

# East Midlands Academy Trust

## Disciplinary & Capability Policy

**'Every child deserves to be the best they can be'**

**Scope: East Midlands Academy Trust & Academies within the Trust**

<b>Version</b> V5	<b>Filename:</b> EMAT Disciplinary & Capability Policy
<b>Approval:</b> March 2025	<b>Next Review:</b> March 2026 <i>This Policy will be reviewed by the Trust Board (FHRE) annually</i>
<b>Owner:</b> Head of People & Culture	

**Policy type:**

Non contractual	Replaces previous version
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Revision Date	Revisor	Description of Revision
February 2025 v5	C Rees	Updated and amended terminology. Clarified some points. Added appendices and format of meeting. Updated new template.
February 2024 V4.1	C Rees	Amended and reviewed A Holton's changes. Updated references from HR to People & Culture Team Reduced the timescales for investigations, invitations to meetings
February 2024 V4	A Holton	Combined Disciplinary and Capability Policies Extracted guidelines only relevant to those conducting investigations or holding meetings under the terms of this policy. Template letters moved to Managers Guide Aligned case usage
September 2023 v3	A Holton	Added revision box. General review of content against any potential changes in legislation Amended some wording in paragraph 2 to avoid misunderstanding regarding Headteachers position in the company disciplinary procedure and involvement of trade union officials. Removed limiting chairing disciplinary meetings to Headteacher/CEO Updated job titles due to changes in the People & Culture Team Removed 'authority to action' as training will be provided to line managers releasing Headteachers in some circumstances

## Disciplinary & Capability Policy

### Contents

1.	Introduction.....	3
2.	Scope .....	3
3.	Purpose.....	3
4.	General Principles.....	4
4.1.	Overview.....	4
4.2.	Conduct & Performance .....	4
4.3.	Capability.....	5
5.	Responsibilities.....	5
6.	Suspension.....	5
7.	Disciplinary .....	6
7.1.	Criminal charges .....	6
7.2.	Informal Action.....	6
7.3.	Formal Action .....	7
7.4.	Investigation .....	7
7.5.	Timescales for Investigations .....	7
7.6.	Employee Representation / Companion at Meetings and Hearings.....	7
7.7.	Disciplinary Hearings .....	8
7.9	The Disciplinary Panel.....	10
8.	Appeals Procedure .....	10
8.1.	Disciplinary Appeals Decision .....	11
9.	Safeguarding.....	11
10.	Capability.....	12
10.1.	The Capability Process overview .....	12
10.2.	Capability – Informal Performance Improvement Plan (PIP) .....	12
10.3	Options for next steps .....	13
10.4	Stage 1 - Formal Capability Procedure .....	13
10.5	Formal Capability –Purpose of the meeting.....	14
10.6	Structure of the Meeting.....	14
10.7	Sickness Absence during the process .....	15



10.8 Monitoring and review period following a formal capability meeting ..... 16

10.9 Stage 2 – Formal Review Meeting ..... 16

10.10 Structure of the Formal Review Meeting ..... 16

10.11 Monitoring and review period following a review meeting ..... 16

10.12 Stage 3 - Decision Meeting Notification ..... 17

10.13 Structure of a Decision Meeting ..... 17

10.14 Dismissal ..... 17

10.15 Appeal ..... 17

10.16 Fast Track Capability Process ..... 17

10.17 Grievances arising during the Capability Procedure ..... 18

10.18 Confidentiality and data protection ..... 18

APPENDIX 1: - GROSS MISCONDUCT AND MISCONDUCT ..... 19

APPENDIX 2 ..... 21

APPENDIX 3 ..... 26



## 1. Introduction

EMAT expects all its employees to recognise their obligations to their Academy, the Trust, the public, pupils, and other employees and to conduct themselves properly at all times and in accordance with the Trust's Code of Conduct and all other policies and procedures.

The disciplinary process may be used when there is a performance or conduct issue with an employee in an effort to improve the performance. An investigation should be conducted to ascertain the need for disciplinary action and to understand the level of sanction if applicable.

Capability refers to an employee's skills, ability, aptitude and knowledge in relation to the job that they are employed to do and may be a reason for unsatisfactory job performance in that they are unable to perform the role. An investigation should be conducted as for disciplinary, and the outcome may be further training and coaching.

The policy does not replace the normal interaction between line manager and employee and recognises that minor breaches of conduct or underperformance should be dealt with promptly and informally without referring to formal procedures.

This policy does not form part of any employee's contract of employment, and it may be amended at any time. We may also vary the procedures set out in this policy, including any time limits, as appropriate in any case.

This Policy is in line with the ACAS code of practice and relevant prevailing legislation.

## 2. Scope

This procedure applies to all employees (teaching and beyond the classroom colleagues support staff) employed within EMAT who either have a permanent contract of employment or have more than three months' continuous service. It does not apply to employee's subject to probation or induction, who are subject to separate procedures i.e., probationary procedures. It does not apply to agency workers or self-employed contractors.

Potential action against a Trade Union officer should be referred to the EMAT People & Culture team who will notify and involve a full time Trade Union official.

Action under this policy relates both to conduct at work and instances where conduct outside work has a direct relationship to the Trust, Academy, or employee's duties. This includes action or conduct that is likely to bring the Trust into disrepute or raises concerns about an employee's suitability to continue to work in a position of trust.

## 3. Purpose

Our aim is to ensure fair and consistent treatment for all employees and that there is a good working relationship between employees and management. We want to promote effective and open communication whilst also ensuring that the required standards of performance and conduct are maintained.

