



ST MICHAEL'S CATHOLIC COLLEGE CAPABILITY POLICY 2022 - 24

1. Aim

- 1.1 Our aim is to provide an outstanding education to all the children taught by us. We expect all our employees to work together to achieve that aim in partnership through trust and integrity.
- 1.2 We are committed to the highest level of achievement for pupils of all abilities and we recognise that there are no limits to a child's potential. We facilitate academic and personal success in a rigorous learning community and in a culture which embraces Salesian values of respect, understanding, affection and humour.
- 1.3 It is our belief therefore that students grow into mature and responsible adults through learning together in a Catholic community by:
 - Aspiring to academic excellence and success;
 - Acquiring confidence, self-esteem and fulfilment of their individual talent;
 - Developing a love of learning, a love of Christ, and a love of each other.
- 1.4 All our policies, including HR support this aim.
- 1.5 The suite of documents contains our policies for Capability, Disciplinary, Grievance Resolution and Absence.
- 1.6 We delegate our authority in the manner set out in this document.
- 1.7 There may be occasions where these policies need to be modified to take account of the requirements of our Child Protection & Safeguarding policies and of Keeping Children Safe in Education e.g. by allowing the Local Authority Designated Officer to offer advice at appropriate stages.
- 1.8 In this document:
 - 'Lawyer' includes solicitor, barrister, legal executive or a person training for such roles.
 - 'Working day' means any day on which in your role you would ordinarily work if you were a full-time employee. In other words, it will be different for teaching and non-teaching staff but will be the same for full-time and part-time employees.
 - 'College Leader' means a person employed on the Leadership Pay Range and does not include College Business Manager or Bursar.

2. Procedures/Attendees of Formal Meetings

- 2.1 For any process described as informal there is no right to be accompanied and we may proceed without you having a companion present.
- 2.2 Where a policy allows you to be accompanied by a companion at a formal meeting, the provisions of this paragraph 2 will apply and **Permitted Companion** means a companion meeting the requirements.
- 2.3 You must let the relevant Manager know who your Permitted Companion will be at least one working day before the relevant meeting.

- 2.4 If you have any particular need, for example, a disability, you may also be accompanied by a suitable helper.
- 2.5 Your Permitted Companion can address the meeting in order to:
 - (a) Put your case;
 - (b) Sum up your case; and
 - (c) Respond on your behalf to any view expressed at the meeting.
- 2.6 Your Permitted Companion can also confer with you during the meeting.
- 2.7 Your Permitted Companion has no right to answer questions on your behalf, or to address the meeting if you do not wish it, or to prevent you from explaining your case.
- 2.8 Where you have identified your Permitted Companion to the relevant Manager and your companion has confirmed in writing to the relevant Manager that they cannot attend the date or time set for the meeting, the relevant Manager will postpone the meeting for no more than five working days from the date set by us to a date or time agreed with your companion provided that it is reasonable.
- 2.9 You do not have a right to be accompanied by a lawyer.
- 2.10 At a disciplinary meeting the Disciplinary Manager or Appeal Manager may take advice from a lawyer.

3. Timing of Meetings

Formal meetings under these policies may:

- (a) Need to be held when you were timetabled to teach;
- (b) Exceptionally be held during planning preparation and assessment time if this does not impact on lesson preparation;
- (c) Exceptionally be held after the end of the College day;
- (d) Not be held on days on which you would not ordinarily work; and
- (e) For support staff, be held at any time during the working day.

4. Recording of Meetings and Minutes

- 4.1 No one is allowed to make an audio or video recording of a formal or informal meeting or interview without the prior express written permission of all persons present.
- 4.2 We may have a note taker at any formal or informal meeting or interview to take the official note of the meeting. The note taker should be someone not involved in the subject matter of the meeting.
- 4.3 Minutes will be shared with you and you will be asked to confirm if they are accurate. No subsequent meeting, interview or decision will be delayed or postponed as a result of a dispute over minutes.

5. Appeal Manager

A person is not prevented from being an Appeal Manager in the Disciplinary, Capability and Sickness Absence policies by virtue of having heard an appeal against any earlier decision in relation to you under that policy or any other policy.

6. Assistance

In all cases involving any sanction in relation to the Principal or to a person on the Leadership Spine, or to potential or actual dismissal of any other member of staff, the Education Commission may send a representative to advise the relevant manager.

