

Capability of staff policy



Churchdown School Academy
ACHIEVING SUCCESS FOR ALL

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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 a 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 [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

Unless the context otherwise requires, the following expressions shall have the following meanings:

- 'school' means the school named at the beginning of this capability policy and includes all sites upon which its activity is being carried out
- 'board, governing board or governing body' means the local governing body of the school
- 'Chair' means the Chair of Governors
- 'Vice Chair' means the Vice Chair of the governing body elected from time to time, as appropriate
- 'Clerk' means the Clerk to the board or the Clerk to the governing body of the school appointed from time to time, as appropriate
- 'companion' means a willing work colleague not involved in the substance of the employee's performance under review by this policy; an accredited trade union representative; an official employed by a trade union who will be expected to make themselves available for the periods of time necessary to meet the timescales under this policy
- 'external adviser' means a suitably skilled and/or experienced person who is appointed by the governing body to support the governing body to appraise the headteacher in accordance with this policy. The external adviser must be familiar with the particular needs and ethos of the school

- 'governors' means the governors appointed and elected to the local governing body of the school, from time to time
- 'standards' means the relevant standards incorporated into the teacher's contract of employment which may be the Teachers Standards published by the DfE in 2012 or any subsequent revisions thereof
- 'teacher' means a teacher employed by the school and, where the context so admits, includes the headteacher
- 'staff' includes 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 governors 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. Appraisal policy and procedure – teachers experiencing difficulties

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

Formal 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 formal capability procedures are triggered. Evidence of this will be available before the process begins.

This policy should, except in exceptional circumstances, only be invoked:

- The employee has made insufficient, or no, improvement as required under such policy after feedback
- And/or it failing to respond to feedback in relation to unsatisfactory performance
- In addition, a recommendation has been made under the relevant procedure that this policy be invoked.

If a Headteacher is subject to this policy and procedure, he or she will normally continue to be responsible for the performance management process of the school.

Where an early career teacher (ECT) is subject to capability procedures, we will continue the induction process in parallel with the capability procedure and inform the appropriate body.

6. Capability, final capability and Appeal Manager

The table in Appendix 1 sets out the persons to be appointed throughout the stages of this capability procedure depending on the person who is the subject of the capability proceedings.

6.1.0 First capability meeting

The school will appoint a Capability Manager. The Capability Manager will write to you inviting you to a first capability meeting. At least 5 working days' notice will be given. At the same time as sending you the letter inviting you to the meeting, the Capability Manager will also send you a copy of the Performance Report which they have prepared, and which shall set out:

- What aspects of your performance are causing concern
- What specific and achievable performance standards are expected, and
- The support that has been provided to you so far.

At the first capability meeting you will have an opportunity to comment upon the Performance Report and to discuss the professional shortcomings, possible support, and guidance and how performance should be monitored going forward.

If the Capability Manager concludes that your performance is satisfactory, you will no longer be subject to this capability policy and procedure and shall be notified in writing. The school's appraisal procedure shall resume.

If the Capability Manager concludes that your performance is unsatisfactory you will be given a First Written Warning and an improvement and support plan which will:

- Identify the professional shortcomings
- Give clear guidance on the improved sustainable standard of performance needed to exit the capability procedure
- Explain the support that will be available, and how performance will be monitored over a period of time referred to in this policy as the Assessment Period
- Identify the timetable for improvement and agree a date for the second capability meeting
- Make it clearly understood that failure to improve may lead to dismissal.

The length of the Assessment Period following a First Written Warning will be at least **4 working weeks**.

If the Assessment Period is less than 12 working weeks, at any time during the Assessment Period the timeframe may be extended by the Capability Manager to a maximum of 12 working weeks in total, if there is sufficient evidence that the employee is progressing towards achieving the standards required.

You may appeal against a First Written Warning by writing to the governance professional within 5 working days of being sent the First Written Warning.

The fact of the appeal does not delay the commencement of the Assessment Period.

In the case of the headteacher, a First Written Warning will remain live for 12 months. In the case of all other employees, a First Written Warning will remain live for 6 months. If within that 12 or 6 month period the employee's required standard of performance is not sustained, the Capability Manager will recommence the capability procedure at the stage it was previously concluded.

