



# The Athelstan Trust

## Capability Procedure

Date of Review	Approved by	Date of Approval	Next Review Date	Website
June 2023	Board Staffing Committee	14 June 2023	June 2026	Y

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### 1. Aims

The aim of our capability procedure is to set out a clear and consistent process for when any employee falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations. The capability procedure applies once an employee has completed their probationary period.

### 2. Legislation and guidance

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:

- An employee failing to perform their role at the level of competence expected of them and that their job requires.

References to an **'employee'** includes the headteacher, teachers and support staff, unless indicated otherwise.

## **4. Roles and responsibilities**

Where the employee subject to the procedure is the headteacher, the CEO and chair of governors will be responsible for coordinating the procedure.

Where the employee subject to the procedure is not the headteacher, the headteacher or a nominated member of senior staff will be responsible for coordinating the procedure (although the decision meeting will be chaired by the headteacher).

Where appropriate, other employees may be asked to provide additional support or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

## **5. Capability procedure**

Performance is monitored on a day-to-day basis by line managers in regular one-to-ones.

Capability procedures will begin when line management support and the appraisal process have been unable to bring about satisfactory performance or improvements in the employee'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.

The employee, and anyone accompanying them must not make electronic recordings of any meetings, or hearings conducted under this procedure, whether these meetings or hearings are conducted in person, by telephone, or using remote working platforms or technologies.

### **5.1 Formal capability meeting**

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 employee has the right to be accompanied by a work colleague or trade union representative

It will be conducted by CEO in the case of a headteacher or by the headteacher or a senior member of the leadership team in the case of any other employee.

The purpose of the meeting is to establish the facts, and to allow the employee 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 Teachers' Standards or other relevant 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 employee improve their performance.
- Set out the timetable for improvement and explain how performance will be monitored and reviewed.
- Warn the employee that failure to improve within this timetable could lead to dismissal.

#### **5.1.2 After the meeting**

The employee 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 employee 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 employee has the right to be accompanied by a work colleague or trade union representative.

If the person conducting the meeting is satisfied that the employee 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 employee will receive a final written warning.

Notes will be taken of formal meetings and a copy sent to the employee.

The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the employee 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. Following the set timescale the employee 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 employee 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 some progress has been made and there is confidence that more is likely, it may be appropriate to agree a further monitoring and review period. If the employee's performance has not improved to a sufficient standard, a decision may be made that the employee should be dismissed or, in the case of a Headteacher, CEO may decide that the Headteacher should be dismissed. In some cases, redeployment may be considered as an alternative to dismissal.

The employee 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 power to decide that employees should no longer work at this school has been delegated to the headteacher (or to the CEO in the event that the capability procedure relates to a headteacher).

Once the decision to dismiss has been taken, the headteacher (or in cases where the capability procedure relates to the headteacher, the CEO), will dismiss the employee with notice.

## **6. Right to appeal**

If an employee feels that a decision to dismiss them is wrong or unjust, they may appeal in writing against the decision within 10 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 employee.

The appeal will be dealt with impartially and by governors who have not previously been involved in the case.

The employee 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 3 years, but can be revised as needed.

This policy will be approved by the staffing committee.

## **10. Links with other policies**

This policy links to our policies on:

- Code of conduct
- Appraisal policy
- Grievance procedures
- Disciplinary rules and procedures
- Equal Opportunities Policy

## Appendix 1: 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) or responsibility 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) or responsibility 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) or responsibility that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

**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

## Appendix 2: Teaching standards

The following non-exhaustive list of teaching standards are expected by the Trust as a minimum. A teacher must:

- set high expectations which inspire, motivate and challenge pupils;
- promote good progress and outcomes by pupils;
- demonstrate good subject and curriculum knowledge;
- plan and teach well-structured lessons;
- adapt teaching to respond to the strengths and needs of all pupils;
- make accurate and productive use of assessment;
- manage behaviour effectively to ensure a good and safe learning environment;
- fulfil wider professional responsibilities;

**Maintaining public confidence:** In addition to the standards detailed above, teachers should maintain public trust and confidence in the Trust, in its Academies and in the profession by:

- demonstrating honesty and integrity;
- understanding and upholding their duty to safeguard the welfare of children and young people;
- maintaining reasonable standards of behaviour whether inside or outside of normal School hours and whether on or off the school's site; and
- maintaining an effective learning environment.