



# Capability Policy

KIBBLESWORTH **ACADEMY**

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## **Capability Policy Statement**

### **1. The Aim**

This academy is committed to ensuring that all employees are encouraged and supported to achieve and maintain acceptable standards of performance. However there are occasions where the standards of performance are adversely affected by the actions of employees and fall below acceptable levels. The academy recognises that these actions are not always due to misconduct or deliberate non-compliance with instructions but due to the employee's lack of capability to perform the duties and responsibilities of the post effectively.

The aim of this policy is to help and encourage employees to achieve and maintain standards of job performance and to provide the necessary improvement through the provision of structured help, advice, support and training.

It is likely that the vast majority of capability cases will be resolved within the informal procedure and will only develop to the formal stage where support, assistance and advice have failed to achieve a satisfactory improvement. However when all informal methods of resolution have failed capability issues will be dealt with as part of the disciplinary process and should employees not achieve the required standards they may ultimately be dismissed from their employment.

This policy provides a consistent and fair method of dealing with any shortcomings in performance, related to skill, aptitude, health and mental or physical well being. It can help an employee to become more effective and enable them to meet the expected standards of the job within the organisation.

### **2. Definition of capability**

Capability is the ability an employee has to perform his/her duties to a standard that is acceptable to the academy for the effective and efficient delivery of its services. In the normal course of work employees meet and may exceed these standards.

### **3. Who this policy applies to**

This policy applies to all employees who have successfully completed a probationary period within the organisation. (Those employees still within their probationary/induction period should receive support and be assisted into developing into their role via regular probationary review meetings)

Note that local government rules for continuity of service do not apply to unfair dismissal, therefore an employee with less than 12 months service

with a local authority or the academy can be dismissed and will not have the right to claim unfair dismissal unless discrimination has taken place with regards to the dismissal.

#### **4. When the policy applies**

This policy applies when an employee's standard of performance falls below acceptable levels and impacts on service delivery.

An employee's performance may be unsatisfactory due to a single action or omission that has such a serious adverse affect that may amount to gross misconduct. In this situation the academy's disciplinary procedure should be used.

Should an employee's level of attendance be affecting their performance then the Attendance Management Policy should be used to manage this type of capability.

#### **5. Commitments**

The employee, management, Human Resources and the SIP will each have a role to play in ensuring that support and training needs are identified and undertaken to improve capability. Their responsibilities are as follows:

##### **5.1 The employee**

The employee will:

- Seek and utilise opportunities that will develop their skills base and improve their qualifications
- Attend meetings with the manager/Human Resources in line with timescales within the procedures
- Work to achieve and maintain satisfactory levels of performance.

##### **5.2 Management**

The line manager will:

- Communicate the expected standards of performance and behaviour
- Ensure the standards are realistic, measurable and relevant to the job
- Monitor and assess progress towards targets in the employee's action plan
- Provide supervision, support and training to help the employee meet the required standards

##### **5.3 Human Resources**

Officers from Human Resources will:

- Ensure consistency in the treatment of matters relating to capability

- Ensure that the procedure is adhered to and advise managers of their obligations under the procedure
- Attend disciplinary interviews held on the grounds of capability to advise managers on process and possible actions

#### **5.4 SIP Support**

There may be occasions where other officers within the Council may be able to provide advice, support and training to both managers and employees by:

- Advising managers on reasonable targets and timescales
- Sourcing or directly providing training opportunities
- Supporting employees by mentoring, coaching and sharing expertise
- Monitoring and assessing employees' progress towards targets

### **6. Additional Information**

#### **6.1 Other academy policies and procedures which may be relevant to this policy:**

- Disciplinary Procedure
- Managing Attendance
- Termination/ Retirement on the Grounds of Ill Health/Termination on the Grounds of Capability Procedure
- Early Retirement Policy
- Redeployment Policy
- Flexible Working Policy
- Home Working Policy

#### **6.2 Relevant Legislation**

##### **6.2.1 Disability Discrimination Act 1995**

The Disability Discrimination Act 1995 makes it unlawful for employers to discriminate against employees with disabilities on the grounds of their disability. Discrimination occurs when, for a reason related to the person's disability, an employer treats a disabled person less favourably than he treats or would treat other people, and cannot objectively justify this treatment.

