment and make the best use of their time at work;
- Fully engage in discussions about their role and performance and development, including the appraisal process.

#### 2.2 Line Manager's Responsibilities

- To implement the procedure when required. For the avoidance of doubt, if a headteacher's capability is being managed, their line manager will, with input from the Chair of Governors, implement the procedure;
- To maintain fair, consistent and objective procedures for matters relating to staff capability;
- To be clear and precise at all times throughout the procedure and ensure that the employee is aware at what stage they are in the process, including the possible outcomes;
- To provide support to direct reports and every opportunity for them to raise their performance to the required level.

## Policy in Detail

### 3. Policy Principles

For the purposes of this policy, lack of capability is defined as a situation in which an employee fails consistently to perform their duties to a professionally acceptable standard.

Unsatisfactory performance can arise for a number of reasons and may be due to an employee's lack of knowledge, skills or aptitude for the position to which they are appointed.

This procedure is not intended as a substitute for sound employment practices, such as the induction of new/newly promoted employees and comprehensive performance management. Generally, performance should be discussed regularly as part of the employee's supervision and under-performance identified and tackled early. Early identification of problems through performance review conversations and the appraisal process will help to avoid formal capability procedures. However, there may be cases where a more formal and structured approach is necessary.

This procedure applies to all employees who either (a) have a permanent contract of employment, or (b) are fixed term employees with more than six months' continuous service. It does not apply to employees within their probationary period.

Incapability due to ill health will be managed in accordance with the REAch2 Sickness Absence Management Policy.

### 4. Disciplinary vs Capability

A distinction should be drawn between the procedure for capability and the procedure for disciplinary issues.

Capability applies to those situations where an employee's performance is unacceptable because they are unable to perform their duties to the required level due to lack of ability, skill, experience or inadequate training.

Disciplinary issues apply to those situations where the employee is capable but wilfully refuses to perform to the required standard. These will be managed through the Disciplinary Policy, not capability procedures. HR advice should be sought prior to proceeding and throughout either procedure.

### 5. Informal Procedure

If a line manager is concerned about an employee's performance, it will be raised as part of normal management processes in the first instance, such as a one to one meeting or performance review meeting. In such circumstances, the line manager should explain where the performance falls below standard, identify where possible the cause of the problem and discuss with the employee appropriate means of support for improving performance.

Where inadequate performance persists, the line manager should invite the employee to a meeting to discuss their performance, as set out in section 3.6 of the REAch2 Appraisal Policy.

In cases of particularly serious concern, such as where the health and safety of others is being placed at risk, the formal procedure may be started immediately without the need for referral to the informal stage. Employees subject to the formal capability procedure should be advised in writing of their right to be accompanied by a recognised trade union representative or work colleague.

Formal procedures should only start after the performance-related process within the Appraisal Policy has been exhausted and performance is still not at the required level.

## **6. Formal Procedure**

If, after informal support, performance continues to fall short of the required standard, the formal procedure will apply. The focus of the formal procedure will still be on supporting the employee to improve their performance. Before starting the formal procedure, an appropriate member of the Human Resources team must be consulted.

At each stage, employees subject to the formal capability procedure should be advised in writing of their right to be accompanied by a recognised trade union representative or work colleague.

Employees have the right to appeal at each stage against written warnings that may be issued to them, as well as any dismissal that may result (see section 6.6 below).

### ***6.1 First Review Meeting***

The first review meeting initiates the formal stage of the capability procedure.

The employee will be invited to a meeting with the line manager, giving at least five working days' written notice. Wherever possible, the time and date of meeting should be agreed with the employee and their representative.

Employees who are unable to attend the first review meeting because their trade union representative or work colleague cannot attend may offer a reasonable alternative date for the meeting to be held within five working days of the original date. A further extension may be considered.

The notification will include:

- Sufficient information relating to the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at the meeting;
- Copies of any written evidence connected to the concerns;
- The details of the date, time and place of the meeting;
- Advice to the employee of their right to be represented/accompanied by a trade union official or work colleague;
- The names of those who will be at the meeting and their role.

At the meeting, the manager will clarify where the employee's performance is falling short of the required standards and specify what the required standards are. This meeting should be used as an

opportunity to explore further with the employee any reasons for their unsatisfactory performance, as well as establishing appropriate training and support mechanisms that will assist an improvement.

The employee will be given the opportunity to respond. At the interview the employee may provide new information or put a different slant on evidence collected. If it becomes clear that further investigation is needed the meeting should be adjourned for as long as necessary.

The manager's decision should be made after all the facts and any representations from the employee have been considered, and with advice from Human Resources.

There are five options at the first review interview, either:

1. No further action\* or
2. Arrange additional informal support \* or
3. Commencement of the first assessment period or
3. First written warning or
4. Final written warning, in cases of particularly serious concern.

\*1 and 2 are only relevant where new information, a different slant on the information collected, or further investigation suggests that the matter is not as serious as it first seemed or there is no case to answer.