In some cases, the Trust may need to take formal action to address problems of underperformance which may result from a lack of the required knowledge, skills or ability (including health). Disciplinary action may be required where misconduct is considered the issue i.e. negligence, lack of application or attitudinal problems.



All employees can expect to be treated with respect and dignity and those involved in a disciplinary investigation or hearing have a duty to act honestly and without malice and will respect the confidentiality and privacy of others. Information may need to be shared to ensure a transparent and fair process, and individuals involved will be told how this will happen if it is necessary.

## 4. General Principles

### 4.1. Overview

- The procedure will be applied objectively to all members of staff concerned and is designed to ensure everyone is treated fairly and consistently and in accordance with Equalities Legislation.
- The procedure should be used primarily to help and encourage employees to improve rather than as a way of imposing a punishment.
- The Trust executive team will clearly define the Trust's standards of conduct and performance required and ensure members of staff are aware of them.
- Employees have the right to be accompanied and represented by a qualified Trade Union official or by a work colleague of their choice at any formal stage during the procedure. There is no statutory right to be accompanied to an investigation meeting.
- All meetings held within this procedure will be arranged at a mutually agreed date, time, and venue within reasonableness and so as not to delay the process unnecessarily.
- The Trust exercises its right not to allow the recording of the meetings/hearings by any media.
- Issues should be raised and dealt with promptly and there should not be unreasonable delay in conducting the meetings, decisions or confirmation of those decisions. This applies to both parties.

### 4.2. Conduct & Performance

- It is a fundamental principle that disciplinary matters are dealt with at the lowest level possible, appropriate to the disciplinary matter under investigation.
- Employees will be informed of any complaint/allegation against them and be provided with as much information as deemed appropriate without compromising the investigation.
- All allegations will be confirmed in writing and substantive evidence provided to any employee who may be the subject of disciplinary action following a thorough investigation in advance of a disciplinary hearing. Employee's will have the opportunity to present their own view and respond to the findings.
- If, without good cause, the employee is unable or unwilling to attend a disciplinary hearing, the matter may be heard in their absence and a decision made based on all the evidence available.
- Where possible, the Chair should not have had any prior involvement with the investigation. Those conducting an appeal should not, where practicable, have had any prior involvement with the investigation or the disciplinary hearing.
- Employees will be offered the right of appeal against any action taken against them.
- No employee will be dismissed for a first disciplinary offence except in the case of gross misconduct when the penalty could be dismissal without notice or pay in lieu of notice.
- Where an employee has been warned before about their conduct or behaviour, it should be made clear at that time that if there is a further instance of misconduct, formal disciplinary action could be taken.
- Any action taken should be reasonable in the circumstances of the case.

### 4.3. Capability

- The employee should fully understand what is expected of them in their role and how this will be measured.
- Issues with underperformance should be made clear in terms of how it is measured and clarity around expectation.
- Employees should be given the opportunity to demonstrate capability within a reasonable timeframe and appropriately supported.
- Any decision to take formal action against a member of staff will only be taken after a period of agreed supportive action, unless there are exceptional circumstances, and it may be appropriate to move to the fast-track procedure.
- The Capability Process should only be invoked where there is clear, triangulated evidence of sustained underperformance and where the Performance Improvement process has failed to provide a solution following an agreed support plan. The instigation of a Capability Process should not come as a surprise to those concerned.

## 5. Responsibilities

The Trust is responsible for maintaining fair, consistent, and objective procedures for matters relating to staff discipline.

Employees and the employer have a joint responsibility to maintain good employment relationships.

Employees are expected to observe all Trust rules, policies, and procedures and respond to reasonable management requests.

## 6. Suspension

The suspension of a member of staff should only be used to enable a matter to be investigated, or, in the interests of protecting children and/or staff, while a matter is investigated pending any further action that may be necessary. Suspensions are a precautionary measure and should not be regarded as prejudging the matter. Suspension is not considered a disciplinary action and should be kept confidential wherever possible. If at any stage during, or at the end of, the investigation, or at any stage of the disciplinary procedure, it is considered that this suspension should be lifted the employee will be informed immediately.

Suspension from duty is a 'working arrangement' whereby the employee must not enter any Trust building or contact any Trust employee without the express permission of the Line Manager/Headteacher. The suspended employee must not contact pupils or their parents or anyone else with whom they would come into contact during the course of their duties. Failure to observe this requirement may render them liable to disciplinary action.

Where an employee is suspended and needs to contact witnesses to provide evidence at a hearing, then this may be considered on a case-by-case basis and achieved via their trade union representative or by a request to the Headteacher/Line Manager/People & Culture team.

Where the allegation concerns the safeguarding of children, a risk assessment must be discussed with the designated safeguarding lead. Once this assessment has been made, a decision about suspension can be taken.

Alternatives to suspension, for example reorganisation of duties, work location, temporary redeployment to another role will be explored where relevant before a decision to suspend is made.

Where allegations are made that involve the protection of children, suspension will not be considered to be automatic. A reasoned decision will be made based on all available information. People & Culture team and Headteacher input should be sought prior to suspending employees.

An employee may be suspended on full pay when an act of gross misconduct is either:

- Suspected or alleged to have been committed
- For other good and urgent cause

. The period of suspension should be as brief as possible and should be kept under review. Suspension should only be used if there is no other alternative and any suspension must be approved by a member of the People & Culture team in advance.