7. Use of Warnings

In the event of any organisational change process, formal warnings/cautions under the disciplinary, capability or sickness absence policy may be used as selection criteria.

8. Freedom of Information

The policies in this Handbook are disclosable under the Freedom of Information Act/GDPR regulations.

9. Monitoring/Review

This policy will be reviewed in June 2022.

1. Scope of Capability Policy

- 1.1 The purpose of this policy is to give a structure to improve performance to the standards expected and to facilitate the fair dismissal of those who have not improved despite support.
- 1.2 There may be some occasions where your behaviour could be described as misconduct. This Capability policy and our Disciplinary policy may be used concurrently whilst we determine whether the behaviour amounts to misconduct or incapability. We anticipate that this will be a very rare situation.
- 1.3 There may be occasions where your capability could relate to your health. This Capability policy may be used concurrently with our Absence policy to ensure that appropriate support is in place. If you go off sick following the use of this Capability policy we may use our Absence policy.
- 1.4 If you are in your probationary period we may decide not to use this policy to deal with capability issues.
- 1.5 In this policy the time specified for an Assessment Period will be extended by any absence during the Assessment Period (including absence due to ill health, paternity maternity or adoption leave).

2. Informal Advice and Support

- 2.1 Your line manager may give you informal advice and support at any time about any performance falling short of the standard expected.
- 2.2 Remedial action taken under any Appraisal policy also counts as informal advice and support for the purposes of this Capability policy.
- 2.3 Your line manager may:
 - (a) Give you informal advice, mentoring, coaching or counselling;
 - (b) Arrange for you to observe lessons taught by our other teachers or elsewhere;
 - (c) Arrange for you to discuss your practice with advisory teachers;
 - (d) Arrange for you to observe best practice delivered by other colleagues; and/or
 - (e) Ask what support you believe would be helpful.
- 2.4 Informal advice and support may be confirmed in writing and may be referred to at a later stage as evidence that an informal approach was attempted and the outcome of such an approach. To ensure an effective understanding of the effectiveness of informal advice and support any written confirmation will be shared with your line managers, your appraiser, the SLT Link. Such records would be shared with your union representative if you wished.
- 2.5 There is no right of appeal against informal advice.

3. **Capability, Final Capability and Appeal Managers**

The table below sets out the normal level of delegation for dealing with formal capability issues.

<i>Your Level</i>	<i>First/Second Capability Meeting – the Capability Manager</i>	<i>Final Capability Meeting – the Final Capability Manager (not previously involved)</i>	<i>Appeal Manager (not previously involved)</i>
Principal	Chair of Governors or nominee	Panel of three non-staff governors	Panel of three non-staff governors
Other Leadership Spine and School Business Manager	Principal	Chair of Governors or nominee	Panel of three non-staff governors
Other Staff	A member of the College's Leadership Team appointed by the Principal	Principal	Chair of Governors or nominee

4. **Transition to capability**

- 4.1 If, having undertaken a support programme to address concerns raised as part of the performance management process, the appraiser is not satisfied with progress, the teacher will be invited to a transition meeting to determine whether formal capability proceedings should commence or whether the support programme should continue. The teacher will be notified in writing 5 working days in advance of the transition meeting and may be accompanied at the meeting by their trade union representative or a work colleague.

5. **Alternative Action**

- 5.1 There may be a situation where the Capability Manager considers that a recent promotion or job change has been a contributory factor in any unsatisfactory performance and that informal advice and support has not been effective.
- 5.2 The Capability Manager may offer you the option of taking a voluntary demotion as an alternative to proceeding with a First Capability Meeting, if an appropriate post exists and if informal action or support has not been effective.

