

Capability of staff policy

Smallwood CE Primary Academy



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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.

2. Legislation and guidance

This policy is based on:

- [The School Staffing \(England\) Regulations 2009](#) (regulation 8)
- [The School Staffing \(England\) \(Amendment\) Regulations 2012](#)
- [The Education \(School Teachers' Appraisal\) \(England\) Regulations 2012 \(the Appraisal Regulations\)](#)

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 the Board of Directors 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

Performance is monitored on a day-to-day basis by line managers. For example:

- Regular One-to-ones
- Learning Walks
- Observations
- Book scrutinies

Capability procedures will begin when line management support and the Performance Management 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. This will involve a support plan, with specific targets and will be reviewed weekly or fortnightly, depending on the situation. Evidence of this will be available before the process begins.

5.1 Formal capability meeting: Stage 1

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

It will be conducted by the Headteacher in the case of all staff. In the case of the Headteacher being the subject of the capability procedure, the meeting will be conducted by the Chair of the Board of Directors. The person conducting the meeting may be supported by the Academy's HR Adviser.

The purpose of the meeting is to establish the facts, and to allow the staff member to respond to the concerns and make relevant representations.

The employee will have the opportunity to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The Headteacher/Chair of the Board of Directors will take full account of the employee's circumstances both at work and, if appropriate, outside work. In particular, s/he should be careful to explore fully the circumstances behind an apparent lack of capability, including any disability, and give the individual every opportunity to present his/her view or explanation of the situation.

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
- 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 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

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

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 will receive a final written warning

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

The final written warning will mirror any previous warnings that have been issued. 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.

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.

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

The staff member will be informed, by letter, as soon as possible 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 rests with the The Board of Directors

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 10 working days of the decision, 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 by senior leaders or governors who have not previously been involved in the case.

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

7. Referral to the Secretary of State

By law, where an employer -

- (a) has ceased to use a teacher's services on grounds relating to his professional incompetence; or
- (b) might have ceased to use a registered teacher's services on such a ground had the registered teacher not ceased to provide those services, the employer may report the facts of the case to the Secretary of State and provide him/her with certain information in relation to the teacher.

Therefore, where a teacher is dismissed for incompetence, the School/Council will refer the case to the Secretary of State. A teacher may also be referred to the Secretary of State if s/he leaves his/her job (even under the terms of a Compromise Agreement) while within formal procedures. A teacher may not be referred to the Secretary of State if s/he leaves his/her job while within formal procedures but improving, and it was considered improbable that dismissal would have been the outcome.

8. Equality

The governing body should ensure that when implementing the model Capability procedure, no employee will be disadvantaged on the basis of their gender, transgender, marital status or civil partnership, racial group, religion or belief, sexual orientation, age, disability, pregnancy or maternity, social or economic status or caring responsibility. This means that the policy may need to be adjusted to cater for the specific needs of an individual including the provision of information in alternative formats where necessary.

9. 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.

10. Consistency of treatment and fairness

The governing 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.

The governing board is aware of the guidance and provisions of the Equality Act 2010.

11. Monitoring arrangements

- Data relating to capability cases will be collated and monitored regularly to ensure that the policy is operating fairly, consistently and effectively. Issues that are identified from the data will be dealt with appropriately.
- In formulating this policy account has been taken of other relevant legislation and policies including the Human Rights Act, the Equality Act 2010 and the Schools HR Consultancy model whistleblowing procedure.
- The effectiveness of this policy will be monitored by the Headteacher and Board of Directors.
- This policy will be reviewed annually but can be revised as needed.
- This policy will be approved by the Board of Directors

12. Links with other policies

This policy links to our policies on:

- Staff code of conduct
- Teachers' Performance Management
- 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 |
| | | |

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|---|--------------------------------|---|
| 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 |
| | | |

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|---|--------------------------------|---|
| 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 |

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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 |
|----------------------------------|----------------------------|-------------|
| | | |