

	POLICY TITLE:	Capability Procedure
Kingsmead Academy T/A Kingsmead School		
Committee/Person Responsible for Policy:		Head Teacher Finance, Strategy & Personnel sub-committee
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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 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. Capability procedure

The Procedure applies to all staff employed in the school under governors' delegated powers. If the Procedure is applied to a Headteacher, the role of the "Headteacher" in the Procedure will be undertaken by a representative(s) of the Governing Body (Appendix H).

Performance is monitored on a day-to-day basis by line managers. Whether this is one-to-one meetings, appraisal observations or Departmental Learning Walks.

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.

In cases of particularly serious concern, where the education of children is in jeopardy, it is possible to move directly to formal capability. This will invoke the Formal Stage and a further assessment period not exceeding 4 school weeks.

5.1 Formal capability meeting

[August 2020 - Capability Policy](#)
Author: Head Teacher

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 or in the case of the Headteacher the Chair of Governors.

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.

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 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 governing board, may be made that the staff member should be dismissed or required to cease working at the school.

The staff member 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
- Their right of appeal

5.5 Dismissal

The decision to continue the Procedure or *decide or* recommend dismissal should be taken by the Headteacher, (except where the Headteacher's performance is being considered). If there is a difference of opinion, the Headteacher's decision should prevail (except where the Headteacher's performance is being considered).

Once the decision to dismiss has been taken, the Headteacher will dismiss the staff member with notice.

Academies must set out who has the power to dismiss staff or require staff to no longer work at the school – this may be stated in their funding agreement.

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, 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 10 working days.

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 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.

9. 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 full governing board.

10. Links with other policies

This policy links to our policies on:

- Standards of conduct for staff
- Teacher appraisal
- Grievance and dispute procedures
- Disciplinary (Staff)
- Equality

STANDARD LETTER: INVITATION TO REVIEW MEETING

Would you please attend a review meeting on (date) at (time) in (location). This meeting is in accordance with the School's Capability Procedure, a copy of which was given to you at the start of the Informal Stage.

The purpose of this meeting is to review and assess your progress towards the targets set following the initial meeting held on (date) and to decide, as a result of this review, the appropriate course of action. The options are:-

- Drop the matter i.e. all identified standards of performance achieved.
- Further support at the Informal Stage i.e. there has been improvement so that some but not all identified standards of performance have been achieved.
- Written warning i.e. there has been little or no progress towards the achievement of the identified standards of performance. A written warning will invoke *the Formal Stage and lead to an assessment period of up to 13 school weeks.*
- A final written warning i.e. where there is particularly serious concern that the education of pupils is in jeopardy. A final written warning will invoke an assessment period of 4 school weeks.

Enclosed are the following relevant reports and other documents, including those produced as a result of the investigation carried out by myself.

As this meeting may result in a warning, you are entitled to be accompanied by either your trade union/professional association representative or a work colleague. Also present will be myself, (name of member of school's staff) and (name of Personnel Adviser).

Please would you confirm with me that you are able to attend.

I have copied this letter to (name of Personnel Adviser and name of trade union/professional association representative or friend).

Yours sincerely

Head Teacher

STANDARD LETTER: CONFIRMING THE OUTCOME OF REVIEW MEETING

I am writing to confirm the outcome of the review meeting held on (date of meeting) which was attended by the following (names and positions of all attendees).

(Explain the process of the hearing i.e. who presented the management case and briefly what the employee replied).

Alternative 1

After full consideration of all of the written evidence and the discussion, I am pleased to confirm that you have achieved the identified standards of performance. Consequently you are no longer subject to the Procedure. As I stressed to you, it is essential that you maintain these standards in the future and provided you do so, all records of this process will be removed from your personal file after 26 school weeks.

Alternative 2

After full consideration of all of the written evidence and the discussion, I concluded that you have made some progress towards the achievement of the identified standards of performance (specify below).

However, further improvement is required in the following standards (specify below). You will continue to receive support at the Informal Stage to enable you to achieve all these standards and to demonstrate that you are able to maintain the standards.

