

Capability Policy for Teaching Staff, CEO and Trust Executive Management Team

Policy Code:	HR1
Policy Start Date:	October 2023
Policy Review Date:	October 2024

Please read this policy in conjunction with the policies and procedures listed below:

- HR2 Appraisal Policy for Teacher, CEO and Executive
- HR6 Data Protection Policy
- HR33 Records Management Policy
- HR11 Teachers Pay Policy
- Current School Teachers' Pay and Conditions Document (STPCD) as issued by the Department for Education

1 Policy Statement

- 1.1 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.
- 1.2 References to the Trust or Academy within this policy specifically include all Primary, Secondary and Special Educational Needs academies within the Trust, as well as the Early Years setting at the Priory Witham Academy, Priory Apprenticeships and Lincolnshire SCITT.
- 1.3 This policy does not form part of any employee's contract of employment and it may be amended at any time.
- 1.4 This policy reflects the current Standard Teachers Pay & Conditions Document (STPCD), and will be updated pending approval, and publication of, the most up-to-date version (expected October 2023).

2 Roles, Responsibilities and Implementation

- 2.1 The Pay, Performance and HR Committee has overall responsibility for the effective operation of this policy and for ensuring compliance with the relevant statutory framework. This committee delegates day-to-day responsibility for operating the policy and ensuring its maintenance and review to the Human Resources Lead.
- 2.2 Leaders and Managers have a specific responsibility to ensure the fair application of this policy and all employees are responsible for supporting colleagues and ensuring its success.
- 2.3 All employees are responsible for ensuring their conduct and the quality of their work is of the standard required by the Trust. Headteachers are responsible for ensuring they are aware of this policy and when to deal with issues under the Capability Policy or when to refer matters to the Human Resources Lead.

3 Aims

- 3.1 To provide a framework within which the Trust can work with employees to improve, maintain and sustain satisfactory standards of performance where underperformance have been raised.
- 3.2 This policy will be applied when informal support as set out in the HR2 Appraisal Policy for Teaching Staff, CEO and Trust Executive

Management Team has been provided and the required improvement has not been made.

- 3.3 This policy applies to all Teaching Staff, CEO and Trust Executive Management team within the Trust excluding those who are in the 12-month probationary period. It does not apply to agency workers.

4 Notification and Procedure for Formal Meetings

- 4.1 An employee will be given at least five working days' written notice if required to attend a formal meeting under this policy. The notification will contain sufficient information about the concerns regarding performance and their possible consequences (including the possibility of issuing a warning or dismissal) to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; copies of witness statements and details of witnesses attending (if appropriate); 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. The representative may present the case on behalf of the employee but may not answer questions on behalf of the employee. 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.
- 4.2 During the meeting, or any other subsequent meeting which could lead to a formal warning [or dismissal], the person conducting the meeting will:
- identify the professional shortcomings, for example which of the standards expected of teachers are not being met (The Teachers' Standards can be found in the Trust's Appraisal Guide or the School Teacher's Pay and Conditions Document, page 52-55);
 - allow the teacher to respond to concerns about their performance, ask questions and to make any relevant representations. This may provide new information or a different context to the information/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;
 - 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 that the teacher can be removed from formal capability procedures (this may include the setting of new personalised approaches to meeting 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 teacher improve their performance;
 - warn the teacher formally that failure to improve within the set period could lead to dismissal or other serious implications such as no pay progression;
 - set out the timescale for improvement and explain how performance will be monitored and reviewed (the Monitoring and Review Period). The timetable will depend on the circumstances of the individual case, in straightforward cases could be 6 weeks, however, in some cases it may be appropriate for a shorter period of 4 weeks to be set. In exceptional circumstances, this period can be extended up to a maximum of 10 weeks; and
 - the Monitoring and Review 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;
- 4.3 Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the teacher will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage 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, we reserve 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). The implications in relation to pay progression will be set out in writing.

5 Stage One Formal Capability Meeting

- 5.1 Stage one formal capability will only apply where informal support has been provided through the Trust HR2 Appraisal Policy for Teaching Staff, CEO and the Trust Executive Management Team and if that has not resulted in the required improvement.
- 5.2 This meeting is intended to establish the facts. Delegated responsibility will be given for the meeting to be conducted by the following:
- For Academy Teaching Staff, it will be a senior employee who has been delegated responsibility from the Headteacher, e.g. Head of Department, Deputy Head, Assistant Head.
 - For Central Services Teaching Staff, it will be conducted by a member of the Trust Executive Management, who has not previously been involved, and who has been delegated responsibility from the CEO.

- For Headteachers, it will be conducted by the Chair of Governors, who has been delegated authority from the Pay Performance and Human Resources Committee.
- For the Trust Executive Management Team, it will be conducted by an independent external adviser who has been delegated authority from the CEO
- For the CEO, it will be conducted by the Pay Performance and Human Resources Committee.

The employee's line manager or appraiser (if different) may attend the meeting to present the management case. Relevant witnesses may be called by the person conducting the meeting or by the employee. The Academy HR Business Partner will also be present.

- 5.3 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 informal appraisal process. In such cases, the capability procedure will end. The person conducting the meeting may also adjourn the meeting if they decide that further investigation is needed, or to consider if any additional information is required.
- 5.4 Where a warning is issued, the first 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. After the active period the warning will remain on the employees personnel file but will be disregarded in deciding the outcome of any future capability proceedings subject to the provision of 4.3 above (not returning to earlier stage).

