



Windsor Academy Trust

Capability Policy for Support Staff

Responsible Committee:	Windsor Academy Trust, Board of Directors
Date revised by Board of Directors:	September 2016
Next review date:	September 2018

Capability Policy for Support Staff

1.0 Introduction and Principles

- 1.1 Capability is defined by the Employment Rights Act of 1996 as “capability assessed by reference to skill, aptitude, health or any other physical or mental quality”. For this procedure, lack of Capability is defined as a situation in which an employee fails to consistently perform his or her duties to a professionally acceptable standard
- 1.2 This procedure does not deal with lack of capability due to ill health, nor with misconduct, which may be defined as an act or an omission by an employee, which is considered to be unacceptable professional behaviour
- 1.3 At all stages in any programme of advice and support under this procedure, the employee shall be entitled to be represented by a Trade Union or work colleague at any meeting or discussion of the matters under review
- 1.4 No formal action should be taken against an official of a recognised Trade Union until the circumstances of the case have been discussed with a Senior Trade Union Representative or full-time official
- 1.5 All information will be regarded as confidential and will only be divulged where this is necessary to effect the procedure
- 1.6 WAT should always give consideration to any steps which can be taken to minimise the risk of poor performance and to create conditions which allow employee’s to carry out their duties satisfactorily. Careful recruitment, selection and induction procedures are essential and it is particularly important that job descriptions reflect accurately the main purpose and scope of each job and the tasks involved
- 1.7 It is the intention of WAT that wherever possible all reasonable steps to effect an improvement in an employee’s capabilities are taken before invoking the formal Capability Procedure
- 1.8 At every stage concerns about performance must be discussed with the employee who should then be given the opportunity to state his or her case before any decision is made. Opportunities to improve will be given along with appropriate support, guidance and training. However a continued lack of capability may lead to dismissal
- 1.9 It is important that in any programme of advice and support, targets and objectives should be agreed and clearly defined for the employee and confirmed in writing. There should be clear points of contact identified for the employee to seek specific advice and support on his/her initiative and a clearly identified meeting(s) and review date(s) to discuss targets and objectives. Any programme of advice, support and outcome must be fully documented and may be subsequently used at a Capability Hearing
- 1.10 In urgent and extreme cases, refer to section 5.0 of this document
- 1.11 This policy/procedure must be applied fairly and consistently to employees irrespective of their race, colour, nationality, ethnic or national origin, religious beliefs, gender, marital status, responsibility for children or other dependants, disability, sexual orientation, transsexuality, age, trade union or political activities, social class, residential location or spent convictions

2.0 Definitions

Chief Executive means the chief executive of WAT

Headteacher refers to all or any of the Headteachers of each school within WAT

Leadership Team refers to a senior member of support staff or any member of the Leadership Group as defined by the School Teachers' Pay and Conditions Document and includes the Headteacher, Deputy Head and Assistant Head.

Local Advisory Body is a forum for parents, teachers, and school leaders to come together and share ideas and views about the school

Board of Directors/Directors means the Directors of WAT

3.0 Roles and Responsibilities

The following roles and responsibilities will usually apply during this policy but may be varied or adapted to meet the circumstances as determined by the Chair of the Board of Directors (or their deputy).

Capability Review Officer means: either a member of the Leadership Team or the Chief Executive.

Determining officer means: the Headteacher or the Chief Executive.

Appeals Panel means: a Director or panel of up to three Directors.

4.0 Informal Procedure (Identification, Assessment and Support)

- 4.1 It is important that professional performance problems are clearly identified and given appropriate consideration and support at the earliest possible stage. The nature of the problem, its level of seriousness and cause(s), must be investigated and identified by structured information gathering and systematic recording.
- 4.2 In the first instance it is the responsibility of the Headteacher or delegated Line Manager to ensure that suitable informal help and advice is offered to employees where a lack of capability is alleged. The Headteacher or delegated Line Manager will meet the employee to establish the facts and seek ways of improving performance. Targets and objectives will be set for immediate and sustained improvement and a programme of action and support will be formulated.
- 4.3 The nature of the alleged shortcoming will determine the nature of the help to be provided. This could include one or more of the following:
- Counselling
 - A review of commitments and responsibilities
 - Availability of suitable resources / equipment
 - Availability of training.
 - Opportunities to see good practice within the school or other appropriate establishments
 - Mentoring