Where suspension occurs, this should be confirmed in writing giving the details of the allegation(s).

## **7. Disciplinary**

### **7.1. Criminal charges**

Where conduct is the subject of a criminal investigation, arrest, charge, or conviction the facts will be established before deciding whether to take any formal disciplinary action. Disciplinary action will not be automatic and will depend on the circumstances.

You should inform your Line Manager/Headteacher/People & Culture team immediately if you are involved in a criminal investigation, arrest, or are subject to a charge or conviction. Failure to notify the Trust may result in disciplinary action.

The Trust will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where employees are unable or have been advised not to attend an investigation meeting or disciplinary hearing or say anything about a pending criminal matter, a decision may have to be made based on available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if it is considered that it is relevant to or impacts on your employment.

Where a criminal investigation relates to allegations of abuse of children or line managing people the Trust will co-operate and share information about the employee with other relevant agencies as appropriate.

### **7.2. Informal Action**

Less serious breaches of conduct should be dealt with informally by meeting with you and discussing the matter in private.

This involves drawing your attention to the unsatisfactory conduct, listening to your point of view, and agreeing a clear and reasonable timescale for your conduct/behaviour to improve.

The Line Manager/Headteacher is required to keep notes of the date and content of the informal discussion. If no further action is taken after a period of 12 months, then these should be destroyed.



### 7.3. Formal Action

If there has been no improvement in conduct or performance, or the matter is of a serious or gross misconduct nature, it will be necessary to commence the formal procedure. Before holding a formal disciplinary hearing, an investigation should be carried out by the nominated investigation officer to determine the most appropriate action.

In very serious or complex cases such as suspected fraud, theft, accusations of any form of racial or severe harassment, or where criminal proceedings may ensue, a detailed formal disciplinary investigation will need to be conducted. EMAT People & Culture team will advise the academy/school on the processes for setting up independent, formal investigations and will suggest suitable qualified people to undertake the work, depending on the individual circumstances of the investigation.

A member of staff may be suspended from work during a formal disciplinary investigation (see section on suspension).

### 7.4. Investigation

The Line Manager/Headteacher is responsible for appointing an investigating officer (IO) who must be competent to undertake the role. Investigations should normally be carried out by the nominated IO, or as nominated by EMAT. Not all disciplinary hearings will require the input of an IO – for performance issues the line manager may have ongoing notes and records of conversations that form the investigation.

The process must be completed as quickly as possible, and should usually take no more than 10 days, ensuring that all parties have had the opportunity to present their evidence.

Ideally the IO should be from another school where possible. The case will be thoroughly investigated, have a written investigation report with recommendations and supporting evidence.

There will be no requirement for an investigation, or nomination of an IO if the evidence is clear e.g. if class registers are continually incorrect.

### 7.5. Timescales for Investigations

All allegations and complaints against employees must be investigated without delay (particularly in cases of potential gross misconduct) and may be conducted during school holidays.

Ideally an investigation should be completed within 10 working days depending on the complexity – if it is likely to be longer, those involved should be informed.

As part of the investigation, you will be invited to a meeting with the IO when you will have an opportunity to present your perspective on the issue under review. There is no statutory entitlement to be accompanied at the investigation meeting.

The IO will determine if there is a case to answer and the disciplining manager will make the decision if it warrants a disciplinary meeting based on the facts/evidence. The affected employee will be informed and if applicable, invited to a disciplinary hearing with 48 hours' notice and details of the allegation.

### 7.6. Employee Representation / Companion at Meetings and Hearings

You have a right to be accompanied by a trade union official or colleague. The TU official must present their ID at the meeting and show evidence that they have had appropriate training for this.



You must inform the person conducting the meeting the name of your companion in advance of the meeting.

Some companions may not be allowed; for example anyone who may have a conflict of interest, or whose presence may prejudice the meeting.

Should you choose to bring a companion to the hearing you will be responsible for making these arrangements and for providing your companion with any paperwork that they require for the hearing.

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 to act as a companion.

The employee's companion can:

1. set out the employee's case
2. respond for the employee to any comments or points made at the meeting
3. talk with the employee during the hearing
4. take notes
5. sum up the employee's case at the end of the hearing

The companion cannot answer questions on behalf of the employee.

### **7.7. Disciplinary Hearings**

Where the results of the investigation recommend that there are reasonable grounds to suggest misconduct or gross misconduct, a Disciplinary Hearing will be arranged as soon as possible.

The IO's report and all relevant documentation will be sent to you with a letter specifying the date, time, and place for the hearing, giving no less than 48 hours' notice.

Legal or other representatives are not considered appropriate or necessary, in what essentially is an internal matter. In addition, the use of recording material will not be approved as this could affect the confidence and comfort of those attending.

If you and/or your companion cannot attend the hearing, you should inform the chair immediately and consideration will be given to arranging an alternative time. You must make every effort to attend the hearing and failure to attend without good reason may be treated as misconduct in itself. Failure to attend, or there being a persistent inability to do so (for example for health reasons), may lead to a decision being taken based on available evidence.

The hearing will be chaired by a relevant level of employee senior to you. Present will be the disciplining manager (the Chair) and a notetaker. There may be times where a panel will be required, in which case you will be advised in advance of the meeting.

There will be a set agenda for the disciplinary meeting, see Appendix 3.

The Chair may adjourn the disciplinary hearing if there is a need to carry out any further investigations such as reinterviewing witnesses in the light of any new points that have been raised and you will be given a reasonable opportunity to consider any new information obtained before the hearing is re-convened.

