



King's Group Academies Capability Policy

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1. Aim

The aim of this policy is to provide a framework for managing employees, who despite the help and support provided through the Appraisal Policy/regular feedback meetings are unable to demonstrate the required level of performance or behaviours in their role.

2. Scope

This policy covers all staff employed by the academy with the exception of:

- Early Career Teachers
- Staff in their probationary period.

Certain procedural variations apply to the Principal as detailed below.

Principal - Meetings will be conducted/chaired by KGA CEO and a member of the Governing Body who may be supported by an HR Adviser.

For Teachers there are certain legislative requirements, which must be adhered to, where this is the case this is shown in bold.

3. When to use this policy

Early intervention is critical when dealing with underperformance because of the impact both on the students in the academy and on the individual. The Principal/Line Manager is expected to raise concerns with individuals about their performance, through feedback, at the earliest possible opportunity and to put in place supportive interventions to help support the employee reach the required standards/behaviours. This is particularly important where a teacher could be given a 'requires improvement' or 'inadequate' assessment at their mid-year or end of year appraisal as detailed in Appendix 2 of the school pay policy

It is recognised that the appraisal process for support staff differs to that of teaching staff, however all KGA employees should have regular meetings with their line manager to discuss progress and receive feedback on their performance. Where there are concerns about performance these should be raised at the earliest opportunity.

The Capability Policy will be instigated when, despite the help and supportive interventions provided through the Appraisal Policy/normal regular feedback meetings, the employee is still unable to meet the required standards and has been formally notified that the Appraisal Policy/normal regular feedback meetings will no longer apply.

The Capability Policy may also be instigated when there are serious concerns about an employee's performance and immediate action is warranted.

The employee will not receive pay progression whilst they are subject to the Capability Procedure.

In cases where the employee does not reach and maintain the required standard of performance, the employee may be dismissed.

If the required standard is not met for reasons of misconduct (e.g. refusal to co-operate or follow instructions) then this will be treated as a disciplinary matter under the disciplinary policy.

Attendance concerns that are a result of sickness absence will be managed through the managing absence policy. If an underlying health condition is a contributory reason for under performance, the sickness absence policy will be used alongside the capability policy to determine appropriate support for rehabilitation and/or exploring reasonable adjustments to the role. In these instances, a blended approach between the two policies will apply.

This policy should be read in conjunction with the school pay policy.

4. Right to be accompanied

Employees have the right to be accompanied at all formal meetings within the procedure. There is no right for the employee to be accompanied to regular meetings during review periods.

The employee's companion can be:

- a work colleague;
- a Trade Union Official; or
- an accredited Trade Union Representative.

The name of the companion attending any formal meeting should be notified to the Principal/Line Manager, no later than 3 working days prior to the formal meeting.

5. The Formal Procedure

Prior to commencing the formal procedure, the employee will have been notified in writing that their performance is to be managed under the formal capability policy and that the appraisal policy no longer applies.

Formal Stages	Purpose.	Outcomes	Meeting Chair
Stage 1 - Formal Meeting	To formally discuss the shortfall in the employee's performance and make clear the required standards, set objectives and timescales for improvement.	Written notice to improve OR No action is necessary and returns to normal appraisal policy/normal regular feedback.	Principal / Line Manager
Stage 2 - Formal Review Meeting	To review the employee's progress against the standards and objectives set in the written notice to improve and decide the next steps.	Final Written notice to improve. OR Extended monitoring period is given OR Formal capability procedures are discontinued. Return to appraisal policy/ normal regular feedback.	Principal / Line Manager
Stage 3 - Final Review and Decision Meeting	To review the employee's progress against the standards and objectives set in the written notice to improve and decide on the appropriateness of continuing the employee's employment.	Dismissal with notice. OR Employee has improved and formal capability procedures are discontinued.	Principal / Panel of no fewer than 2 governors and KGA Officer

These would normally be followed sequentially, however there are certain circumstances where it would be appropriate to initiate the capability policy at a later stage, this includes:

- Where a notice of improvement is still 'active' and the employee's performance lapses during this period; OR
- Where there is a significant or sudden drop in performance that jeopardises the education of children.

In cases where it is not clear where the procedure should commence, advice should be sought from HR.

6. Notice of meetings

Where possible the date of the Formal Review meeting and Final review meeting should be set in advance, but in any case, at least 5 working days written notice should be given of attendance at any formal meeting under the procedure.

The notice of the meeting must contain sufficient information about the concerns, and their possible consequences to enable the employee to prepare their response.

7. Postponements

A postponement may be requested in advance of the meeting and providing the reasons for the request are reasonable this will be agreed to. Only one postponement will be allowed.