Alternative 3

After full consideration of all of the written evidence and the discussion, I informed you that as you had not made satisfactory progress towards the achievement of the identified standards of performance, I had no alternative but to issue you with a written/final warning, place you on the Formal Stage and establish an improvement period. I need to emphasise that unless you achieve all the identified standards of performance within the improvement period established, I will have to issue a final written warning/consider or recommend your dismissal for reason of a lack of professional capability.

(State the areas of continuing concern about the standards of performance, detail the structured support programme and the targets set).

During the (next 13 school weeks/four school weeks) your performance will be subject to regular observation, monitoring and evaluation, with guidance, training if necessary, and support. A formal meeting has been arranged for (specify date).

You have the right to appeal against this warning by writing to the Clerk to Governors stating the reasons for your appeal within five school days of receiving this warning.

Please sign the enclosed copy of this letter to confirm its receipt and your understanding of its contents and return it to me.

(Personal comment considered appropriate, for example – “May I reaffirm my commitment to helping you to achieve the standards of performance necessary in your work which will be in both your interests and the School’s”).

Yours sincerely

Head Teacher

STANDARD LETTER: INVITATION TO FORMAL MEETING

With reference to the formal meeting held on (date), as arranged, would you please attend a second formal meeting on (date) at (time) in (location), in accordance with the School's Capability Procedure.

The purpose of this meeting is to review and assess your progress towards the targets set and to decide, as a result of this review, the appropriate course of action. The options are:-

- Drop the matter i.e. all identified satisfactory standards of performance achieved.
- Final written warning i.e. where a first written warning was given at the first formal meeting and none or only some of the identified standards of performance have been achieved.
- A decision to dismiss/a recommendation for dismissal to the Governor's Staff Dismissal Committee i.e. where a final warning was given at the first formal meeting and none or only some of the identified standards of performance have been achieved.

Enclosed with this letter are the following relevant reports and other documents, including those produced through the implementation of the structured support and monitoring/assessment programmes (describe the documentation below).

As this meeting may result in a final written warning/your dismissal/recommendation for your dismissal, you are entitled to be accompanied by either your trade union/professional association representative or a work colleague. Also present at the meeting will be myself and (name of Personnel Adviser).

Please would you confirm with me that you are able to attend.

I have copied this letter to (name of Personnel Adviser and name of trade union/professional association representative or friend).

Yours sincerely

Head Teacher

STANDARD LETTER CONFIRMING THE OUTCOME OF FORMAL MEETING

I am writing to confirm the outcome of the formal meeting held on (date of meeting) which was attended by the following (names and positions of all attendees).

(Explain the process of the hearing i.e. who presented the management case and briefly what the employee replied).

Alternative 1

After full consideration of all of the written evidence and the discussion, I am pleased to confirm that you have achieved identified standards of performance. Consequently, you are no longer subject to the Procedure. As I stressed to you, it is essential that you maintain these standards in the future and provided you do so, all records of this process will be removed from your personal file after 26 school weeks.

Alternative 2

After full consideration of all of the written evidence and the discussion, I informed you that as you had achieved none or only some the identified standards of performance, I had no alternative but to issue you with a final warning. I need to emphasise that unless you achieve the standards of performance within 4 school weeks, I will have no alternative other than to dismiss you/recommend to the Governors' Staff Dismissal Committee that you are dismissed for reason of a lack of professional capability.

(State the areas of continuing concern about the standards of performance referring to the structured support programme and the targets set), copies of which should be enclosed with this letter).

The improvement period will be up to the date of the second formal meeting which has been arranged on (date) at (time) in (location).

You have the right to appeal against this final warning by writing to the Clerk to Governors stating the reasons for your appeal within five school days of receiving this warning (7 consecutive days out of term time).

Please sign the enclosed copy of this letter to confirm its receipt and your understanding of its contents and return it to me.

(Any personal comment considered appropriate).

Alternative 3

NB Where a final warning was issued at the Review Meeting and a decision to dismiss/make a recommendation for dismissal is the outcome of the formal meeting, use Appendix F, Alternative 2.