If you choose not to attend the hearing, you may choose to send a written statement for consideration at the hearing.

You will be informed in person of the decision and the reasons for it at the meeting. Where timescales don't allow e.g. further investigation is required or school holidays you will receive the outcome in writing.

## 7.8 Disciplinary Sanctions

A decision on disciplinary action will be made in light of what is believed. The nature of any disciplinary action taken will be proportionate to the seriousness of the case and its surrounding circumstances and will reflect a conclusion that any reasonable employer could have been expected to reach.

The following formal stages of disciplinary action can be taken for breaches of conduct and/or capability:

**Verbal Warning/Letter of Management Advice** – may be issued where a minor misconduct has occurred.

**First Written Warning** – may be issued where misconduct has occurred.

**Final Written Warning** – may be issued when an employee has a current warning about conduct where further misconduct has occurred, or the misconduct is sufficiently serious.

**Dismissal** – may be issued when an employee has received a final written warning where further misconduct has occurred or where an employee has committed an act of gross misconduct.

Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence, or in any case involving an employee who has not yet completed their probationary period, dismissal without previous warnings may be appropriate.

Please see below table for how long the warning will remain active:

Disciplinary Action	Duration of action on file
Verbal warning/letter of management advice	6 months
First written warning	12 months
Final written warning	12 months
Dismissal	

Should further misconduct occur during the term of a first written warning, where this results in a formal hearing and a final written warning is issued, the duration of the final written warning will supersede that of the first written warning.

Upon expiry, all disciplinary warnings will be removed from record except for warnings relating to the safety and welfare of children or Line Managing people that fall under safeguarding issues.

Where a member of staff is dismissed, misconduct cases that relate to the safety of children and Line Managing people will be referred to Disclosure and Barring Service. This will be dealt with by the People and Culture Team for the Trust. All other cases of teacher misconduct resulting in dismissal will be

referred to the Teaching Regulation Agency on behalf of the Secretary of State for Education. It will also be reported to the Local Authority Designated Officer.

### 7.9 The Disciplinary Panel

The person(s) hearing the disciplinary will write to the employee giving details of the hearing, normally allowing 48 hours' notice and confirm any other people who will be present.

For all meetings, a note-taker will attend to take non verbatim notes (NVN) of the proceedings. It is their role to note the significant points of the hearing and is not part of the decision-making process.

At the Hearing, all parties in attendance will be given an opportunity to ask questions or challenge the reports/evidence submitted by all witnesses.

## 8. Appeals Procedure

Employees have the right to Appeal against any sanction.

Appeals must be registered in writing to the person indicated in the outcome letter within 5 working days of receipt of the letter and must state your reason for appeal. Appeals received after this period will not be heard.

The Appeal will concentrate on the area(s) of dispute only and will not be a rerun of the whole disciplinary hearing. Accordingly, it is important that you are explicit about the grounds for appeal, and you must provide clear and specific reasons in writing. Such written notice of the Appeal must include reference to any new facts you intend to raise at the Appeal.

You may present any further evidence which was unavailable at the time of submission of the appeal documentation in advance of the Appeal Hearing so that there is an opportunity to respond.

Appeals against the outcome of any disciplinary action may be considered in relation to one or more of the following grounds:

**The PROCEDURE** – the grounds of appeal should detail how any procedural irregularities prejudiced the disciplinary decision.

**The FACTS** – the grounds of appeal should detail how the facts do not support the decision or were misinterpreted or disregarded. They should also detail any new evidence to be considered.

**The DECISION** – the grounds of the appeal should state how the conduct/capability did not justify the level of disciplinary action taken or the act was one of misconduct rather than gross misconduct.

The appeal hearing will be conducted by the next level of Management, or a peer level of management not previously involved in the investigation or disciplinary hearing giving the employee 48 hours' notice and held within 5 working days of the appeal being received. The following will be considered:

- The hearing involved a full and thorough consideration of the facts and evidence
- Proper procedures were observed
- The findings were fair and reasonable
- The penalty imposed properly reflected the gravity of the matter
- Mitigating factors were fully considered

You may submit any appropriate evidence and call any appropriate witness. However, the Trust cannot compel the attendance of an unwilling or unavailable witness.

At an appeal hearing the employee is entitled to be accompanied as before and the appeal may result in one of the following outcomes:

- No change to the disciplinary sanction
- A lesser sanction
- Identify further matters for investigation
- Uphold the employee's appeal and overturn the disciplinary action taken

The result of the Appeal and the reasons for the decision will be conveyed to you as soon as possible. If there are extenuating circumstances where this is not possible, you will be notified within 5 working days of the appeal meeting in writing by the Chair.

In certain cases, it might be appropriate, for a fresh rehearing of the matter.

We reserve the right not to hear the appeal if appropriate or relevant information is not available or is not submitted in writing, or grounds for the appeal is not given.

### **8.1. Disciplinary Appeals Decision**

If your appeal is upheld and the disciplinary action taken is overturned:

All reference to the disciplinary action will be deleted from your record, except where the case is related to safeguarding.

In the case of dismissal if your appeal is upheld you will be re-instated with effect from the original date of the dismissal and will be paid any loss of salary and benefits from the date of dismissal to the date of reinstatement.

If an appeal against dismissal is not upheld the dismissal will be deemed to have taken effect from the date of the original dismissal.

