

**POLICY TYPE: PRESCRIBED**  
**ACTION: FOR SCHOOL ADOPTION**

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**Southwark Diocesan  
Board of Education  
Multi-Academy Trust**  
Developing Church of England Education

# HR POLICY HANDBOOK

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## CAPABILITY POLICY

## 1. SCOPE OF CAPABILITY POLICY

- 1.1 The purpose of this policy is to give a structure to improve performance to the standards expected and to facilitate the fair dismissal of those who have not improved despite support.
- 1.2 There may be some occasions where your behaviour could be described as misconduct. This Capability policy and our **Disciplinary policy** may be used concurrently whilst we determine whether the behaviour amounts to misconduct or incapability. We anticipate that this will be a very rare situation.
- 1.3 There may be occasions where your capability could relate to your health. This Capability policy may be used concurrently with our **Sickness Absence policy** to ensure that appropriate support is in place. If you go off sick following the use of this Capability policy we may use our **Sickness Absence policy**.
- 1.4 If you are in your probationary period we may decide not to use this policy to deal with capability issues.
- 1.5 In this policy the time specified for an Assessment Period will be extended by any absence during the Assessment Period (including absence due to ill health or to family leave such as paternity, maternity or adoption leave).

## 2. INFORMAL ADVICE AND SUPPORT

- 2.1 Your line manager may give you informal advice and support at any time about any performance falling short of the standard expected.
- 2.2 Remedial steps taken under any Appraisal policy also count as informal action for the purposes of this Capability policy.
- 2.3 Your line manager may:
  - (a) give you informal advice, mentoring, coaching or counselling;
  - (b) arrange for you to observe lessons taught by our other teachers or elsewhere;
  - (c) arrange for you to discuss your practice with advisory teachers or other colleagues;
  - (d) arrange for you to observe best practice delivered by other colleagues; and

- (e) ask what support you believe would be helpful.

- 2.4 Informal advice and support may be confirmed in writing and may be referred to at a later stage as evidence that an informal approach was attempted and the outcome of such an approach. To ensure an effective understanding of the informal advice and support, any written confirmation will be shared with your line managers, and/or your appraiser, and the appropriate members of SLT. Such records would be shared with your union representative if you wished.
- 2.5 There is no right of appeal against an informal advice.

## 3. CAPABILITY, FINAL CAPABILITY AND APPEAL MANAGERS

The table below sets out the normal level of delegation for dealing with formal capability issues.

| Your Level                          | First/Second Capability Meeting - the Capability Manager                                      | Final Capability Meeting – the Final Capability Manager (not previously involved)                  | Appeal Manager (not previously involved)        |
|-------------------------------------|---|--|---|
| School's Headteacher                | Chair of School's Governors or our Executive Team's nominee                                   | A member of our Executive Team or their nominee  | Trust Chair or their nominee                    |
| Other Leadership & Business Manager | School's Headteacher  | Chair of School's Governors or our Executive Team's nominee  | A member of our Executive Team or their nominee |
| Other School Teaching Staff         | School's Headteacher or a member of the School's Leadership Team appointed by the Headteacher | School's Headteacher (or Chair of School's Governors if the Headteacher is the Capability Manager) | A member of our Executive Team or their nominee |

|                        |   |  |   |
|------------------------|---|--|---|
| Other Support Staff    | School's Headteacher or a member of the school's leadership team appointed by the Headteacher | School's Headteacher (or Chair of School's Governors if the Headteacher is the Capability Manager) | A member of our Executive Team or their nominee |
| Non-School Trust Staff | A member of our Executive Team or their nominee or the Trust Chair's nominee                  | Trust Chair's nominee  | Trust Chair                                     |

#### 4. ALTERNATIVE ACTION

- 4.1 There may be a situation where the Capability Manager considers that a recent promotion or job change has been a contributory factor in any unsatisfactory performance and that informal advice and support has not been effective.
- 4.2 If an appropriate post exists and if informal action or support has not been effective, the Capability Manager may offer you the option of taking a voluntary demotion as an alternative to proceeding with a First Capability Meeting,

#### 5. FIRST CAPABILITY MEETING

- 5.1 The Capability Manager will produce a Performance Report setting out:
- (a) what aspects of your performance are causing concern;
  - (b) what specific performance standards are expected; and
  - (c) the support that has been provided to you so far.
- 5.2 This Performance Report will be sent to you at least **5 working days** before the First Capability Meeting.
- 5.3 At the First Capability Meeting you will have an opportunity to comment upon the Performance Report and to discuss the alleged professional shortcomings, possible support guidance and monitoring and any contributory factors to underperformance such as domestic or health needs.
- 5.4 The Capability Manager may adjourn the meeting, to consider further investigation.

