

**The Heath Family (NW) Multi Academy Trust
Capability Policy – Teaching Staff**

Date completed:	Date amended: 12 th May 2017 Date adopted: September 2015
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Supporting documents, procedures & forms of this policy	The Heath Family (NW) Appraisal Policy (Teaching Staff)

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1 Purpose

- 1.1 This policy sets out the procedure for dealing with staff competency where, following application of the Trust Teaching Staff appraisal policy a staff member's performance has fallen below the levels of competence that are expected.
- 1.2 The policy will be implemented in accordance with the provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures
- 1.3 This policy will be applied fairly and in accordance with employment law and equality and diversity policies. The application of this policy will not directly nor indirectly discriminate against members of staff on the grounds of their gender, age, disability, gender re-assignment, marital or civil partnership status, pregnancy, maternity status, race (including colour, nationality and ethnic or national origins), religion or belief or sexual origination.
- 1.4 The application of this policy will not directly nor indirectly discriminate against members of staff on the grounds of trade union/professional association membership or activities.

2 Introduction

- 2.1 This procedure applies to teachers or Principals about whose performance there are serious concerns that the teaching staff appraisal process has been unable to address. In accordance with the teaching staff appraisal policy, if at any point there are serious concerns regarding a teacher's performance, they may be removed from the appraisal process into the Trust's capability procedure. This will be confirmed in writing and the teacher will be invited to a stage 1 meeting. The timescales for the formal capability procedure outlined in paragraph 4.5 below, will commence with the Stage 1 meeting. In such circumstances the teacher will be invited in writing to a Stage 1 meeting.

3 Accredited Professional Association/Trade Union Officials

- 3.1.1 Normal performance standards apply to officials' conduct as employees of the Trust but action under this policy should not be taken without inviting the involvement of a Regional Official.
- 3.1.2 Where any capability procedure is being considered in respect of a recognised trade union or professional association representative, no action shall be taken unless and until the matter has been discussed by the Principal (or a person acting on their behalf) and a full time officer or locally elected officer at the level of the local authority of that trade union or professional association.

4 Stage 1

- 4.1.1 At least ten working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a work colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.
- 4.1.2 The capability procedure commences at the conclusion of the stage 1 meeting.

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4.2 Formal capability meeting

- 4.3 This meeting is intended to establish the facts. It will be conducted by the Heath Family (NW) Multi Academy Trust (for Principal capability meetings) or Principal / nominated senior leadership team member. The school may also invite attendance of a HR Advisor to advise the panel on details of procedure. The meeting allows the employee, accompanied by a work colleague, a trade union official, or a trade union representative who has been certified by their union as being competent, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected. The procedure for the meeting is set out in Appendix A.
- 4.4 Following consideration of all the facts and the evidence presented, the person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end and the appraisal process restarted (see paragraph 12). In exceptional circumstances the person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.
- 4.5 In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:
- identify the professional shortcomings, for example which of the standards expected of teachers are not being met;
 - give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
 - explain any support that will be available to help the employee improve their performance;
 - set out the timetable for improvement and explain how performance will be monitored and reviewed. The formal review period will be made up of a review period normally between 6 and 8 weeks. In serious cases where the safety or education of children is significantly at risk, the timescale may be shortened.
 - issue a first written warning and advise the staff member that failure to improve within the set period could lead to the issuing of a final written warning. In very serious cases, this warning could be a final written warning.
- 4.6 Notes will be taken, by the clerk to the Local Governing Body, of formal meetings and a copy sent to the member of staff. Where a warning is issued, the employee will be informed in writing within 3 working days of the matters covered in the bullet points above and given information about the timing and handling of the review stage.
- 4.7 The employee will be given the right of appeal which should be submitted in writing within 5 days of receipt of the written notification of the warning, at the same time setting out the grounds for the appeal.

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- 4.8 The appeal hearing will be considered by a panel of governors, not previously involved in this stage of the procedure and wherever possible will be heard normally within 10 working days of the receipt of the written appeal from the employee. Appeal hearings will not delay the capability procedure, which will continue whilst the appeal is being considered.
- 4.9 The employee will have the right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. The procedure for the appeal will be as set out in Appendix A. The school may also invite attendance of a HR Advisor to advise the panel on details of procedure.
- 4.10 **Monitoring and review following a formal capability meeting**
- 4.11 The first performance monitoring and review period of 6-8 weeks will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the specified first review period the employee will be invited to a formal review meeting. The procedure for the meeting is set out in Appendix A. In cases where the employee was previously issued with a final written warning, that meeting will be a decision meeting (see paragraph 6.1 below).

