



# **CAPABILITY PROCEDURE**

**Date:** 27<sup>th</sup> June 2012

**Reviewed:** May 2015

**Date approved**

**by Governing Body:** 27<sup>th</sup> June 2012

**Review Schedule:** Every 3 years

**Next review Date:** June 2018

**Responsibility:** Full Governing Body

Company Number 07564519

A Company Limited by Guarantee

Registered in England

Clyst Vale Academy Trust, known as Clyst Vale Community College, is an exempt charity

## **Purpose**

This procedure sets out the arrangements that will apply when staff at Clyst Vale Community College fall below the levels of competence that are expected of them.

## Capability Procedure

This procedure applies to all staff at Clyst Vale Community College, about whose performance there are serious concerns that the appraisal process has been unable to address.

A minimum of five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the member of staff to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the 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 who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

### Formal capability meeting

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Principal capability meetings) or the Principal or College Manager as appropriate (for other staff members). The meeting allows the staff member to be, accompanied by a companion if they wish, 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 person conducting the 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. The person conducting the 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. In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the professional shortcomings, including which of the standards expected are not being met;
- give clear guidance on the improved standard of performance needed to ensure that the member of staff 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 that will be available to help the staff member to improve his/her performance;
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but straightforward cases will be no less than half-a-term and no longer than a term
- warn the staff member formally, that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal meetings and a copy sent to the member of staff within a reasonable time. Where a warning is issued, the member of staff will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

## **Monitoring and review period following a formal capability meeting**

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 (see below).

### **Formal review meeting**

As with formal capability meetings, a minimum of five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the staff member of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

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. 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; in some circumstances, where appropriate, it may be necessary to extend the monitoring and review period over a substantial period of time in the order of up to twelve months to demonstrate sustained improvement

If no, or insufficient improvement has been made during the monitoring and review period, the member of staff 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 written 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 and 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 member of staff will be invited to a decision meeting.

### **Decision meeting**

As with formal capability meetings and formal review meetings, a minimum of five 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 who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

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. If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the member of staff should be dismissed or required to cease working at the College.

Before the decision to dismiss is made, the school the College will seek appropriate Human Resources advice.

The member of staff 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.

## **Decision to dismiss**

The power to dismiss staff in this College has been delegated to one or more governors acting with the Principal.

## **Dismissal**

Once the decision to dismiss has been taken, the Governing Body will dismiss the member of staff with notice.

## **Appeal**

If the member of staff feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place.

The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the member of staff.

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

The appellant will be informed in writing of the results of the appeal hearing as soon as possible.

# **Appendix 1: General Principles Underlying This policy**

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

This procedure will be implemented in accordance with the provisions of the ACAS Code of Practice.

### **Confidentiality**

The Principal /College Manager as appropriate, will personally review all staffs' objectives and appraisal records to ensure consistency of approach and expectation between appraisers.

The Principal/College Manager will also be aware of any pay recommendations that have been made.

In the case of teachers, lesson observation judgements will be aggregated for College leadership and accountability purposes.

The permission of individuals may be sought to use their appraisal record (anonymised if requested) as an example of best practice.

Some generalised details of the appraisal process which do not compromise individual confidentiality may be shared with Governors and other key members of staff to facilitate the planning of CPD, Quality Assurance, and overall monitoring of the appraisal process

During an Ofsted inspection, inspectors may investigate the effectiveness of the College's Appraisal and Capability policies, but individual confidentiality will not be compromised.

### **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.

### **Definitions**

Unless indicated otherwise, all references to "teacher" include the Principal.

### **Delegation**

Normal rules apply in respect of the delegation of functions by governing bodies, Principals and local authorities.

### **Grievances**

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

### **Sickness**

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be

dealt with in accordance with the College's absence policy and will be (eg referred immediately to Well-Being at Work to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures). In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

## **Monitoring and Evaluation**

The governing body and Principal will monitor the operation and effectiveness of the College's appraisal arrangements.

## **Retention**

The governing body and Principal will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.