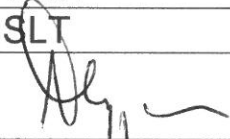




BEIS YAAKOV JEWISH HIGH SCHOOL ACADEMY

CAPABILITY POLICY

Date of approval	June 2018
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Term of review	4 years
Committee Responsible	C & P
Prepared By	SLT
Signed and dated by Chair of Committee	

Changes Made	Date

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PART ONE

1. INTRODUCTION

Beis Yaakov Jewish High School Academy (BYJHS) aims to ensure a service delivery of the best possible quality for pupils, parents and the wider community. To achieve this, it is necessary to create a flexible organisation that enables maximum performance and contribution from properly skilled people.

Most members of staff are competent, effective and able to develop through training and support. There are occasions, however, when a gap develops between the requirements of a post and the level of performance. When this happens, a member of the SLT (or their representative) will raise the issue with the employee concerned and jointly seek solutions. Issues of performance, which do not meet the required standard, will be addressed by a member of the SLT (or their representative) and the employee jointly, in order that the employee understands the School's expectations, and the School will provide the necessary support, training or resources to ensure that the performance can be improved. Where an employee fails to perform to an acceptable standard, this policy provides for an increasingly more formal process of management and review.

The purpose of this policy is to bring together information in one document, on how BYJHS will approach, consider and manage cases where performance can be improved. By using this policy as a starting point for performance management, once a performance issue has been identified which cannot be addressed as part of the appraisal procedure, both the member of the SLT, (or their representative) and the employee will have the benefit of a clear, systematic and sympathetic process designed to improve and maintain performance levels.

This policy outlines how problems of capability, defined by section 98 (3) (a) of the Employment Rights Act 1996 as "capability assessed by reference to skill, aptitude, health or any other physical or mental quality", will be managed. It also reflects the national conditions for Local Government employees and meets the requirements of the DfE Model capability procedure for teachers (May 2012)

2. GENERAL PRINCIPLES

- 2.1 **The SLT's Responsibility.** It is the responsibility of the SLT to ensure that proper standards of work performance are achieved by the employee(s) for whom they are responsible. Where an employee's work performance is below standard, the SLT is responsible for investigating the cause and taking suitable action without delay. The SLT will delegate their responsibilities (except in a case involving the need for dismissal) to an appropriate senior leader.
- 2.2 **Corrective Action.** Action taken under this policy is to improve or correct work performance. Genuine incapability is not defined as misconduct.
- 2.3 **Disciplinary Action.** Where, whilst dealing with a case as a capability issue, it is concluded that misconduct has occurred, it will be appropriate to start disciplinary proceedings on grounds of misconduct.
- 2.4 **Cautions.** When a caution is given in accordance with this policy, it is to ensure that the employee is aware that their performance is below the standard required and to tell them in what way(s) it has fallen short. The caution also states the consequences if the required standard is not reached by the end of a review period.
- 2.5 **Review period.** A review period is the period given for an improvement in performance to be achieved. The period set must be reasonable and would depend on the nature of the post. In a post where there are few and very simple tasks, a period of a few days may be reasonable, particularly where the lack of capability occurs in a task which is fundamental to the job and emerges in the early stages of appointment. Where the post is complex and effectiveness cannot be assessed in a short time, a review period of several weeks or longer, may be necessary.

Where a teacher's classroom performance is under review, individual review periods shall normally be four working weeks or sooner if appropriate. The total period for improvement should normally be no more than one term from the date of entry (except in cases of extreme poor performance).

- 2.6 **Representation.** An employee has the right to be represented by a trade union representative, friend or colleague, at all stages.
- 2.7 **Trade Union Representatives.** No formal action will be taken against a trade union representative under this policy until a full time local official of the trade union has been informed.
- 2.8 **Appeals against Decisions made at Dismissal Hearing.** There is a right of appeal following a formal dismissal hearing, for all decisions including dismissal. Appeal is to the Appeals Panel of the Governing Body. This is explained in detail in **Appendix 1**.

3. PROBATIONARY EMPLOYEES

- 3.1 Performance issues are more likely to occur during an employee's probationary period (support staff) or during the first few months of promotion or appointment from another school (teachers).
- 3.2 As part of induction, therefore, a member of the SLT has a responsibility to monitor the employee's performance closely and to deal immediately with any problems.

4. EMPLOYEES ON TEMPORARY CONTRACTS

- 4.1 Teacher employees from agencies and on temporary contracts will have their performance and conduct monitored closely against the Teachers' Standards. Employees on contracts of 3 months or more will be monitored as in **paragraph 2** above against objectives and, later in the contract, in the same way as permanent employees.

5. MONITORING

This policy will be reviewed every four years by a member of the SLT and presented to the C&P Committee.