- 4.4 Following a specified period of support, monitoring and evaluation, the next decision will be to assess the outcome. An assessment of Capability will be undertaken by the Headteacher or delegated Line Manager (the Assessment Report.)
- 4.5 Following the assessment, a decision must be made as to whether to drop the matter, give further informal support, or proceed to a Capability Hearing thereby invoking the formal Capability Procedure. The date of the Capability Hearing will constitute “date of entry into the formal procedure.”
- 4.6 In the event that the employee has failed to satisfy the targets and/or performance standards set, consideration should be given to a different balance of duties or alternative post. Where this is not possible, the formal procedure will be followed.

5.0 Formal Procedure

- 5.1 The time scale adopted will be in accordance with the seriousness of the lack of capability of the employee. Consideration needs to be given to whether the problem is a specific or broader professional difficulty, whether it is of very recent concern or spanning a longer period of time. Normally the period given for improvement will be no more than **24 working weeks** after the date of entry into the formal procedure.

Timescales and Process:

5.1.1 **Formal Capability Meeting** (see paragraph 5.2)

5.1.2 **First Assessment Stage:** Weeks 1 – 20 (see paragraph 5.3)

Week 10 (or earlier if appropriate) – Formal review meeting to assess performance over the previous weeks (see paragraph 3.4.)

Week 20 (or earlier if appropriate)– Formal review meeting to assess performance over the previous weeks (see paragraph 5.4.)

5.1.3 **Second Assessment Stage:** Weeks 20 – 24 – Regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.

5.1.4 Week 24 – Final review meeting to report the assessment of performance over the previous weeks (see paragraph 5.5.)

5.1.5 If performance is still unsatisfactory, the matter is referred to a hearing with the Determining Officer.

5.2 Formal Capability Meeting

- 5.2.1 Unless there are exceptional circumstances, Capability Meetings will not be held during periods of school closure.
- 5.2.2 Where it is decided as a result of the assessment that there is a case to answer, the employee concerned shall be informed in writing, giving not less than 7 working days' notice, that he/she is being called to answer concerns at the Capability Meeting with the Capability Review Officer. The letter convening the meeting shall be accompanied by a copy of the Assessment Report, and the concerns to be considered must be specified. Any further documentary evidence to be considered in connection with the concerns should be made available to the employee and to his/her Nominated Representative as soon as possible and at the latest, 5 working days in advance of the Hearing. Only information that has come to light during the investigation or assessment process can be considered. He/she will also be informed of his/her right to be represented, and of the right to present his/her case, call relevant witnesses and give evidence.
- 5.2.3 The employee and his/her Representative will be informed of the decision and notified of the right to appeal.
- 5.2.4 The employee will be told that his/her capability is in question and that an oral warning will be recorded on his/her file. He/she should be told that this is the first action within the Capability Procedure and warned of the possible consequences of continuing concern. The oral warning will be confirmed in writing, normally within 2 working days and will advise of the right to appeal.
- 5.2.5 Targets and objectives will be set for immediate and sustained improvement and a programme of action and support will be formulated. A date will also be set for the formal Review Meeting to be held **no later** than week 10. This date may be brought forward if necessary subject to 7 working days' notice being given.
- 5.2.6 At the Review Meeting, held at **no later** than week 10, if there has been no marked improvement in performance and no indication that targets will be achieved, this should be recognised formally through the issue of a written warning. Targets and objectives will be reviewed and re-emphasised and a date set for the next formal Review Meeting (no later than week 20.)

5.3 First Assessment Stage

- 5.3.1 Regular observation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.
- 5.3.2 Appropriate Monitoring Meetings with the person designated to offer support should be arranged on at least a monthly basis, or on a more regular basis if there is a need.
- 5.3.3 A formal Review Meeting will be held at (no later than) week 10 which may result in the issue of a written warning (see 5.2.6 and 5.4.)
- 5.3.4 If at any point during this stage the circumstances suggest a more serious problem, a decision may be taken to move directly to a final written warning.

