



The Charter Schools Educational Trust
Transforming lives through the power of inclusive education

Staff Capability Procedure

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Capability Procedure

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1. Definition

Capability is assessed by reference to skill, aptitude, health or any other physical or mental quality. Lack of capability occurs when an individual is either partially or totally unable to perform the duties for which they have been employed to an acceptable standard.

Lack of capability must not be confused with wilful misconduct and incompetence. Such circumstances should be dealt with under The Charter Schools Educational Trust's disciplinary procedure.

2. Scope

This procedure applies to all staff who are permanent or fixed-term employees within the establishment of the Trust, in teaching and support posts, including Headteachers and Deputies.

This procedure does not apply to Supply Staff or agency workers.

3. Principles

The following principles will apply to this procedure:

- All matters relating to this procedure will be dealt with promptly and without undue delay.
- All proceedings, including meetings and records, will be kept confidential and conducted in a private environment.
- At every stage in the procedure the employee will be clearly advised of the areas in which their performance is unsatisfactory and will have the opportunity to state their case before a decision is made.
- At all formal stages of the procedure, an employee will have the right to be accompanied or represented by a trade union representative or a work colleague employed by the Trust.
- No action will be taken until the case has been investigated. This will involve gathering all relevant facts and evidence including witness statements where appropriate.
- An employee will be notified in writing of any formal capability action to be taken.
- An employee will have the right to appeal any formal capability action taken and will be advised of the appeal procedure at the conclusion of the formal capability meeting.

Where an employee is considered to be underperforming, the Headteacher or nominated manager will investigate and collect evidence. The Trust CEO will make arrangements for this to be done if the performance of the Headteacher is in question. The Chair of the Trust Board will make arrangements for this to be done if the performance of the CEO is in question. Once the facts are gathered and the seriousness of the problem established, there are three initial options:

- Drop the matter (no case to answer, or trivial)
- Arrange an informal capability guidance meeting (support without using the formal procedure)
- Arrange a formal capability meeting (for more serious cases).

4. Informal Stage

The nominated manager will meet the member of staff informally to:

- Give clear feedback on the nature and seriousness of the concerns.
- Give the member of staff the opportunity to comment and discuss the concerns.
- Agree any support that will be provided to help address the specific concerns
- Set objectives for the member of staff to achieve within a reasonable and appropriate timescale i.e. 4 to 6 working weeks.
- Explain the implications and process if no – or insufficient – improvement is made.

If more serious concerns arise, or if the employee expresses discontent or indifference to the counselling, the formal procedure should be commenced to deal with the matter in a more structured and objective manner.

After a period of review of no more than 4 to 6 working weeks, involving observation and assessment, a firm conclusion will be reached. The options will be to:

- Drop the matter.
- Continue to provide support, as this is already proving effective.
- Arrange a formal capability meeting.

5. Formal Stage

Formal Capability Meeting

The formal capability meeting initiates the formal stage of the Capability Procedure. It provides an opportunity to deal with more serious problems in a structured way. It allows the employee to prepare a response to allegations about performance and make a case in the company of a trade union representative or work colleague. The representative can speak and present the case if the employee so wishes, but factual questions should be answered personally by the employee.

Formal capability meetings will be conducted by the Chair of the Trust Board (for CEO capability meetings), CEO (for Headteacher capability meetings) or Headteacher (for other staff members).

Employees will be given a minimum of 5 working days' written notice of the formal capability meeting, which for teaching staff will be held in directed time. The notification will contain all relevant information regarding the concerns about performance and their possible consequences to enable the teacher to prepare to answer the case as fully as possible.

While the meeting is intended to establish facts, it may provide new information or put a different slant on evidence previously collected. If it becomes apparent that further investigation is required, the meeting will be adjourned for an appropriate length of time to allow this to happen.

The options at formal capability meetings are:

Either:

Where new information/a different context is provided for information, or further investigation suggests that there is insufficient grounds for pursuing the capability issue, the person conducting the meeting may:

- Drop the matter.
- Offer further informal support and review via the appraisal process

Where continued concern about the standard of performance is justified or further investigation concludes that the matter is of serious concern

- Written warning
- Final written warning
- Referral to Staff Dismissal Committee (a panel of 3 x independent senior staff members)

Except in exceptional circumstances, any formal warnings should be disregarded for capability purposes after a specified period of satisfactory performance. Written warnings will be recorded on file for a period of 3 terms from the date the warning was given. A final written warning will be recorded on file for a period of 6 terms from the date the warning was given.

A decision should be made after all the facts and any representations from the employee have been considered.

The meeting will be adjourned briefly to consider the appropriate option before delivering a decision to the employee.

The decision as to which level of warning to issue will depend on the seriousness of the problem.

In cases of particularly serious concern, it is possible to move directly to a final written warning or referral to the Staff Dismissal Committee.

