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**Chadsgrove Educational Trust Learning Centre**

**Mental Capacity and Consent Policy**

**October 2019**

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| Policy No: This policy is reviewed every 3 years by the company directors and was last reviewed on: N/ANext Review Date: October 2022 |

**Mental Capacity and Consent Policy**

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1. **Introduction**
	1. Chadsgrove Educational Trust (CET) is committed to providing outstanding educational opportunities for all of our students. We aim to put the individual at the heart of all our provision, supporting each student to identify and achieve the aims that are important to them.
	2. The legal frameworks that support all young people between 19 and 25 include:
		* Human Rights Act 1998
		* Mental capacity Act 2005 as amended by Mental Capacity (Amendment) Act 2019
		* Equality Act 2010
		* Children and Families Act 2014
		* All adult safeguarding legislation
	3. The Children and Families Act 2014 (CFA) and the Mental Capacity Act (MCA) apply to all young people (16-25) making decisions about their education. The CFA has its own code of practice (the SEND CoP) which specifically includes the MCA Code of Practice (MCA CoP). A central principle of the CFA is that young people should participate as fully as possible in decision-making about their education and must have their views, wishes and feelings considered.
	4. It is expected that all young people with special educational needs or disabilities, will make their own decisions about their education, unless it is proved that they cannot do so.
2. **Purpose**
	1. This policy sets out CET’s understanding of, and approach to, supporting mental capacity and consent within the context of our provision. CET strives to provide teaching and learning which is responsive to the individual needs of students. On this basis, CET 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 Annex A for a summarised version), and ensuring that student consent is sought and given with respect to all aspects of their learning
3. **Aims**
	1. To identify the key aspects of the Mental Capacity Act in relation to CET students.
	2. To clarify CET’s responsibilities to facilitate students in maximising their self-advocacy, and ensuring all appropriate support to achieve this.
	3. To ensure that a student’s consent is paramount in all situations.
4. **Policy statement**

Chadsgrove Educational Trust will:

* 1. Assume a student has capacity with regard to the decisions and choices presented to them within CET provision.
	2. Take a decision-specific approach to capacity and consent.
	3. Ensure that the circumstances for making a decision are right for the individual student.
	4. Where members of staff or other relevant adults consider that a student, may in certain circumstances, require a capacity assessment, the procedure identified in Annex B should be followed.
	5. Records should be kept of all assessments, and outcomes shared, as appropriate, with relevant teaching staff, parents and the young person.
	6. Records, including any updates, should be kept on the student’s file, with a copy to the Designated Safeguarding Lead.
	7. 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.
	8. Not lead a student, through emphasis or intonation, when presenting them with a choice.
	9. Only have an involvement in assessing a student’s capacity within the remit of decisions relating to their learning and being at CET.
	10. Ensure that key staff involved in assessing capacity have received training on the Mental Capacity Act and suitable assessment strategies.
	11. Strive to maximise the opportunities for all students to advocate for themselves.
	12. Maximise the awareness of opportunities for individual students through the planning of sessions.
	13. Reflect a student’s dreams and aspirations as identified through Person Centred Planning and reviews.
	14. 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.
	15. 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.
	16. 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.
	17. 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.
	18. 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 CET provision.
	19. Ensure the student (or, where the student does not have capacity, their best-placed advocate) has consented to attending and applying to attend CET provision.
	20. Respect a student’s decision if they express a wish to leave CET 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 CET provision.
	21. Always gain a student’s consent (or, where the student does not have capacity, their best-placed advocate) for the taking and use of images and video material in different forms and media.
	22. Have due regard Deprivation of Liberty Safeguards (DoLS) or Liberty Protection Safeguards (LPS) as in force at the appropriate time. This is a safeguard for people who lack capacity to make decisions regarding their own safety. CET will provide a safe environment for the diverse needs of all its students, ensuring the safety and due liberty of them all as individuals. CET 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.
	23. Students accessing services should be cared for in the least restrictive way possible and planning should always consider any other less restrictive options that would prevent unnecessary deprivation of liberty.
1. **Linked policies**
* Medical Interventions Policy
* Safeguarding Vulnerable Adults Policy
* Intimate Care Policy
* Positive Physical Intervention Policy
1. **Monitoring and Review**
	1. This policy to be reviewed by the company directors.
	2. This policy to be initially reviewed April 2020, or sooner dependent on implementation of regulations under the Mental Capacity (Amendment) Act 2019.
	3. Subsequent reviews should be completed at intervals not exceeding 3 years.

