



**Avenue**  
CENTRE FOR EDUCATION

# **CAPABILITY PROCEDURE FOR SUPPORT STAFF 2023 – 2024**

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Approval Level:	<b>Management Committee</b>
SLT Review Date:	<b>17<sup>th</sup> April 2023</b>
Governance Review Date:	<b>19<sup>th</sup> October 2023</b>
Governance Approval Date:	<b>19<sup>th</sup> October 2023</b>
Review Cycle:	<b>Annually</b>
Next Review Date:	<b>October 2024</b>

## **CAPABILITY PROCEDURE FOR SUPPORT STAFF IN SCHOOLS WITH DELEGATED BUDGETS**

The head teacher and governing body have a responsibility to help and encourage all staff in the school to achieve and maintain an acceptable standard of performance.

Capability refers to the ability to carry out the duties of the post to the required standard. This standard should be appropriate to the level of the job and the skills and experience reasonably expected in that position. Headteachers will enable access to appropriate guidance, support and training for all staff.

Expectations and standards of performance should be agreed at the earliest opportunity. Where a minor problem in performance first occurs, it should be the normal practice for the line manager to support the staff member in the matter by counselling, advice, guidance, training and example. It is not intended that the capability procedure should replace this normal interchange between the staff member and line manager in the day to day running of a school or department.

The governing body of a school with a delegated budget is responsible for employment matters including dismissal on the grounds of capability but may delegate the responsibility for dismissals to the Head teacher.

An HR Representative from Luton Borough Council has the right (subject to the accordence of advisory rights by VA, Foundation or Academy Schools) to be present at all proceedings where a formal warning or dismissal is a possible outcome.

This formal capability procedure reflects the ACAS Code of Practice on disciplinary and grievance procedures. Capability procedures apply only to support staff about whose performance there are serious concerns. Those concerns, whether they are identified through the appraisal process or via other sources of information, for example parental complaints, will, in the first instance be addressed through the schools appraisal procedure.

Capability due to ill health will be managed under the school's sickness absence procedure.

### **1. First Formal Capability Meeting**

- 1.1. The meeting will have been arranged following a review under the school's Appraisal Procedure for Support Staff. The meeting will be conducted by the head teacher or deputy headteacher. S/he may wish to be accompanied by a HR representative. The member of staff may wish to be accompanied by a companion and will have an opportunity 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 staff member's line manager/appraiser will also attend the meeting.

The chosen companion can be one of the following only:

- A work colleague
- A Trades Union Representative\*
- An official employed by a Trades Union
- A 'support worker' may be allowed to accompany an employee with a disability, agreed in advance as a reasonable adjustment under the Equalities Act 2010

\*A trades union representative who is not an employed official must have been certified by their trades union as being competent to accompany the employee. It is the employee's responsibility to check with their trades union that their chosen representative has been certified as competent.

- 1.2 During the meeting, the person conducting the meeting will ask the staff member's appraiser/line manager to:
- detail the serious concerns that the appraisal process has been unable to address.
  - identify the professional shortcomings, for example the areas of the job role not being effectively met
- 1.3 The Head teacher will then;
- give clear guidance on the improved standard of performance needed to ensure that the staff member 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 or training that will be available to help the member of staff improve their performance
  - set out the timetable for improvement (a maximum of 4 weeks) and explain how performance will be monitored and reviewed and by whom,
  - warn the staff member formally that failure to improve within the set period could lead to dismissal. The first written warning will be confirmed in writing and will remain live for one year.
- 1.7 Notes will be taken of formal meetings and a copy sent to the member of staff.
- 1.8 The outcome of the First Formal Capability Meeting will be confirmed in writing to the staff member within 5 working days. A model letter can be found in Appendix 1
- 1.9 A performance monitoring and review period will follow the First Formal Capability Meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The staff member will be invited to a Second Formal Capability Meeting at the end of the review period.
- 1.10 The person conducting the First Formal Capability meeting 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 and the appraisal process will apply once more.

1.11 The person conducting the First Formal Capability meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

## **2. Second Formal Capability Meeting**

2.1 The date of any Second Formal Capability Meeting will be agreed upon during the First Formal Capability Meetings and confirmed in writing.

2.2 The meeting will be conducted by the head teacher or deputy head teacher. The staff member's line manager/appraiser will attend the meeting.