6. Stage One Monitoring and Review

- 6.1 A performance monitoring and review period will follow the stage one formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period.
- 6.2 At the end of the monitoring and review period the member of staff will be invited to a review meeting, unless they were issued with a final written warning during the monitoring and review period, in which case they will be invited to a stage three decision meeting (see Section 9).

7 Stage Two Formal Capability Meeting

- 7.1 The review meeting will follow the same notification process and procedure set out in Section 4.

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- 7.1 The review meeting will be conducted by the same panel as outlined in Section 5.2.
- 7.2 If [at any stage] the person conducting the meeting is satisfied that the teacher has made sufficient improvement and can continue to maintain and sustain all areas of the Teachers' Standards, the capability procedure will cease, the Trust's appraisal process will re-start and the meeting will end.
- 7.3 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.
- 7.4 If no, or insufficient improvement has been made during the stage one monitoring and review period, the teacher will receive a final written warning. A further (stage two) Monitoring and Review Period will follow in accordance with Section 4.
- 7.5 Notes will be taken of formal meetings and a copy sent to the member of staff. Where a final written warning is issued, the member of staff will be informed of any relevant points and that failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal. During this time any further performance concerns will be addressed at the next stage of the process (stage three). They will also be given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The implications in relation to pay progression will be set out in writing.
- 7.6 Where a final warning is issued, this 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 three). After the active period the warning will remain on the employees personnel file but will be disregarded in deciding the outcome of any future capability proceedings, subject to the provision of 4.3 above (not returning to earlier stage).

8 Stage Two Monitoring and Review

- 8.1 A performance monitoring and review period will follow the stage two formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period.
- 8.2 At the end of the monitoring and review period the member of staff will be invited to a decision meeting.

- 8.3 At this stage and by agreement with you, 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 your 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.

9 Stage Three Formal Capability Decision Meeting

- 9.1 The decision meeting will follow the same notification process and procedure as set out in Section 4. The decision meeting will usually be conducted by the following:

- For Academy Teaching Staff, it will be the Headteacher if they have not previously been involved.
- For Central Service Teaching Staff, it will be conducted by the CEO.
- For Headteachers, it will be conducted by the CEO who has been delegated authority from the Pay Performance and Human Resources Committee.
- For the Trust Executive Management Team, it will be conducted by the CEO.
- For the CEO, it will be conducted by the Trust Board.

The employee's line manager or appraiser (if different) may attend the meeting to present the management case. The Resources Lead will be also be present.

- 9.2 If an acceptable standard of performance has been achieved during the further stage two 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, the decision to dismiss may be made by the Headteacher (if they have delegated authority from the Priory Federation of Academies Trust), or a further recommendation will be sent to the Chief Executive Officer (CEO).
- 9.3 The teacher will be informed in writing as soon as possible 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.

10 Dismissal

- 10.1 Once the decision to dismiss has been taken, the CEO/Headteacher, who has delegated authority, will confirm to the individual 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 teacher's right of appeal.

11 Appeal

- 11.1 If the employee feels that a decision to dismiss them, or other action taken against them (including warnings), is wrong or unjust, they may appeal. The appeal should be in writing to the following:

- For Academy Teaching Staff, the appeal should be sent to the CEO
- For Central Service Teaching Staff, Headteachers and the Trust Executive Management Team the appeal should be sent to the Pay Performance and Human Resources Committee.
- For the CEO, the appeal should be sent to the Chair of Trustees.

This should be sent within working five days of the decision and should clearly state the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements as set out for formal meetings earlier in this policy in relation to notification and the 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, apply.

- 11.2 The appeal will be dealt with impartially by the relevant person as per section 11.1.
- 11.3 The individual will be informed in writing of the results of the appeal hearing as soon as possible.
- 11.4 There is no further right of appeal against the sanction or dismissal within The Priory Federation of Academies Trust.

12 General Principles Underlying This Policy

12.1 Confidentiality

The Appraisal and Capability processes will be treated with confidentiality. 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.

12.2 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 teachers. The Trust is aware of the guidance on the Equality Act 2010 issued by the Department for Education.

12.3 Definitions

Unless indicated otherwise, all references to “teacher” include academy and central services teachers, subject and other teaching middle leaders, Deputy Headteachers and Assistant Headteachers. The Trust Executive Management Team includes Directors or Leaders on support Staff and Teaching Contracts.

12.4 Delegation

Normal rules apply in respect of the delegation of functions by the Trust and Headteachers.

12.5 Grievances

Where a member of staff raises a grievance during the operation of the capability policy, the capability process 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.

12.6 Sickness

If long-term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with The Priory Federation of Academies Trust’s Absence Policy HR18. In some cases, it may be appropriate to seek occupational health advice to determine the appropriateness or otherwise of continuing with the formal process and for monitoring and/or formal procedures to continue during a period of sickness absence.

12.7 Monitoring and Evaluation

The Trust and Headteacher will monitor the operation and effectiveness of the Academy’s appraisal and capability arrangements.

12.8 Retention

Please see Records Management Policy HR33 for more information.

13 Policy Review

This policy is reviewed annually by the Trust in accordance with the STPCD. We will monitor the application and outcomes of this policy to ensure it is working effectively.

14 Policy amendment

This policy may only be amended or withdrawn by The Priory Federation of Academies Trust.



The Priory Federation of Academies Trust Capability Policy for Teaching Staff, CEO and Trust Executive Management Team

This Policy has been approved by the Priory Federation of Academies Pay, Performance and HR Committee:

Signed..... Name..... Date:

Trustee

Signed..... Name..... Date:

Chief Executive Officer

Signed..... Name..... Date:

Designated Member of Staff

Please note that a signed copy of this agreement is available via Human Resources.