



# Excelsior Multi Academy Trust Capability policy

This policy was approved by the Trustees 31<sup>st</sup> January 2024

Chair of Governors/Trustees

This policy will be reviewed every 3 years

## Contents

1	Introduction.....	3
2	Scope and purpose of this policy.....	3
3	Notification and procedure for formal meetings.....	3
4	Formal capability meeting (Stage 1).....	5
5	Formal review meeting (Stage 2) .....	6
6	Decision meeting (Stage 3).....	6
7	Appeal .....	7
8	Sickness.....	7
9	General principles underlying this policy .....	7
10	Review of policy.....	8



## **1 Introduction**

- 1.1 Excelsior Multi Academy Trust 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 help them continually improve their performance and develop to their full potential, which will in turn help improve outcomes for our young people.
- 1.2 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 is set out in our Professional Growth 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 there is serious underperformance which the Appraisal Policy has been unable to address. The aim is to improve performance and provide the opportunity for employees to respond before formal action is taken.
- 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 The policy has been formally adopted by the Governance Board.
- 1.6 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 Excelsior Multi Academy Trust 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 serious underperformance and informal support as set out in the Professional Growth Policy has been provided and the required improvement has not been made. The policy also links to the Pay Policy. Where there are capability (performance) concerns relating to an employee who is in within their probationary period, this will be managed outside of this 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.
- 2.3 This policy applies to all employees of the Excelsior Multi Academy Trust, including teachers and support staff, excluding those who are in the probationary period. It does not apply to agency workers.

## **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 procedure.
- 3.2 The written notification will also contain:

- 3.2.1 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
- 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 Your right to be accompanied (see 3.4)
- 3.3 Formal meetings will be conducted by the Head Teacher/Head of School or other senior employee delegated this responsibility by the Head Teacher/Head of School.
- 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, which may be because their representative is unable to attend the meeting.
- 3.5 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 2 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.
- 3.6 A formal meeting under this procedure will:
  - 3.6.1 establish the facts and identify performance shortcomings, including which of the standards expected not being met;
  - 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, including disability or health matters where reasonable adjustments to working arrangements or this procedure could be made;
  - 3.6.4 identify what action (including support provided) has been taken to date and what the outcome was;
  - 3.6.5 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;
  - 3.6.6 where appropriate, identify and explain any support, including training, that will be available to help the employee improve performance;
  - 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 Professional Growth process will re-start.
- 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, 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 Professional Growth policy).
- 3.10 Minutes will be taken of all formal meetings and you will be sent a copy following the meeting.

#### **4 Formal capability meeting (Stage 1)**

4.1 If we consider that there are serious performance concerns you will be invited to a formal capability meeting to establish the facts.

4.2 Potential outcomes of this meeting are:

4.2.1 it is determined that your performance does meet required standard and no further action is taken. You revert to the appraisal policy.

4.2.2 you are issued with a warning for unsatisfactory performance. A Monitoring and Review Period will follow as set out in 4.5

4.3 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.

4.4 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 your 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).

#### **4.5 Monitoring & Review Period (1)**

4.5.1 The standard set length of the monitoring and review period following the formal capability meeting in this Trust will vary depending on the circumstances but may extend from four to 10 weeks.

4.5.2 At the end of the monitoring and review period you will be invited to a formal review meeting, unless you were issued with a final written warning in which case you will be invited to a decision meeting.

## **5 Formal review meeting (Stage 2)**

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

- 5.1.1 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 continue.
- 5.1.2 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.
- 5.1.3 If no, or insufficient improvement has been made during the monitoring and review period, you will receive a final written warning. A further Monitoring and Review Period will follow in accordance with 4.5.

5.2 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 your 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).

### **5.3 Monitoring & Review Period (2):**

- 5.3.1 At the end of the further monitoring and review period, you will be invited to a decision meeting.
- 5.3.2 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 Professional Growth process would re-start.

## **6 Decision meeting (Stage 3)**

6.1 The decision meeting will usually be conducted by Head Teacher/Head of School if they have not previously been involved or a panel of governors not previously involved in the case, which could include the Head Teacher/Head of School. Dismissal is a possible outcome of a decision meeting.

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

- 6.2.1 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.
- 6.2.2 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.

- 6.3 If performance remains unsatisfactory and of serious concern, a decision will be made that you should be dismissed with notice or required to cease working at the Trust. Normal delegation rules apply to the power of dismissal.
- 6.4 You 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 your right of appeal.

## **7 Appeal**

- 7.1 If you feel that the decision to dismiss you or other action taken against you (including warnings) is wrong or unjust, you may appeal. You should appeal in writing to the Headteacher/Head of School or Trust HR Lead 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 governors who have not previously been involved in the case in line with the Trust's arrangements for appeals.
- 7.4 You 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 be necessary to quality-assure the operation and effectiveness of the process.

### **9.2 Consistency of Treatment and Fairness**

Excelsior Multi Academy Trust and the Governance 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 Governance Board 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

The Governance Board and Head Teacher/Head of School 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 our data protection policy. We 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 our Workforce Privacy Notice, and in line with the requirements of the **Data Protection Legislation**.

## 10 Review of policy

This policy is reviewed every three years by Excelsior Multi Academy Trust. We will monitor the application and outcomes of this policy to ensure it is working effectively.