It also occurs when an employer fails to comply with a duty to make a reasonable adjustment in relation to the disabled person, and the failure cannot be objectively justified. A reasonable adjustment is any step or steps that an employer can reasonably take to prevent arrangements made by him/her or physical features of premises occupied by him/her from putting a disabled person at a disadvantage in comparison with a non-disabled person.

### **6.2.2 Employment Relations Act 2004**

The Employment Relations Act 2004 makes it unlawful to unfairly dismiss employees and ensures that a fair process has been undertaken and employers have acted reasonably during a disciplinary procedure. If an employer fails to follow a fair and reasonable process then dismissal is automatically unfair.

### **6.2.3 Sex Discrimination Act 1975**

The Sex Discrimination Act 1975 makes it unlawful for employers to discriminate against employees on the grounds of their gender. Discrimination occurs when, for a reason related to the person's gender, an employer treats a person less favourably than he treats or would treat other people of the opposite gender, and cannot objectively justify this treatment.

### **6.2.4 Race Relations (Amendment) Act 2000**

The Race Relations (Amendment) Act 2000 makes it unlawful for employers to discriminate against employees on the grounds of their race. Discrimination occurs when, for a reason related to the person's ethnic origin, an employer treats a person less favourably than he treats or would treat other people from different ethnic origins, and cannot justify this treatment.

### **6.2.5 The Employment Equality (Age) Regulations 2006**

The Employment Equality (Age) Regulations 2006 makes it unlawful for employers to discriminate against employees on the grounds of their age. Discrimination occurs when, for a reason related to the person's age, an employer treats a person less favourably than he treats or would treat other people of a younger or older age, and cannot objectively justify this treatment.

### **6.2.6 Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000**

The Part time Workers (Prevention of Less Favourable Treatment) Regulations 2000 makes it unlawful for employers to discriminate against part time workers in the application of their terms and conditions of employment in comparison to full time workers. Discrimination occurs when, for a reason related to the person's part time working, an employer treats a person less favourably than he treats or would treat full time workers, and cannot objectively justify this treatment.

## Capability Procedure

### 1. Identifying concerns

It is the manager's<sup>1</sup> responsibility to ensure all employees are fully aware and understand what standard of performance is expected of them in the delivery of the service and to support them in achieving that level of performance

It may be that some areas of poor performance are of a minor nature and can be tackled as a day-to-day management issue. For example a newly promoted or appointed employee undertaking new duties incorrectly can improve their performance by receiving on the job training.

Performance problems may be identified through appraisal and development, supervision or performance management meetings and should be resolved with the early intervention of support from the manager thereby avoiding the need for commencing the capability procedure.

However when minor issues have been tackled through further induction and clarification of the standards expected and they have failed to have a positive effect on the employee's standard of performance then the manager must identify the area or areas where an employee's performance has fallen below the expected standard and demonstrate how this has impacted on the delivery of the service he/she provides or that others provide.

### 2. Investigation of concerns

Once the manager has identified a concern in performance that has not been improved by day to day management there should be a period of investigation to identify if there has been previous poor performance in this and other areas of their work to determine whether the identified area of concern can be established as a genuine concern about the capability of the employee. All employees can have "off days" and investigation may determine that the lack of performance was due to a one-off error rather than the ability to perform.

Also if an employee informs their manager that a colleague is not performing appropriately the manager may need to investigate how the concern arose to ensure that there is no malicious intent involved before pursuing the concern.

The length of the investigation period may vary as it may only be an occasional part of the job that cannot be performed satisfactorily and may need the advice and support of appropriate officers<sup>2</sup> within the Council to

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<sup>1</sup> For teachers "manager" refers to the Head Teacher

<sup>2</sup> Appropriate officers for school-based employees will be officers from the Raising Achievement Service. For non school-based employees appropriate officers could include

validate the seriousness of the concerns investigated. It will also depend upon the circumstances of each individual case.