STANDARD LETTER: INVITATION TO SECOND FORMAL MEETING

With reference to the formal meeting held on (date), as arranged, would you please attend a meeting on (date) at (time) in (location), in accordance with the School's Capability Procedure. The purpose of this meeting is to review and assess your progress towards the targets set and to decide, the appropriate course of action. The options are:-

- Drop the matter i.e. all identified satisfactory standards of performance achieved.
- A decision to dismiss/a recommendation of dismissal to the Governor's Staff Dismissal Committee for reason of a lack of professional capability i.e. none or only some the identified standards of performance have been achieved.

Enclosed with this letter are the following relevant reports and other documents, including those produced through the implementation of the structured support and monitoring/assessment programme (describe the documentation below).

As this meeting may result in a decision to dismiss/a recommendation for dismissal, you are entitled to be accompanied by either your trade union/professional association or a work colleague.

Also present will be myself and (name of Personnel Adviser).

Please would you confirm with me that you are able to attend.

I have copied this letter to (name of Personnel Adviser and name of trade union/professional association representative or friend).

Yours sincerely

Head Teacher

STANDARD LETTER CONFIRMING OUTCOME OF SECOND FORMAL MEETING

I am writing to confirm the outcome of the second formal meeting held on (date of meeting) and attended by (names and positions of all attendees).
(Explain the process of the hearing i.e. who presented the management case and briefly what the employee replied).

Alternative 1

After full consideration of all of the written evidence and the discussion, I am pleased to confirm that you have achieved all the identified standards of performance. Consequently, you are no longer subject to the Procedure. As I stressed to you, it is essential that you maintain these standards in the future and provided you do so, all records of this process will be removed from your personal file after 78 school weeks.

Alternative 2

After full consideration of all of the written evidence and the discussion, I informed you that as you had achieved none or only some the identified standards of performance, I had no alternative but to dismiss you, with due notice, from your post due to for reason of a lack of professional capability. During the notice period you will be suspended from duty on full pay. While you are suspended you should not enter the school premises without the permission of either myself or a Deputy Headteacher.

You have the right to appeal against this decision to a Governors Appeal Committee. If you decide to appeal you should write to me within 7 working days setting out the grounds for the appeal.

Alternative 3

After full consideration of all of the written evidence and the discussion, I informed you that as you had achieved none or only some the identified standards of performance, I had no alternative but to recommend to the governors that you should be dismissed from your post for reason of a lack of professional capability. A meeting of the Governors' Staff Dismissal Committee is being arranged to consider my recommendation. I will write to you with full details of the time, date, place and procedure for the hearing together with the documents I would wish the Committee to consider. If there are any documents you would like the Committee to consider, please would you let me have these as quickly as possible.

I regret that pending the outcome of the hearing you will be suspended from duty on full pay. While you are suspended you should not enter the school premises without the permission of either myself or a Deputy Headteacher.

(Any personal comment considered appropriate).

Yours sincerely

Head Teacher

HEADTEACHER CAPABILITY PROCEDURE

1. **Principles**

- 1.1 The DfES' "Code of Practice" will be applied up to the point when the School's Capability Procedure is invoked.
- 1.2 The decision to implement the Capability Procedure rests with the Governing Body and is intended to be implemented when a Head teacher consistently fails to perform his/her duties and responsibilities as required.
- 1.3 Consideration should always be given to whether the concerns would be better pursued through the performance management arrangements.
- 1.4 In the event that a meeting is convened in accordance with para 4.7 of this Appendix the Head teacher should be given details of the issues in writing and any evidence on which the Governors rely.

2. **Code of Practice**

- 2.1 The implementation of the Capability Procedure in respect of the Head teacher and the reason for it should be reported to the Full Governing Body by the Chair.
- 2.2 The Governors monitor the performance of the School and support and challenge the Headteacher and the SLT where necessary using a wide range of routinely available information to help them monitor performance. This monitoring should give an early indication of cause for concern. At the earliest opportunity the issue should be raised with the Head teacher who should be given support and the opportunity to address the concern. External advice and support will be made available with the agreement of the Governing Body and the Head teacher to address the issue. Issues arising from other than routine monitoring may be raised at the discretion of the Chair of governors and any such issue will be raised at the first available opportunity.

