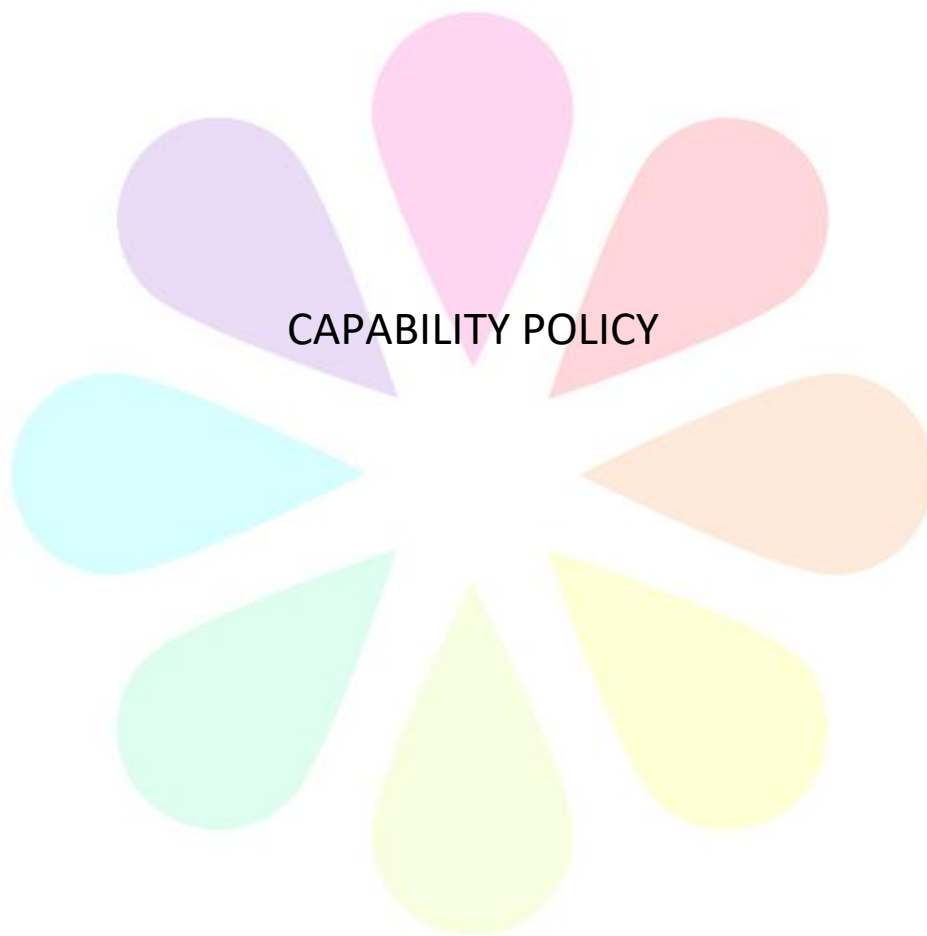




Special Partnership Trust



CAPABILITY POLICY

Date Last Reviewed: October 2023

Review Date: October 2025



Special Partnership Trust

Capability Policy

1. Introduction

- 1.1 The Special Partnership Trust will endeavour to ensure that all staff achieve and maintain the required standard of performance in their job description and person specification. The standard required will be established with each member of staff by way of Special Partnership Trust Values, Professional Standards and skill levels through the Performance Management Process as identified in the Trusts Performance Management Policy. In short, all staff will know what is expected of them. Performance will be monitored and staff given appropriate training and support to meet the required standard in their role.
- 1.2 This procedure is to be used when a member of staff is not meeting the required standard for their job. The reasons for this may be established through appraisal, assessment data, informal meetings, lesson observations and the member of staff will be given the identified support needed to enable them to meet the required standard.
- 1.3 Throughout this procedure, the term 'line manager' is a generic term.
- 1.4 This procedure does not form part of any contract of employment or other contract to provide services, and it may be amended at any time.
- 1.5 This procedure applies to employees. However, the Trust may depart from this procedure where appropriate (including but not limited to during an employee's probationary period). It does not apply to agency workers, consultants, self-employed contractors, volunteers or interns.
- 1.6 This procedure is reviewed every two years.

2. Overview

- 2.1 Formal capability should only be entered into where either of the following circumstances exists:
 - 1) Prior to the stages below, line management have carried out informal meetings, coaching and /or action planning to address issues of poor performance. The staff member will have been aware that there are performance issues and will have had a chance to address performance;
 - 2) Or the impact of the capability has a very serious and detrimental effect on other staff, learners or the Academy.

It is important to recognise that many issues of poor performance can be, and should be, resolved without recourse to the formal Capability Procedure. The formal procedure is intended as a framework and may need to be adapted to suit the needs of each situation.