In the event that the employee fails to attend the meeting or chooses not to attend the meeting, the matter may be considered and decided in their absence.

8. Document Exchange

Any documentation to be considered at any formal meeting must be sent to the employee with the invitation to attend the meeting.

If the employee wishes to submit documentation to be considered this should be submitted no later than 3 working days prior to the meeting.

9. Witnesses

In certain circumstances it may be appropriate for the Principal/Line Manager, or the employee to call witnesses to attend the hearing. Where this is the case, the Principal/Line Manager shall notify the names of the witnesses they intend to call in the invitation to attend the meeting. Where the employee wishes to call their own witness the name of the witnesses should be notified in writing no later than 3 days before the meeting.

10. Formal confirmation of decisions

The formal decision of the meeting and a copy of the notes of the meeting must be confirmed in writing to the employee within 5 working days of the meeting being held. (see below for special provisions relating to dismissal).

11. Monitoring Periods

The length of a monitoring period depends on the seriousness of the issue, but is expected in most cases, to be between 4 to 8 weeks per monitoring period, with the aim of completing the procedure, within a term of commencing the process.

12. Currency of notice to improve

If, at the end of their monitoring period, the employee has achieved the required standard, formal capability procedures will be discontinued and the employee will return to the normal appraisal process. The employee should be notified formally in writing of this.

However, the notice to improve will remain 'live' for a period of:

- 9 calendar months (written notice to improve) or

- calendar months (final notice to improve) or
 - to the end of the academic year (whichever is the greater period)
- commencing from the date of the meeting, which confirms that formal procedures no longer apply.

Should the employee's performance lapse during this period they will return to the Capability procedure at the stage they left it.

13. Dismissal

Final meeting and Dismissal Information will be included in writing to the employee for any decision of dismissal

For a dismissal, the outcome and the following information will be announced.

- Specify the poor performance issue.
- Notification of dismissal.
- The reason(s) for dismissal.
- Details of mitigation/special circumstances considered.
- The right of appeal. How the appeal can be lodged and timescales.
- Where applicable, state that due to the outcome of the hearing, a referral will be made to the DBS

As an Academy, the Trust shall issue the notice of dismissal, within 5 working days of the decision being made. This will be confirmation of the employee's dismissal.

In academies where staffing matters are the responsibility of the board of trustees, the trustees will issue the notice of dismissal.

14. Appeals

There is the right of appeal at all stages of the formal Capability policy.

In the case of dismissal, the employee has the right to appeal against any such dismissal to a panel of no fewer than two Governors and a KGA Trust representative none of whom should have been members of the panel at the Stage 3 meeting.

Employees wishing to appeal against a notice to improve or dismissal, must submit their appeal in writing, stating the grounds for their appeal, with 5 working days of receiving written confirmation of the decision to KGA's Director of Human Resources (HR).

The HR Director-will make arrangements for a suitable person to hear the appeal meeting to be held within 10 working days of receiving the employee's letter.

The Appeal Panel cannot increase the level of the notice to improve.

15. Overlapping Procedures

In certain circumstances an employee may have a difficulty that is covered by two policies (for example, Grievance); or another difficulty arises during the application of one policy (e.g. sickness absence). In these circumstances the meetings required could be combined to ensure that the issue is dealt with in its' entirety rather than viewed in isolation. The aim should be to focus on resolving the difficulty, ensuring that the essential elements from each

procedure have been included in order to minimise the number of meetings and correspondence.

Sickness Absence or Grievances will not necessarily mean the Capability Policy is suspended, each individual case will be examined on its merits and timescales may be amended accordingly.

HR can provide advice in these circumstances.

16. Link with Incremental Pay (Support staff only)

The pay policy states that employees will usually progress to the next spinal column point on an annual basis, subject to their performance, until they reach the top of the pay spine. If an employee is given a notice to improve their Line Manager may authorise for the employee's increment to be withheld until the notice to improve has lapsed. If this is to be actioned, the employee will be told in writing.

17. Trade Union Representatives

No formal action will be taken under this policy against an accredited representative of a trade union, until the circumstances of the case have been discussed with a full-time official of the trade union concerned.

18. Employees with Disabilities

If an employee requires any reasonable adjustments to be made to enable them to fully participate in the process, they should notify their Headteacher/Line Manager as soon as possible.

In the case of any formal meeting, any reasonable adjustments should be notified as soon as possible (and providing a minimum 3 working days' notice).

19. Management of policy

The King's Group Academies Trustees has overall responsibility for the maintenance and operation of this policy. They will maintain a record of concerns raised and the outcomes. King's Group Academies policies will be reviewed regularly and will include an evaluation for impact on workload and working hours.