



Adderley Children's Centre Capability Procedure for Support Staff

Adderley Children's Centre have adopted the following procedure that has been developed by Birmingham City Council.

The law

The School Staffing (England) Regulations 2009 require the governing bodies of schools with delegated budgets to establish procedures for dealing with lack of capability on the part of staff at the school (regulation 8). Similar duties were imposed by earlier legislation. The governing body must formally adopt such procedures.

Cases in which an employer is found at an employment tribunal not to have followed its capability procedures will be deemed automatically unfair and will be lost.

Model capability procedure for teachers – local authority

The local authority has commended a new (2012) [model capability procedure for teachers](#). (There is a separate model procedure for support staff.)

The procedure is designed for professional capability. Incapability due to ill health should be managed using the procedure for [Managing Staff Sickness](#) and, if necessary, the [dismissal procedure for some other substantial reason](#)

The old (2002) capability procedure for teachers is available as a word document at the bottom of this page for use pending adoption of the new procedure and for completing any case begun under the old procedure.

Capability procedure for support staff – local authority/ academy

This [model capability procedure](#) for support staff should be used if the school have concerns about the professional capability of their support staff which have not been successfully resolved through performance management.

A separate [manager's toolkit](#) provides useful guidance and letters

Competence procedures – support staff

As the model capability procedure for teachers relates specifically to the duties of a teacher, there is a [separate procedure for support](#) staff. This was originally a procedure for all staff in the school, but when the Government instructed schools to introduce a different procedure for teachers the competence procedure was left in place for support staff.

The procedure is designed for professional capability. Incapability due to ill health should be managed using the procedure for [Managing Staff Sickness](#) and, if necessary, the [dismissal procedure for some other substantial reason](#)

Cases started under the competency procedure for support staff should continue with this. However, any new cases should use the model capability procedure for support staff. (See above)

Right of the local authority to be represented at proceedings

The [School Staffing Regulations](#) give the local authority the right to “attend and offer advice at all proceedings relating to the selection or dismissal of any teacher” in a community, community special, voluntary controlled or maintained nursery school and the governing body must consider any advice offered by the authority in such cases. In voluntary aided and foundation schools the authority “may offer advice to the governing body in relation to the governing body’s functions of appointment and dismissal of any teacher, to the extent provided by, and subject to, any relevant agreement”. The authority deems a school’s written agreement to buy the authority’s personnel advice a ‘relevant agreement’ for this purpose.

Governing bodies and head teachers are strongly recommended to seek advice from the authority (through the Employee Relations Team) beyond the statutory requirements for the authority’s involvement, so that the school is protected financially against the outcome of any proceedings in an employment tribunal or other court. For this reason schools should also ensure that a representative of the authority is involved in competence procedures for support staff.

General advice on the application of capability procedures may be obtained from the Employee Relations Team.

Costs of dismissal

Although the authority normally meets the costs of dismissal for all employees the authority nonetheless has the power to charge the school for the costs of dismissal (or part of the costs) where it has "good reason", for example where there has been a significant breach of the procedure or where the authority's representative has advised that dismissal should not take place, but the advice is ignored and an employment tribunal or other court subsequently decides that the dismissal was unfair. For this reason governing bodies and head teachers are strongly recommended to seek advice from the authority (through the Employee Relations Team) beyond the statutory requirements for the authority’s involvement, so that the school is protected financially against the outcome of any proceedings in an employment tribunal or other court.

Adoption of procedure

Procedures can only apply when formally adopted by the governing body. Any case begun under previous procedures must continue under those procedures and the governing body's resolution should reflect that requirement.

The head teacher should ensure that all teachers are aware of the capability procedure adopted by the governing body and have ready access to it, either electronically or in the form of a paper copy in the school office. Copies should also be displayed on notice boards in school staff rooms or other areas in the school where employees meet together.

Model letters

Model letters to support the authority's new model capability procedure for teachers will be published shortly. The letters for the old procedure can be found at the bottom of this page. These letters have been prepared to conform to the timescales in the authority's model procedure and should not be used to support other procedures unless the timescales are checked to ensure that they correspond.

The authority's model competence procedure for support staff does not have model letters. The letters for teachers can be adapted, having regard to any differences in timescale or other aspects of the two procedures.

Conduct of hearings

Procedures for the conduct of hearings, are at ([link to procedure for conduct of capability hearing](#)).

[Guidance on behaviour in meetings and hearings](#)

The authority has produced guidance on behaviour in meetings and hearings which should apply to disciplinary proceedings.

Reviewed September 2017

Review next: September 2018

Governing Body at Adderley Children's Centre

Signed:

Date: 30th October 2017