5.4 Review Meetings

5.4.1 There should be two Review Meetings during the 20 week period. These should be held:

Review Meeting 1 no later than 10 weeks into the period of the warning.
Review Meeting 2 no later than week 20.

The Review Meeting should be conducted by the Capability Review Officer who will determine the outcome. The employee and his/her Representative will be informed of the decision and the reason for it, and notified of the right of appeal.

5.4.2 At least 7 working days' notice must be given for these meetings and the employee may be accompanied by a Trade Union or other work colleague.

5.4.3 The Review Meeting must be formally documented.

5.4.4 At the Review Meeting the employee will be informed either that:

- (i) There are no grounds for continuing the procedure: or
- (ii) There has been some improvement in performance and if so what this is, but a further support programme needs to be formulated and why: or
- (iii) There has been no marked improvement in performance and why and that the employee is to be issued with:
 - a. At or before week 10 a written warning: or
 - b. At or before week 20 a final written warning and in both cases a further period of support will be given

All feedback must be clear and constructive

5.4.5 If the level of performance has been satisfactory and there is confidence that it can be sustained the Capability Procedure can end here with a letter confirming this.

5.5 Final Review Meeting

5.5.1 At or before week 24, a Final Review Meeting will be convened giving at least 7 working days' notice and stating that the employee may be accompanied by a Trade Union or other Representative.

5.5.2 If at the Final Review Meeting it is identified that performance has been satisfactory and there is sufficient confidence that it can be maintained, the Capability Procedure can end at this meeting

5.5.3 If at the Final Review Meeting it is identified that the performance continues to be unsatisfactory the employee should be told that the matter will be referred to a Decision Meeting with the Determining Officer. The result of the Final Evaluation Meeting, main points of the meeting and a date for the Decision Meeting (if known), should be recorded in a letter to the employee

6.0 Decision Meeting

- 6.1 If capability is still unsatisfactory following a final written warning, the employee shall be notified that the meeting at which his/her capability is to be considered may result in dismissal.
- 6.2 Where dismissal is being considered, all correspondence should be either hand delivered or sent by recorded delivery.

7.0 Procedure for Urgent and Extreme Cases

- 7.1 Undue delay may not always be in the interest of all parties. In extreme cases where the education of students and safety of staff and students is jeopardised, the period given for improvement after the date of a final written warning will be no more than 4 weeks. Such cases will be rare and advice must be sought from the HR provider before any action is taken.
- 7.2 An employee must not continue with duties if they have not improved within the 4 weeks specified above. At this stage they could be suspended (without prejudice) on full pay pending a Decision Meeting.
- 7.3 Where an employee is under Notice of Dismissal he/she will not be required to work during the notice period.

8.0 Summary of Written Notification

- 8.1 The letter to the employee will indicate the following if the Capability Review Officer has decided to give an oral, written or final written warning:
- i)
 - a) An oral warning will be in force for a maximum of 6 months but may be progressed to a written warning at or before week 10.
 - b) A written warning will be in force for a maximum of 12 months but may be progressed to a final written warning at or before week 20.
 - c) A final written warning will be in force for a maximum of 12 months. However, referral of the case to the Decision Meeting will take place within 4 weeks if action is taken under 7.0 above.
 - ii) That an oral, written or final written warning has been given
 - iii) That the facts will be entered on the employee's personal record (in the case of an oral warning, only the written notification will be placed on the employee's file)
 - iv) That the employee shall be entitled to have his or her written comments on any warning attached or appended to any filed record of the warning
 - v) Details of the required and expected improvement
 - vi) The possible consequences of further poor performance
 - vii) The right of appeal against the warning
- 8.2 A warning will be expunged from an employee's record after the period specified in 8.1(i) above

8.3 A copy of this letter will be sent to the Trade Union or other Representative accompanying the employee unless the employee requests otherwise.

9.0 Appeals

9.1 An employee may appeal against any warning to the Chair of Directors. An appeal will be convened with the Appeals Panel. Appeals must be made in writing to the Clerk to the Governors within 7 working days and heard within 14 working days of notification of Appeal and must not interrupt the progress of the Procedure, unless the Appeal decision leads to the matter being reconsidered

9.2 For the Right of Appeal procedures, please refer to Section 7 of the Disciplinary Policy