Formal warnings should not be issued at this meeting unless there are very significant concerns about performance. A first written warning issued as a result of this meeting will remain on the employee's file for a period of six months. A final written warning will remain for a period of 12 months.

Where further informal support, an assessment period or a formal warning is issued, the manager should:

- Identify the performance shortcomings;
- Set reasonable and achievable targets for improvement;
- Give clear guidance on the improved standard of performance to be reached and maintained to end the capability procedure;
- Explain the support that will be available and how performance will be monitored in a sympathetic way over the following weeks (it is expected that the action plan to be agreed at the meeting will cover a period of not less than 4 weeks, dependent on the role and expected improvements);
- Confirm that a first written warning or final written warning has been issued (where relevant) and the employee's right of appeal;
- Agree a date for the second review meeting and confirm the employee's right to be represented by a trade union representative or work colleague;
- Make it clearly understood that failure to improve may in due course lead to dismissal.

A letter should be sent to the employee within five working days of the formal meeting recording the main points discussed and confirming the decision. Where a warning is issued, information should be given about the next stages and possible outcomes if no improvements are forthcoming, as well as confirming the right to respond on the record or appeal.

If the level of performance has been satisfactory and there is confidence that it can be sustained, the capability procedure can end here with a letter from the line manager. If some improvements have been made, then the meeting may be adjourned for further monitoring and support.

## ***6.2 First Assessment***

Following the first review meeting, a performance monitoring and review period will take place, with regular monitoring and evaluation of performance, as well as support for the employee, as agreed. For teaching staff this may also involve lesson observations. It is expected that this action plan will cover a period of between four and eight working weeks, depending on the role, nature of improvement needed and training / support to be provided, allowing sufficient time for improvements to take place.

If at any time, unforeseen developments suggest a more serious problem, a decision may be taken to move directly to the second review meeting.

## ***6.3 Second Review Meeting***

The line manager will meet with the employee again to review the employee's performance. Where the date of the meeting was not specified at the first review meeting, the employee should be given five working days' written notice and notified of the right to be represented by their trade union representative or work colleague.

Again, the focus of this meeting should be to identify whether the employee's performance has improved and to explore ways of supporting the employee to improve their performance to an acceptable level.

Where, following the first assessment, the employee's performance has improved to a satisfactory level, the capability process should be terminated and this should be formally recognised and confirmed in writing within five working days of the meeting. The manager should explain to the employee the importance of sustaining this level of performance. If inadequate performance reoccurs during the next 12 months, the formal capability procedure will recommence at the first review meeting stage.

Where, following the first assessment, and despite appropriate support mechanisms having been put in place, the employee's performance remains unsatisfactory and shows no signs of improving, the manager may issue a final written warning. If this is the case, then a further action plan will be agreed, setting out the steps to improve the employee's performance. This will be for a period of between four and eight working weeks depending on the role and nature of improvement needed.

Final written warnings issued as a result of this meeting will remain on the employee's file for a period of 12 months.

Following this meeting, the manager should write to the employee within five working days recording the main points discussed and confirming the decision, the agreed further action plan. They will also confirm that failure to make the required improvement in their work performance within the agreed timescale may result in dismissal. It will state the right to respond on the record or appeal.

## ***6.4 Second Assessment***

During this stage, there will be further performance monitoring and evaluation of performance against the action plan as agreed in the second review meeting, alongside any guidance, training, and support agreed with the employee. Again, for teaching staff, this may also involve lesson observations. This will be for a period of between four and eight working weeks depending on the role and nature of improvement needed.

Where some progress is evident, or the line manager is confident that more progress is likely within a short timeframe, then consideration will be given to extending the monitoring and review period.

## ***6.5 Capability Hearing***

Where, following the second assessment, the employee's performance remains unsatisfactory and shows no sign of improving, the matter will be referred to a capability hearing. The hearing will be conducted by a panel comprising at least three senior managers and governors with no previous involvement in the matter, selected from line managers / headteachers, senior REAch2 employees, academy Governors and a member of the Human Resources Team.

The employee will be given at least ten working days' written notice of this meeting, will be provided with any relevant documentation and notified of the right to be represented by their trade union representative or work colleague.

Sympathetic consideration will be given to any request for postponement in order to allow representation or where there are other extenuating circumstances. As a guide, one rearrangement will be permitted within 5 days of the original hearing date. However, should all reasonable efforts be made to reschedule the meeting and the employee is unable to agree to the rescheduled date or does not attend, then the meeting may be held in their absence.

The employee must submit any new evidence that they wish to present to the panel at least five working days prior to the hearing.

The purpose of the meeting will be for the panel to consider whether the employee's performance falls below the standard that is required, to satisfy themselves whether adequate support mechanisms have been offered to the employee and to ensure that all reasonable alternatives to dismissal, such as redeployment, have been exhausted.

Where the panel feels that acceptable improvement has been made, and an acceptable standard of performance has been achieved during the process, the capability process will end and the manager will confirm this in writing to the employee. The manager should explain to the employee the importance of sustaining this level of performance. If unsatisfactory performance reoccurs during the following 12 months, the formal capability procedure will normally recommence at the first review meeting stage.

