



The Arthur Terry Learning Partnership

Capability policy

This policy was approved by the Trustees December 2021

John.Vickers..... Chair of Trustees

This policy will be reviewed annually on or before December 2022

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(Note: Where reference is in this policy is to “Manager”, this will mean: CEO, Director of Education, Executive Team or Head Teacher.)

1 Introduction

- 1.1 The Arthur Terry Learning Partnership (ATLP) is committed to providing high quality teaching and learning. Through its workforce the Trust aims to provide opportunities for all of its pupils, whatever their ability. Each employee will therefore be given support to help them continually improve their performance and develop to their full potential, which will in turn help improve outcomes for its young people.
- 1.2 Having an effective performance management process in place is one of the ways the Trust can support its employees and deal with performance matters as they arise; this is set out in the Appraisal Policy.
- 1.3 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 serious underperformance have been raised which the Appraisal Policy has been unable to address
- 1.4 This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.5 This policy does not form part of any employee's contract of employment and may be amended at any time.

2 Scope and purpose of this policy

- 2.1 The purpose of this policy is to provide a framework within which The ATLP can work with employees to improve and maintain satisfactory standards of performance where serious concerns have been raised.
- 2.2 This policy will be applied where there is underperformance and informal support as set out in the Appraisal Policy has been provided and the required improvement has not been made.
- 2.3 This policy applies to all employees of the Trust, including teachers and support staff, excluding those who are in the probationary period. It does not apply to agency workers.
- 2.4 The ATLP offer access to confidential counselling should it be required. The details to access this service are as follows: DAS telephone counselling telephone 0117 934 2121, or alternatively contact can be made with the Education Support Partnership: <https://www.educationsupport.org.uk>, or telephone 08000 562 561.

3 Notification and procedure for formal meetings

- 3.1 An employee will be given at least five working days' written notice if required to attend any formal meeting under this policy.
- 3.2 The written notification will also contain:
 - 3.2.1 Sufficient information about the performance concerns and the 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.

- 3.2.2 Copies of any written evidence
 - 3.2.3 Copies of witness statements and details of witnesses attending (if appropriate)
 - 3.2.4 Details of the time and place of the meeting
 - 3.2.5 The right to be accompanied (see 3.4)
- 3.3 Formal meetings will be conducted by the Headteacher/Manager or other senior employee delegated this responsibility by the Headteacher/Manager. A representative from HR will be in attendance.
- 3.4 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, if their representative is unable to attend the meeting.
- 3.5 The employee's [line manager/appraiser] may attend the meeting to present the management case. Relevant witnesses may be called by the person conducting the meeting and an employee may request that relevant witnesses are called to any formal meeting.
- 3.6 A formal meeting under this procedure will:
- 3.6.1 identify performance shortcomings;
 - 3.6.2 allow an 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;
 - 3.6.3 find out if there are any issues (both in or outside of work) that are affecting their performance that need to be considered;
 - 3.6.4 identify what action (including support provided) has been taken to date and what the outcome was;
 - 3.6.5 where appropriate, identify and explain any support that will be available to help the employee improve performance;
 - 3.6.6 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
 - 3.6.7 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.
- 3.7 The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required.
- 3.8 If at any stage the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will restart.

3.9 Following a formal meeting, the matters covered in 3.6 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, the Trust reserves the right to deal with the matter at the same stage of the procedure and not return to earlier stage (including not returning to the appraisal policy).

3.10 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)

4.1 If the Trust considers that there are serious performance concerns the employee will be invited to a formal capability meeting to establish the facts.

4.2 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.

4.3 The warning will normally remain active for 12 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 personnel file but will be disregarded in deciding the outcome of any future capability proceedings, subject to the provision of 3.9 above (not returning to earlier stage). The only exception to this is where a warning for performance involve issues relating to the safety and welfare of children and young people, in which case the warning will be retained permanently on the personal file.

4.4 Monitoring & Review Period (1)

4.4.1 The standard set length of the monitoring and review period following the formal capability meeting 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.

4.4.2 At the end of the monitoring and review period the employee will be invited to a formal review meeting, unless a final written warning was issued in which case the employee will be invited to a decision meeting.

5 Formal review meeting (Stage 2)

5.1 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 restart.

5.2 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 4 additional weeks.

5.3 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 in accordance with 4.4.

5.4 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 personnel file but will be disregarded in deciding the outcome of any future capability proceedings, subject to the provision of 3.9 above (not returning to earlier stage). The only exception to this is where a warning for performance involve issues relating to the safety and welfare of children and young people, in which case the warning will be retained permanently the personal file.

5.5 Monitoring & Review Period (2):

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

5.5.2 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 a vacant post and if so whether this may be more suited to the employee's capabilities. If there is a vacant post which the Trust agree with the employee 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 the employee commencing in the new post and the appraisal process would re-start.

6 Decision meeting (Stage 3)

6.1 The decision meeting will usually be conducted by a panel of the Trust not previously involved in the case. Dismissal is a possible outcome of a decision meeting.

6.2 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.

6.3 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.

6.4 If performance remains unsatisfactory and of serious concern, a decision will be made that the employee should be dismissed or required to cease working at the Trust. Normal delegation rules apply to the power of dismissal.

6.5 The employee will be informed in writing as soon as possible of the dismissal, the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and the right of appeal.

7 Appeal

7.1 If the employee feels that the decision to dismiss or other action taken against them (including warnings) is wrong or unjust they may appeal. The appeal should be made in writing to the Head Teacher/Manager/HR setting out the grounds for appeal within five working days of the decision.

- 7.2 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 in section 3.
- 7.3 The appeal will be dealt with impartially and, wherever possible, by a panel of three members of the Trust who have not previously been involved in the case in line with the Trust's arrangements for appeals.
- 7.4 The employee will be informed in writing of the results of the appeal hearing as soon as possible.
- 7.5 There is no further right of appeal against the sanction or dismissal within the Trust.

8 Sickness

- 8.1 If at any stage 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 sickness absence policy.
- 8.2 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.

9 General principles underlying this policy

9.1 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.

9.2 Consistency of Treatment and Fairness

The ATLP and the Trust Board 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.

9.3 Grievances

Where a member of staff 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.

9.4 Retention and data protection

All written records will be 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 the data protection policy. It will comply with the requirements of the **Data Protection Legislation** (being (i) the General Data Protection Regulation (EU) 2016/679) unless and until the GDPR is no longer directly applicable in the UK and any national implementing laws, regulations and secondary legislation,

as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998), including the Data Protection Act 2018). Records will be kept in accordance with the Workforce Privacy Notice, the Retention and Destruction Policy and in line with the requirements of the **Data Protection Legislation**.

10 Review of policy

This policy is reviewed and where appropriate amended annually by the Trust in consultation with the recognised trade unions. The Trust will monitor the application and outcomes of this policy to ensure it is working effectively.