6. LINKED POLICIES

This policy is linked to other BJYHS policies –

Disciplinary policy and procedure
Grievance policy
Appraisal policy
Staff code of conduct
Equality statement

PART TWO: THE CAPABILITY PROCEDURE

1. IDENTIFYING PERFORMANCE WHICH FAILS TO MEET THE REQUIRED STANDARD

Any one or more of the following may indicate a problem of performance which does not meet the required standard:

- failure to meet specified standards or level of performance (see Career stage descriptors of expected levels of performance in Appendix 3)
- failure to meet pre-set targets or deadlines;
- line manager's/senior member of staff's/SLT's observation of instances of performance giving cause for concern;
- complaint(s) or criticism(s) of the employee's work.

The employee's appraiser will look into the facts and make an initial assessment, based on structured information gathering and systematic recording.

2. INITIAL ACTION THROUGH APPRAISAL

Where there is poor or unsatisfactory performance or an instance of inappropriate action, the appraiser will point it out to the employee as soon as possible and remind him/her, in a constructive and positive manner, of the standard required under the Appraisal policy and procedure. The procedure set out under the Appraisal policy and procedure will then be put in place.

3. FORMAL CAPABILITY MEETING

Where, following the procedures of the Appraisal policy, the Appraiser or senior leaders believes that the Appraisal process has failed to remedy the concerns and that it is necessary to take further action, the Appraisal process will stop and actions will then follow the Capability procedure and a formal meeting will be arranged with the employee. The senior leader appointed by a member of the SLT will have made an assessment based on the appraisal outcomes and structured information gathering with particular reference to any relevant standards.

A letter outlining the date and time of the meeting will be sent to the employee at least 5 working days in advance of the meeting.

The letter will include:

- the reason for the meeting;
- the name of the senior colleague who will conduct the meeting;
- the employee's right to be represented by a trade union representative, friend or colleague who may speak on their behalf;
- copies of any documentation to be used at the meeting,
- a copy of the school's Capability Policy
- a statement that entry into the formal procedure commences from the date of the meeting when suitable targets/a plan of action are drawn up.

At the Meeting

The meeting is intended to establish or clarify the facts. It allows the employee to respond to concerns about their performance and to make relevant representations to explain and/or give reasons why the senior colleague should not consider that performance has been poor. This may provide information or a different context to the information/evidence already collected.

The senior member of staff may:

- if satisfied with the employee's explanation for poor performance or that there are mitigating circumstances, decide that there are insufficient grounds for pursuing the

capability issues and that it would be more appropriate to continue to address concerns through the appraisal process and conclude the Capability procedure

- if required, adjourn the meeting in order to make further investigation, or to consider additional information

Otherwise the senior member of staff will:

- set out the standards of work performance expected of the employee in the areas under consideration;
- explain how the employee's performance has fallen short of what is required and the impact of this on service delivery;
- confirm that any actions taken during or following the appraisal process have failed to improve performance to the level required
- discuss the way forward and ensure suitable targets/plan of action are/is drawn up with appropriate success criteria and evidence which will be required to demonstrate that the necessary improvement has been made
- explain any support which will be available to help the employee improve their performance
- set a review date which allows for regular updating to the employee on progress being made and gives a reasonable period of time for the employee to improve and demonstrate that they are capable of performing all the duties of the post;
- caution the employee that if they fail to reach the required standard during the course of the review period, further formal action may be taken, including possible referral to the member of the SLT to consider terminating their contract of employment on the grounds of capability

After the Meeting

The senior colleague will confirm any decision and action to be taken, in writing, to the employee within 5 working days. The letter will state

- the areas where improvement is required;
- the level of improvement required and/or the required standard that must be achieved
- the support that will be made available to assist the employee in making the required improvement
- any other action that will be taken by the senior team or the employee to help resolve the situation;
- the monitoring process over the improvement period
- the consequences if performance does not reach a satisfactory level within the timescale adopted
- the length of the performance monitoring and review period
- the date, time and place of the Formal Review meeting and the employee's right to be accompanied by a colleague, friend or trade union official

4. THE FORMAL REVIEW MEETING

If performance is assessed as meeting the standards of performance required at the end of the review period, the senior member of staff will inform the employee and confirm this in writing.

The Capability procedure will cease and the appraisal process will re-start. In other cases:

- If some progress has been made and there is confidence that further progress is likely, the monitoring and review period may be extended to be followed a second Formal Review Meeting
- If however, performance has not sufficiently improved or reached the required level, the employee will receive a final written warning of dismissal. This will inform the employee that failure to achieve an acceptable standard of performance within a set timescale may result in dismissal. The letter will also give information about the final period of monitoring

and review and the procedure and time limits for appealing against the final written warning.

- A time, place and date will be set for the Decision Meeting and the employee will be notified of their right to be accompanied by a friend, colleague or trade union official.

