

# Managing Capability Policy

01 September 2017

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## 1. Introduction

### Mission

The Trust places students at the centre of everything it does. Our drive and focus is on creating and ensuring that a first class, innovative and creative education is provided for all. We aim to nurture, develop resilience and empower potential in every child, making it possible for them to lead productive and successful lives. We want our students to leave a positive mark on our and their communities as a whole.

### Our Vision

To open minds, creating opportunities for all to believe in themselves, achieve their potential and develop the skills needed to succeed and enjoy life.

### Our Values

**Ambition** - Striving for the highest personal achievement

**Integrity** - The moral courage to be sincere, reliable and trustworthy at all times

**Inclusivity** - Together we create a stronger community

**Endeavour** – The best preparation for tomorrow is doing the best today

**Resilience** - Take on challenges, learn and thrive

### Strategic Priorities

- To raise attainment and improve progress
- To ensure strong leadership and governance
- To build a strong infrastructure in the Multi Academy Trust
- To support an excellent standard of teaching

## 1 Introduction

- 1.1 The Evolve Trust is committed to providing and supporting the provision of high quality teaching and learning for our pupils in our academies. Our aim is that every Evolve Trust Academy is a centre of excellent teaching, providing opportunities for every pupil whatever their ability. Our workforce is at the heart of delivering this which means we want all our employees to be given every support to develop to fulfil their potential in their job, thereby improving outcomes for our young people. Our aim is to continually develop and improve performance, guiding employees through their careers with The Evolve Trust. Having an effective performance management process in place is one of the ways we can support our employees and deal with performance matters as they arise. This involves effective day-to-day supervision, carrying out performance management, providing development opportunities and operating a fair and reasonable capability process. As an academy within The Evolve Trust, we understand that managing and improving performance not only helps the employee but also the pupils and ultimately the academy community as a whole.
- 1.2 It is recognised however, that there are occasions when an employee's performance is identified as below an acceptable standard and when normal day-to-day management support has not resulted in satisfactory improvement.
- 1.3 This procedure will only become 'active' once the normal management processes of discussing performance and providing encouragement, guidance, support and feedback have been provided. This includes any required performance management/supervision and performance reviews. As such, it is strongly recommended that this procedure is read in conjunction with the Trust Performance Management Policy .
- 1.4 Where it becomes necessary to activate this procedure it has been designed to provide the employee with the opportunity to understand how and why their performance does not meet the needs of the school and its children and young people, and to provide a framework to encourage the employee to improve their performance.

## 2 Scope of procedure

- 2.1 This procedure is designed to deal with unsatisfactory standards of performance by an employee that it is believed may be due to a lack of the necessary ability, aptitude, knowledge or skills required to do the job.
- 2.2 This procedure does not deal with sickness absence. It is acknowledged, however, that health problems, particularly those that are stress related, may be identified in the course of the procedure.
- 2.3 In such cases the Managing Attendance Policy may be used in conjunction with this policy and where appropriate, the advice of HR and/or Occupational Health will be sought to try to find the most appropriate individual solution.
- 2.4 Similarly, matters of misconduct do not fall within the scope of this document and should be dealt with under the agreed Disciplinary Policy.
- 2.5 It should also be noted that this procedure does not apply to;
  - Termination of a fixed term Contract of Employment where the term of that contract expires without being renewed.
  - Termination of a temporary appointment where the reason for termination is that the requirement for the employee's service has ceased or diminished, or is

expected to cease or diminish.

- Termination during or at the end of a probationary period of service, whether or not extended beyond its originally specified duration.
- Termination of employment by reason of redundancy, whether or not competence and performance are criteria taken into account when selecting for redundancy.
- Resignation by the employee, or other termination by mutual consent.