The findings, decision and outcome of the appeal hearing will be confirmed to you in writing. Appeal decisions are final.

## **9. Safeguarding**

If allegations are made against staff which involve safeguarding issues, the Trust's Safeguarding Policy and procedure must be followed, irrespective of how the allegation arises.

The Designated Officer has a statutory duty to ensure that allegations about safeguarding are handled properly and quickly. They must also inform the People & Culture and Team and an investigation in conjunction with the Safeguarding policy will take place along with any disciplinary procedure as appropriate.

You may be suspended on full pay pending the outcome of the Safeguarding Policy and procedure; however, suspension will not be the default option. If the relevant safeguarding agencies decide not to pursue action, this will be confirmed with the Trust. The fact that external agencies have not acted should not be taken as an indication of the employee's innocence or guilt.

If an employee resigns during an investigation, the investigation will continue and have an outcome, which will be recorded.



The Trust will operate within statutory guidance when handling cases of safeguarding.

## 10. Capability

If a line manager has reason to believe an underperformance is due to capability they should first talk to the individual and agree an improved level of performance with clear expectations.

If the performance continues to be below that expected the line manager will arrange a meeting with factual examples of poor performance and seek the employee's input. If there is an underlying health reason it should be covered by the same meeting and may result in a referral to Occupational Health.

Further training, if applicable, may be arranged and clear targets with a timeline for improvement will be agreed. The employee will have the opportunity to seek support and suggest ways to improve performance through these meetings.

If the targets are not met within the timeline (or any agreed extension) the formal process can then be commenced.

### 10.1. The Capability Process overview

If your Line Manager believes there is a shortfall in performance that could be linked to capability, you will initially be invited to an informal capability meeting where steps to improve performance within an agreed timeline will be drawn up in the form of a Performance Improvement Plan (Appendix 2). There is no statutory right for staff members to be accompanied at the informal stage.

Should the required standard not be consistently achieved you will be invited to a formal meeting including the right to be accompanied (by an official Trade Union official or by a work colleague) and you may find at this stage there is a repetition of the targets for improvement you have previously experienced with a tighter timeline and failure to achieve these may result in a written warning.

A further failure to achieve or maintain the agreed level of performance within an agreed timeline will result in further formal meetings ultimately leading to dismissal with notice or pay in lieu of notice. There is a right of appeal against this decision.

Individuals in this situation will be supported with the main aim to retain them, however, if you are unable to perform your role despite clear target setting and/or training/coaching or other changes this may lead to dismissal.

In accordance with the ACAS Code of Practice, where a staff member is persistently unable or unwilling to attend a capability meeting without good cause, we will consider this under the Disciplinary Policy. All members of staff have the right of appeal against any action taken against them at the formal stages of this process.

### 10.2. Capability – Informal Performance Improvement Plan (PIP)

Prior to commencing the formal capability process, a bespoke informal Performance Improvement Plan (PIP) should be implemented, developed in conjunction with you. This will summarise the areas of concern, based on robust triangulated evidence and illustrates the support that you will be provided with in order to get to the required standard.



For the avoidance of doubt, this PIP is not classed as formal capability and is therefore not subject to being disclosed to a potential employer in a reference.

You should be invited to an informal capability discussion with your Line Manager to discuss your performance. Notes of this meeting will be kept using the Performance Improvement Plan (PIP) proforma that documents the following:

- The areas of performance needing improvement; and
- The level of improvement required; and
- The support that you will be provided with; and
- The target time frame for reaching the required standard.

If appropriate, other suggestions or support mechanisms will be agreed, which may include:

- Providing appropriate training or development opportunities; and/or
- Reviewing the duties, responsibilities, reporting line or other aspects of the job; and/or
- Shadowing team members or peers across EMAT; and/or
- Transferring you to a suitable alternative post within the academy/EMAT subject to mutual agreement.

At the end of the agreed review period, the line manager, potentially with the support of their line manager or People & Culture team should review the informal PIP and progress made and a meeting should be held with you to decide if the necessary improvements have been made.

### **10.3 Options for next steps**

If sufficient progress has been made there may be no need for further action, and you will be informed of this. If, however, similar performance concerns come up within 12 months of this meeting, EMAT reserves the right to commence the process at Stage 1 – Formal Capability, rather than starting again at the informal PIP stage. This will be decided on a case-by-case basis in discussion with you.

If there is inadequate improvement the process will transition to Stage 1 Formal Capability. You will be informed that this is the case and then invited to a formal capability meeting, with the right to be accompanied and during which a formal PIP will be agreed.

If some progress has been made there could be an extension of informal PIP and monitoring period at EMAT's discretion based on evidence and the circumstances of each case. Consideration may be given whether an occupational health referral needs to be made or if any reasonable adjustments are required including a potential change to your role.

### **10.4 Stage 1 - Formal Capability Procedure**

You will be notified in writing of the decision to stop the informal process and move to the Capability Process. The notification will include an invitation to attend a formal capability meeting with the Line Manager providing 48 hours' notice.

The notification will contain specific information regarding the concerns about performance and the possible consequences to enable you to prepare to answer or refute the concerns at a formal capability meeting.

You will also be informed in writing of your right to be accompanied, if you wish, by a companion who may be a trade union representative or work colleague.

Meetings associated with any stage of the Formal Procedure will normally only be postponed once. A postponed meeting will be re-arranged within 5 working days.

If you or your trade union representative, or work colleague is unable to attend on the revised date, the meeting will take place as scheduled in your/their absence.