Managers will need to consider the following when investigating concerns:

- Is the issue conduct or capability? (if it is conduct then refer straight to the disciplinary procedure).
- Is the employee incapable of performing their job role and what evidence exists to support this view.
- Is the employee aware of the standards and understands them?
- What is the actual level of performance;
- What training, support and guidance has been provided to date;
- Are the standards required clearly defined and reasonable?
- Whether adequate resources have been provided to enable the required standards to be met (equipment/facilities);
- Are the standards applied consistently?
- If there were time scales set to achieve the required standard of performance – were these reasonable?
- Are there other possible reasons for the performance standards not being met e.g. are there external factors which could be affecting performance, domestic/personal issues,
- Whether the employee's personal file contains additional evidence/information. E.g. training records, performance target records, recent compliments and complaints.

### **3. The Initial Meeting**

Once a genuine area of concern has been identified a meeting should be arranged as soon as possible between the manager and the employee to discuss the issue. If the concerns are not discussed the employee may believe that their level of performance has been accepted as satisfactory.

At this meeting there is no legal requirement for trade union representation however it would be deemed good practice to allow the employee to be accompanied by their chosen union representative/ work colleague. It may also be useful for relevant officers to be present who have a knowledge and understanding of the performance levels required.

The established capability procedure for teachers allows for trade union representation and requires the presence of the SIP at all meetings.

At the meeting the employee should be informed of the manager's concerns about their performance, particular incidents where performance has been below expectations and be reminded of the expected levels of performance. The discussion should then focus on the employee's

understanding of their performance and how the shortfall in performance may have occurred

The meeting should conclude with management reaffirming the levels of performance expected, how the employee should attain those levels and what training, support and advice will be made available to them to help them achieve those levels. There should also be a time period set for their performance to improve and a date set to review progress. This should be detailed in an action plan of which both the manager and the employee should retain a copy. Guidance of how this meeting should be conducted is contained in Appendix 1 of this procedure and a model action plan is attached in Appendix 2. The meeting should also determine how any progress will be monitored and by whom.

After the meeting the employee should receive written confirmation of:

- i) the areas of concern that have been identified;
- ii) the targets that they are expected to meet to improve their work performance;
- iii) the forms of help, support and guidance that will be provided to assist in improving work performance;
- iv) the arrangements to monitor and review work performance, including the time scale agreed;
- v) a copy of the action plan.

It is in the interests of both parties that there is a consensus regarding the targets that have been identified and the means to their achievement.

This meeting may identify problems that are not connected to work but affect the employee to such a degree that they affect his/her performance. If this occurs reference may need to be made to other academy policies that may be able to provide support to the employee during this time e.g. Attendance Management, Flexible Working.

#### **4. Review periods and timescales**

Dependant on the circumstances of each employee and their individual case, consideration should be given to:

- the employee's length of time in the role;
- the nature of the role;
- the availability and nature of support required.

As a guide, it is recommended that action plans should be for a minimum of 6 weeks with up to a 6 months maximum timescale for improvement, depending on the above considerations and the level of improvement required. There may be rare occasions where a longer time period than 6 months is required due to the frequency of the work undertaken to meet a particular target. Informal reviews should take place regularly during this



monitoring period. However, if an employee's performance deteriorates significantly during this period, the review meeting may be brought forward.

The manager should ensure consistency for improvement timescales.

## **5. Monitoring**

The employee's work should be monitored regularly against the targets set in the action plan and an indication of the progress made towards the targets should be given and recorded. It is advisable that the line manager and an officer with relevant knowledge of the work and standards expected carry out the monitoring jointly. A model monitoring form is attached as Appendix 3. At the end of the review period an objective decision should be made as to whether the target has not been met at all, has been partially met but there is still room for improvement or has been achieved satisfactorily.

## **6. Review Meeting**

At the end of the review period a review meeting must be held to discuss achievements towards completing the action plan, the monitoring that has taken place and the overall outcome. If it is confirmed that the employee now meets the standards of performance expected the capability procedure will end.

If there has been some improvement but there is still a shortfall between expected and actual performance it may be appropriate to extend the period over which support is offered, with a further review date.

If there has been no, or insufficient, improvement the manager in consultation with HR may decide to move to the formal disciplinary stage of the procedure.

The outcome of the review meeting should be confirmed to the employee in writing.

## **7. Formal Disciplinary Interview on the grounds of capability**

This stage may begin where the problem is of such a serious nature that significant improvement needs to be made or the area of concern has not been resolved despite the support referred to in Section 6.