5.5 If the Capability Manager concludes that performance is satisfactory the formal capability process will end (though informal action and support may continue) and the relevant **Teacher Appraisal policy** or **Support Staff Appraisal policy** will be used.

5.6 If the Capability Manager concludes that performance is unsatisfactory you will be given a First Written Warning which will:

- (d) identify the professional shortcomings;
- (e) give clear guidance on the improved sustainable standard of performance needed to exit our Capability policy;
- (f) explain the support that will be provided, and how performance will be monitored over the Assessment Period;
- (g) identify the timetable for improvement and agree a date for the next Capability Meeting; and
- (h) make it clearly understood that failure to improve may lead to final written warning and dismissal.

5.7 The length of the Assessment Period following a First Written Warning will be at least **4 working weeks** and no more than **8 working weeks**.

5.8 You may appeal against a First Written Warning by writing to the Capability Manager within **5 working days** of being sent the Written Warning.

5.9 The fact of the appeal does not delay the implementation of the Assessment Period.

5.10 Any appeal should normally be heard within **10 working days** of us receiving your appeal.

#### 6. SECOND CAPABILITY MEETING

6.1 The Capability Manager will prepare an Updated Performance Report recording the assessments, support and evaluation of your performance during the Assessment Period. This Report may be prepared and sent on the last day of the Assessment Period.

6.2 This Report will be presented to you at least **4 working days** before the Second Capability meeting.



- 6.3 If after the Second Capability Meeting the Capability Manager considers that your performance is satisfactory, the capability process will end (though informal advice and support may continue) and the relevant appraisal policy will be used.
- 6.4 If after the Second Capability Meeting the Capability Manager considers that your performance remains unsatisfactory you will be given a Final Written Warning, setting an Assessment Period of **4 working weeks** and setting the date for the Final Capability Meeting. You will be informed that failure to make satisfactory sustainable improvement will result in your dismissal.
- 6.5 You may appeal against a Final Written Warning by writing to the Capability Manager within **5 working days** of being sent the Final Written Warning.
- 6.6 The appeal process does not delay the implementation of the Assessment Period.
- 6.7 Any appeal should normally be heard within **10 working days** of us receiving your appeal.

## 7. FINAL CAPABILITY MEETING

- 7.1 The Capability Manager will prepare a Final Performance Report recording the assessments, support and evaluation of your performance during the Assessment Period. This report may be prepared and sent on the last day of the Assessment Period.
- 7.2 This report will be presented to you at least **5 working days** before the Final Capability Meeting.
- 7.3 If after the Final Capability Meeting the Final Capability Manager considers that your performance is satisfactory, the Capability process will end (though informal action and support may continue) and the relevant appraisal policy will be used.
- 7.4 If after the Final Capability Meeting the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement the Final Capability Manager will terminate your employment on notice by way of a letter setting out your date of termination and your right of appeal.
- 7.5 You may appeal against a dismissal on notice by writing to the Final Capability Manager within **5 working days** of being sent the notification of termination.

- 7.6 The fact of the appeal does not delay the commencement of the notice period.
- 7.7 If your contract contains a payment in lieu of notice clause we may exercise that clause to bring your contract to an end with immediate effect.
- 7.8 Any appeal should normally be heard within **20 working days** of us receiving your appeal.
- 7.9 At a Final Capability Meeting where dismissal is a potential outcome you may propose redeployment to another post. The Final Capability Manager is not obliged to comply with such a request but shall consider it and may determine the appropriate salary for the redeployment post.

## 8. DURATION OF WARNINGS

- 8.1 If you have been given a First Written Warning and your performance has improved such that you return to the **Teacher Appraisal policy** or **Support Staff Appraisal policy** and within **12 months** of that First Written Warning your performance deteriorates such that the formal capability process is used, you will be called to a Second Capability Meeting at which a Final Written Warning may be issued.
- 8.2 If you have been given a Final Written Warning and your performance has improved such that you return to the **Teacher Appraisal policy** or **Support Staff Appraisal policy** and within **12 months** of that Final Written Warning your performance deteriorates such that the formal capability process is used, you will be called to a Final Capability Meeting at which a further Final Written Warning may be issued.

## 9. COMPANION

You may bring a Permitted Companion to a formal Capability Meeting (see HR Policy Handbook - Introduction HRBP01).