

Liberty Academy Trust

Capability Policy

Date	July 2023
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Review Date	July 2025

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1. Introduction

- 1.1. Liberty Academy Trust is committed to providing high quality teaching and learning. Through our workforce we aim to provide opportunities for all of our pupils, whatever their ability. Each employee will be given support to ensure they are able to develop the skills they need to carry out their role, to help them continually improve their performance and to develop to their full potential, which will in turn help improve outcomes for our young people.
- 1.2. 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 appraisals, providing development opportunities and operating a fair and reasonable capability process.
- 1.3. This policy sets out the arrangements that will apply if an employee falls below the levels of competence and performance that are expected of them. It is intended to strike an appropriate balance between the capability of our staff, and our aim of providing an exceptional education offer for our children and young people. This is in line with our three core values of courage, determination and teamwork.
- 1.4. This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures. It complies with the requirement for all schools including academy trusts to have a policy that deals with capability of staff. When carrying out capability procedures, we will ensure we abide by the Equality Act 2010.
- 1.5. This policy does not form part of any employee's contract of employment and may be amended at any time. We may vary the procedures set out in this policy, including any time limits, where it is appropriate to do so.
- 1.6. This policy covers all employees at all levels and grades regardless of status, although particular arrangements will apply to employees in their probationary period. This does not apply to agency workers or the self employed.

Definitions

- 1.7. Lack of capability is defined as:
 - An employee failing to perform their role at the level of competence expected of them and that their job requires.

2. Roles and responsibilities

- 2.1. In all circumstances the best person to hold these meetings is the employees line manager.
- 2.2. Where appropriate, other members of staff may be asked to provide additional support or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

3. Capability procedure

- 3.1. Performance is monitored on a day-to-day basis by line managers who should hold regular and frequent formal and informal one to ones with their direct reports. Please see the Line Management Protocol for further details.
- 3.2. Formal capability procedures will begin when line management support has been not brought about satisfactory performance or improvement in the employee's work.
- 3.3. An informal period of support, put in place and monitored by the line manager, will have been in place before formal capability procedures are triggered. Evidence of this will be available before the process begins.
- 3.4. 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.

4. Conduct of Capability Meetings

Purpose

- 4.1. The purpose of a Capability Meeting is to:
 - Identify performance shortcomings, including which of the standards expected not being met
 - Allow the employee to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected
 - Find out if there are any issues (both in or outside of work) that are affecting their performance that need to be considered
 - Identify what action (including support provided) has been taken to date and what the outcome was
 - Give clear guidance on the improved standard of performance needed to ensure the employee can be removed from the formal capability procedure
 - Identify and explain any support that will be available to help the employee improve performance
 - Warn the employee formally that failure to improve within the set period could lead to dismissal or other serious implications (which may include no pay progression) and
 - Confirm the timescales for the monitoring and review period which will follow a formal meeting where a warning is issued. The timescales will depend on the circumstances of the individual case but the period will be reasonable and proportionate (typically 4-8 weeks) ensuring that the arrangements minimise the impact on workload for all parties involved, and should provide sufficient

opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support will continue during this period.

Notification

- 4.2. An employee will be given at least five working days' written notice to attend any formal meeting under this procedure.
- 4.3. The written notification will also contain:
 - Sufficient information about the performance concerns and their possible consequences (including the possibility of issuing a warning or dismissal) to enable the employee to prepare to answer the case at the formal meeting
 - Copies of any written evidence which may include copies of one to one meeting notes and performance improvement plans
 - Copies of witness statements and details of witnesses attending (if appropriate)
 - Details of the time and place of the meeting
 - Who will conduct the meeting (see above 'Roles and Responsibilities')
 - The right to be accompanied either by a colleague or a trade union representative
- 4.4. Employees are entitled to request an alternative date which is within five days of the original date, if their representative is unable to attend the meeting. A companion may make representations, ask questions, and sum up your position, but will not be allowed to answer questions on the employees behalf. Employees may confer privately with their companion at any time during a meeting. The employee should confirm to us their intentions with regard to being accompanied at a meeting at their earliest convenience in advance of the day of the meeting.

Process

- 4.5. The employee's line manager is responsible for gathering relevant evidence to support the meeting in advance of the meeting. This might include speaking other relevant people who may have a valid perspective.
- 4.6. The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required.
- 4.7. If at any stage the person conducting the meeting is satisfied that there are insufficient grounds for perusing the capability issue or after a review period the employee has made sufficient improvement, the capability procedure will cease.
- 4.8. Following a formal meeting, the matters covered above and any other relevant points will be confirmed in writing. Where a warning has been issued the letter will set out the length of the monitoring and review period and the procedure and time limits for appealing against the warning. If under-performance occurs again shortly after the end of the live period of the warning, we reserve the right to deal with the matter at the same stage of the procedure and not return to earlier stage.

- 4.9. Minutes will be taken of all formal meetings and the employee will be sent a copy following the meeting.