At least 48 hours prior to the meeting you will receive copies of all documentation to be presented by the Line Manager. This should include:

- documents to evidence the concerns.
- details of support already given including notes from one-to-one meetings, feedback from lesson or work observations Performance Development Review's documentation and any other evidence deemed appropriate.

Prior to the meeting you must provide the name of your companion who is to attend the meeting, if applicable. You may provide additional evidence to support your case, and this should be submitted prior to the meeting.

### **10.5 Formal Capability –Purpose of the meeting**

This meeting is to establish the facts, review any evidence, identify the on-going areas of concern and to agree a way forward. The purpose of the meeting is to allow you to respond to concerns about your performance and to make relevant representations.

The Line Manager will present the case, explaining how your performance has been assessed as unsatisfactory and what support/actions have been taken during the informal process of the performance procedure.

This may provide new information or a different context to the information/evidence already collected. The Line Manager will chair the meeting and may be accompanied by a note taker.

The Line Manager may adjourn the meeting if it is decided that further investigation is required or if more time is needed to consider any additional information.

### **10.6 Structure of the Meeting**

The Line Manager conducting the meeting will:

- Explain clearly how the standards are not being met and show evidence to support the concerns and the effect this is having on students; staff and/or the provision of education or service in the academy or EMAT.
- Give you the opportunity to respond to the concerns being raised.
- Provide you with a clear expectation of the improved standard of performance needed to remove you from the formal process. This will form the formal PIP/action plan, setting new objectives focused on the specific areas of concern/weakness 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 the support that will be available to help you improve your performance. This may include monitoring, observing effective practitioners, training, and partnership teaching. This list is not exhaustive.
- 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 but the maximum timescale for review should be four weeks from the date of the meeting.
- Inform you that failure to improve within the set period could lead to a final written warning which then could lead to dismissal. This constitutes a first warning under the procedure. In very exceptional circumstances the decision may be to issue a final written capability warning and invite you to a decision meeting.
- Advise you of your right of appeal within five working days of written confirmation being received of any decision issued.
- You will receive notes of the meeting within 5 days and where a warning is issued, you will also be advised of the procedure and time limits for appealing.

If the meeting is concluded with no further action required that will be the end of the formal process, however, you will be warned that if new or existing concerns are raised about your performance within 12 months of this meeting, the Line Manager may continue with formal capability monitoring from the stage that they reached previously under this procedure.

Where a staff member is persistently unable or unwilling to attend a meeting without good cause the Line Manager should make a decision based on the evidence available.

#### **10.7 Sickness Absence during the process**

If you are signed off by your GP at the start of, or during, any stage of the Formal Capability Process, the East Midlands Academy Trust Absence & Time Off Policy will commence. An Occupational Health Referral may be made to seek medical opinion on your fitness for continued employment and the appropriateness of continuing with the formal process.

If you are not fit to attend meetings, it may be appropriate for subsequent monitoring and/or meetings to proceed in your absence or with a trade union representative attending on your behalf. In this case, the Line Manager will take due account of the medical condition and will write to you to confirm the outcome of the meeting and ask you to comment if you wish.

The Line Manager will confirm in writing the performance issues causing concern, the levels of support to be maintained or put in place, the targets set, and the period set for review. A copy of any actions agreed should be enclosed. The letter will give details of the length of time you have to reach the required standard and will confirm whether a written capability warning has been issued, together with the length of time this will remain on your personnel file. You must be warned that failure to improve could lead to dismissal.

If during the review period you have concerns about any issues which may impact your ability to meet or sustain the set targets, you should discuss these with, or provide a written statement to, your Line Manager as soon as possible and not wait for the review meeting.

### **10.8 Monitoring and review period following a formal capability meeting**

An agreed performance monitoring and review period, normally of no less than 4 working weeks, will follow. A mid-point review meeting will be agreed to support you in reaching the required standard.

### **10.9 Stage 2 – Formal Review Meeting**

At the end of the agreed monitoring and review period you will be invited to a formal review meeting and will be provided with a minimum of 48 hours' notice.

This written notification will:

- Contain detailed information about the concerns about the performance and the possible consequences to enable you to prepare to answer the case.
- contain copies of any written evidence.
- confirm the details of the time and place of the meeting.
- advise you of the right to be accompanied by a companion, who may be a work colleague or a trade union representative.
- advise you of the right to respond to the concerns raised and submit relevant evidence to the person conducting the meeting prior to the meeting.
- advise you who will be conducting the meeting.
- If you were issued with a final written capability warning, you will be invited to a decision meeting.

### **10.10 Structure of the Formal Review Meeting**

This meeting will follow the same structure as a formal capability meeting.

If the person conducting the meeting is satisfied that you have made sufficient improvement, the Capability Process will cease and the appraisal management process will restart; you will resume your normal duties.

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, progress has been made during the monitoring and review period, you will receive a second and final written capability warning.

The second and final written capability warning will clearly state the improved standard of performance required, the evidence that will be used to assess whether or not the necessary improvement has been made and the support that will be available to help you improve your performance. It will set out the timetable for improvement and explain how performance will be monitored and reviewed and confirm the time limits for appealing against the warning.

The second and final written capability warning will inform you that failure to achieve an acceptable standard of performance (within the set timescale), may result in the requirement to attend a decision meeting and dismissal from your post.