**Annex A: Summary of THE MENTAL CAPACITY ACT 2005 (as amended)**

**What is Mental Capacity?**

The Mental Capacity Act 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 Code of Practice chapter 4.1 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. *Presumption of Capacity*

All young people over 16 are assumed to be able to make their own decisions, unless it is proved that they cannot do so. A decision about a young person’s ability to make a **particular decision** depends on the extent to which a young person is able to understand the information about the decision in order to make a choice. A decision about capacity should not be based on a young person’s diagnosis, condition, appearance, behaviour or age.

2. *The right for young people to be supported to make their own decisions*

The young person should be provided with the information needed to enable her/him to make a decision. The information should be provided in whatever format is appropriate.

3. *The right to make what might seem like unwise decisions*

An unwise decision does not automatically mean lack of capacity. Choosing an unwise course of action is a personal right, provided the young person understands the consequences of the decision.

4. *Decisions made on behalf of a young person must be in their ‘best interests’*

*Where a decision has been made that a young person lacks capacity, the decision should follow the ‘best interests’ checklist below, as set out in the MCA COP.*

5*. Least restrictive intervention*

Decisions made on behalf of a young person should limit rights and freedoms as little as possible.

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 (4.2) 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**”*

Anyone assessing someone’s capacity to make a decision for themselves should use the two-stage test of capacity (chapter 4):

1. 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.)
2. 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 identifies 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, so assessments should be reviewed from time to time (4.29).

**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)
* 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 better suits the person?

**Annex B: CAPACITY ASSESSMENT**

The Headteacher/Centre Manager has responsibility for identifying the need for assessments, taking into account any assessments carried out as part of the Education, Health and Care Plan process, and ensuring that CET procedures for assessment are carried out where required and that staff are appropriately trained to do so.

The Headteacher/Centre Manager should ensure that the ‘best interest’ assessments and decisions are carried out demonstrating respect and dignity for the young people, and ensure that the Directors are kept informed about the extent to which actions have been taken in the ‘best interests’ of young people.

The procedure for assessing capacity consists of two stages, which are questions that need to be answered. Stage 1 determines whether an assessment is required and Stage 2 consists of 4 key questions to determine whether the young person has the capacity to make the decision.

**Stage 1**

Does the young person have an impairment of, or a disturbance in the functioning of their mind or brain?

*Does the young person have a learning difficulty or disability, difficulties with her/his emotional well-being or fragile mental health?*

If the answer to this question is yes, go to stage 2

**Stage 2**

Does the impairment or disturbance mean that the young person is unable to make a specific decision as needed?

*Does the young person’s learning difficulty or disability, difficulties with her/his emotional well-being or fragile mental health mean s/he is unable to make specific decision at this time?*

If the answer to this is **no** then the young person has capacity to make the decision and no further action is needed

If the answer to this is **yes** or **unsure** a capacity assessment using the 4 key questions should be undertaken.

**The Four Questions**

1. Can the young person understand the information provided, including the consequences of not making the decision? (ensure the information is in an appropriate format)
2. Can the young person retain the information long enough to make the decision?
3. Can the young person weigh up the information to arrive at a choice?
4. Can the young person communicate their decision in any way?

If the answer is **no** to **any** of these questions the young person does not have the capacity to make the decision at this particular time.

**Best Interests**

In trying to work out the ‘best interests’ of a young person who lacks capacity, the MCA Code of Practice provides a checklist to be considered by the decision-maker.

The following 7 Factors must be considered when trying to determine the ‘best interests’ of the young person:

* Encourage participation by the young person
* Identify all the relevant circumstances for that young person
* Find out the person’s views, wishes and feelings
* Avoid discrimination: make sure the decision is not being made solely on the basis of the age, appearance, condition or behaviour
* Assess whether the young person will regain capacity and whether it might be possible to delay the decision (for example following medical treatment)
* Consult others where practical and appropriate
* If the decision concerns a life-sustaining decision, do not make assumptions about a person’s quality of life

After weighing up all of these factors, the decision should be the ‘least restrictive’ for the individual.

See the MCA Code of Practice for further detail about the requirements.