2.3 During the Second Formal Capability Meeting, the person conducting the meeting will ask the staff member's appraiser/ line manager to provide feedback on the progress made against the objectives set.

2.4 The staff member will have an opportunity to respond and make relevant representations.

2.5 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. However should poor performance recur during the length of the written warning period the procedure will be restarted at the second stage. If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review by up to a maximum of two weeks. A further Second Formal Capability meeting will then be held at the end of the extended monitoring and review period.

2.6 An extension to the monitoring and review period will be confirmed in writing. A model letter is available at appendix 3.

2.7 If no, or insufficient improvement has been made during the monitoring and review period the Head teacher will then;

- give clear guidance on the improved standard of performance needed to ensure that the staff member 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 further support that will be available to help the staff member improve their performance;
- advise that the staff member will have a further 4 week monitoring period prior to attending a Decision Meeting and explain how performance will be monitored and reviewed and who by.
- Issue a final written warning. The warning will be confirmed in writing and will remain live for eighteen months.

2.8 Notes will be taken of formal meetings and a copy sent to the member of staff.

- 2.9 The outcome of the Second Formal Capability Meeting will be confirmed in writing to the member of staff within 5 working days. A model letter is available at appendix 2.
- 2.10 A performance monitoring and review period will follow the Second Formal Capability Meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The staff member will be invited to a Decision Meeting at the end of the review period.

### **3. Decision Meeting**

- 3.1 As with the formal capability meetings, at least 5 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. Details of who a chosen companion may be are provided in paragraph 1.1 above. A model invite letter is available at Appendix 4.
- 3.2 The Decision Meeting will be conducted by the Head teacher, and will be accompanied, for the purpose of giving advice, by a HR representative from Luton Borough Council.
- 3.3 The Decision Meeting will be informed by the Appraisal Report, the evidence collected by the Appraiser/Line Manager following the First Formal Capability Meeting and the Second Formal Capability Meeting if one took place. This collated written evidence will be shared with the staff member 5 working days prior to the Decision Meeting. The staff member may also submit evidence subject to the requirement to provide that evidence 3 working days in advance of the Decision Meeting.
- 3.4 The procedure to be followed at a Decision Meeting or at an Appeal Meeting is detailed at Appendix 5.
- 3.5 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. However should poor performance recur during the length of the final written warning period the procedure will be restarted at the decision meeting stage. If performance remains unsatisfactory, a decision will be made that the staff member should be dismissed.
- 3.6 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 and their right of appeal.

### **4. Appeal**

- 4.1 The staff member may appeal against a formal warning or dismissal. To do so, the staff member must write to the Chair of Governors within 5 working days of receipt of the outcome letter, setting out clearly the grounds for appeal.
- 4.2 Appeals will be heard by at least two governors from the school's appeals committee.

- 4.3 The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability meetings.
- 4.4 The procedure to be followed at a Decision Meeting or at an Appeal Meeting is detailed at Appendix 5.
- 4.5 The staff member will be informed in writing of the outcome of the appeal hearing within 5 working days.

## **GENERAL PRINCIPLES UNDERLYING THIS PROCEDURE**

### **ACAS Code of Practice on Disciplinary and Grievance Procedures**

The policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

### **Confidentiality**

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head teacher and governing body to quality-assure the operation and effectiveness of the capability procedure.

### **Consistency of Treatment and Fairness**

The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

### **Monitoring and Evaluation**

The governing body and head teacher will monitor the operation and effectiveness of the school's capability arrangements including for equality purposes.

## CAPABILITY PROCEDURE

### MODEL LETTER – outcome of first formal capability meeting

#### WRITTEN WARNING

Further to our meeting on (date), held under the school's Capability Procedure, this letter constitutes a written warning that you are failing to achieve a satisfactory level of performance in your post of (post title).

Your performance was reviewed against the agreed objectives:

- (Objectives)
- 
- 

Ongoing support and training was agreed as follows:

- (Support and training)
- 
- 

Your performance will be reviewed over the next (number) weeks in conjunction with (name of appraiser/line manager). A Second Formal Capability meeting will be conducted by me on (date) (time) (venue).

This written warning will remain live for one year.

Please sign and return the second copy of this letter to acknowledge receipt. You have the right to appeal against this decision. If you wish to do so you should write to (insert COG details) within 5 working days of the date you receive this letter.