- 2.2 Concerns about capability may arise from a number of factors, including but not limited to:
- Lack of proficiency and poor overall organisation
 - Poor results in key areas of achievement
 - Student/parent complaints
 - Lesson observations for teaching staff – based upon National Teaching Standards
 - Failure to achieve identified/agreed targets via the Performance Management process (all staff)
 - Lack of aptitude, skill or experience relating to roles/responsibilities
 - Reorganisation or redefinition of role
 - Poor attendance at work, related to ill health
 - Personal/family difficulties unresolved following appropriate support measures provided by the Trust
 - Changes in the nature and allocation of work, including heavy workload
- 2.3 Concerns about capability should not be confused with disability. Where a member of staff has become disabled during their employment it is important to ensure that every effort should be made to retain them in their original job role through reasonable adjustments or redeploy them to a suitable alternative post.
- 2.4 In exceptional circumstances, it may be necessary to temporarily redeploy or suspend a member of staff immediately from their normal job, e.g. staff against whom serious complaints of lack of capability and/or lack of competence have been made by students or workplace colleagues.
- 2.5 Throughout this procedure, the term ‘line manager’ is a generic term.
- 2.6 All staff have the right to be represented and accompanied by a representative of a trade union or workplace colleague at any stage of the formal Capability Procedure.
- 2.7 The capability procedure may be run in parallel with other Special Partnership Trust procedures as appropriate.

3. Disability

3.1 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to your working arrangements, including changing your duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases.

3.2 If you wish to discuss any disability that may be affecting your performance at work or inform us of any medical condition you consider relevant, you should contact your line manager.

4. Confidentiality

4.1 The Trust's aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.

4.2 You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure, whether these meetings or hearings are conducted in person, by telephone, or using remote working platforms or technologies.

4.3 You will normally be told the names of any witnesses whose evidence is relevant to your capability hearing, unless we believe that a witness's identity should remain confidential.

5. Procedure

5.1 Formal stage

5.1.1 First Stage Formal Meeting (see Appendix 1, 2 and 3 for template letters)

After making the individual aware that there are capability concerns around their performance the line manager should invite the staff member to a formal meeting to review their capability in post.

The member of staff has the right to be accompanied at the meeting by a Trade Union representative or a Special Partnership Trust employed colleague. If the staff member or companion cannot attend the hearing, they should inform the Trust immediately. The staff member must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct. If the staff member fails to attend without good reason, or is persistently unable to do so (for example, for health reasons), the Trust may have to take a decision based on the available evidence including any written representations made.

The hearing will normally be held by a Senior Manager and a member of the HR team may be present in an advisory capacity. The meeting should not be delayed unreasonably and the staff member will usually be given 7 days' notice to prepare their case. Any staff member who is undergoing formal capability must be in receipt of the Trusts Capability Policy to secure an understanding of the process being followed. Prior to the meeting, the member of staff will have been informed of the specific performance issues and likely outcome in writing if it is decided that performance has been unsatisfactory. Where appropriate, the member of staff will also be given:

- a) A summary of relevant information gathered as part of any investigation.
- b) A copy of any relevant documents which will be used at the capability hearing.
- c) A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case as much information will be given as possible while maintaining confidentiality

The aims of a capability hearing will usually include:

- a) Setting out the required standards that the Trust believes the staff member may have failed to meet, and going through any relevant evidence that gathered.
- b) Allowing the staff member to ask questions, present evidence, call witnesses, respond to evidence and make representations.
- c) Establishing the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement.
- d) Identifying whether there are further measures, such as additional training or supervision, which may improve performance.
- e) Where appropriate, discussing targets for improvement and a time-scale for review.
- f) If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.

A hearing may be adjourned if the Trust needs to gather any further information or give consideration to matters discussed at the hearing. The staff member will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The member of staff should be given an opportunity to respond to the issues and discuss any difficulties they have been having before the line manager makes a decision as to what action should be taken.

At the formal meeting, the line manager may decide to issue a written capability warning. This will clearly indicate the further stages of the process and possible outcomes if improvement is not achieved. The decision needs to be confirmed in writing with objectives specified via an action plan and giving clear indication of how they will be measured. An example of an Action Plan is shown in Appendix A. Monitoring and assessment should continue for up to 12 weeks.

If a capability warning is given the staff member has the right to appeal this decision. Any appeal should be made within 5 working days in writing, to the senior manager of the Academy in which the staff member works. The senior manager will hold the appeal or appoint an appropriate manager to hear the appeal. The person holding the appeal must be more senior than the manager who issued the warning and someone not previously involved in issuing the warning. If the warning was issued by the Headteacher the appeal must be heard by a Trustee of the Special Partnership Trust or the CEO. A member of the HR team should attend the appeal in an advisory capacity. The staff member has the right to be

accompanied by a Trade Union representative or a Special Partnership Trust employed colleague. The meeting should not be delayed unreasonably.

