MENTAL CAPACITY AND CONSENT POLICY

The OHC&AT Board of Directors has agreed this Policy and as such, it applies across the organisation – 16th March 2018.

Jay Mercer
Chair of OHCAT Board

Darren Coghlan
Chair of OHC Board

Mental Capacity and Consent Policy

INTRODUCTION

Orchard Hill College and Academy Trust (OHC&AT) is committed to providing outstanding educational opportunities for all our pupils and students. We aim to put the individual at the heart of all our provision, supporting each pupil and student to identify and achieve the aims that are important to them.

This policy sets out OHC&AT's understanding of and approach to supporting mental capacity and consent within the context of our provision. OHC&AT strives to provide teaching and learning which is responsive to the individual needs of pupils/students. On this basis, OHC&AT will strive to maximise the independence and self-advocacy of all students, operating from a starting assumption that each student has capacity to make decisions related to their learning unless evidenced to the contrary within the parameters of the Mental Capacity Act (2005) (please see Appendix A for a summarised version), and ensuring that student consent is sought and given with respect to all aspects of their learning.

Under the Children and Families Act 2014, a child becomes a young person and is deemed to have capacity once they reach the age of 16; this is the point at which parental rights under the law in relation to the young person's education pass to the young person. Therefore this policy applies to all students aged 16 or over who attend an OHC&AT provision. However, as a general principle it should be noted that OHC&AT will always respect the rights of the individual and will strive to support every pupil/student to express their needs and wishes, regardless of age or legal status.

AIMS

- To identify the key aspects of the Mental Capacity Act (2005) in relation to OHC&AT students.
- To clarify OHC&AT's responsibilities to facilitate students in maximising their self-advocacy, and ensuring all appropriate support to achieve this.
- To ensure that a student's consent is paramount in all situations.

POLICY STATEMENT

OHC&AT will:

- Assume a student has capacity with regard to the decisions and choices presented to them within OHC&AT provision.

- Take a decision-specific approach to capacity and consent.

- Ensure that the circumstances for making a decision are right for the individual student.

- Acknowledge that, in the judgment of staff, a student may make an 'unwise decision' but staff will still respect and support it, provided it does not place the student or others at risk of harm.

- Not lead a student, through emphasis or intonation, when presenting them with a choice.

- Only have an involvement in assessing a student's capacity within the remit of decisions relating to their learning and being at OHC&AT provision, unless invited to contribute otherwise e.g. at external best interest meetings.

- Ensure that key staff involved in assessing capacity have received training on the Mental Capacity Act and suitable assessment strategies.

- Strive to maximise the opportunities for all students to advocate for themselves.

- Maximise the awareness of opportunities for individual students through the planning of sessions.

- Reflect a student's dreams and aspirations as identified through Person Centred Planning, tutorials and reviews.

- Work in the best interests of the student, and in partnership with all appropriate agencies, in the event that a student's capacity is in question with regard to a specific decision affecting them or their circumstances.

- Ensure that when 'appropriate help' with decision making is given to a student, it is someone who the student has chosen and who knows them well.

- Always gain a student's consent before undertaking any medical or therapeutic interventions – consent will be gained for each separate intervention. Where it has been specifically identified that a student lacks capacity with regard to granting permission for the administration of medical care, or has a level of language development which is not consistent with their being able to give informed consent, medical care will be administered with the student's best interest in mind and in accordance with professional advice and/or the student's best-placed advocate.

- Work in collaboration with a student where they are unhappy about essential interventions (e.g. personal care or emergency medical care) to achieve a level and mode of support that they are comfortable with.

- Ensure consent is gained from prospective students (or, where the student does not have capacity, their best-placed advocate) with regard to medical, therapeutic and other forms of assessment during any assessment days and/or initial assessment processes for OHC&AT provision.

- Ensure the student (or, where the student does not have capacity, their best-placed advocate) has consented to attending and applying to attend OHC&AT provision.

- Respect a student's decision if they express a wish to leave OHC&AT provision at any time, ensuring that they can do so safely and providing their concerns have been discussed and attempts made to resolve these. If there are safeguarding concerns these should be reported to the Designated Safeguarding Lead before a student leaves OHC&AT provision.