Where the panel believes that no/insufficient progress has been achieved nor will it be following an extended monitoring period, the employee will be informed that they will be dismissed from their employment with the Trust on the grounds of capability. The employee will be informed of the date on which the employment contract will end, the appropriate period of notice and of their right to appeal.

Where possible, consideration will be given to alternatives to dismissal, such as redeployment or demotion to a lower graded role by mutual agreement. This will depend on the circumstances of the school or service area.

Where possible the panel's decision will be communicated orally to the employee at the meeting. The decision will be confirmed in writing within five working days and the employee advised of their right to appeal against the decision, the timescale for appeal, to whom it should be addressed and that they are entitled to be represented by their trade union representative or work colleague at any appeal hearing.

## **6.6 Appeals**

Appeals must be made in writing within ten working days of the written confirmation of the warning or decision to dismiss to the Human Resources Director who will make arrangements for the appropriate person(s) with no previous involvement in the matter to hear the appeal.

The Appeals Panel will comprise at least three senior managers, selected from line managers / headteachers, senior REACh2 employees, academy Governors and a member of the Human Resources Team. None of the Appeals Panel will have been involved previously.

Appeals against capability action will usually be considered by the panel in relation to one or more of the following grounds:

The procedure – the grounds of appeal should detail how procedural irregularities prejudiced any decision.

The facts – the grounds of appeal should detail how the facts do not support the decision or were misinterpreted or disregarded. They should also detail any new evidence to be considered.

The decision – the grounds of the appeal should state how the level of action taken was unreasonable and unjustified.

An appeal hearing will be convened as soon as is reasonably practicable and the employee will be given ten working days' notice of the time and place of the appeal hearing and will be provided with any relevant documentation. Sympathetic consideration will be given to any request for postponement in order to allow representation or where there are other extenuating circumstances.

The employee must submit any new evidence that they wish to present to the panel at least five working days prior to the hearing.

The purpose of the appeal hearing is to review the decision to give a written warning or to dismiss. The outcome will either be to confirm it, substitute a lesser penalty or to cancel it. Where the reasonableness of the decision is being questioned the test that should apply for overturning a formal warning is that the decision was so unreasonable that it was one that no other senior manager, acting with proper regard to his or her responsibilities, could have chosen to take. The person chairing the appeal will communicate the decision in writing to the employee within ten working days of the appeal hearing. This decision is final.

Appeals should not unnecessarily delay progression of the capability procedure. Whilst a second review meeting/capability hearing may be delayed pending an outstanding appeal, this is not necessarily always the case and the decision to delay the process depends on the nature of the appeal. This decision will be made by the line manager. Any monitoring or supportive action being taken will continue whilst the appeal is being processed (and count towards any monitoring periods / timescales previously agreed). If an employee's companion cannot attend on a proposed date, the employee can suggest another date so long as it is within five working days of the original date.

## **7. Capability and Disability**

Under the Equality Act 2010 a person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse impact on their ability to carry out normal day-to-day activities.

Before a line manager commences capability proceedings with an employee with a disability, due consideration should be made of whether the performance concerns relate to the disability and if so, whether any reasonable adjustments can be made to overcome the problem.

## **8. Other Information**

### ***8.1 Sickness Absence***

If long term sickness absence appears to have been triggered by monitoring or by a formal capability procedure, the case will be dealt with in accordance with the REAch2 Sickness Absence Management Policy and the employee will be referred immediately to the Occupational Health Service to assess the employee's health and fitness for the appropriateness or otherwise of continuing with monitoring or formal procedures. Consideration will be given to the period of absence being excluded from the period for support, monitoring and review.

### ***8.2 Grievance***

Where an employee raises a grievance during the capability process, the capability process may be temporarily suspended in order to deal with the grievance. This is not necessarily always the case and the decision to delay the process depends on the nature of the grievance. This decision will be made by the line manager, unless the grievance is against the line manager in which case it will be made by the next, more senior line manager. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

### ***8.3 Record Keeping***

Managers and panels must keep written records of meetings and discussions relating to the capability process.

Written records must be signed and dated by all parties. Written confirmation of the outcome of any meetings will be sent to the employee and their representative within five working days for their information and a copy kept on the employee's personal file in accordance with the REAch2 Data Retention Policy.

Records should include: the nature of the inadequate performance; what was decided and actions taken; the reason for the actions; whether an appeal was lodged; the outcome of the appeal and any subsequent developments.

### ***8.4 Equality Monitoring***

To ensure that we are meeting our public sector equality duty we will monitor annually the impact of this policy by reference to the protected characteristics of staff (age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex and sexual orientation). The results will be shared (anonymised where appropriate) with the recognised trade unions.

## Policy Review

This policy will be reviewed by the REAch2 HR Committee every 2 years as per the REAch2 policy cycle or sooner if required.