The informal stage of the capability procedure described in section 6 can be regarded as corresponding to the 'investigation stage' of the disciplinary procedure. If it is decided to invoke the disciplinary procedure, the employee must be advised of this.

The relevant disciplinary procedure<sup>3</sup> must be followed at this stage (there are two disciplinary procedures, one for non school based employees and one for schoolbased employees). All relevant documentation should be made available to both parties before the disciplinary interview is held.

When disciplinary action is taken the employee will receive written confirmation of the improvement note to be issued with a revised action plan and informed of the right to appeal against the decision. Any warning/improvement note should set out what the performance problem is, the required improvement, timescales for improvement, the review date and any support the employer will provide to assist with improvement.

In the case of employees who are required to be registered by a national body in order to undertake their professional role it should be explained at the commencement of the formal procedure that should their performance not improve and the Council decides in the future to dismiss them or they cease to provide their services due to capability the matter will be reported to the relevant national body.

## **8. Support and Monitoring Following Disciplinary Action**

Once the employee has been issued with a revised action plan the manager should ensure that any support identified in the action plan is given to the employee. This assistance may take the form of more formal training in the activities of the job role, coaching or support with the workload until they are capable of the full role. This support should be given over a specified time scale.

In order to assess whether the employee is achieving the targets for improved performance progress should be monitored as sensitively as possible. It is essential that full and accurate records of the support given and the progress achieved are maintained.

## **9. Review of the Revised Action Plan**

At the end of the specified time period the employee's performance will be reviewed with the employee. Where there has been sufficient improvement the capability procedure will cease. If there has been some improvement then consideration should be given as to whether to cease the capability process at this point or if further monitoring and support would be beneficial. If there has been insufficient improvement then further disciplinary action should be considered.

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<sup>3</sup> The disciplinary procedures detail the timescales and processes required to undertake a disciplinary interview.

## **10. Further Disciplinary Action**

Where progress is not satisfactory, further formal disciplinary interviews and disciplinary action may be necessary, as outlined in the disciplinary procedure. At each disciplinary interview the history of the case should be reviewed and the employee given the opportunity to explain his/her position. It may be necessary for a further disciplinary warning to be given and new timescales for improvement and monitoring to take place. Again this should be accompanied by a written explanation incorporating a further formal warning and to outline the risk to their continued employment.

Should there be insufficient progress towards set targets or achieving action plans the employee will be required to attend a disciplinary interview where their employment may be terminated on the grounds of capability with notice or payment in lieu of notice.

The employee must be notified in writing of the decision to dismiss and of the grounds on which the decision has been made.

## **11. Redeployment as an Alternative to Dismissal**

The decision made at the disciplinary interview may be that the employee cannot remain in his/her current post but as an alternative to dismissal may decide that the possibility of redeployment be explored. Due to the stand alone nature of the academy, redeployment would only be *within* the organisation.

## **12. Appeal**

Should the employee wish to appeal against any disciplinary action taken they must follow the appeals process as laid down in the relevant disciplinary procedure.

**Initial Interview – Guidelines**

**Introduction**

- Introduce purpose of meeting, (good practice would be to allow a representative to attend should the employee request it).
- Explain what the interview is for and the format of the interview
- What it is not (i.e. a disciplinary interview)

**Main Body of Interview**

- Be sure of your facts, use examples which, highlight the concerns (e.g. performance/attitude etc.)
- Listen to the employee's reasons/concerns/perceived training needs
- Explain what is required (e.g. expected levels of performance/conduct/competencies)
- Devise action plan (if necessary)
- Set review period

**Conclusion**

- Summarise what's been discussed and the way forward
- State what will happen if there is no improvement, in most cases this will mean that disciplinary action will be considered.
- Confirm the interview and what has been discussed in writing. Letter should be kept on the employee's personal file until successful achievement of action plan/ dismissal of employee.

**Capability Procedure**  
Action Plan

Employee.....

<u>Targets</u>	Nature of support	Review Date	Deadline	Practices to be Assessed against

Employee Signature.....

Head Teacher.....

Date .....

**Capability Procedure**  
Monitoring Form

<u>Targets</u>	Support given (Type/date)	Progress/ Achievement by Deadline	Monitored against (procedures, professional stds etc)	Monitored by

Monitoring undertaken by  
Name .....  
Date.....

Signature.....