5. Formal Capability Meeting (Stage 1)

- 5.1. If we consider that there are performance concerns the employee will be invited to a formal capability meeting to establish the facts and give them the opportunity to respond before formal action is taken.
- 5.2. Where a warning is issued at stage 1, this will usually be a first written warning. However, in very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure and there are still concerns, this could be a final written warning. The implications in relation to pay progression will be set out in writing.
- 5.3. The warning will normally remain active for 6 (first written warning) 12 months (for a final written warning) from the end of the monitoring and review period. During this time any further performance concerns will be considered at the next stage of the process (stage 2). After the active period the warning will remain on your personnel file but will be disregarded in deciding the outcome of any future capability proceedings, subject to the provision above (not returning to earlier stage).

6. Monitoring and Review Period (1)

- 6.1. The standard set length of the monitoring and review period following the formal capability meeting in Liberty Academy Trust is normally six weeks. However, in some cases it may be appropriate for a shorter period of four weeks to be set. In exceptional circumstances, this period can be extended up to a maximum of 10 weeks.
- 6.2. At the end of the monitoring and review period the employee will be invited to a formal review meeting, unless they were issued with a final written warning in which case the employee will be invited to a decision meeting.

7. Formal review meeting (Stage 2)

- 7.1. If the person conducting the formal review meeting decides that sufficient progress and improvement has been made, then the capability procedure will cease.
- 7.2. If they decide that some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period up to a maximum of 4 additional weeks.
- 7.3. If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning. A further Monitoring and Review Period will follow as above. Again this will be for maximum of a further eight weeks unless there are mitigating circumstances.

- 7.4. The warning will normally remain active for 12 months from the end of the further monitoring and review period. During this time any further performance concerns will be addressed at the next stage of the process (stage 3). After the active period the warning will remain on the employees personnel file but will be disregarded in deciding the outcome of any future capability proceedings, subject to the provision above (not returning to earlier stage).

8. Monitoring and Review Period (2)

- 8.1. At the end of the further monitoring and review period, the employee will be invited to a decision meeting.
- 8.2. If the person conducting the formal review meeting decides that sufficient progress and improvement has been made, then the capability procedure will cease.
- 8.3. If they decide that some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period up to a maximum of 4 additional weeks.
- 8.4. If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive an invite to a final capability meeting.

9. Final Capability Meeting (Stage 3)

- 9.1. The final capability meeting will usually be conducted by the Principal (if they have not previously been involved) or a panel which may include member of the Executive team not previously involved in the case, which could include the Principal.
- 9.2. A review will be undertaken of all the meetings that have taken place, the support provided and the outcomes to date. The meeting will also consider any further matters the employee wishes to raise in relation to this issue.
- 9.3. If performance remains unsatisfactory and of serious concern, the termination of the employees employment by way of dismissal will be considered. At this stage either a decision will be made to dismiss the employee or (and in agreement with the employee) instead of dismissing them it may be appropriate to consider whether there is an appropriate vacant post and if so whether this may be more suited to their capabilities. If there is a vacant post which it is agreed is suitable, this would be a permanent change in role and if the alternative post is at a lower salary level, the substantive lower salary would apply. The capability procedure would cease on commencing in the new post.

10. Appeal

- 10.1. If the employee feels that the decision to dismiss or other action taken against them (including warnings) is unfair they may appeal. The employee should appeal in writing within five working days of receiving the outcome to the manager who lead the process and the letter should state the full grounds of their appeal.

- 10.2. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as set out above.
- 10.3. The appeal will be dealt with impartially and, wherever possible by people who have not previously been involved in the case. Depending on the grounds of appeal, this might involve a review of the original decision, or a rehearing of the meeting about which the employee has appealed.
- 10.4. Following an appeal, the original decision may be confirmed, revoked or replaced with a different decision. The final decision will be confirmed in writing, if possible, within five days of the appeal meeting. There will be no further right of appeal.
- 10.5. If an employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity of service or pay.

11. Sickness

- 11.1. If long term sickness absence appears to have been triggered at any stage of this procedure, the case will be dealt with in accordance with the Liberty Academy Trust's sickness absence policy.
- 11.2. The employee will be referred immediately to the occupational health service to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

12. General Principles Underlying this Policy

Confidentiality

- 12.1. The capability process will be treated confidentially. However, it needs to be recognised that, in supporting employees through this process, some degree of information sharing is likely to be necessary in order to quality-assure the operation and effectiveness of the process.

Consistency of Treatment and Fairness

- 12.2. Liberty Academy Trust are committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled employees. The Trust is aware of the guidance on the Equality Act issued by the Department for Education.

Grievances

- 12.3. Where an employee raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently, and at the same meeting.

Retention and data protection

- 12.4. We will ensure that all written records are retained in a secure place. As part of the application of this policy, the Liberty Academy Trust may collect, process and store personal data in accordance with our data protection policy. We will comply with the requirements of Data Protection Legislation (being the UK General Data Protection Regulation and Data Protection Act 2018) and any implementing laws, regulations and secondary legislation, as amended or updated from time to time. Records will be kept in accordance with our Data Protection Policy and in line with the requirements of the Data Protection Legislation.

13. Review of Policy

- 13.1. We will monitor the application and outcomes of this policy to ensure it is working effectively. This policy is reviewed by July 2025 by Liberty Academy Trust, in consultation with the recognised trade unions.

Template: Capability Action Plan

This template can be used as part of the process of supporting an employee who is underperforming before starting the formal capability procedure. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, appropriate to the career experience of the member of staff concerned.

NAME OF STAFF MEMBER	NAME OF LINE 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

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

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 APPRAISER	DATE