### **3 Guiding principles**

- 3.1 This procedure has been produced having regard to the following guiding principles:
- To encourage a sensitive and constructive approach to capability issues by employees, Headteachers and Governors.
  - To involve and recognise the value of the role of the Trade Unions in the operation of this procedure.
  - To ensure that the standards of work required are clearly defined, documented and explained so that all parties are clear as to what is expected of them.
  - To try to find solutions to overcome any difficulties which may arise, whilst protecting the shared interests of everyone concerned and most importantly, to sustain standards and quality in teaching and learning to children/young people.
  - To recognise that whilst all reasonable efforts will be made to support an employee with a capability issue, the trust cannot guarantee to maintain employment.

### **4 Aim of the procedure**

- 4.1 The aim of the procedure is to ensure that employees are aware of, and can meet the basic requirements of the job and perform to the relevant published teacher standards in addition to the internally set performance objectives. This involves making clear what is expected, setting clear identifiable targets, monitoring performance, and where appropriate providing the necessary development or training to achieve the necessary standards.
- 4.2 Where, despite this support, an employee is still unable to meet the standards required then it may be necessary to terminate their employment.

### **5 Stages of the formal capability procedure**

#### **Preface**

- 5.1 This procedure is staged to provide a framework for Headteachers, Governors, Trustees and employees to resolve performance difficulties at the earliest possible opportunity.
- 5.2 Where this Procedure makes reference to 'The Headteacher' this may also be a Representative of the School Leadership Team (SLT) who has been delegated responsibility by the headteacher to address performance matters.
- 5.3 The formal stages of the Capability Procedure, detailed below, should only commence once the initial informal stage(s) of managing performance concerns have occurred. This includes the completion of a period of informal support as well as a teacher performance management and capability transitional meeting to ensure the teacher concerned is aware of the next steps and implications of commencing formal capability

procedures.

- 5.4 Headteachers and Governors should, before entering into the stages of the procedure, ensure that both the Trust Executive Team and HR Director are aware of the situation.
- 5.5 When meeting formally with an employee, the Headteacher should normally be accompanied, this may be a representative from HR or the Trust, in order to ensure an accurate record of the meeting and the outcome is made.
- 5.6 The Headteacher should endeavour to ensure the employee is accompanied at any meeting, either by their Trade Union Representative, or work colleague. It is the responsibility of the employee to ensure they have appropriate representation at all stages of this process, if required.

### Stage one of the formal procedure

- 5.7 If following the conclusion of the informal stages of the support/coaching plan, it is felt that the capability problem remains, or is of a more serious nature, the Headteacher should commence the formal stages of this procedure.

### Timescales

- 5.8 Normally, the period given for improvement will be no more than three months after the date of entry into the Formal Procedure (in exceptional circumstances this period could be extended). The frequency of review meetings during this period will depend on the circumstances of each case. In extreme cases where poor performance is likely to present a risk to the school, staff or children or young people, then the period given for improvement in performance after the date of a formal warning will be no more than four weeks.
- 5.9 The employee should normally be given notice, of at least 48 hours, of a meeting with the Headteacher and be advised of their right to be represented. It is the employee's responsibility to arrange representation at the meeting. The Headteacher should write to the employee and state the issues they are going to discuss at the meeting. (Appendix C)
- 5.10 The Headteacher should begin the meeting by outlining the problem(s) as they see it, remind the employee of the standards required and seek to confirm with the employee's agreement that there is a shortfall in performance.
- 5.11 The Headteacher must listen to any reasons given or statements made by the employee and be prepared to adjourn the meeting, if necessary, to investigate any points raised. It is important that the employee is given the opportunity to explain anything that may be affecting their performance.
- 5.12 At the end of the meeting, the Headteacher should;
  - Confirm their decision in writing to the employee and any action points made.
  - Set up an informal performance improvement plan (Appendix B) with the employee with a timetable for improvement (usually six weeks). It is important that the Headteacher monitors performance against the improvement plan on a regular basis in order to;
    - i. provide support and guidance to the employee, hopefully to assist them to improve their performance;
    - ii. Should an opinion be needed from an Occupational Health Practitioner, the Headteacher should also refer to this in the letter to the employee. It is important that the Occupational Health provider is provided with a thorough and accurate account of the problem.

