

Staff capability procedures

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1. Aims

The aim of our capability of staff policy is to set out a clear and consistent process for when any member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations. Concerns over performance will be dealt with fairly and employees will be given the opportunity to respond at a hearing before any formal action is taken.

This procedure applies to all employees apart from recently appointed employees who have not yet successfully completed a probationary period with the exception of particularly serious cases, Newly Qualified Teachers who have separate support and assessment arrangements in place during their induction year. Employees will be informed when the policy is updated. The School reserves the right not to follow this procedure where an employee has less than 2 years' continuous service.

2. Legislation and guidance

This policy is based on:

- Equality Act 2010
- The School Staffing (England) Regulations 2009 (as amended)
- The Education (School Teachers' Appraisal) (England) Regulations 2012
- DfE (2020) 'Governance handbook'
- DfE (2019) 'Teacher appraisal and capability: A model policy for schools'
- ACAS (2015) 'Code of practice on disciplinary and grievance procedures'

This policy is based on the [Department for Education's model policy and guidance](#), and the [Acas code of practice on disciplinary and grievance procedures](#).

When carrying out capability procedures, we will ensure we abide by the [Equality Act 2010](#).

This policy also complies with our funding agreement and articles of association.

3. Definitions

Lack of capability is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires

References to '**staff**' include the headteacher, teachers and support staff, unless indicated otherwise.

4. Roles and responsibilities

Where the member of staff subject to the procedure is the headteacher, the chair of trustees will be responsible for co-ordinating the procedure.

Where the member of staff subject to the procedure is not the headteacher, the headteacher or a nominated member of senior staff will be responsible for co-ordinating the procedure.

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

5. Capability procedure

Appraisal at this school will be supportive, and the developmental process is designed to ensure that all teachers have, or fully develop, the skills and access to support they need to carry out their role effectively – it will help to ensure that teachers and staff members are able to continue to improve their professional practice and to develop in their roles.

Where there are concerns about any aspects of performance, the appraiser will meet formally to:

- Give clear feedback about the nature and seriousness of the concerns.
- Give an opportunity to comment and discuss the concerns.
- Agree any support that will be provided to help address those specific concerns.
- Make clear how and by when, the appraiser will review progress.
- Explain the implications and process if no or insufficient improvement is made, for example, the impact on pay progression and the potential for movement into formal capability proceedings.
- Set clear objectives to be met to achieve the required improvement

If the Academy has serious concerns about an employee's performance, it will undertake an assessment to decide whether there are grounds for taking formal action under this procedure. The steps involved will depend on the circumstances but may include reviewing the employee's personnel file including any job description and appraisal records, gathering any relevant documents, monitoring work, and meeting the employee to discuss their work.

Transition to capability

If the appraiser is not satisfied with the teacher's progress, the teacher will receive written notification that their performance will be managed under the capability procedure instead of the appraisal system and will be invited to a formal capability meeting.

Capability procedures will begin when line management support and the appraisal process have been unable to bring about satisfactory performance or improvements in the staff member's work.

An informal period of support, put in place and monitored by the line manager, will have been in place before capability procedures are triggered. Evidence of this will be available before the process begins.

Formal Capability

The School may decide to proceed straight to a Decision Meeting where the evidence suggests that the employee may have been grossly negligent such as to potentially warrant dismissal without the need for a final written warning.

The employee must make every effort to attend a formal hearing, and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason, or is persistently unable to attend

(for example because of poor health), the School may make decisions based on the available evidence including any written representations made by the employee. The School understands that this procedure may cause employees some stress and anxiety and will endeavour to provide appropriate support; however an indefinite or lengthy delay is likely to prolong the uncertainty and is therefore unlikely to be in the best interests of employees, pupils or the School.

5.1 Formal capability meeting

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

- The concerns about performance and possible consequences
- Any written evidence
- The time, date and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative
- The purpose of the hearing and who will decide the outcome;
- The stage of the capability procedure that has been reached; and
- The likely outcome if the School decides after the hearing that performance has been unsatisfactory.

It will be conducted by the Headteacher or a member of the Senior Leadership Team and the Chair of Trustees for the Headteacher or other suitable nominated person in a senior position.

The purpose of the meeting is to establish the likely causes of poor performance and identify any training needs and set clear targets and support for improvement and a time-scale for review.

5.1.1 Possible outcomes

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

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

If the meeting continues, the person conducting the meeting will:

- Explain the expected standards that are not being met based on the teacher's standards, career stage expectations and/or job description
- Give clear guidance on the standard of performance needed to end the procedures
- Explain the support available to help the staff member improve their performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed
- Warn the staff member that failure to improve within this timetable could lead to dismissal

5.1.2 After the meeting

The employee will be informed in writing of the School's decision and the reasons for it, usually within 5 working days of the capability hearing. Where possible this will also be explained to the employee in person.

If the specific performance concerns are not upheld, or if the decision maker feels that informal action or support is appropriate in the particular circumstance, the employee will be informed in writing that no further formal action will be taken.