- 2.3 If following the steps outlined in 2.2 above:

there are grounds for concluding that the Headteacher's performance is having a significantly detrimental effect on the performance, management or conduct of the School, or would soon have such an effect if action was not taken, the Chair of Governors should report details of such concerns to the Governing Body.

- 2.4 The types of concerns which would be appropriate to trigger a report (not an exhaustive list):-

- OFSTED finds the school requires special measures or has serious weaknesses.
- Standards of performance in public examinations have worsened significantly for reasons attributable to the Headteacher's performance.
- The school is a long way short of the performance targets or standards can be shown to be well below those achieved by comparable schools for reasons attributable to the Headteacher's performance.
- A pattern of repeated or serious complaints from parents, staff, governors or students (and/or their respective representatives) which have not been addressed satisfactorily.

- Significant evidence of continuing and systematic weaknesses in management (including human resources) or financial controls which risk significant disruption to the school's continuing operation. the types of concerns which would not appropriately to trigger the making of a report to the Governors include (but are not limited to):
- The Headteacher has opinions, beliefs or practices about pedagogic, management or other issues to do with the conduct of a school which the Governors do not agree with, but which are within the field of legitimate professional debate and are not demonstrably damaging standards;
- The Headteacher has not co-operated with the Governors, or complied with a request from the Governors, on an issue where he or she was under no legal obligation to do so;
- Although the Headteacher's personality or style makes relations with the Governors difficult, there is no evidence that this is damaging standards or the satisfactory running of the school.

4. Process During Pre-Capability Procedure

- 4.1 As a matter of routine, the Headteacher's performance will be monitored and evaluated by:-
- (a) the Governing Body usually through its Committee structure and, in particular, by the "Appointed Governors" responsible for the Head teacher's Performance Management, one of whom should be the Vice Chair.**
- 4.2 Through these management processes it is expected that any issues of concern will be discussed with the Headteacher by the above and addressed informally through appropriate support and guidance.
- 4.3 In accordance with the DfE Code of Practice, if, through its monitoring processes, the appointed Governors consider that the Headteacher's performance is consistently unsatisfactory, it will register its concerns informally with the Headteacher. This task will be undertaken by the Vice Chair of the Governors who will explain the nature of the concerns and the supporting evidence. The content of the meeting will be confirmed subsequently in writing to the Headteacher and copied to the Chair of Governors.
- 4.4 If, after a reasonable period of time, and using the approach set out in paragraph 4.2 above the appointed Governors conclude that the Headteacher has not addressed the concerns successfully, it will inform the Headteacher that it is producing a report for the Chair of Governors. This report will be sent to the Chair of Governors and, at the same time, copied to the Headteacher. The report should contain a recommendation for further action or that no further action be taken.
- 4.5 The whole Governing Body should be informed that a report has been issued and broadly the nature of the report.
- 4.6 If the Appointed Governors decide to take no action on the report, they must give the Governors a properly considered response. In addition the Headteacher should be given the opportunity to make representations to the Governors about its report.
- 4.7 If the Appointed Governors are satisfied that the concerns may be valid the Headteacher will be given the opportunity to make representations to the Chair of Governors about the report. To allow this and to enable the appointed Governors to address its concerns with the Headteacher a meeting will be conducted in

accordance with the Informal Stage of the procedure (see paragraph 2.1 of the Procedure). The participants at the meeting should be:-

- The Chair or Vice Chair of the Governing Body who will chair the meeting and decide what action to take based on the evidence provided and the Headteacher's responses.
- An Adviser for the Governors.
- A Personnel Adviser (to advise on procedures).
- The Headteacher.
- The Headteacher's Professional Association representative or work colleague e.g. a colleague Headteacher.
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Note: In the event of serious concerns or allegations arising without previous warning about the Headteacher's performance, it may be appropriate to convene the meeting described in paragraph 4.7 above as a formal meeting in accordance with paragraph 2.2 of the Capability Procedure.

- 4.8 The Headteacher should be notified in writing of the decision of the Chair or Vice Chair as to what action is required within 5 working days of the meeting. The Governing Body should be notified of the decision of the Chair or Vice Chair at a subsequent meeting of the Governing Body. Such report will be confidential and may be oral if the Chair or Vice Chair deems that appropriate.



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

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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