- iii. issue a Formal Warning to the employee that their performance is below standard and advise them that failure to improve their performance could ultimately lead to dismissal should they continue to fail to meet the standard required;
- iv. The employee will have the right to appeal against any Formal Warning issued. This should be done within ten working days of receipt of the letter. Any appeal should be to the Chair of Governors. The employee has the right to be represented by their Trade Union or accompanied by a work colleague.

### Stage two of the formal procedure

- 5.13 If the employee's performance continues to remain below standard, or is seriously below the standard required, the employee should be advised in writing (Appendix C), normally with at least 48 hours' notice that a meeting is to be held to discuss their performance. The issues to be addressed should be outlined and the employee advised of their right to be represented (as in 5.10).
- 5.14 The Headteacher should state the problem to the employee and remind them of what is required. The Headteacher will need to listen to what the employee has to say (as in 5.5, it is important that due account is taken of any medical information which the employee has provided and a referral made to an Occupational Health Practitioner, if appropriate). The Headteacher should be prepared to adjourn the meeting, if necessary, to investigate any points raised by the employee.
- 5.15 At the end of the meeting the Headteacher will need to;
  - Confirm the discussion and action points;
  - Set up a final performance improvement programme (Appendix B) with the employee, with a timetable set for improvement as outlined in 5.13;(usually 6 weeks)
  - Issue a Final Written Warning to the employee explaining what will happen if they continue to fail to meet the standard required.
  - The employee will have the right to appeal against any Formal Warning issued. This should be done within ten working days of receipt of the letter. Any appeal should be to Chair of Governors. The employee has the right to be represented by their Trades Union or accompanied by a work colleague.
- 5.16 Where at the completion of the final period allowed for improvement there has not been acceptable progress, the Headteacher will confirm the intention to convene a Formal Capability Hearing.

### Stage three of the formal procedure

- 5.17 The employee will be advised in writing of arrangements for a formal capability hearing and at least five working days' notice will be provided. The notification will include the purpose of the meeting, copies of any written evidence to be submitted, relevant documents to be referred to, and details of any witnesses to be called. The employee will be advised of the right to be accompanied by their Union Representative or work colleague.
- 5.18 The panel for the hearing will consist of two Governors (one of whom will be the Chair or Vice Chair of Governors and will chair the hearing) in addition to a Trustee and HR Director (to ensure the process is followed and to record the meeting).
- 5.19 The hearing to be conducted in accordance with procedure outlined in Appendix A.
- 5.20 The panel considering a capability issue will need to consider;

- an outline of the employee's job/role within the School, including their date of commencement, job description, their application form and training record;
  - the performance standards required of the post holder;
  - reasons why the standards are achievable;
  - the reasons for setting the standards;
  - where the employee falls short of performance (with evidence where appropriate);
  - steps that the Headteacher has taken to improve the employee's performance including dates and times of meetings with copies of letters sent and your notes of meetings held;
  - the Headteacher's response to any explanations or statements of the employee;
- 5.21 The panel may determine either that;
- no further action be taken;
  - there be a further opportunity to improve performance, together with any specific recommendations;
  - an alternative post be offered which may be at a lower level of responsibility and grade or salary;
  - contract of employment be terminated with the required period of notice;
- 5.22 The employee will be advised of the right of appeal against the decision and the decision will be conveyed in writing within five working days.
- 5.23 Any appeal must be registered in writing to Chair of Governors within ten working days of receipt of the letter confirming the outcome.
- 5.24 The Appeal Hearing will be conducted in accordance with Appendix A and the decision of the panel will be final.

