

# Eastwood Park Academy Trust (EPAT)

EPAT

Believe Succeed Together

## Capability Policy

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## **1.0 Definition**

The minimum standard expected of all employees is the satisfactory performance of the tasks as set out in their job description, to the level set out in the person specification for that job and any standards applicable to the role.

The performance of staff is monitored and managed on a day to day basis by line managers and through the Performance Management Policy.

The Capability Policy sets out arrangements that will apply where an employee's performance falls below the minimum standard of competence that is expected of them. A summary of the procedure is set out at **Appendix A**.

## **2.0 Capability Procedure**

### **2.1 Monitoring Period under the Performance Management Procedure**

Where evidence emerges that an employee's performance has fallen below the minimum standards expected of them, this will be discussed with the employee under the Performance Management Policy. The line manager or other appropriate manager, will:

- Set out the nature and seriousness of the concerns.
- Confirm any previous discussions/support.
- Give the employee the opportunity to comment on and discuss the concerns.

A monitoring period will usually be set in which the line manager will:

- Set targets for future performance (in addition to existing performance management targets).
- Agree any further support with the employee.
- Make it clear how, and by whom, progress will be monitored and when it will be reviewed.
- Explain the consequences and process if no, or insufficient improvement is made.

The period of monitoring will normally be between 4-8 working weeks; the precise length being determined by the seriousness of the issues and individual circumstances. Exceptionally, an extension of up to 4 weeks may be granted, where there has been significant improvement or where there has been significant absence during the monitoring period.

### **2.2 Formal Capability Procedure**

In the most severe cases, and where there has been insufficient or un-sustained improvement following any monitoring period, the Performance Management Process will be suspended and the Formal Capability Procedure will be invoked.

The employee will be called to a Formal Capability Meeting conducted by an appropriate manager. This will be the Principal where there have been previous warnings and dismissal is therefore a possible outcome. Where the Principal is the subject of the procedure, the meeting will be conducted by the CEO. Where the CEO is the subject of the procedure, the meeting will be conducted by Chair of Trustees.

The employee will be given at least five working days' notice, in writing, of the date, time and place of the meeting. When given this notice, the employee will be:

- Informed of the nature and details of the concerns.
- Informed of his/her right to be accompanied at the meeting by a representative.
- Supplied with a copy of the evidence which is to be considered at the meeting.
- Given an indication of the possible penalty which could be imposed if the concerns are found to be substantiated, e.g. a formal warning or termination of employment by dismissal where previous warnings have been issued.
- Informed who will be involved in the meeting, including the name of any advisers.

Not later than two working days before the meeting the employee:

- Must supply the name and status of his/her representative.
- May submit a written statement or other supporting written evidence if s/he wishes, either direct or through his/her representative.

At the meeting the concerns will be explained to the employee and they will have the opportunity to make representations. An employee is entitled to be accompanied by a trade union/professional association representative, colleague, friend or other appropriate person, at all stages of the formal procedure. The employee must make his/her own arrangements for this.

### 2.3 Outcomes

Where the concerns are substantiated the following decisions will be made:

Substantiated Nature of Concerns	Outcome/Decision
Where there is serious concern about the standard of performance or there has been insufficient or un-sustained progress following a period of monitoring.	<b>Written Warning</b> (remaining active for 12 months) and a continuation of the formal monitoring period for a further 4-8 weeks. After the active period, the warning will remain on an employee's personnel file but will be disregarded in deciding the outcome of any future capability proceedings.
Where the concerns are particularly serious or there has been insufficient progress following a previous warning or period of monitoring.	<b>Final Written Warning</b> (remaining active for 12 months) and a formal monitoring period for a further 4-8 weeks. After the active period, the warning will remain on an employee's personnel file but will be disregarded in deciding the outcome of any future capability proceedings.
In the most serious cases where there has been: a) No progress following a previous warning/period of monitoring. b) Insufficient progress following a final written warning.	<b>Dismissal with notice.</b> Employees will normally be placed on paid suspension for the period of notice, pending any appeal.

The outcome of the formal meeting will usually be notified at the end of the meeting, but in any case, will be communicated in writing, normally within 5 working days

Where a warning is determined, the employee will be informed of:

- The nature and seriousness of the concerns.
- The improvement in performance that is required during the formal monitoring period to remove them from the formal process (i.e. through set targets).
- The support that will be available to help the member of staff improve.
- The end date of the formal monitoring period and how performance will be monitored during this period, including any review dates.
- The fact that any pay progression due at the next pay review is likely to be withheld.
- The consequences of failure to improve to the required standard.
- Their right of appeal.

## **2.4 Appeals**

An employee has a right of appeal against any warning/dismissal. An employee may forego his/her right to appeal.

