



STAFF CAPABILITY POLICY AND PROCEDURE

1. Introduction

This procedure applies where a member of staff is failing to carry out their responsibilities or duties in a satisfactory manner, due to a lack of ability, experience, or qualifications or on health grounds.

This procedure aims to ensure fairness and consistency of approach throughout the School and provides for warnings to be given for failure to meet our expected standards of job performance. The procedure is non-contractual but applies to all members of staff except that this procedure will not apply during the first two years of employment, in line with employment law. All members of staff should familiarise themselves with its provisions.

Most performance improvement procedures will follow the course set out below. However, we may vary the process to suit individual circumstances; such a variation will not amount to a breach of this procedure. The procedure will be invoked when performance issues arise or are identified either following an appraisal process or otherwise.

The School will normally first address performance informally, and offer appropriate training and support to an employee, before progressing under this procedure.

The procedures set out in this document aim to ensure that there is:

1. Openness and clarity for staff when they are not meeting the required levels of performance;
2. A means of monitoring performance and establishing performance criteria;
3. A consistency of approach in how staff are given opportunities to attain satisfactory levels of performance;
4. Assistance in identifying the most appropriate form(s) of support and providing that support.

The School will consider what training and support it can give the employee to help them meet the performance requirements. The School reserves the right to revert to a disciplinary process where it believes the matter arising relates to behaviour rather than performance.

2. CONFIDENTIALITY

Our aim is to deal with performance matters sensitively and with due respect for the privacy of the individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this Capability Procedure.

An employee, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

3. SUSPENSION

Where an employee is accused of an act of serious or gross negligence, they may be suspended from work on full pay and benefits, pending the outcome of the capability (or the disciplinary procedure if that is more appropriate). Such suspension is considered to be of mutual benefit and does not imply that any decision has already been made in relation to this procedure (or the disciplinary procedure.)

Where appropriate, during any investigation or suspension, the Principal, Headteacher, or Head of HR will appoint a senior member of staff, who is not involved in the capability procedure, to provide guidance and support to the member of staff under investigation or suspension.

Staff will be able to access the Simply Health Employee Assistance Programme for advice and support should they wish to do so.

[Simply Health](#) EAP: 0800 9753347

4. FORMAL CAPABILITY MEETINGS

After all other avenues have been exhausted, we may consider it is necessary to invoke the formal capability procedure, if so, we will inform the employee in writing. In so doing, we will give the employee reasonable notice of a capability meeting and set out details of the alleged shortfall or failure in performance, together with any evidence relied upon if practicable and available.

The sequence of available meetings is laid out in the flow chart at Appendix A.

At all stages of the procedure, the employee will be allowed to attend a capability meeting with a colleague or a trade union official as a representative and will be given an opportunity to state their case.

Failure to reach the required standard agreed at a formal capability meeting where an informal meeting has already been held, will result in a formal capability hearing.

The employee must take all reasonable steps to attend the hearing. If they fail to attend this will usually be rearranged once, but should they fail to attend the rearranged hearing then a decision may be reached in their absence.

Following the hearing, the School will write to the employee to confirm the decision and to advise the employee of the right to appeal the decision if they are not satisfied with it.

5. APPEAL

An employee may appeal against a decision within five working days of receipt of the written decision. Such appeals are to be made in writing to the Head of HR.

The appeal hearing will be convened as soon as is reasonably practicable. The appeal hearing will be held by a senior colleague and a panel of up to two Trustees (who have had no prior involvement). The Head of HR will attend to provide HR support and guidance and to take notes. Where new evidence arises prior to or during the appeal the employee will be given access to any relevant information or evidence and will have the opportunity to make their representations. The employee will have the right to be accompanied at any appeal meeting by a colleague or trade union representative. The employee will be informed in writing of the decision of the appeal

hearing following the conclusion of the hearing. Such decision will be final. In the event of an unsuccessful appeal against a decision to dismiss the original dismissal date shall stand.

If the performance shortfall or failure is dealt with under the formal capability procedure, a record will be kept of the shortfall or failure, the defence or mitigation, minutes of the capability hearing, the action taken and reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records are confidential and will be retained on the employees personnel file in accordance with the prevailing data protection legislation and with due regard to [General Data Protection Regulations](#).

6. PERFORMANCE WARNINGS

Decisions could include the following:

Written warning

In the case of a serious shortfall or failure, or a repetition of an earlier shortfall or failure, the employee will be given a written warning. The warning will set out the precise nature of the shortfall or failure, and the likely consequences of further shortfall or failure, specifying, if appropriate, the improvement required and over what period. Objectives, timescales, and measures for the performance improvement must be set by the Line Manager. The employee's Line Manager or Head of Department should offer help with training and supervision as required. A written warning will be kept on the employee's record in accordance with the School's Staff Privacy Notice and Data Retention Policy but will be considered expired after 12 months. The employee's performance may be appraised, at intervals to be determined by their Line Manager or Head of Department, at any time during this period.

