



Interaction & Communication

— Academy Trust —

Capability Policy and Procedure

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Due to the Interaction and Communication Trust Academies being re-brokered. This policy has been extended.

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1. Introduction

Interaction & Communication Academy Trust (ICAT) (the Trust) recognises that school leaders have a responsibility to ensure that pupils receive the best educational opportunities available to them. They believe that the schools can only be fully effective in delivering a service to their pupils and the community if they have well trained motivated, committed and competent staff. In support of these aims this policy and procedure set out the arrangements that will apply when staff are experiencing difficulties in meeting the standards that are expected of them.

Standards appropriate to the level of the post need to be applied. ICAT will determine professional standards against key Trust priorities and staff will need to demonstrate that their practice is consistent with the standards that are being applied in the trust by which all are being measured.

1.1 Purpose

The Capability Procedure will be used to address any concerns that are raised about a member of staff's performance, where progress of pupils is at risk and/or that there are concerns about pupil health and safety and to provide a more tightly focused strategy of support and assessment.

1.2 Application of the policy

This policy is non-contractual and applies to all employees of ICAT.

The Trust expressly reserves the right to depart from the terms of the disciplinary procedure in circumstances where the employee does not have two year's qualifying service and will only do so following the consultation of HR and legal, to ensure the dismissal is not automatically unfair or discriminatory.

2. Capability Procedure

The Capability Policy should only be used in circumstances where the formal appraisal process has been unable to address concerns regarding their performance. The Trust will ensure that the instigation of a capability process will not come as a surprise to the employee concerned.

The right to be accompanied by a trade union representative or work colleague, applies at all the meetings listed under the stages of this procedure.

2.1 Stage 1 - Transition from the Appraisal Process meeting

(NB. For all non-teaching staff, this meeting can be amended to reflect the position in school but may not be referred to as Transition)

A Transition Meeting, to move away from the Appraisal Process may be held at any stage of the appraisal cycle if the staff member's performance remains a cause for concern as part of the normal appraisal procedure. This may include but is not limited to concerns about low expectations of pupils, unsatisfactory progress made by pupils, weak planning and preparation and inadequate classroom and behavior management skills.

The staff member will have at least five working days' notice of the meeting if the date has not been agreed at an earlier stage in the Appraisal procedure.

This meeting will be conducted by a (Deputy) Principal (or by the Chief Executive of the Trust for Principal).

The meeting allows the staff member, accompanied by a work colleague or a trade union representative to respond on behalf of their member 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 meeting will provide an opportunity to review progress towards meeting the targets for improvement. The process for the meeting will be as follows:

- A summary of the concerns will be given at this meeting by the appropriate leadership team member
- The staff member will be provided with an opportunity to respond
- The appropriate leadership team member will express a view on whether the performance management/appraisal process should remain in place or whether formal capability proceedings should commence
- The staff member, assisted by a trade union representative or accompanied by a work colleague, may make representations regarding their performance and targets set and progress made in meeting the targets
- If the person leading the meeting concludes 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 performance management/appraisal process, then the transition to the Capability procedure would be inappropriate at this time. The staff member would continue to be supported, as described in the Appraisal Policy and a new timescale for improvement set together with a date for a review meeting
- The person conducting the meeting may also adjourn the meeting if, for example, they decide that further investigation is needed, or that more time is needed in which to consider any additional information
- If it is decided that capability procedures will commence, the staff member will be notified in writing that the performance management / appraisal process will no longer apply and that their performance will continue to be managed under the capability procedure
- An agreed date will be set for the Formal Capability Meeting and the staff member will receive written notification of the meeting, the evidentiary documents and a copy of the procedures will be supplied to the staff member a minimum of five working days ahead of the meeting
- If it is decided that transition to Stage 2 of the Capability Procedure is inappropriate at this time, then the staff member will continue to be supported under an Action Plan, as described in the Appraisal Policy for staff experiencing difficulties, and a new timescale for improvement will be set together with a date for a review meeting

2.2 Stage 2 Formal Capability meeting

The written notification of the meeting, together with the evidentiary documents and a copy of the procedure should be supplied to the staff member a minimum of five working days ahead of the meeting.

This meeting is intended to establish the support necessary to enable the member of staff to reach a consistently good standard to enable them to re-join the appraisal

process. It will be conducted by Chief Executive for principal capability meetings, or the Principal (or a Deputy Principal) for all other staff.

The meeting allows the staff member, accompanied by a work colleague or a trade union representative who has been certified as being competent by the union to respond on behalf of their member 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.

