



Girls' Learning Trust

# **CAPABILITY POLICY**

Approved By: Trust HR Committee  
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# **PART A – POLICY**

## **1. POLICY STATEMENT**

1.1 The Girls' Learning Trust (the Trust) strives to safeguard the provision of an exceptional education and outcomes for our students. Maintaining excellent standards of performance within our staff team is integral to this.

1.2 We will support staff to achieve excellent standards of performance by providing opportunities for training and development, to allow them to develop fully.

1.3 Managers of staff have a responsibility to set excellent standards of performance by their own example and similarly to expect excellent standards of performance from their teams. Managers should encourage their staff to achieve these standards by giving support, training and opportunities for self-development.

1.4 Minor issues relating to standards of performance should be dealt with through open, constructive dialogue between the employee and their line manager as a normal part of the performance management process.

1.5 The aims of this policy are to:

- Provide a framework within which managers can work with employees to maintain excellent performance standards and encourage improvement where necessary.
- Set out the arrangements that will apply when an employee's performance falls below the levels of competence that are expected of them.
- Ensure that all employees are treated fairly and consistently when a performance matter is being dealt with.

1.6 This policy should be read in conjunction with the following policies, which can be located on the GLT Staff Zone:

- Disciplinary Policy
- Staff Code of Conduct
- Grievance Policy
- Performance Appraisal Policies (teaching and support staff)
- Sickness Absence Policy

## **2. SCOPE**

2.1 This policy applies to all permanent staff who are employed by the Trust.

2.2 This policy does not apply to employees who remain in their probationary period (where relevant).

2.3 This policy does not apply to casual workers (e.g. zero-hour contracts), although advice should be sought from the HR team to ensure a fair process is applied. It does not apply to agency workers, self-employed contractors or supply staff.

2.4 Where an early careers teacher (ECT) is subject to capability procedures, we will continue the induction process in parallel with the capability procedure and inform the appropriate body.

2.5 This policy does not form part of an employee's contract of employment and may be amended at any time.

### **3. LEGISLATION & DEFINITIONS**

3.1 The procedures outlined in Part B reflect the Acas Code of Practice on disciplinary & grievance procedures.

3.2 Lack of capability is defined as:

- An employee failing to perform their role at the level of competence expected of them and that their job requires, due to a lack of ability, skill, experience or inadequate training.

3.3 The following context may help inform whether expected standards of performance are being met (this list acts as a guide and is not exhaustive):

- Lack of achievement of the role responsibilities outlined within the job description.
- Lack of progress or achievement against performance appraisal objectives which have been agreed.
- Not meeting the expected standards of performance in relation to the Trust Teachers' Standards (M2 – UPS3), or the Trust Standards for Middle and Senior Leadership.

3.4 For the purposes of this policy, the following definitions apply:

- A reference to Headteacher also means member of the Senior Leadership for staff who work across the Trust within our shared services.
- A reference to Senior Leadership team in schools means the CEO, Headteacher, Deputy Headteachers and Assistant Headteachers.
- A reference to Senior Leadership team in shared services means the CEO, COO and Heads / Directors of Departments.

### **4. ROLES AND RESPONSIBILITIES**

4.1 The Headteacher, or a nominated member of the senior leadership team, will be responsible for coordinating the procedure.

4.2 Where the employee subject to the procedure is the Headteacher, the CEO will be responsible for coordinating the procedure.

4.3 Where the employee subject to the procedure is the CEO, the Chair of Trustees will be responsible for coordinating the procedure.

4.4 Line managers will be responsible for the informal part of this procedure (section 6) and should ensure adherence to the specified requirements. Line managers should ensure that a member of the senior leadership team is kept informed of any performance concerns within their team or department.

4.5 Where appropriate, other members of staff may be asked to provide additional support to the employee or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

### **5. DISABILITY**

5.1 The law says that someone is disabled if both of the following apply:

- They have a physical or mental impairment.
- The impairment has a substantial and long-term adverse effect on their ability to carry out normal day to day activities.

5.2 Consideration will be given to whether underperformance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to working arrangements, including changing duties or providing additional equipment or training, where appropriate.

5.3 Employees should speak to their line manager at the earliest opportunity regarding any disabilities that they believe may have an adverse effect on their performance.

## **PART B - PROCEDURE**

### **6. INFORMAL ACTION**

6.1 Performance is monitored on a day-to-day basis by line managers. Depending on the role this may occur through regular one-to-one meetings, learning walks, and / or lesson observations. Any underperformance will be dealt with as part of this day-to-day line management with the aim of achieving positive improvement. Notes should be kept in the event that this is not achievable and there is a requirement to progress to the formal stage of this procedure.

6.2 The Performance Appraisal Policies are designed to facilitate more formal feedback with regards to performance. Any underperformance concerns should have been discussed previously at an informal opportunity before being discussed as part of the Performance Appraisal.

6.3 The informal capability process applicable to staff who are deemed to be underperforming may be known as the 'Performance Improvement Plan'. A template form is available in Appendix 1.