Please have no hesitation in seeking clarification or further support if you feel this would help.

Encl. notes of meeting.

**CAPABILITY PROCEDURE**

**MODEL LETTER - second formal capability meeting**

**FINAL WRITTEN WARNING**

Further to our meeting on (date), held under the school's Capability Procedure, this letter constitutes a final written warning that you are failing to achieve a satisfactory level of performance in your post of (post title).

Your performance was reviewed against the agreed objectives:

- (Objectives)
- 
- 

Ongoing support and training was agreed as follows:

- (Support and training)
- 
- 

Your performance will be reviewed over the next 4 weeks in conjunction with (name of appraiser/line manager).

There will be a formal Decision Meeting on (date), at (time), (venue) at which you will be entitled to be accompanied by a professional association/trades union representative or work colleague.

Please be advised that failure to achieve an acceptable standard of performance within the timescale specified may result in dismissal from your post.

This written warning will remain live for eighteen months.

Please sign and return the second copy of this letter to acknowledge receipt. You have the right to appeal against this decision. If you wish to do so you should write to (insert COG details) within 5 working days of the date you receive this letter.

Please have no hesitation in seeking clarification or further support if you feel this would help.

Encl. Notes of meeting



## CAPABILITY PROCEDURE

### MODEL LETTER - outcome of second formal capability meeting

#### EXTENSION OF MONITORING PERIOD

Further to our meeting on (date), held under the school's Capability Procedure, I write to confirm that you have made some progress to improve your performance against the objectives set for you and that you will be subject to a further period of monitoring and review.

Your performance was reviewed against the agreed objectives:

- (Objectives)
- 
- 

Ongoing support and training was agreed as follows:

- (Support and training)
- 
- 

Your performance will be reviewed over the next (number) weeks in conjunction with (name of appraiser/line manager). A further Second Formal Capability meeting will be conducted by me on (date) (time) (venue).

Please sign and return the second copy of this letter to acknowledge receipt.

Please have no hesitation in seeking clarification or further support if you feel this would help.

Encl. Notes of meeting

## CAPABILITY PROCEDURE

### MODEL LETTER - invitation to Decision Meeting

#### DECISION MEETING

Further to the Formal Capability Meeting on (date) held under the school's Capability Procedure, I write to request your attendance at a Decision Meeting.

The Decision Meeting convened under the school's Capability Procedure for Support Staff paragraph 3 will take place on (date), at (time), (venue). I will conduct the meeting and will be advised by (name). ((Name), as your appraiser/line manager will attend. (Please also specify any other witnesses who will attend).

You may be accompanied at the meeting by a companion. Details of who a chosen companion may be are provided in paragraph 1.1 of the Capability Procedure for Support Staff in Schools with Delegated Budgets. A notetaker will be in attendance to take notes for management purposes.

If you wish to submit evidence to the meeting or call witnesses please ensure that (name) is in receipt of documentation and names of witnesses 3 days in advance of the meeting.

Your performance will be reviewed against the agreed objectives.

- (Objectives)
- 
- 

You are advised that one of the outcomes available to me is dismissal from your post of (post title).

Please sign and return the second copy of this letter to acknowledge receipt.

Please have no hesitation in seeking clarification or further support if you feel this would help.

**THE PROCEDURE TO BE FOLLOWED AT A DECISION MEETING OR AT AN  
APPEAL MEETING**

The meeting will be conducted by the Head teacher in the case of a Decision Meeting or by members of the school's appeals committee at an Appeal Meeting.

The person(s) conducting the meeting will invite the appraiser/line manager or Head teacher to present the evidence of serious performance concerns collated by the school.

The appraiser/line manager or Head teacher may call witnesses.

Each party will have the opportunity to question the witnesses.

The person(s) conducting the meeting will invite the staff member to respond to the concerns detailed and make any representations that they wish to.

The Staff member may call witnesses.

Each party will have the opportunity to question the witnesses.

The person(s) conducting the meeting and their HR Representative will have the opportunity to ask questions of the appraiser/line manager/Head teacher and of the staff member.

The person(s) conducting the meeting will invite both parties to sum up and withdraw from the meeting.

The person(s) conducting the meeting will consider the evidence presented and confirm their decision in writing to the staff member.