## APPENDIX A

### Conduct of capability hearings and appeals under the capability procedure

#### Governor and Directors panel

- The panel for the hearing or appeal hearing will comprise two Governors (one of whom will act as Chairman for the purpose of controlling the proceedings). A representative of HR and a member of the Trust board. The employee may be accompanied by a Children's Services employee, Trade Union Representative or may choose to represent themselves.

#### Conduct of hearing

- The Chairman of the Panel will introduce those present and explain the purpose of the hearing, also the procedure to be followed. The procedure will allow for short adjournment should either party wish a brief period for deliberation during proceedings.
- The Headteacher will present a statement of the case regarding the reasons for the employee being unable to achieve satisfactory levels of performance. Documentary evidence may be referred to and witnesses called.
- The employee (or representative) will have the opportunity to question the Headteacher and witnesses.
- The panel will have the opportunity to question the Headteacher and witnesses.
- Each witness will leave the proceedings after questioning.
- The employee (or representative) will present a statement of case and may call witnesses in support.
- The Headteacher will have the opportunity to question the employee and witnesses.
- The panel will have the opportunity to question the employee and witnesses.
- Each witness will leave the proceedings after questioning.
- The Headteacher will summarise the case introducing no new evidence.
- The employee (or representative) will summarise the case, introducing no new evidence.
- The Headteacher and employee will leave the proceedings whilst the Panel considers its decision and recommendations. Should the Panel wish to ask further questions both parties will return notwithstanding that the Panel may only wish to ask questions of one of the parties.
- On reaching a decision, the Chair will recall the parties and advise them of the outcome.
- The employee will be advised of the outcome in writing.

## Appendix B

# Performance improvement plan (PIP)

To be used by the Headteacher and Employee as part of the Managing Capability Procedure (all parties to ensure signed and dated record are kept at all times).

\*Formal PIP

\*Final PIP

\*{delete as appropriate}

Person conducting interview
Name
Position
Department
Accompanied by

Person being interviewed
Name
Position
Department
Accompanied by

Further information
Date of interview
Dates of previous discussion(s) regarding performance
Please attach any supporting documentation

Specific work issues requiring discussion between Headteacher and employee

Areas of concern	Standards required	Agreed action to meet requirements	Timescale for improvements	Support required

Employee's comments
<p>Any other information which should be taken into account regarding employees' performance.</p>

Further information	
Are there any warnings to be given?	FORMAL / FINAL (delete as appropriate)
Date of next meeting	
Signed by employee	Date
Signed by Head Teacher	Date

Headteacher's comments
<p>Reason for issuing formal warning.</p>
<p>cc Employee File            Personal File            Trade Union Representative</p>

## Appendix C

# Invitation to attend counselling session

Ref:

**Private and Confidential**

Date

Dear

### **Managing capability, informal stage**

In accordance with the Managing Capability Procedure a meeting has been arranged for {date, time and place} to discuss...

{Be specific about the problem e.g. failing to meet payroll deadlines}

You are entitled to be accompanied by a Trade Union representative or a work colleague if you wish. Please acknowledge receipt of this letter by signing the attached copy.

