

Capability Procedure (Associate Staff)

Last review: June 2019

This procedure applies only to members of associate staff, including teaching assistants, about whom there are serious performance concerns which the appraisal process has been unable to address.

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information detailing the concerns about performance and their possible consequences to enable the member of staff to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative.

Formal capability meeting

This meeting is intended to establish the facts. It will be conducted by the Headteacher. The meeting allows the member of staff, accompanied by a companion if they wish, 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 may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The Headteacher may also adjourn the meeting if they decide that further investigation is needed or that more time is needed in which to consider any additional information.

In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the Headteacher will:

- identify the professional shortcomings;
- give clear guidance on the improved standard of performance needed to ensure that the member of staff can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- explain any support that will be available to help the member of staff improve their performance;
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases it would include fortnightly meetings with the relevant line manager, a formal review meeting after 5 weeks and subsequently at the end of the 10 week period;
- warn the member of staff that failure to improve within the 10 week period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal capability meetings and a copy given to the member of staff. Where a warning is issued, the member of staff will be informed in writing of the matters covered in the bullet points above and be given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

Monitoring and review period following a formal capability meeting

A 10 week performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. After this period, 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 below).

Formal Review Meeting

As with Formal Capability Meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If the Headteacher is satisfied that the member of staff 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 progress 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 member of staff will receive a final written warning.

As before, notes will be taken of Formal Review Meetings and a copy given 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), will result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The member of staff will be invited to a decision meeting.

Decision Meeting

As with Formal Capability Meetings and Formal Review Meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start. If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the member of staff should be dismissed or required to cease working at the school.

Before the decision to dismiss is made, Katharine Lady Berkeley's School will seek HR and legal advice. The member of staff will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

Decision to dismiss

The power to decide that members of staff should no longer work at Katharine Lady Berkeley's School rests with the Headteacher.

Dismissal

Once the decision to dismiss has been taken, the Headteacher will dismiss the member of staff who will receive one month's pay in lieu of notice.

Appeal

If the member of staff considers that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days of the decision.

The appeal should be made to the Chair of Governors, setting out the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with Capability, Review and Decision Meetings and, as with other formal meetings, notes will be taken and a copy sent to the member of staff.

The appeal will be dealt with impartially and, wherever possible, by governors who have not previously been involved in the case.

The member of staff will be informed in writing of the results of the appeal hearing as soon as possible.

Confidentiality

The capability process will be treated with confidentiality.

Consistency of Treatment and Fairness

The governing body is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation and the school's Single Equality Scheme.

Delegation

Normal rules apply in respect of the delegation of functions by the governing body, and the Headteacher.

Grievances

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

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 referred immediately to the school's contracted occupational health service (currently Gloucestershire County Council) to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures.

*Discussed by Governors' finance and staffing committee 12 June 2019
Approved by Full Governors: 10 July 2019*