### **10.11 Monitoring and review period following a review meeting**

A performance monitoring and review period agreed as above will follow the formal review meeting. The agreed formal monitoring, evaluation, guidance, and support will take place during this period. If

an acceptable standard of performance has been achieved during the further monitoring and review period, the Capability Process will end and the Performance Development Reviews will restart; you will resume your normal duties. Any warnings issued either at Stage 1 or Stage 2 of the process will remain on file from the date that they were issued.

If performance remains unsatisfactory, you will be invited to a decision meeting which will make the decision that you could be dismissed due to capability.

### **10.12 Stage 3 - Decision Meeting Notification**

You will be invited to a decision meeting with at least 48 hours' notice.

The written notification will:

- contain detailed information about the concerns about performance and possible consequences to enable you to prepare to answer your case.
- contain copies of any written evidence including previous written capability warnings.
- confirm the details of the time and place of the meeting.
- advise you of your right to be accompanied by a companion, who may be a work colleague or a qualified trade union representative.
- advise you of your right to respond to the concerns raised and submit relevant evidence to the person conducting the meeting prior to the meeting.
- advise you who will be conducting the meeting and provide details of anyone else attending, for example the Headteacher/Line Manager and East Midlands Academy Trust representative.

### **10.13 Structure of a Decision Meeting**

This meeting will follow the same structure as a formal capability meeting; however, the meeting must be held by whoever can make the recommendation to dismiss to the Trust

### **10.14 Dismissal**

You will be informed at the meeting of the decision and in writing within 5 working, the date on which your employment contract will end, the appropriate period of notice and your right of appeal.

### **10.15 Appeal**

If you feel that a decision to dismiss you, or other action taken against you, is wrong or unjust, you may appeal in writing within five working days of the decision, setting out your grounds for appeal. Please refer to the disciplinary process for how to appeal.

### **10.16 Fast Track Capability Process**

For serious performance issues e.g. Non-compliance with legal or statutory requirements; or safeguarding issues a fast-track capability process may be invoked.

This will consist of two stages, each of 4 weeks duration. A final written capability warning may be issued at the end of the first review period.

The meetings in this Fast-Track procedure will follow the same format as outlined in the formal Capability Process.



### **10.17 Grievances arising during the Capability Procedure**

If the grievance is related to the case, it will normally be dealt with as part of the formal capability meeting/appeal. Depending on the nature of the grievance, the capability process may, in some situations, be suspended for a short period to deal with the grievance. You will need to raise the grievance in accordance with EMAT's Grievance procedure.

### **10.18 Confidentiality and data protection**

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 quality-assure the operation and effectiveness of the process.

Your Line Manager will ensure that all written records are retained in a secure place. As part of the application of this policy, EMAT may collect, process, and store personal data in accordance with the Trust's Data Protection Policy.

## APPENDIX 1: - GROSS MISCONDUCT AND MISCONDUCT

### GROSS MISCONDUCT

Gross misconduct is defined as misconduct of such a serious nature that the employer is no longer prepared to tolerate the employee's continued presence at the place of work. Where allegations are substantiated, they may lead to a hearing panel being convened and dismissal proceedings invoked.

The following are examples of gross misconduct, but are not intended to be exhaustive:

- Undertaking other work whilst absent
- Deliberate or serious breaches of conduct, standards/rules and regulations
- Any action which can be construed as an intention to defraud/deceive the Trust
- Being under the influence of alcohol, other intoxicants, drugs, or other substances
- Wilful refusal to carry out a reasonable instruction compromising Health and Safety or Safeguarding
- Deliberate, repeated or serious breaches of Health and Safety procedures
- Negligence which causes or could cause unacceptable loss, damage or injury
- Deliberate damage, destruction, sabotage of property (company, employee, visitor or persons etc.)
- Deliberate breach of rules
- Acting or working in a situation which constitutes a serious conflict of interest
- Communicating confidential information outside of the company
- Inappropriate conduct towards, or contact with, pupils.
- Serious acts of insubordination/failure to follow a lawful or reasonable instruction
- Serious breaches of the Trust's Financial Regulations or individual Academy's Code of Conduct.
- Theft or misappropriation of the property, assets or funds of the academy or its employees.
- Any form of assault or physical violence serious threatening or abusive behaviour towards, pupils, parents or fellow employees and/or whilst representing the Trust/Academy.
- Criminal offences (including fraudulent activities) which may affect the individual's employment suitability.
- Falsification of documents likely to be of financial benefit to the employee or other persons e.g. time sheets, bonus / expense claims, qualifications etc.
- Obtaining a job by lies or deception in the course of selection procedures.
- Making false claims under any of the Trust's policies and / or procedures.
- Discrimination / harassment/bullying against a pupil, employee or parent, on the grounds of sex, trans-gender status, sexual orientation, religion or belief, marital status, civil partnership status, age, race, colour, nationality, national origins, ethnic origin or disability.
- Serious contravention of the Trust's Policy on various ICT policies, such as social media, Internet Access.
- Acts or omissions that would expose the Academy or Trust to criticism or cause reputational damage.
- Disorderly or indecent conduct, whether at the Trust, Academy or otherwise; Bringing the Trust/Academy into disrepute



## MISCONDUCT

The following are examples of misconduct, but are not intended to be exhaustive:

- Insubordination
- Being absent from work without permission (AWOL)
- Persistent lateness
- Failure to disclose any potential conflicts of interest
- Failure to report any criminal convictions.
- Persistent minor breaches of the Trust rules
- Persistent poor performance
- Misuse or wilful damage of Trust property
- Minor breaches of IT policy