5 Stage 2

- 5.1 **Formal review meeting**
- 5.2 As with formal capability meetings, at least 10 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. The school may also invite attendance of a HR Advisor to advise the panel on details of procedure.
- 5.3 If the person conducting the meeting is satisfied that the employee has made sufficient improvement, that the relevant standards are now met and that performance is at the required level, the capability procedure will cease and the appraisal process will re-start. (see paragraph 12 below)
- 5.4 If no, or insufficient improvement has been made during the monitoring and review period to demonstrate that the relevant standards are now met and that performance is at the required level, the employee will receive a final written warning. Review periods will not be extended if some, but insufficient improvement has been made during the review period. The required standards of performance, as well as the support and monitoring arrangements during the review stage will be confirmed as set out in paragraph 4.5 in Stage 1.
- 5.5 As before, notes will be taken, by the clerk to the Local Governing Body, of formal meetings and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within a 6 to 8 week timescale), may result in dismissal and given information about the handling of the further monitoring and review period.
- 5.6 The employee will be given the right of appeal which should be submitted in writing within 5 days of receipt of the written notification of the warning.

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- 5.7 The appeal hearing will be considered by a panel of governors, not previously involved in this stage of the procedure and wherever possible will be heard normally within, 10 working days of the receipt of the written appeal from the employee. Appeal hearings will not delay the capability procedure which will continue whilst the appeal is being considered.
- 5.8 The employee will have the right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. The procedure for the appeal will be as set out in Appendix A. The school may also invite attendance of a HR Advisor to advise the panel on details of procedure.
- 5.9 At the end of the specified review period following a final written warning the employee will be invited to a decision meeting.

6 Stage 3

6.1 Decision meeting

- 6.2 As with formal capability meetings and formal review meetings, at least 5 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. The procedure for the meeting is set out in Appendix A.
- 6.3 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start as set out in paragraph 12. If performance remains unsatisfactory, a decision will be made which will normally be that the employee should be dismissed.
- 6.4 The employee will be informed in writing of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

7 Decision to dismiss

- 7.1 The power to dismiss staff in each school rests with the Local Governing Body, as delegated by the Trust.

8 Dismissal

- 8.1 Once the decision to dismiss has been made, which will normally be on notice, the employee will be given the right of appeal within 10 working days of receipt of the written notification of dismissal (as in 9.1 below).

9 Appeal

- 9.1 If an employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within 10 working days of the receipt of the written notification of the decision, setting out at the same time the grounds for appeal. The date of receipt will be deemed as per the date of the notification if delivered personally, else 2 clear working days after if sent via the post. Appeals will be heard without unreasonable delay, wherever possible within 15 working days of receipt of the written appeal and within the period of notice given to the employee. As with other formal meetings, notes will be taken and a copy sent to the employee.

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9.2 The appeal will be heard by a panel of the Local Governing Body (normally 3 members) who have not previously been involved in the original decision to dismiss. The employee will have the right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. The procedure for the appeal will be as set out in Appendix A. The school may also invite attendance of a HR Advisor to advise the panel on details of procedure.

9.3 The employee will be notified in writing of the outcome of the appeal hearing.

10 Sickness

10.1 If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the monitoring and formal capability procedures will be held in abeyance until the employee returns to work continue in line with the timescales outlined in the policy.

11 Grievances

11.1 Where a member of staff raises a grievance during the capability procedure the grievance will be dealt with urgently, in accordance with the schools grievance procedure, and will run concurrently with the formal capability procedure. Where the grievance relates to the application of the formal capability procedure and is upheld following investigation under the agreed procedure, the capability procedure will be suspended.

12 Transition back to Appraisal

12.1 Where, following a formal review period it has been decided that a staff members performance has improved to the required level against all the appropriate standards, and that formal capability procedures should cease, the member of staff will return to performance monitoring through the applicable formal appraisal process.

12.2 If at any time during that twelve month period the staff member's performance deteriorates to a level which causes concern about their overall performance against the required standards, the Appraisal process will cease and they will move back into the formal capability procedure at an appropriate point up to and including (but, other than in very serious cases affecting children's' safety / education, not exceeding) the stage at which they were previously at in the formal capability procedure.