Where a formal warning is issued, the CEO, Headteacher or nominated manager should use the remainder of the meeting to:

- Identify the professional shortcoming.
- Give clear guidance on the improved standard of performance needed to end the capability procedure.
- Explain the support that will be available, and how the performance will be monitored over the following weeks.
- Depending on the level of warning issued, identify the timetable for improvement and agree a date for the next/final evaluation meeting.
- Make it clearly understood that failure to improve may lead to dismissal.
- Inform the employee of their right to appeal the decision to issue a warning.

After the meeting the employee will be informed in writing of the result of the investigations, the main points discussed at the meeting, confirming the decision and where a warning is issued, giving information about the handling of the formal review stage, as well as the procedure and timescales for appealing against the warning.

6. Monitoring and review period

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. 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.

The timescale for the formal review period will vary between 6 to 10 working weeks.

6.1 Formal review meeting

Employees will be given a minimum of 5 working days written notice of the formal review meeting, which for teaching staff will be held in directed time. The employee will be advised of their right to be accompanied at the review meeting by a trade union representative or a work colleague employed by the Trust.

If the person conducting the review meeting is satisfied that the employee has made sufficient progress, the capability procedure will cease. 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 employee will receive a final written warning.

As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final 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; given information about the handling of the further monitoring and review period; and the procedure and time limits for appealing against the final warning. The employee will be invited to a decision meeting.

6.2 Decision meeting

A decision meeting will be arranged to assess performance over the previous weeks. At least 5 working days' notice of the meeting will be given to the employee. The employee will have the right to be accompanied at the meeting by a trade union representative or work colleague.

If an acceptable standard of performance has been achieved during the monitoring and review period, the capability procedure will end. If performance remains unsatisfactory, the employee will be informed that the matter will be referred to a Staff Dismissal Committee comprising of the Headteacher, the HR Director with another member of the Senior Leadership Team (committee members can be replaced dependent on their involvement in the case). If the dismissal concerns a Headteacher then the Staff Dismissal Committee will be formed by the CEO, the Chair of the Local Governing Body and a Trustee. If the dismissal concerns the CEO then the Staff Dismissal Committee will be formed by the Chair of the Trust Board and two Trustees.

The result of the evaluation, main points of the meeting and date of the Staff Dismissal Committee hearing should be recorded in a letter to the employee. The employee should be given at least 5 working days' notice of the Staff Dismissal Committee hearing. The employee will have the right to be accompanied at the meeting by a trade union representative or work colleague.

7. Dismissal Committee Stage

The Staff Dismissal Committee will hear representations and recommendations brought by the Senior Leader and/or line manager conducting the capability evaluation and any representations that the employee or their representative may wish to make.

Where the Staff Dismissal Committee determines the case against the employee to be proven they shall normally give the employee contractual notice of dismissal.

If the Staff Dismissal Committee determine on the balance of probability the case against the employee has not been proven they shall determine:

Either

- To end the capability procedure

Or

- To revert to an earlier stage in the procedure.

A letter will be sent to the employee informing them of the decision of the Staff Dismissal Committee and the reasons for it.

8. Appeal

Employees may appeal against the following:

- Written warnings
- A decision to dismiss.

Such a right of appeal must be exercised in writing to the Headteacher within five working days of being notified of the decision giving full details of the reasons for the appeal.

The Appeal Panel will be made up of three members from the Local Governing Body and the Headteacher will arrange for an Appeal Hearing to take place as soon as reasonably practicable.

If a Headteacher or CEO wishes to appeal they should do so in writing to the Chair of the Trust Board, via the Clerk to the Trust, who will then convene an Appeal Panel and arrange for an Appeal Hearing to take place as soon as is reasonably practicable.

The Appeal Panel will hear any appeal, at this stage of the procedure. The Appeal Panel will hear both the reasons for the appeal and the reasons for the decision before determining whether or not to uphold the appeal.

The decision of the Appeal Panel will be final and given in writing to the staff member as soon as possible after the

9. Confidentiality

It is incumbent upon all those involved in capability proceedings to ensure that all records are kept confidential and that the proceedings are not discussed with people who are not directly involved. Any person found to be in breach of confidentiality will be liable to disciplinary proceedings.

10. Records

The maintenance of accurate and contemporaneous records is essential. Both panels dealing with the capability should normally be accompanied by a note-taker. Notes are not necessarily verbatim, and there is no requirement for agreed minutes.

Records should be held in a secure and confidential manner, often the issues raised by an employee are particularly sensitive and it is essential that information is kept in accordance with the Data Protection Act 2018.

11. Employee Assistance Programme (EAP)

All employees have access to a free 24 hour, 365 days a year, confidential information, support and counselling service whenever they need it through the Trust's EAP provider, Worklife Support. Further information on this service is available from the Trust's Director of HR.