## APPENDIX 2

### PERFORMANCE IMPROVEMENT PLAN

#### INFORMAL/FORMAL CAPABILITY PROCEDURE

<b>Employee Name:</b>		<b>Position:</b>	
<b>School name:</b>		<b>Line Manager:</b>	
<b>Employment start date:</b>		<b>PIP discussion date:</b> <i>Date concerns raised</i>	
<b>Date of Progress Review Meetings</b>	<b>1.</b>	<b>2.</b>	<b>3.</b>
<b>Employee's Signature</b>		<b>Date:</b>	
<b>Manager's Signature</b>		<b>Date:</b>	
<b>People &amp; Culture review</b>  <i>Please share with HRBP should an Occupational Health referral be needed and for support EAP etc.</i>		<b>P&amp;C Notes:</b>	

**High level summary below:**

**Please note:** *the action plan detailed below is hypothetical and has been developed as an example only. You should develop an action plan that is specific to the identified areas for improvement for each person. If applicable, the targets should be in line with the teacher standards that apply and their individual job*

<b>Key Areas Identified</b>	<b>Improvement Objectives</b>  <i>What specifically must the individual do to improve their performance to meet expected standards?</i>	<b>Action Steps</b>  <i>What will be done?</i>	<b>Additional Support Required</b>  <i>What additional development or support does the individual require in order that they are able to achieve expected standards?</i>	<b>Reasonable Adjustments</b>  <i>What advice has been received from OH that will support employee? List reasonable adjustments which are in place.</i>	<b>Progress Review Meetings</b>  <i>When will progress against the improvement objectives be reviewed? How will evidence of progress be collected? Who will review progress?</i>
1.					
2.					
3.					

*description.*



### Detailed action plan (example)

Key area identified	Action	Timescale	Support from School	Success criteria	Monitoring	Outcome
Target						
<b>Classroom practice</b> 1. Manage behaviour effectively to ensure a good and safe learning environment (Teacher Standards 7)	Have clear rules and routines for behaviour in classroom in line with school's behaviour policy	Immediate	School behaviour policy reissued and content discussed on xx Peer lesson observation arranged to demonstrate good practice, held xx	What does successful achievement of this target look like?	By Who? When? How will it be evaluated?	Has performance target been met or not? If partially met what %? Comments where partially met
	Manage classes effectively, using approaches and interventions which are appropriate to pupils needs in order to involve and motivate them	To demonstrate by XX	INSET training on behaviour management held on xx To attend external training on behaviour management techniques on xx			
	Establish a framework for discipline with a range of strategies using praise, sanctions, and rewards consistently and fairly	Immediate				

<p><b>Classroom practice</b></p> <p>2. Plan and teach well-structured lessons (Teacher Standards 4)</p>	<p>Develop lesson plans using the schools template, that are clear and well structured, including lesson aims, objectives, warm up, differentiation, timings, plenary, etc</p>	<p>By xx</p>	<p>School lesson plan template re-issued and requirements discussed on xx Exemplar lesson plans shared on xx 1-1 support arranged to provide constructive feedback on lesson planning held xx INSET training on using schools' lesson planning template held on xx</p>	<p>What does successful achievement of this target look like?</p>	<p>By Who? When? How?</p>	<p>Has performance target been met or not? If partially met what %? Comments where partially met</p>
	<p>Submit proposed lesson plans for the following week to XX</p>	<p>Submitted by 2pm, Thursday weekly</p>	<p>Feedback on proposed lesson plans given by 3pm Friday</p>		<p>Weekly by XX</p>	
	<p>Teach well-structured lessons</p>	<p>3 weeks</p>		<p>Lessons are delivered in line with structured lesson plan</p>	<p>Lesson observation</p>	
<p><b>SENCO / Leadership responsibilities</b></p> <p>3. Effective communication</p>	<p>Communicate effectively, orally and in writing, to the Headteacher, colleagues, parents,</p>		<p>Training on report writing to be held on xx Training on 'effective communication' attended on xx</p>	<p>What does successful achievement of this target look like?</p>	<p>By Who? When? How?</p>	<p>Has performance target been met or not? If partially met what %? Comments where partially met</p>



<p><i>skills (SENCO standards 4c)</i></p>	<p><i>Governors and external agencies</i></p>		<p><i>Exemplar SENCO reports shared</i>  <i>Effective communication to parents observed on xx SENCO mentor at xx school identified, 2 meetings facilitated on xx and xx</i></p>			
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## APPENDIX 3

### Disciplinary Meeting Agenda

Hearings will be held in as informal manner as possible, and the employee will be afforded every reasonable assistance to put their case forward. The conduct of the hearing is at the discretion of the chair hearing the case, but the chair will allow the parties every reasonable opportunity to present their case.

The order of the meeting will be as follows:

1. Introduction

The Headteacher/Chair hearing the case will ensure that those present are introduced to each other and that they are aware of the procedure to be followed.

2. Presentation of the Allegations

The investigating officer (if an investigation was conducted) will present a summary of the investigation and be open to questioning from both the chair and the employee.

3. Questions

The Chair will proceed to ask any further questions that have arisen. The employee also be given the opportunity to add any further comments.

4. Adjournment

The meeting will adjourn to consider the case and decide the outcome. If any further evidence or investigation is required, this may delay the decision.

5. Decision

Where possible the decision will be communicated orally to the employee after the meeting. The decision will be confirmed in writing to the parties involved as soon as possible after the hearing, but within 5 working days.