6. **First Capability Meeting**

- 6.1 The Capability Manager will produce a Performance Report setting out:
- (a) What aspects of your performance are causing concern;
 - (b) What specific performance standards are expected; and
 - (c) The support that has been provided to you so far.
- 6.2 This Performance Report will be sent to you at least five working days before the First Capability Meeting.
- 6.3 At the First Capability Meeting you will have an opportunity to comment upon the Performance Report and to discuss the alleged professional shortcomings, possible

- support guidance and monitoring and any contributory factors to underperformance such as domestic or health needs.
- 6.4 The Capability Manager may adjourn the meeting, to consider further investigation.
- 6.5 If the Capability Manager concludes that performance is satisfactory the formal capability process will end (though informal action and support may continue) and the relevant appraisal policy will be used.
- 6.6 If the Capability Manager concludes that performance is unsatisfactory you will be given a First Written Warning which will:
- (a) Identify the professional shortcomings;
 - (b) Give clear guidance on the improved sustainable standard of performance needed to exit the Capability policy;
 - (c) Explain the support that will be provided, and how performance will be monitored over the Assessment Period;
 - (d) Identify the timetable for improvement and agree a date for the next Capability Meeting; and
 - (e) Make it clearly understood that failure to improve may lead to final written warning and dismissal.
- 6.7 The length of the Assessment Period following a First Written Warning will be at least four working weeks and no more than eight working weeks.
- 6.8 You may appeal against a First Written Warning by writing to the Capability Manager within five working days of being sent the Written Warning.
- 6.9 The fact of the appeal does not delay the implementation of the Assessment Period.
- 6.10 Any appeal should normally be heard within ten working days of us receiving your appeal.
- 7. Second Capability Meeting**
- 7.1 The Capability Manager will prepare an Updated Performance Report recording the assessments, support and evaluation of your performance during the Assessment Period. This Report may be prepared and sent on the last day of the Assessment Period.
- 7.2 This Report will be presented to you at least four working days before the Second Capability meeting.
- 7.3 If after the Second Capability Meeting the Capability Manager considers that your performance is satisfactory, the capability process will end (though informal advice and support may continue) and the relevant appraisal policy will be used.
- 7.4 If after the Second Capability Meeting the Capability Manager considers that your performance remains unsatisfactory you will be given a Final Written Warning setting an Assessment Period of four working weeks and setting the date for the Final Capability Meeting. You will be informed that failure to make satisfactory sustainable improvement will result in your dismissal.
- 7.5 You may appeal against a Final Written Warning by writing to the Capability Manager within five working days of being sent the Final Written Warning.
- 7.6 The appeal process does not delay the implementation of the Assessment Period.
- 7.7 Any appeal should normally be heard within ten working days of us receiving your appeal.
- 8. Final Capability Meeting**
- 8.1 The Capability Manager will prepare a Final Performance Report recording the assessments, support and evaluation of your performance during the Assessment Period. This report may be prepared and sent on the last day of the Assessment Period.

- 8.2 This report will be presented to you at least five working days before the Final Capability Meeting.
- 8.3 If after the Final Capability Meeting the Final Capability Manager considers that your performance is satisfactory, the Capability process will end (though informal action and support may continue) and the relevant appraisal policy will be used.
- 8.4 If after the Final Capability Meeting the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement the Final Capability Manager will terminate your employment on notice by way of a letter setting out your date of termination and your right of appeal.
- 8.5 You may appeal against a dismissal on notice by writing to the Final Capability Manager within five working days of being sent the notification of termination.
- 8.6 The fact of the appeal does not delay the commencement of the notice period.
- 8.7 If your contract contains a payment in lieu of notice clause we may exercise that clause to bring your contract to an end with immediate effect.
- 8.8 Any appeal should normally be heard within twenty working days of us receiving your appeal.
- 8.9 At a Final Capability Meeting where dismissal is a potential outcome you may propose an alternate sanction namely redeployment to another post at the same salary or at a lower salary. The Final Capability Manager is not obliged to comply with such a request but shall consider it.

9. Duration of Warnings

- 9.1 If you have been given a First Written Warning and your performance has improved such that you return to the appraisal policy and within twelve months of that First Written Warning your performance deteriorates such that the formal capability process is used, you will be called to a Second Capability Meeting at which a Final Written Warning may be issued.
- 9.2 If you have been given a Final Written Warning and your performance has improved such that you return to the appraisal policy and within twelve months of that Final Written Warning your performance deteriorates such that the formal capability process is used, you will be called to a Final Capability Meeting at which a further Final Written Warning may be issued.

10. Permitted Companion

You may bring a Permitted Companion to a formal Capability Meeting.

July 2022

Signed:



Date: 27/10/22

Chair of the Finance & Resources Committee

Signed:



Date: 27/10/22

Chair of the Governors

Review Date June 2024