5. THE DECISION MEETING

At the meeting the senior member of staff will decide whether the further period of monitoring and review has resulted in an acceptable standard of performance. If so, the Capability procedure will end and the appraisal process will re-start.

If the senior member of staff decides that performance remains unsatisfactory, the following options will be considered:

- recommendation to the SLT to terminate their contract of employment on the grounds of capability
- alternative employment within the Academy. This action will only be taken if the employee accepts that he/she has a performance problem and says that he/she is willing to be considered for alternative work. If such an alternative post were to be available, in offering alternative work, the senior colleague will have to be convinced that the employee will be able to perform the duties of the new post to a required standard, Otherwise there is a risk that the capability problem will be transferred to the new area of work. Where such work is available, offered and accepted, the rate of pay, grade and other conditions are those applicable to the new post being offered.

6. THE DECISION TO DISMISS

The power to dismiss staff at Beis Yaakov High School has been delegated to the SLT. The SLT will review the minutes of all meetings and the evidence of unsatisfactory performance before issuing a letter dismissing the employee on the grounds of capability. The letter will set out the reasons for the dismissal, the date on which employment will cease, the appropriate period of notice and the employee's right of appeal and the appeal procedure.

PART THREE: NOTES

1. THE CAPABILITY OF A MEMBER OF THE SLT

Where the Chair of Governors or a Governing Body has expressed concern about the performance of a member of the SLT, it is the responsibility of the Chair to take up the concerns with the member of the SLT, using the Capability procedure and timescales.

2. GRIEVANCES

Where a member of staff raises a grievance during the Capability procedure, the Capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related, a member of the SLT will decide whether it is more appropriate to deal with both issues concurrently.

3. SICKNESS

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the Academy's Absence policy and the employee will be referred immediately to the Academy's Occupational Health Service to assess the employee's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring and/or formal

procedures. In some cases, a member of the SLT may decide that it is appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

APPENDIX 1 APPEALS PROCESS

1. Following the Decision Meeting, the employee can appeal to the Appeals Panel of the Governing Body. If, as an alternative to dismissal, an offer of redeployment/other employment has been made, an employee will still have access to this stage of appeal.
2. The appeal must be lodged in writing with the Chair of the Appeals Panel, within 10 working days of receipt of the letter confirming the outcome of the Decision Meeting, clearly setting out the grounds of the appeal and outlining the reasons why the employee believes that the decision was unfair. Grounds of appeal will relate to one or more of the following:
 - the process used to come to the decision
 - the action proposed
 - the findings of the senior member of staff /Head Teacher
3. The Appeals Panel will arrange to meet both parties within 15 working days or as soon as possible thereafter to hear the grounds for appeal and to come to a decision.
4. Both the SLT and the employee may submit written evidence and call witnesses. The employee has the right to representation by a friend, colleague or trade union official.
5. Copies of any documentation, notification of the names of witnesses and details of where and when the appeal will be heard will be notified to both parties, at least 5 working days prior to the hearing.
6. An HR advisor may be present to advise the Appeals Panel.
7. The format for the hearing is shown in **Appendix 2**.
8. The decision of the Appeals Panel is final.

APPENDIX 2 PROCEDURE AT APPEAL

The Appeals Panel of the Governing Body represents the final stage under this Policy. The Panel will consist of no less than 3 members of the Governing Body with no previous involvement in the capability process in regard to the employee.

Introduction

1. The Chair will introduce all parties and explain the purpose of the hearing. The names of any witnesses being asked to attend will be noted and all documentary evidence being presented will be verified. New documentation will not normally be allowed to be presented on the day of the hearing.

The Employee's Presentation

2. The employee (or representative) will present his/her grounds of appeal and outline the reason/s why he/she believes that the decision was unfair. The grounds for appeal will be one or more of the following:

- the process used to come to the decision
- the action proposed
- the findings of the Decision Meeting

3. Questions may be asked, of the employee in the following order:

- a) Head Teacher/senior member of staff
- b) the Appeals Panel
- c) the HR Advisor

4. The employee may then call his/her witnesses and ask questions of them. The witness/es can then be questioned by the other parties in the order outlined at 3 above.

The SLT's Presentation

5. A member of the SLT and the senior member of staff who has operated the capability procedure will present the response to the employee's presentation.

6. Questions may be asked of the member of the SLT/senior member of staff in the following order:

- a) employee/representative
- b) the Appeals Panel
- c) the HR Advisor

7. The member of the SLT may then call witness/es and ask questions of them. The witness/es will then be questioned by the other parties in the order outlined at 6 above. Once each party has completed their questioning, the witness will not be recalled. The Chair of the Appeals Panel however retains the right to recall any witness should further clarification of any issue be required. Where this happens, all parties will be recalled to the hearing.