Yours sincerely,

Headteacher

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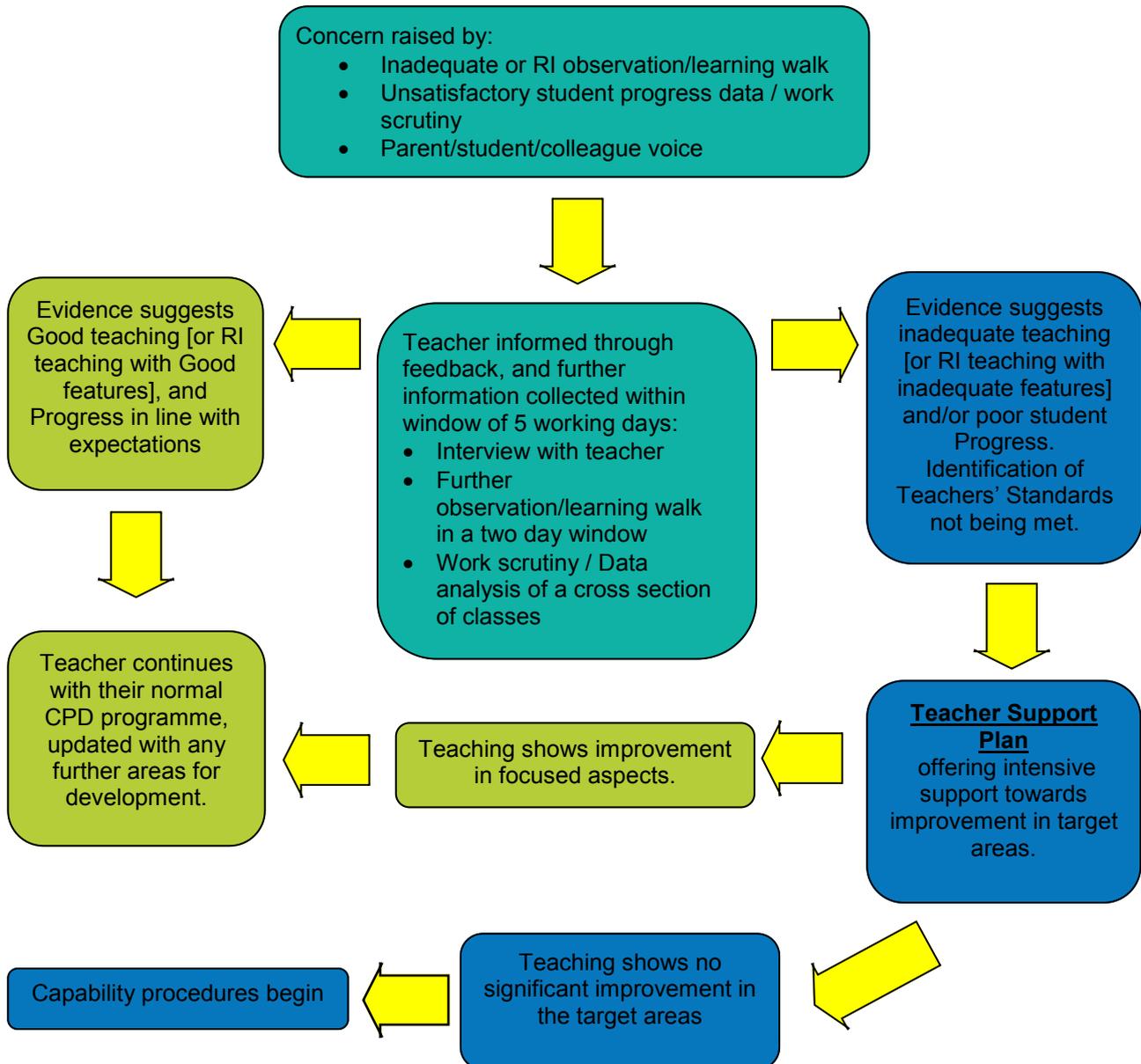
I acknowledge receipt of an exact copy of this letter.

<b>Signed</b>	<b>Date</b>
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## Appendix D

Staff performance is reviewed in a number of ways, to provide evidence of their impact on learning: Work scrutiny, Lesson observations and learning walks, and the results of pupil and parent voice activities are all part of our ongoing review of teaching and learning.

Any one of these evidence bases may raise a concern which could lead to a 5 day information gathering exercise, pulling together varied evidence to fairly assess teacher performance across a full range of indicators.



Unsatisfactory performance will be characterised by a number of features:

- Lack of pupil progress over time
- Poor results profiles for examination classes
- A high number of interventions needed for behaviour support

Observations and other monitoring exercises that rate teaching in a lesson as grade 3 or 4, this would usually be the case if the teaching was weak in a number of areas and would contribute to the above.