6.1.1 Second capability meeting

The Capability Manager will write to you inviting you to a second capability meeting. You will be given at least 5 working days' notice of such meeting. At the same time as sending you the letter inviting you to the meeting, the Capability Manager will also send you a copy of the Updated Performance Report, which they have prepared and which shall set out the assessments, support and evaluation of your performance during the Assessment Period.

At the second capability meeting you will have an opportunity to comment upon the Updated Performance Report and to discuss the professional assessment and any continuing shortcomings, possible support, and guidance and how performance should be monitored going forward.

The Capability Manager will confirm the outcome of the second capability meeting in writing within 5 working days of the date of such meeting.

Where the Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this capability policy and procedure and shall be notified in writing. The school's appraisal procedure shall resume. However, if the required standard of performance is not sustained during the life of the First Written Warning, the Capability Manager will recommence the capability procedure at the stage it was previously concluded.

Where the Capability Manager concludes that some progress has been made and that with a further period of monitoring an acceptable level of performance will be achieved, the Capability Manager may consider extending the Assessment Period up to an additional 4 weeks.

Where the Capability Manager concludes that no, or insufficient, improvement has been made so that your performance remains unsatisfactory, you will be given a Final Written Warning setting a Further Assessment

Period of 4 working weeks and setting the date for the final capability meeting. You will be informed that failure to make satisfactory sustainable improvement will result in your dismissal.

You may appeal against a Final Written Warning by writing to the Clerk within 5 working days of being sent the Final Written Warning.

The fact of the appeal does not delay the commencement of the Further Assessment Period.

A Final Written Warning for all employees will remain live for 12 months and if, within that 12 months, the employee's required standard of performance is not sustained the Capability Manager will recommence the capability procedure at the stage it was previously concluded.

6.1.2 Final capability meeting

The Final Capability Manager will write to you inviting you to a final capability meeting. You will be given at least 5 working days' notice of such meeting. At the same time as sending you the letter inviting you to the meeting, the Final Capability Manager will also send you a copy of the Final Performance Report which they have prepared and which shall set out the assessments, support, and evaluation of your performance during the Further Assessment Period.

At the final capability meeting, you will have an opportunity to comment upon the Final Performance Report and to discuss the continued professional shortcomings, where appropriate.

The Final Capability Manager will confirm the outcome of the final capability meeting in writing within 5 working days of the date of such meeting.

Where the Final Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this capability policy and procedure and shall be notified in writing. The school's appraisal procedure shall resume. However, if the required standard of performance is not sustained during the life of the Final Written Warning, the Final Capability Manager will recommence the capability procedure at the stage where it was previously concluded.

Where the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement the Final Capability Manager will recommend to the governing body that your employment be terminated in accordance with your contract of employment and the governing body will take the appropriate steps to terminate your employment.

You may appeal against a dismissal with notice by writing to the Clerk within 10 working days of being sent the notice of termination.

The fact of the appeal does not delay the commencement of the notice period.

In the event that your employment is terminated:

- If your contract of employment contains a garden leave clause the governing body may exercise that clause so that you are not required to attend the school during the notice period but remain employed and so bound by the terms of your contract of employment until the expiry of the notice period; or
- If your contract of employment contains a payment in lieu of notice clause, the governing body may exercise that clause to end your contract with immediate effect.

6.2 Appeals against decisions made by Capability Manager and/or Final Capability Manager

An appeal against a decision of the Capability Manager or Final Capability Manager can be made at each stage of the procedure set out above.

In all cases, your appeal letter must set out the grounds of your appeal in detail.

Any appeal should normally be heard by the relevant Appeal Manager appointed in accordance with Appendix 1 within 20 working days of the Clerk receiving your appeal letter.

The Appeal Manager is not required to hear oral evidence and may rely on written evidence.

If the Appeal Manager does decide to hear oral evidence, you will be given an opportunity to comment on it by attending the meeting or by reviewing the notes of that oral evidence after the meeting (if you were not present at the meeting where such oral evidence was given).