6.4 The main objectives of an informal capability process are to:

- clarify the required standards (which for teachers will be linked to the Trust Teachers' Standards)
- establish the likely causes of underperformance and identify and implement any training and support needed.
- set targets for improvement and a timescale for review (usually eight working weeks).

6.5 The line manager should monitor progress during the review period, meeting with the employee regularly throughout.

6.6 Following the agreed period of support, the line manager will arrange a meeting with the employee to discuss progress. Where sufficient progress has been made, the informal process will end. Where there has not been sufficient improvement, the formal procedures may be invoked. This decision will be made by a member of the senior leadership team.

### **7. FORMAL CAPABILITY HEARING NOTIFICATION**

7.1 If it is decided that a formal capability hearing is required, the employee will receive a written notification at least 5 working days before the hearing. The meeting could be sooner if it is agreed by both parties. The hearing manager may be the line manager or a member of the senior leadership team. The notification will include:

- The purpose of the hearing - to establish the facts and to allow the employee to respond to the concerns and make relevant representations.
- The concerns about performance and possible consequences.
- Copies of any written evidence.
- The time, date and location of the hearing (including the details if the meeting is to be held over video conferencing if relevant).
- A statement that the employee has the right to be accompanied.
- Notification that relevant witnesses may be asked to attend the hearing with sufficient notice to arrange their attendance.
- The name of the manager who will conduct the hearing and any HR representation.
- The confidentiality of the process.

### **8. FORMAL CAPABILITY MEETING PRINCIPLES**

8.1 The employee must make every effort to attend the hearing as failure to attend without good reason may be treated as misconduct under the Disciplinary Policy. If an employee fails to attend without good

reason or is persistently unable to do so (for example for health reasons), the hearing may proceed without the employee and a decision may have to be reached in the employee's absence.

8.2 Employees have a statutory right to be accompanied at the hearing by a work colleague, a workplace trade union representative or an official employed by a trade union. Employees must notify the hearing manager in advance of the meeting, to allow them to prepare a suitable location and time off for the companion if necessary.

8.3 Acting as a companion is voluntary and colleagues are under no obligation to do so. If they agree to do so they will be allowed reasonable time off from duties without loss of pay.

8.4 If an employee's chosen companion will not be available to meet at the proposed time, the hearing will be postponed to a time proposed by the employee, as long as the alternative time is reasonable and not more than 5 working days after the original date.

8.5 The companion can address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

8.6 If the hearing manager is not the line manager, the hearing manager may choose to have the line manager in attendance to present feedback on action that has been taken, progress that has been made and any concerns that remain.

8.7 Employees and their representatives are not permitted to make any electronic recordings of any meetings. Summary notes will be taken by a member of HR or a suitably qualified notetaker.

8.8 The Trust reserves the right to electronically record any meetings or hearings. In these circumstances, employees will be informed that a recording is to be made and will be given a copy of the recording upon request.

## **9. STAGE ONE – FORMAL CAPABILITY MEETING**

9.1 At the capability hearing the hearing manager will explain the performance concerns and go through the evidence that has been gathered. This may include:

- Explaining how the expected standards are not being met (based on the Trust Teachers' Standards or other relevant standards and / or job description).
- Giving clear guidance on the standard of performance needed to end the procedure.
- Explaining the support available to help the employee improve their performance.
- Setting out the timetable for improvement and explaining how performance will be monitored and reviewed.
- Warning the employee that failure to improve within this timetable could lead to an escalation of the procedure and ultimately dismissal from the organisation.

9.2 The employee will be invited to respond to the evidence and set out any relevant mitigation.

9.3 The hearing may establish that there are no grounds to pursue the capability issue. In this case, the procedure will come to an end and the issues will continue to be addressed through informal action.

9.4 The hearing may be adjourned if further investigation is needed, or if more time is needed to consider additional information presented.

## **10. AFTER THE MEETING**

10.1 After the meeting, the employee will be sent formal summary meeting notes.

10.2 If it is decided that the employee's performance is unsatisfactory, the employee will be issued with a first written warning and an improvement note which shall set out:

- The areas where the employee has not met the required performance standards.
- Targets for improvement.
- Any measures, such as additional training or supervision, which may be taken with a view to improving performance.
- A period for review (normally between 4 – 8 working weeks).
- The consequences of failing to improve within the review period, or of further unsatisfactory performance.
- Information about appealing the warning.

10.3 Any written warning will normally remain active for 12 months. After the active period, the warning will remain permanently on an employee's personnel file but will normally be disregarded in deciding the outcome of future capability proceedings.

## **11. MONITORING & REVIEW PERIOD**

11.1 A performance monitoring and review period consisting of formal monitoring guidance and support will follow the formal capability meeting.

11.2 The employee will be invited to a formal review meeting, unless they are issued with a final written warning, in which case they will be invited to a final decision meeting.