The staff member will be sent formal meeting notes. If a formal warning has been issued, the staff member will also receive:

- A written record of the bullet points above
- Information about the timing and handling of the review stage
- Information about the procedure and time limits for appealing against the warning

Any warning will normally remain active for a period of six to twelve months from the date of the issue of the warning. The outcome letter will confirm the specific length of the active period of the warning. Whilst the warning is active, the capability process can be resumed at the same stage if the employee's

performance declines. After the active period the warning will remain permanently on the employee's personnel file but will be disregarded in relation to future capability proceedings.

5.2 Monitoring and review period

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

The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see 5.4, below).

5.3 Formal review meeting

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

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative
- Other points as relevant as set out in paragraph 5.1 above

The purpose of the meeting is to establish the likely causes of poor performance and identify any training needs and set clear targets and support for improvement and a time-scale for review. The meeting will cover similar ground to the meeting under paragraph 5.1.1 above but in respect of this being a second formal capability meeting.

The meeting may be adjourned if the School needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

5.3.1. Outcome of meeting

The employee will be informed in writing of the School's decision and the reasons for it, usually within 5 working days of the capability hearing. Where possible this will also be explained to the employee in person.

If the person conducting the meeting is satisfied that the staff member has made sufficient improvement, 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 more is likely, it may be appropriate to extend the monitoring and review period-
- If no, or insufficient improvement has been made during the monitoring and review period, the staff member may receive a final written warning

Notes will be taken of formal meetings and a copy sent to the member of staff.

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

Any final written warning will normally remain active for a period of twelve to twenty-four months from the date of the issue of the warning. The outcome letter will confirm the specific length of the active period of the warning. Whilst the warning is active, the capability process can be resumed at the same stage if the employee's performance declines. After the active period, the warning will remain permanently on the employee's personnel file but will be disregarded in relation to future capability proceedings.

5.4 Decision meeting

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

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

If an acceptable standard of performance has now been achieved, the capability procedure will end and the appraisal process will re-start. The employee will be reminded that the capability process may be resumed

if their performance declines whilst the written warning is active;

If the person conducting the meeting feels that there has been a substantial but insufficient improvement, the review period and any active final written warning may be extended.

If the staff member's performance does not improve to a sufficient standard, a decision, or recommendation to the governing board, may be made that the staff member should be dismissed or required to cease working at the school.

Other potential outcomes are as follows:

- Redeployment into a suitable available job at the same or a lower grade;
- Final written warning (where no final written warning is currently active).

The outcome of the hearing will be communicated to the employee in writing without unreasonable delay and usually within 5 working days, giving full reasons for the decision and information about the right of appeal. Where dismissal is the outcome of the meeting, the staff member will also be informed of:

- The reasons for the dismissal
- The date on which the employment contract will end
- The appropriate period of notice
- Their right of appeal

5.5 Dismissal

The power to decide that members of staff should no longer work at this school has been delegated to one or more trustees acting with the headteacher

Once the decision to dismiss has been taken, person/people with the power to dismiss will dismiss the staff member with notice (or payment in lieu of notice) unless the employee's performance has been so negligent as to amount to gross misconduct, in which case the employee may be dismissed without notice or any pay in lieu.

6. Right to appeal

If a staff member feels that a decision to dismiss them is wrong or unjust, they may appeal in writing against the decision within 5 working days of the decision to the Chair of Trustees setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay and at an agreed time and place. The same arrangements for notification and statutory right to be accompanied will apply as with formal capability and review meetings. Notes will be taken and a copy sent to the staff member.

The appeal will be dealt with impartially and will be conducted by a senior manager who has not been previously involved in the case. The original decision maker will usually be present. Where the original decision was made by the Principal, the appeal will be heard by a single governor (for a written warning) or a panel of three governors (for a dismissal decision).

The appeal hearing will be a review of the fairness of the original decision in light of the procedure that was followed and any new information that may have become available. The employee will be given a full and fair opportunity to put forward his or her grounds for appeal together with any supporting evidence. The appeal will however only consider the relevant grounds of appeal and will not be a full re-hearing

The hearing may be adjourned if the School needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The staff member will be informed in writing of the results of the appeal hearing usually within 5 working days.

The outcome of the appeal hearing may be to:

- confirm the original decision;
- revoke the original decision; or
- substitute a different (but not a higher) penalty.

There will be no further right of appeal.

7. Confidentiality

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and governing board to quality assure the operation and effectiveness of the system.

8. Consistency of treatment and fairness

The trustee board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.

9. The trustee board is aware of the guidance and provisions of the Equality Act 2010. Monitoring arrangements

The effectiveness of this policy will be monitored by the headteacher and governing board.

This policy will be reviewed every 2 years, but can be revised as needed.

This policy will be approved by the board of trustees.

10. Links with other policies

This policy links to our policies on:

- Staff code of conduct
- Teachers' appraisal
- Staff grievance procedures
- Staff disciplinary procedures
- Equality information and objectives

Appendix 1: capability action plan template

This template can be used as part of the process of supporting a teacher who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, appropriate to the career experience of the member of staff concerned.

Name of staff member	Name of Appraiser	Date of meeting

Objective 1:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

Objective 2:

Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

Objective 3:

Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress

Support/resources to be provided	Monitoring arrangements	Review date

Other support provided

Mentor/coach allocated	Yes/No (If yes give name)
Counselling to be provided	Yes/No
Occupational health referral to be made	Yes/No
[Insert any other support provided]	
Formal review date	

Signed by member of staff	Signed by appraiser	Date