



Brighter Futures
Educational Trust

CAPABILITY OF STAFF POLICY

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VERSION CONTROL

V1.1	March 2024	Version Control Added
V1.2	March 2025	<ul style="list-style-type: none"> • Change of trust name • Roles and Responsibilities – Headteacher added • 9.3 added • 10.2 added
V1.3	April 2026	<ul style="list-style-type: none"> • New layout due to rebrand • Added fairness test for dismissal decisions in section 6 • Added flexibility to monitoring periods in section 4 • The Trust will make reasonable adjustments in accordance with the Equality Act 2010 throughout this process in section 9

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1. INTRODUCTION

Brighter Futures Educational Trust (BFET) 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 therefore 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.

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.

This policy sets out the arrangements that will apply when an employee falls below the levels of competence and performance that are expected of them and there is serious underperformance which the Pay and Appraisal Policy have been unable to address. The aim is to improve performance and provide the opportunity for employees to respond before formal action is taken.

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.

The policy has been implemented following consultation with staff. It has been formally adopted by the Trustee Board.

This policy does not form part of any employee's contract of employment and may be amended at any time following consultation with staff and the recognised trade unions where appropriate.

2. SCOPE AND PURPOSE OF THIS POLICY

The purpose of this policy is to provide a framework within which BFET can work with employees to improve and maintain satisfactory standards of performance where serious concerns have been raised.

This policy will be applied where there is serious underperformance, and informal support as set out in the Pay and Appraisal Policy has been provided and the required improvement has not been made. The policy also links to the Pay and Appraisal Policy. Where there are

capability (performance) concerns relating to an employee who is in within their probationary period, this will be managed in accordance with the probationary policy. However, the principles set out in this policy will still apply. This policy does not apply to cases involving sickness absence or misconduct. In those cases, reference should be made to the appropriate policy or procedure.

This policy applies to all employees of the BFET excluding those who are in the probationary period. On successful completion of the probationary period, employees' performance management will be covered by this policy. This policy does not apply to agency workers.

3. NOTIFICATION AND PROCEDURE FOR FORMAL MEETINGS

An employee will be given at least five working days' written notice to attend any formal meeting under this procedure.

The written notification will 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. This will include:

Copies of any written evidence and copies of witness statements and details of witnesses attending (if appropriate). This notification will also include details of the time and place of the meeting and the right to be accompanied.

Formal meetings will be conducted by the Chief Executive Officer (CEO) or other senior employee delegated this responsibility by the CEO.

An employee has the right to be accompanied to any formal meeting under this procedure by a companion, who may be a colleague or a trade union representative. Employees are entitled to request an alternative date which is within five days of the original date, which may be because their representative is unable to attend the meeting.

The employee's line manager may attend the meeting to present the management case. Relevant witnesses may be called by the person conducting the meeting. Such a request should be provided in writing at least two days prior to the meeting with details of why such a witness should be called. The person conducting the meeting shall determine who shall be called as a witness and may request a written statement is provided instead of attendance.

A formal meeting under this procedure will:

- establish the facts and 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, including disability or health matters where reasonable adjustments to working arrangements or this procedure could be made.
- 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. This may include setting new objectives.
- where appropriate, identify and explain any support, including training, that will be available to help the employee improve performance.
- where appropriate, warn the employee formally that failure to improve within the set period could lead to dismissal or other serious implications such as 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 timetable will depend on the circumstances of the individual case, but the period will be reasonable and proportionate 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.

The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required.

If at any stage the person conducting the meeting is satisfied that there are insufficient grounds for pursuing the capability issue or after a review period the employee has made sufficient improvement, the capability procedure will cease, and the appraisal process will restart.

The Trust may determine that it is appropriate to proceed at the same stage, depending on the circumstances of the case.

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

4. FORMAL CAPABILITY MEETING (STAGE 1)

If we consider that there are serious performance concerns the employee will be invited to a formal capability meeting to establish the facts and give you the opportunity to respond before formal action is taken.