Notice of any appeal must be given in writing to the Chair of the Trust within five working days of receipt of the written notification by the employee of the outcome of the meeting, clearly stating the grounds upon which the appeal is made.

Valid grounds for appeal may be:

- There was a flaw or error in the procedure.
- The penalty was unduly severe.
- The original finding was against the weight of evidence.
- There is evidence not taken into account which could affect the original decision.
- There has been an error of judgement on a point of fact.

Employees may be asked for clarification of the grounds for their appeal where this is not clear.

All appeals will be heard by the Trust's Disciplinary/Dismissal Appeal Committee. The decision of this committee is final, subject to the employee's rights at law.

The employee will be given at least five working days' notice of the appeal hearing in writing.

A Disciplinary Appeal Hearing may be a full rehearing of the original case or a consideration of particular matter where the appeal is on a specific and narrow point(s). An appeal will not normally hear matters which were not upheld at the original meeting. The format for the Disciplinary Appeal Hearing will be determined, upon receipt of the letter of appeal, and communicated to all parties.

New evidence, provided it is relevant to the original allegation(s), can be introduced at the appeal stage by either party. All parties' papers, including any new evidence relevant to the appeal, must be submitted to the other party and the Disciplinary Appeals Committee at least 3 working days before the appeal hearing.

The employee will present evidence to support their appeal point(s) and the original decision maker will respond to these as part of the appeal process. The Disciplinary Appeal Committee will then consider these submissions, together with the outcome letter and notes from the original hearing.

The outcome of the appeal will be notified as per the original hearing, except that there is no further right of appeal within these procedures.

## **2.5 Records**

Notes of hearings and meetings with the employee will be taken and shared with them as soon as possible after the hearing. The employee has the right to challenge the accuracy of any minutes and to have these recorded.

No-one may record meetings or hearings, except for the Clerk, to assist with producing the minutes, where permission is given by all parties. A request from a disabled employee/companion to record the hearing will normally be considered as a reasonable adjustment in appropriate circumstances but will be subject to agreement by all parties. Any recording made will be destroyed once minutes/notes are completed. If an unauthorised recording is made by the employee this may result in disciplinary action. If an unauthorised recording is made by the companion this may result in the employer refusing to allow the companion to attend further meetings.

Details of any formal action, including any warnings, will be retained on the employee's file.

Details of any formal action, including any warnings, will be retained on the employee's personal file. Warnings will be disregarded after the expiry of their life.

Details of any current capability procedures and/or warnings will be referred to when responding to an employee reference request.

A written record of all meetings conducted under this procedure will be made, either by the person holding the meeting or by an alternative person arranged by the school to take notes. The Trust processes any personal data collected during the capability procedure in accordance with its Data Protection Policy. Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the capability procedure.

On the conclusion of the procedure, data collected will be held in accordance with the Trust's Retention Policy. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Trust's Data Protection Policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the Trust's Disciplinary Misconduct Policy.

## **2.6 Timing/Location of Meetings/Hearings**

Employers are obliged to deal with performance issues without any undue delay. It is expected that employees and their representatives will assist in this aim.

Where possible, timings of formal meetings and appeal hearings will be agreed with the employee and his/her representative and will normally take place during the working day.

Employees and their representatives should make themselves available to attend meetings within a reasonable period of time. If, however, the employee's chosen representative is not available, for a reason that was not reasonably unforeseeable, at the time proposed for any meeting or hearing, one alternative date will be set, normally no later than five working days from the original date.

Where possible, meetings and hearings will be held at a mutually convenient location, which meet any special needs of attendees and which may sometimes be away from the normal place of work or by virtual meeting, where this is considered to be appropriate.

Reasonable time off with pay will be granted to employees who are acting as representative for an employee who is subject to the capability process.

## **2.7 Grievances raised during Capability Procedures**

If an employee raises a grievance during the course of the capability procedure, related to the case, the grievance will normally be dealt with as part of the Formal Capability Meeting/Appeal. If appropriate, given the nature of the grievance, the capability process may be temporarily suspended in order to deal with the grievance.

## **2.8 Ill Health during Capability Procedures**

While it is recognised that capability procedures can be distressing and may sometimes lead to an employee feeling unwell, the Governing Body believes that it is in everyone's best interest to conclude matters as quickly as possible and will work with the employee to achieve this.

If sickness absence appears to have been triggered by the commencement of the capability procedure, the case will be referred immediately to an Occupational Health Adviser to assess the employee's fitness for participation in the capability process. Where an employee remains off sick, the matter will subsequently be dealt with in accordance with the Sickness-Absence Policy.

# Appendix A