Final written warning

In the case of a further repetition of an earlier shortfall or failure, if the employee still fails to improve or if the shortfall or failure, whilst falling short of gross negligence, is serious enough to warrant only one written warning, the employee will be given a final written warning setting out the precise nature of the shortfall or failure. The warning will include a statement that any recurrence or failure to improve will lead to dismissal or another penalty if this is considered appropriate and specifying, if appropriate, the improvement required and over what period. A final written warning will be kept on the employee record in accordance with the School's Staff Privacy Notice and Data Retention Policy but will be considered expired after 12 months. Objectives, timescales, and measures for the performance improvement should be set. The employee's Line Manager or Head of Department should offer help with training and supervision as required. The employee's conduct and performance will be appraised, at intervals to be determined by their Line Manager or Head of Department, at any time during this period.

Depending upon the seriousness of the matter and all the circumstances, any of the above stages may be omitted.

Dismissal

In the event of a finding of gross negligence, or where all appropriate stages of the warning procedure have been exhausted, the employee will normally be dismissed.

The School reserves the right to consider other possible formal action, including (but without limitation): demotion or transfer; loss of seniority or salary increment where the employee is on the formal Pay Scale; or suspension (without pay).

If the employee is dismissed, they will be provided with a written statement detailing the full extent of the issues that have led to the dismissal, the date upon which employment will terminate and the right of appeal.

7. EXAMPLES

The following are non-exhaustive and non-exclusive examples of the types of issues that may be considered performance shortfalls or failures, which will normally lead to action being taken.

Minor offences (likely to result in an informal oral warning)

- Occasional poor job performance involving sub-standard work or application.

Serious offences (may result in a written or final written warning)

- Consistent poor performance or application.
- Failure to improve performance following an appraisal meeting or performance review within the timescale specified at such a meeting or review.
- Failure to perform duties or responsibilities to an acceptable standard for reasons which, it is considered, are within the employee's ability.

The employee should be made aware that if there is no adequate improvement following the issue of warnings, such issues may result in dismissal.

Capability and consistent performance offences (possible dismissal with notice)

- Incapable of performing role, or unsuitable to perform role or main job functions/duties, as set out in job description and which could not be rectified by training or coaching if such options were possible.
- Consistent failure or unable to improve performance to required or reasonable standards or to the level of other members of staff carrying out the same, similar, or equivalent work.
- The employee is unable satisfactorily to do, or does not have the qualifications, aptitude, attitude and/or ability for, the job.

Gross negligence (dismissal without notice)

- In the most serious cases of gross negligence, normally (but not necessarily) resulting in significant financial loss or loss of reputation to the School, where our continued trust and confidence in the employee has been destroyed as a result, dismissal may be without notice or payment in lieu of notice.

8. DISABILITIES

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to an employee's working arrangements, including changing their duties or providing additional equipment or training. We may also consider adjusting this procedure in appropriate cases.

9. LONG-TERM SICKNESS ABSENCE

Where an employee's underperformance is as a result of long-term sickness absence and the employee has more than 2 years' service, then the School will seek medical advice from the employee's doctor or other medical adviser, or may refer the employee to an Occupational Health Adviser to provide the School with suitable advice as to the long-term outlook, prior to making a decision about an employee's ongoing employment. The School will also consider whether there are any reasonable adjustments which can be made to assist the employee to

perform their role. In cases where the School has concerns about the employee’s long-term ability to perform their job as a result of health grounds, the School will normally move to dismissal stage without prior warnings.

10. RELATIONSHIP WITH DISCIPLINARY PROCEDURE

The Capability Procedure is not intended to apply to cases where poor performance results directly from misconduct, in which case the [Disciplinary Policy and Procedure](#) will apply. It may not, however, always be immediately clear whether poor performance results from misconduct or capability and the procedures may, initially, be run in parallel whilst the concerns are being investigated.

The employee may be dismissed following exhaustion of the formal capability procedure and will have no separate right to have the disciplinary procedure followed prior to dismissal, and vice versa.

Live warnings issued under the disciplinary procedure may, if appropriate, be taken into consideration when considering the level of warning to be given under the capability procedure, and vice versa.

Title of Policy / Procedure	Staff Capability Policy and Procedure
Maintained By	Head of HR
Owned By	Head of HR
Approving Committee / Ratifying Body	Board of Trustees
Last Reviewed on	March 2022
Review on	March 2025
Current Version	Version 1
Location of master document	https://teams.microsoft.com/l/channel/19%3aw-ekhrkvUAYf-poCislpXAtITMpMervHPnfaS0ONC_Y1%40thread.tacy2/General?groupId=fe70d9e8-8216-4003-922e-b9bfe9e5fb9c&tenantId=02f4a62e-6e9d-4607-974c-7de2591c4698
Web location	