Summing Up Stage

8. Each party will then have the opportunity to sum up, with the member of the SLT going first. No new evidence may be introduced at this stage.

9. The Chair of the Appeals Panel will then ask both parties to withdraw and the Appeals Panel will come to a decision based on the evidence presented.

10. Once a decision has been made, both parties will be recalled and informed of the outcome. The decision will be confirmed in writing within 5 working days. In certain situations the parties may not be required to wait for the decision, Where this happens, the decision will be communicated in writing within 5 working days of the hearing.

A copy of the outcome letter will be placed on the employee's personal file.

APPENDIX 3 _TEACHERS' STANDARDS

Categories linked to Teachers' Standards	Entry Stage (MPR 1&2)	Development Stage (MPR 3&4)	Contribution Stage MPR 5& 6	High Value Stage (UPR 1,2&3)
Professional Practice	<p>All relevant teachers' standards being implemented with guidance. Monitoring of practice indicates teaching and learning is good. Seeking support from line manager as required.</p>	<p>All relevant teachers' standards being implemented independently. Monitoring of practice indicates teaching and learning is good. Seeking support but usually only for challenging or complex issues.</p>	<p>All relevant teachers' standards being implemented independently. Monitoring of practice indicates teaching and learning is good, some is outstanding. Increasingly able to respond, without support or guidance, to challenging or complex issues. Within their relevant field of expertise they proactively initiate improvement and collaboration with colleagues, leading, modelling and evaluating good practice.</p>	<p>All relevant teachers' standards implemented independently. Monitoring of practice indicates teaching and learning is good, some is outstanding. Trusted to respond effectively to challenging or complex issues. Across all areas of relevant expertise they provide a model of good practice. They provide an excellent source of experience, knowledge and skill, coaching and mentoring others. They initiate, design, lead and evaluate innovative strategies to impact across the whole school and, where required, beyond.</p>
Professional Outcomes	<p>Through the implementation of the relevant teachers' standards, all pupils meet school expectations. Where children do not meet expectations teachers can evidence good reasons. Teacher uses data to improve outcomes for pupils in their class.</p>	<p>Through the implementation of the relevant teachers' standards, all pupils meet school expectations. Where children do not meet expectations teachers can evidence good reasons. Teacher understands, analyses and evaluates data effectively to improve outcomes for pupils and groups in their class.</p>	<p>Through the implementation of the relevant standards, all pupils meet school expectations. Where children do not meet expectations teachers can evidence good reasons. . Teacher is using, analysing and evaluating data effectively to improve practice and outcomes for all pupils and groups in their class, year group and in their area of expertise.</p>	<p>Through the implementation of the relevant standards, all pupils meet school expectations. Where children do not meet expectations teachers can evidence good reasons. . Teacher is using, analysing and evaluating data effectively to improve practice and outcomes for all pupils and all groups across areas of learning for the whole school and, where required, beyond.</p>

Professional Relationships	Through the implementation of the relevant teachers' standards, staff establish positive working relationships with pupils, colleagues within school and parents. They contribute to the effective running of their team	Through the implementation of the relevant teachers' standards, staff demonstrate consistently positive relationships with pupils, colleagues within school and parents. They proactively contribute to the effective running of their team.	Through the implementation of the relevant standards, staff demonstrate consistently positive and supportive relationships with pupils, colleagues within school and parents. They take constructive positive action to ensure good relationships are maintained . They play a proactive role in building effective teams that are focussed on good outcomes for all pupils and groups in the school.	Through the implementation of the relevant standards, staff demonstrate consistently positive and supportive relationships with pupils, colleagues within school and parents. They take constructive positive action to ensure good relationships are maintained and fostered. They play a proactive role in leading and managing key areas and /or effective teams that are focussed on good outcomes for all pupils and groups in the school and, where required, beyond.
Professional Development	Using the relevant teachers' standards as a framework, staff are able, with support, to identify key professional development needs. They respond professionally to advice and feedback.	Using the relevant teachers' standards as a framework, staff are proactively identifying key professional development needs. They respond professionally to advice and feedback, and quickly take action to improve practice.	Using the relevant teachers' standards as a framework, staff proactively identify their own key professional development needs, including development that will improve their ability to lead and manage others. They respond professionally to advice and feedback, and quickly take action to improve practice. They provide effective support, training and guidance for others professional development, within school and beyond.	Using the relevant teachers' standards as a framework, staff proactively identify their own key professional development needs. They have evidenced the ability to lead and manage others effectively They respond professionally to advice and feedback, and quickly take action to improve practice. They have evidenced they can provide high quality support, training and guidance for others professional development. Much of this support is through coaching and mentoring. They manage the performance of others effectively.
Professional Conduct	Meets all standards.	Meets all standards.	Meets all standards.	Meets all standards. Acts as a role model for others.