Following the First Stage Formal Meeting, if the Trust decides that the member of staff's performance is unsatisfactory, it will give issue [a first written warning OR an improvement note], setting out:

- a) The areas in which have not been met to the required performance standards.
- b) Targets for improvement.
- c) Any measures, such as additional training or supervision, which will be taken with a view to improving performance.
- d) A period for review.
- e) The consequences of failing to improve within the review period, or of further unsatisfactory performance.

The [warning OR improvement note] will normally remain active for six months from the end of the review period. After the active period the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of any future capability proceedings.

The staff member's performance will be monitored during the review period and the Trust will write to inform them of the outcome:

- a) if the line manager is satisfied with their performance, no further action will be taken;
- b) if the line manager is not satisfied, the matter may be progressed to a Second Stage Formal Review Meeting; or
- c) if the line manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

5.1.2 Second Stage Formal Review Meeting (see Appendix 4 for letter template)

At this stage a final capability written warning may be issued, if there is still evidence of poor performance .

If a final capability written warning is given, it will set out:

- a) the areas in which the staff member has not met the required performance standards;
- b) targets for improvement;
- c) any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- d) a period for review; and
- e) the consequences of failing to improve within the review period, or of further unsatisfactory performance.

A final written warning will normally remain active for 12 months from the end of the review period. After the active period, the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future capability proceedings.

The staff member's performance will be monitored during the review period and the Trust will write to inform of the outcome:

- a) if the line manager is satisfied with their performance, no further action will be taken;
- b) if the line manager is not satisfied, the matter may be progressed to a Final Stage Meeting; or
- c) if the line manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

5.1.3 Final Stage Meeting (see Appendix 5, 6 and 7 for letter template)

If there is no evidence of improved performance, the performance is unsatisfactory while a final written warning is still active, the performance has been grossly negligent such as to warrant dismissal without the need for a final written warning or the impact of the capability has a very serious and detrimental effect on other staff, learners of the Special Partnership Trust, the staff member should be invited to a formal final stage meeting.

The meeting should be conducted by the Head teacher, a senior member of the HR team, together with the member of staff. The member of staff will be advised of their right to be accompanied by a Trade Union representative or a Special Partnership Trust employed colleague.

If after review, it is found that the requirements of the agreed action plan have not been met, or the performance is unsatisfactory, the following options might be considered:

- (a) the member of staff may be dismissed. If dismissal is the outcome, the member of staff should be dismissed in accordance with the dismissal procedure and should be informed of their right to appeal. Dismissal will normally be with full notice or payment in lieu of notice, unless the performance has been so negligent as to amount to gross misconduct, in which case the Trust may dismiss the staff member without notice or any pay in lieu
- (b) redeploying the staff member into another suitable job at the same or (if the contract permits) a lower grade. If an alternative role is considered then the offer should be made in writing as soon as possible explaining why it is being made. The member of staff should respond within 5 working days. The Special Partnership Trust is under no obligation to create a job for the staff member but should consider appropriate available job roles.
- (c) extending an active final written warning and setting a further review period (in exceptional cases where we believe a substantial improvement is likely within the review period); or
- (d) Giving a final written warning (where no final written warning is currently active).

5.2 APPEAL – see appendix 8

Members of staff have the right to appeal against the decision at any stage under the Capability Procedure. The appeal should be made in writing to the Head teacher. Written notice of an intention to appeal, and the grounds on which it is based should be submitted within 5 working days of the date of action.

If the staff member 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 staff member will be reinstated with no loss of continuity or pay.

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

The Trust will give the staff member written notice of the date, time and place of the appeal hearing. This will normally be two to seven days after the staff member receives the written notice.

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

Appeals against action taken will be held by a panel consisting of the Head teacher, (unless involved in the dismissal), or senior manager or deputy (not previously involved in the case) or a Special Partnership Trust Trustee. A member of the HR team will be present in an advisory capacity. Where Academy senior managers/Head teacher have already been involved in the process the panel will exist of 2 Trustees, 1 must be a member of a Governing Body of a school within the Trust.

A hearing may be adjourned if the Trust needs to gather any further information or give consideration to matters discussed at the hearing. The staff member will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Following the appeal hearing the Trust may:

- a) confirm the original decision;
- b) revoke the original decision; or
- c) substitute a different penalty.

The Trust will inform the staff member in writing of the final decision as soon as possible, usually within one week of the appeal hearing. Where possible it will also explain this in person. There will be no further right of appeal.