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 areas for development to enable performance standards to be met, (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 staff member has every opportunity to improve their performance. This may include the setting of new objectives focused on the specific areas of development 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
- Allow the staff member the opportunity to request an adjournment at any point in order to consider the management proposals and develop alternative or additional suggestions
- Explain any support that will be available to help the staff member to improve their performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case. A support and monitoring period of between four and ten weeks will be put in place to enable the member of staff to make progress against the relevant performance standards or new objectives set. It is for ICAT to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place
- In cases, where the progress of pupils is being seriously jeopardised or where there are serious concerns on the grounds of health and safety, a written/final warning may be issued with a four-week period for improvement being given (which will remain on file for 6 months for a written warning and 12 months for a final written warning excluding the summer break)
- The staff member will be advised formally that failure to improve within a set period could lead to dismissal

Notes of this formal meeting will be taken, and a copy sent to the staff member. Where a warning is issued, the staff member will be informed in writing in addition to 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.

There is a right of appeal. Details of the process to appeal should be provided in writing, typically within 5 working days of the decision being communicated.

2.3 Stage 3 Formal Capability meeting

The written notification of the meeting, together with the evidentiary documents and a copy of the procedure will be supplied to the staff member a minimum of five working days ahead of the meeting.

If the (Deputy) Principal conducting the meeting (CEO in case of a Principal) is satisfied that the staff member has made sufficient and sustained improvement, the Capability Procedure will cease, and the appraisal process will re-start.

In other cases:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period
- If no, or insufficient improvement has been made during the monitoring and review period, the staff member will receive a final warning (which will remain on file for 12 months excluding the summer break)

Where such a warning is issued, the staff member will be informed in writing and given information about the timing and handling of the review stage. The member of staff will be informed in writing that failure to achieve an acceptable standard of performance, within the support and monitoring period of four to ten weeks, may result in dismissal.

There is a right of appeal to the Appeals Committee. Details of the process to appeal should be provided in writing within 5 days of the decision being communicated.

2.4 Final Formal Review Meeting

At the end of the support and monitoring period there will be a Final Formal Review Meeting with the staff member and their trade union or work colleague support, at which progress towards improvement will be discussed. If the school remains dissatisfied, then the staff member will be invited to a Stage 4 final capability decision meeting at which dismissal can be considered. The staff member must be advised that dismissal is a possible outcome of the Stage 4 meeting.

Although it is not a legal requirement, before a decision is made to move towards dismissal, the Trust may discuss the matter with its ICAT Central Team.

2.5 Stage 4 – Final Capability Decision Hearing

The ICAT Directors have formally delegated powers of dismissal to the relevant Principal and this hearing will be held by them.

For capability proceedings regarding the Principal, the CEO/nominated Director shall have the authority to dismiss, and a second nominated Director will hear any appeal. For capability proceedings regarding the Chief Executive Officer, a nominated ICAT Director will have the authority to dismiss, and any appeal will be to another nominated Director(s).

In a case where any person with the power to dismiss is compromised through existing circumstances or, will need to be significantly involved in the investigation – the case will be discussed by the Chief Executive and ICAT Director to determine the appropriate course to take in consultation with the HR provider.

As with formal capability meetings and formal review meetings, at least five working days' notice will be given of a Final Capability Decision Hearing. The notification will give details of the time and place of the hearing and will advise the staff member of their right to be accompanied by a work colleague or trade union representative.

2.6 Procedure at the Final Capability Decision Hearing

As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of their right to be accompanied by a work colleague or trade union representative who has been certified by their union as being competent.

The Principal (or CEO where it involves the Principal) will go through the evidence that has been gathered. The employee will be able to respond and present any relevant evidence.

Evidence is provided through witness statements. There is no right for either the Trust/School or the employee to call witnesses to the hearing. As such, there is no power for the Trust/School or the employee to cross examine the witnesses (albeit that the Principal (or CEO where it involves the Principal) may ask questions of the employee).

The employee will be given full opportunity to ask questions and put forward any mitigating factors which he/she believes are relevant to the hearing.

Once the employee has been afforded an opportunity to explain their position, the Principal (or CEO where it involves the Principal) will either:

- Give the decision and explain the reasons for the decision, and confirm as soon as possible in writing; or
- Inform the employee that the decision will be given in writing as soon as possible

The Principal (or CEO where it involves the Principal) may adjourn the hearing if the Trust/School needs to carry out any further investigations in light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider and comments on any new information obtained before a decision is given.

2.7 Decisions taken by the Final Capability Decision Hearing

If this hearing finds that a required 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 continues to fall below the acceptable standards, the Principal (or CEO where it involves the Principal) will make a decision as to whether to dismiss the employee on the grounds of lack of professional capability subject to statutory and contractual notice periods.