## **12. STAGE TWO - FORMAL REVIEW MEETING**

12.1 At least 5 working days' notice will be given of the formal review meeting, and will explain:

- The time and place of the meeting.
- That the employee has the right to be accompanied by a work colleague or trade union representative.

12.2 The possible outcomes to this meeting include:

- The employee has made sufficient improvement, and the capability procedure will cease. If, during the period that the written warning is active, there is further or continued evidence of underperformance, a hearing under Stage Two of the capability procedure will be convened.
- The employee has made some progress and there is confidence that more progress is likely, it may be appropriate to extend the monitoring and review period.
- No or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.

12.3 Notes will be taken of formal meetings and a copy sent to the employee.

12.4 Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance within the set review period may result in dismissal. They will be given information about the further monitoring and review period, the procedure and time limits for appealing against the final warning. The employee will be invited to a decision meeting at the end of the review period.

## **13. STAGE THREE – FINAL DECISION MEETING**



- 13.1 A hearing at stage three will only be conducted by a Headteacher, COO, CEO, Trustee or delegated member of the senior leadership team who has not previously been involved in the procedure.
- 13.2 At least 5 working days' notice will be given of the decision meeting, and will explain:
- The time and place of the meeting.
  - That the employee has the right to be accompanied.
- 13.3 If an acceptable standard of performance has now been achieved, the capability procedure will end. If there is further or continued evidence of underperformance while the final written warning is still active, a further hearing under Stage Three of the capability procedure may be convened.
- 13.4 If the employee's performance does not improve to a sufficient standard, a decision may be made that:
- The review period should be further extended.
  - An active warning should be extended.
  - The employee should be redeployed to a suitable job at the same or lower grade, where possible.
  - The employee should be dismissed.
- 13.5 The employee will be informed as soon as possible of:
- The outcome of the decision.
  - The reasons for the decision.
  - The date on which the employment contract will end, if relevant.
  - The appropriate period of notice, if relevant.
  - Their right of appeal.
- 13.6 Any dismissal will normally be with full notice or payment in lieu of notice.

#### **14. APPEALS PROCESS**

- 14.1 The employee has the right to appeal any of the sanctions outlined in this procedure. Appeals must be made in writing within 5 working days of the decision to [HR@girlslearningtrust.org](mailto:HR@girlslearningtrust.org) setting out the grounds for appeal.
- 14.2 Appeals may be made under any of the following terms:
- Where the employee feels that the outcome is too severe.
  - Where the employee believes that any part of the capability process was wrong or unfair.
  - Where the employee has new evidence which they can provide.
  - Where the employee has been dismissed for an unfair reason.
- 14.3 An appeal hearing manager will be appointed. This will be an impartial member of the senior leadership team or Trustee who has not previously been involved in the case.
- 14.4 Appeals will be heard without unreasonable delay, either in person, or over video conferencing if relevant.
- 14.5 Employees' statutory right to be accompanied by a companion will apply as with formal capability hearings.
- 14.6 Summary notes will be taken by a member of HR or a suitably qualified notetaker. A copy will be sent to the employee.

14.7 The employee will be informed in writing of the results of the appeal hearing as soon as reasonably practicable.

## **15. SPECIAL CASES**

15.1 If the employee involved in a capability procedure is also a trade union representative, we will notify the union and discuss the matter with an official employed by the union before action is taken, after obtaining the employee's agreement. The procedure will continue as normal.

15.2 If the employee who is subject to capability procedures raises a grievance about the capability allegations or the procedure itself, the grievance procedure will run concurrently.

15.3 Where an employee's long-term sickness absence is considered to have rendered them incapable of satisfactorily carrying out their duties, with the result that the Trust cannot continue to sustain their employment, the formal procedures set out in the Sickness Absence Policy will be used. This will be referred to as ill-health capability and not as poor performance.

15.4 Any capability action against the Chief Executive Officer shall be taken by the Trustees. The Chair of Trustees is responsible for conducting any necessary investigation that they may delegate to a member, trustee or governor as they determine is appropriate.

## **16. RECORD KEEPING**

16.1 Summary notes will be kept of all interviews and meetings. Where possible, these will be confirmed by the employee as an accurate reflection of what was discussed during the meeting.

16.2 Records of all materials relating to the capability process will be kept securely, only for as long as necessary and in line with data protection law, and our privacy notice.

16.3 If a formal warning is given, a record of this will be added to the employee's personnel file.

16.4 We are required to disclose any formal warnings if a reference is requested by a future employer.

**APPENDIX 1 – TEMPLATE PERFORMANCE IMPROVEMENT PLAN**

<b>Area of Focus / Goal</b>	<b>Agreed Objective</b>	<b>Target / Measure of Success</b>	<b>Timeframe</b>	<b>Support</b>
<i>Define the area of focus and / or the specific goal.</i>	<i>Define the action required by the employee to achieve the goal.</i>	<i>Indicate what success against the objective looks like.</i>	<i>Define how long the employee has to achieve this goal.</i>	<i>Specify what support can be offered / i.e. regular meetings, training, mentoring etc.</i>