The Appeal Manager will confirm the outcome of the Appeal Meeting in writing to you within 5 working days of the date of the Appeal Meeting. The decision of the Appeal Manager is final and there will be no further right of appeal. The outcomes of the Appeal Meeting are that:

- The Appeal Manager may uphold the decision of the Capability Manager or Final Capability Manager, or
- The Appeal Manager may uphold the employee's appeal, overturn the decision of the Capability Manager or Final Capability Manager, and refer the matter back to the Capability Manager or Final Capability Manager for reconsideration.

6.2.1 Governors' panels

Governors' Capability or Appeal Panels shall comprise three non-staff directors/governors not previously involved in the matter and shall not comprise the Chair or Vice-Chair unless there are insufficient numbers of non-staff governors not previously involved in the matter, in which case the Chair and/or Vice-Chair may be appointed to a Governors' Capability or Appeal Panel.

6.2.2 Companion

If you are the subject of any capability meeting, a companion may accompany you.

You must let the relevant Manager know who your companion will be at least 1 working day before the relevant meeting.

If you have any particular reasonable need, for example because you have a disability, a suitable helper may also accompany you.

Your companion can address the meeting in order to:

- Put your case
- Sum up your case
- Respond on your behalf to any view expressed at the meeting, and
- Ask questions on your behalf.

Your companion can also confer with you during the meeting.

Your companion has no right to:

- Answer questions on your behalf
- Address the meeting if you do not wish it
- Prevent you from explaining your case.

Where you have identified your companion to the relevant Manager and they have confirmed in writing to the relevant Manager that they cannot attend the date or time set for the meeting, the relevant Manager will postpone the meeting for no more than 5 working days from the date set by the school to a date or time agreed with your companion provided that it is reasonable in all the circumstances. Should your companion subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted.

7. Timings of meetings

Meetings under this procedure may:

- Need to be held when you were timetabled to teach
- Exceptionally be held during planning, preparation and administration time, if this does not affect lesson preparation

- Be held after the school day
- Not be held on days on which you would not ordinarily work
- Be extended by agreement between the parties if the time limits cannot be met for any justifiable reason.

8. Assistance

In all cases involving any sanction in relation to the headteacher or to a person on the leadership spine, or to potential or actual dismissal of any other member of staff, the local authority may send a representative to advise the Capability Manager, Final Capability Manager or Appeal Manager.

9. Monitoring arrangements

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

This policy will be reviewed annually.

This policy will be approved by the F&R committee.

10. Links with other policies

This policy links to our policies on:

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

Appendix 1: persons to be appointed in capability action plan

Employee Level	First/Second Capability Meeting – the Capability Manager	Final Capability Meeting – the Final Capability Manager	Appeal Manager (Re Written Warnings)	Appeal Manager (Re Dismissal)
Headteacher	Chair or a non-staff Governor (other than the Vice-Chair) nominated by the Chair	Governors' Capability Panel appointed by the Vice-Chair	A non-staff Governor (other than the Chair or Vice Chair) nominated by the Vice-Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Leadership Spine and School Business Manager	Headteacher	Chair or a non-staff Director/Governor nominated by the Chair	A non-staff Governor (other than the Chair or Vice Chair) nominated by the Vice-Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Teaching Staff	(1) A member of the Leadership Team (other than the Headteacher) appointed by the Headteacher or, in the event that (1) above cannot be complied with, (2) a person appointed by the Headteacher	Headteacher	Chair or a non-staff Governor (other than the Vice- Chair) nominated by the Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Support Staff	A person appointed by the Headteacher	Headteacher	Chair or a non-staff Governor (other than the Vice Chair) nominated by the Chair	Governors' Appeal Panel appointed by the Vice- Chair

NB: In law, only the school, as the employer of staff, has the power to terminate employment, so the school will need to ensure that it has delegated this power to the Final Capability Manager in accordance with the table above. Where the school amends the table above, it will need to ensure that it has delegated its power to dismiss to the panel of persons and/or the individual that it appoints as the Final Capability Manager.