- Always gain a student's consent for the taking and use of images and video material in different forms and media. Consent will only be overruled where it has been evidenced that an individual does not have capacity and/or it is deemed by their parent/carer or best-placed advocate that the use of any images will create a safeguarding risk or pose another form of significant threat to their wellbeing.

- Have due regard to Deprivation of Liberty Safeguards. This is a safeguard for people who lack capacity to make decisions regarding their own safety. OHC&AT will provide a safe environment for the diverse needs of all its students, ensuring the safety and due liberty of them all as individuals. OHC&AT will ensure that student choice and best interest is considered at all times and that decisions being made suit the needs of the student to which they pertain.

POLICY REVIEW DETAILS

Version:	1.0
Reviewer:	Jackie Van-West, John Prior
Approval body:	Family Board
Date this version approved:	16.03.18
Due for review:	Spring 2021

RELATED POLICIES AND PROCEDURES

Administration of Medication and Prescribed Substances in College Policy
Child Protection Adult Protection & Safeguarding Policy and Procedure
Personal and Intimate Care Policy
Supporting Pupils in Schools with Medical Conditions Policy

APPENDIX A: THE MENTAL CAPACITY ACT 2005

What is Mental Capacity?

The Mental Capacity Act (2005) provides the legal framework for acting and making decisions on behalf of an adult (aged 16 or over) who lacks the mental capacity to make particular decisions for themselves.

The Mental Capacity Act (2005) Code of Practice makes the following definition:

"Mental capacity is the ability to make a decision.

- *This includes the ability to make a decision that affects daily life – such as when to get up, what to wear or whether to go to the doctor when feeling ill – as well as more serious or significant decisions.*
- *It also refers to a person's ability to make a decision that may have legal consequences – for them or others. Examples include agreeing to have medical treatment, buying goods or making a will."*

The Five Statutory Principles of the Mental Capacity Act

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help her/him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he/she makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in her/his best interests.
5. Before the act is done, or the decision is made, regard must be given to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

The statutory principles aim to:

- protect people who lack capacity, **and**
- help them take part, as much as possible, in decisions that affect them.

They aim to assist and support people who may lack capacity to make particular decisions, not to restrict or control their lives (in line with the Human Rights Act 1995).

Assessing Capacity to Make a Decision

The Code of Practice states that:

"The starting point must always be to assume that a person has the capacity to make a specific decision. Some people may need help to be able to make or communicate a decision. But this does not necessarily mean that they lack capacity to do so. What matters is their ability to carry out the processes involved in making the decision – and not the outcome."

Assessing Capacity

Anyone assessing someone's capacity to make a decision for themselves should use the two-stage test of capacity:

- Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? (It doesn't matter whether the impairment or disturbance is temporary or permanent.)
- If so, does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?

The Code of Practice lists people with learning disabilities as having the potential to fall into the above criteria. However it also acknowledges that these people may regain or develop capacity in the future:

"a person with learning difficulties may learn new skills or be subject to new experiences which increase their understanding and ability to make certain decisions."

Safeguards Provided by the Act in Assessing Someone's Capacity

An assessment that a person lacks capacity to make a decision must never be based simply on:

- their age
- their appearance (including physical characteristics of certain conditions e.g. features linked to Down's syndrome or muscle spasms caused by cerebral palsy)
- assumptions about their condition (including physical disabilities, learning difficulties and disabilities), **or**
- any aspect of their behaviour (including shouting or gesticulating and withdrawn behaviour e.g. talking to oneself/avoiding eye contact).

Support with Decision Making

The Code of Practice recognizes that providing appropriate help with decision-making should form part of care planning processes for people receiving health or social care services and, by virtue, learning providers and a key example of this is Person Centred Planning for people with learning disabilities.

Key factors to establish are:

- Does the person have all the relevant information they need to make a particular decision?
- If they have a choice, have they been given information on all the alternatives?
- Could information be explained or presented in a way that is easier for the person to understand (for example, by using simple language or visual aids)?
- Have different methods of communication been explored if required, including non-verbal communication?

- Could anyone else help with communication (for example, a family member, support worker, interpreter, speech and language therapist or advocate)?
- Does the time of day suit the person?
- Is there a location where they feel most at ease?
- Could the decision be deferred to a time that best suits the person?