Potential outcomes of this meeting are:

- it is determined that performance does meet required standard and no further action is taken. Revert to the appraisal policy.
- the employee is issued with a warning for unsatisfactory performance.

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.

The warning will normally remain active for six months 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 the employee file but will be disregarded in deciding the outcome of any future capability proceedings, subject to the provision in section 3 (not returning to earlier stage). Monitoring periods may be adjusted where reasonable, including where reasonable adjustments are required.

Monitoring & Review Period (1):

The standard set length of the monitoring and review period following the formal capability meeting in this 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. Monitoring periods may be adjusted where reasonable, including where reasonable adjustments are required.

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 they will be invited to a decision meeting.

5. FORMAL REVIEW MEETING (STAGE 2)

Potential outcomes for this formal review meeting at stage 2 are:

- If the person conducting the formal review meeting decides that sufficient progress and improvement has been made, then the capability procedure will cease, and the appraisal process will continue.
- If the person conducting the formal review meeting decides 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 four additional weeks.
- 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.

The warning will normally remain active for six 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 your personnel file but will be disregarded in deciding the outcome of any future capability proceedings, subject to the provision in section 3 (not returning to earlier stage). Monitoring periods may be adjusted where reasonable, including where reasonable adjustments are required.

Monitoring & Review Period (2):

At the end of the further monitoring and review period, the employee will be invited to a decision meeting.

At this stage and by agreement with the employee, instead of progressing to a decision meeting it may be appropriate to consider whether there is an appropriate vacant post and if so whether this may be more suited to the employee's capabilities. If there is a vacant post which we agree with you 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 and the appraisal process would re-start.

6. DECISION MEETING (STAGE 3)

The decision meeting will usually be conducted by CEO if they have not previously been involved or a panel of trustees not previously involved in the case, which could include the Executive Headteacher. Dismissal is a possible outcome of a decision meeting.

Potential outcomes of this formal review meeting at stage 3 are:

- 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.
- If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be imposed. There will be a further decision meeting at the end of that extended monitoring and review period.
- If performance remains unsatisfactory and of serious concern, a decision will be made that you should be dismissed with notice. Normal delegation rules apply to the power of dismissal. Any decision to dismiss will be based on a reasonable belief, following a fair process and sufficient evidence.

7. APPEAL

If the employee feels that the decision to dismiss them or other action taken against them (including warnings) is wrong or unjust, they may appeal. They should appeal in writing to the CEO, setting out the grounds for appeal normally within five working days of the decision.

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 in section 3.

The appeal will be dealt with impartially and, wherever possible, by a panel of three trustees who have not previously been involved in the case in line with the Trust's arrangements for appeals.

If the 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, they will be reinstated with no loss of continuity or pay.

The employee will be informed in writing of the results of the appeal hearing as soon as possible. Following the appeal hearing the panel may: (a) confirm the original decision; (b) revoke the original decision; or (c) substitute a different penalty.

There is no further right of appeal against the sanction or dismissal within the Trust.

8. SICKNESS

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 Trust's absence policy.

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. Medical advice will be obtained and reasonable adjustments considered before proceeding.

9. GENERAL PRINCIPLES UNDERLYING THIS POLICY

Confidentiality

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 to quality-assure the operation and effectiveness of the process.

Consistency of Treatment and Fairness

The Trust is 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 Board is aware of the guidance on the Equality Act issued by the Department for Education. The Trust will make reasonable adjustments in accordance with the Equality Act 2010 throughout this process.

Grievances

Where a member of staff raises a grievance during the capability procedure, the procedure may be suspended 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

The Trust will ensure that all written records are retained in a secure place. As part of the application of this policy, the Trust may collect, process and store personal data in accordance with its 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 implement laws, regulations and secondary legislation, as amended or

updated from time to time. Records will be kept in accordance with our Workforce Privacy Notice, and in line with the requirements of the Data Protection Legislation.

10. REVIEW OF POLICY

This policy is reviewed and where appropriate amended annually. We will monitor the application and outcomes of this policy to ensure it is working effectively.