The Principal (or CEO where it involves the Principal) also has the power to order a further period of improvement if they believe that there has been some progress

and that there is a likelihood of the staff member being able to reach the required standard of performance with additional support and time for improvement. In this case the Principal (or CEO where it involves the Principal) will adjourn the meeting for a period of four working weeks when it will reconvene to consider whether an appropriate standard of work has been achieved or whether to go ahead with consideration of a decision to dismiss the employee.

In some cases, the Trust/School may at its discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning (which will remain on file for 12 months excluding the summer break).

Examples include:

- Demotion
- Transfer to another department or job
- A period of suspension without pay
- Loss of seniority
- Reduction in pay
- Loss of future pay increment

The staff member will be informed 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.

2.8 Appeal

All employees have the right of appeal.

Appeals must be lodged in writing to the Principal/CEO or Board of Directors within five working days of the decision being communicated to the employee (i.e. usually within five days of the date of the outcome letter).

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 the employee will be reinstated with no loss of continuity of service and pay.

If the employee raises any new matters in his/her appeal, the appeal officer may need to carry out further investigation. If any new information comes to light the appeal officer will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.

The Trust/School will give the employee written notice of the date, time and place of the appeal hearing.

The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the

Trust/School's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.

Where possible, the appeal hearing will be conducted impartially by a more senior manager who has not been previously involved in the case. The employee may bring a companion to the appeal hearing. If Directors are required at any stage of the process, they reserve the right to convene a panel of one or more Directors.

The appeal officer may adjourn the appeal hearing if the Trust/School need to carry out any further investigations in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before a decision is given.

The appeal office will take advice from the school/Trust HR advisor when determining the outcome of the appeal meeting.

The appeal officer will inform the employee in writing of the final decision as soon as possible.

There will be no further right of appeal.

3. References

The Trust/School complies with The School Staffing (England) Regulations 2009, paragraph 2, Regulation 8. The Trust recognises that it has a duty to other employers to give truthful and balanced references and this is the policy of the Trust/School, if an employee had been subject to formal capability procedures in the preceding two-year period. For the purpose of clarity, it will be deemed that an individual has entered the formal capability procedures, once they have attended the Transition meeting to consider the move from Appraisal to capability.

The Trust will provide written details to the request of a governing body or proprietor of an employment requesting a reference of the duration and outcome of the proceedings and the concerns which gave rise to the actions carried out under the Capability Procedure.

4. General Principles Underlying This Policy

4.1 Consistency of Treatment and Fairness

The ICAT Directors are committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation. Any member of staff who feels that they are being treated unfairly should raise a concern under the grievance procedures immediately, identifying the nature of the concern.

4.2 Right to be accompanied

The employee may bring a companion to any meeting or hearing under this procedure. The companion may be either a trade union representative or a work colleague. The employee must tell the disciplinary officer who his/her chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so. If the choice of

companion is unreasonable, the Trust/School may ask the employee to choose someone else. For example:

- If in the Trust/School's opinion the employee's companion may have a conflict of interest or may prejudice the hearing; or
- If the companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days afterwards.

The Trust/School may, at its absolute discretion, allow the employee to bring a companion who is not a work colleague or union representative (for example a member of family) if this will help the employee overcome a disability. At a hearing, the companion may make representations to the Trust/School and ask questions but should not answer questions on the employee's behalf. The employee may confer privately with his/her companion at any time during a hearing.

5. ACAS Code of Practice on Disciplinary and Grievance Procedures

The conduct of the formal capability stage will be undertaken in accordance with the provisions of the ACAS Code of Practice.

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 Trust Staff Attendance Management Policy and will normally be referred to the Trust Occupational Health provider to assess the member of staff's 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 formal procedures to continue during a period of sickness absence. However, the views of the occupational health physician will always be taken into account before a decision is reached.

7. Grievances

Where a member of staff raises a grievance during the appraisal or capability process, the appraisal or capability process may be temporarily suspended in order to deal with the grievance. Where the grievance and appraisal or capability cases are related it may be appropriate to deal with both issues concurrently.

8. Retention

All written appraisal records are retained in a secure place for 6 years and then destroyed as per the ICO's Retention Schedule and the ICAT Freedom of Information and GDPR policies

9. Confidentiality and Professional Relationships

The appraisal and capability processes will be treated with confidentiality and information will only be shared where it is deemed necessary by management.

10. Monitoring and Evaluation

The Trust will monitor the outcomes and impact of this policy on an annual basis, including trends in progression across specific groups to assess its effect and the Trust's continued compliance with equalities legislation.