



DOWNSVIEW PRIMARY SCHOOL

Capability Procedure - Teachers

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The Governing Board of _____ School adopted this policy on _____

It will review it in *(insert date or number of years)*

1. Introduction

1.1 This publication provides non-statutory guidance from the Department for Education. The term 'capability' is defined as the ability of an employee to perform their duties to the standards required. Capability procedures apply only to teachers and school leaders where there are concerns, which the appraisal process has been unable to address, of not meeting the required standards of work performance.

1.2 The primary objective is to ensure maximum support is provided through guidance, counselling and training to improve the employee's performance, encourage professionalism and autonomy and resolve any performance related issues, which are more than likely to be temporary.

1.3 The use of this procedure must be distinguished and kept entirely separate from initial support provided under the appraisal procedure. It should only be used after such informal support has been provided. The appraisal process will be suspended when the capability procedure is invoked.

1.4 This procedure applies to all teaching staff, including the head teacher, **except for Early Career Teachers (ECTs)** for whom separate induction procedures should apply. References to the appraisal process throughout this procedure are not applicable to support staff.

1.5 Managers are expected to ensure that all employees have a clearly defined and agreed job description, reviewed on a regular basis to ensure it remains relevant. Additionally, managers should ensure that employees know what is expected of them, and that relevant school policies and other information are available and drawn to the employee's attention.

1.6 Except in the most serious cases of persistent failures to meet job expectations, resulting in negative consequences on the pupils and the organisation, teachers and school leaders should not be placed on capability procedures without first undergoing a period of informal support. This support should have clear objectives, timelines and goals that are achievable. Informal support should be provided for a reasonable period (for example a minimum of 6 weeks) to allow for performance improvement. The duration will be determined based on the specific circumstances, with appropriate support in place to facilitate improvement. If no, or insufficient, improvement has been made over this period, the process should move to the formal capability procedures.

1.7 The aim of this procedure is to provide a clear formal framework in which capability issues and concerns around performance are managed, reflecting the ACAS Code of Practice on disciplinary and grievance procedures¹. A robust and fair teacher capability process combines support, evidence, and careful management to foster improvement and maintain a high-quality education system.

1.8 Schools should follow the ACAS code of practice on disciplinary and grievance procedures. Under The School Staffing (England) Regulations 20093, all maintained schools are required to have a capability policy. The model capability policy below provides a framework and a process that schools could adopt in full or adapt. Schools should consult with staff or their representatives in developing their capability policy. It also provides useful context and guidance on each stage of the process. In the policy: Text in speech marks "" indicates statutory requirements contained in the School Staffing Regulations.

1.9 In exceptional circumstances concerns about the senior leadership of the school will be raised via alternative routes (e.g. LA monitoring of schools causing concern, Ofsted) that have not been addressed via day-to-day management or the appraisal process. In these circumstances, the issues will be highlighted to the senior leaders involved and addressed via the formal capability procedure.

1.10 Schools should seek support from their HR Provider when following this procedure.

2. Purpose

This policy sets out the arrangements that will apply in serious cases where there have been persistent failures to meet job expectations, resulting in negative consequences on pupils and the organisation. This procedure applies only to teachers and school leaders, where there is a capability issue that the appraisal process, including any informal support arrangements, have been unable to address.

3. Capability procedure

3.1 Notification of a formal capability meeting should never come as a surprise to the teacher concerned. Informal support and a performance improvement plan should mean that the teacher is fully aware of the concerns being raised and they should have had every opportunity to improve in a supportive environment. At least 7 working days' notice will be given of the formal capability meeting.

3.2 The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the teacher 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 teacher 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.

3.3 Teachers are entitled to reasonably request an alternative date where they are unable to attend the original date proposed.

3.4. While a teacher or school leader is in capability procedures, pay progression should be withheld.

4. Formal capability meeting

4.1 This meeting is intended to examine the facts. It will be conducted by the Chair of Governors or an appropriate member of the trust (for head teacher capability meetings) or head

teacher (for other teachers). The meeting sets out the required standards which are believed to have been failed by the teacher. The meeting allows the teacher to respond to concerns about their performance and to make any relevant representations, with the option of being accompanied by a work colleague, union representative or an official employed by a trade union. This may provide new information or a different context to the information/evidence already collected. During the meeting, evidence shall be presented, and witnesses shall be called where appropriate and necessary. The teacher shall be allowed to ask questions, present their own evidence and rely on their own witnesses where appropriate and necessary, and will be permitted to respond to the evidence and ask questions. 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.

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, for example which of the standards expected of teachers are not being met;
- give clear guidance on the improved standard of performance needed to ensure that the teacher 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 teacher improve their performance;
- set out the timetable for improvement taking into account the teacher's personal circumstances. This may include any medical conditions, working pattern, wellbeing support needs, or disabilities protected by the Equality Act 2010. The timetable will depend on the circumstances of the individual case but in straightforward cases could be (insert reasonable time period. It is for the school to fairly determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place); and
- explain how performance will be monitored and reviewed. warn the teacher formally that failure to improve within the set period could ultimately lead to dismissal.

Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the teacher 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.

5. 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).

6. Formal review meeting

6.1 As with formal capability meetings, at least 7 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher 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.

6.2 Teachers are entitled to reasonably request an alternative date where they are unable to attend the original date proposed (for example a date that is within 7 working days of the original proposed date).

6.3 If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease, and the appraisal process will re-start.

6.4 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 not, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning which will set out the areas where performance standards have not been met, targets for improvement, any measures (training and supervision) which will be taken to improve performance, a period for the review and the consequences of not meeting expected performance standards.

6.5 As before, notes will be taken of formal meetings and a copy sent to the member of staff.

6.6 Where a final warning is issued the member of staff will be informed within 7 working days of the meeting. The final warning will mirror any previous warnings that have been 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 teacher will be invited to a decision meeting.

6.7 The teacher may appeal against a first or final written warning within 10 working days of receiving the warning by writing to the Chair of Governors

7. Decision meeting

7.1 As with formal capability meetings and formal review meetings, at least 7 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher 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

7.2 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, during the following 12 months, concerns about the standard of performance re-emerge, then they will be dealt with under the final stage of this procedure.

7.3 If performance remains unsatisfactory, a decision (if in regard to a teacher), or recommendation to the governing board or an appropriate member of the Trust (if in regards to a headteacher,) will be made that the final written warning should be extended (where possible or appropriate), or the teacher should be dismissed or required to cease working at the school. Redeployment into an alternative role may be considered where appropriate and possible.,

7.4 Before the decision to dismiss is made, the school will discuss the matter with the local authority or Trust. For community (maintained) and voluntary controlled schools, the local authority may attend and offer advice at all proceedings relating to the dismissal of any teacher, and the governing board must consider any such advice.

7.5 The teacher will be informed in writing within 7 working days of the reasons for the dismissal and the date on which the employment contract will end the appropriate period of notice and their right of appeal.

7.6 The teacher may appeal against the decision to dismiss within 10 working days of receiving the above letter by writing to the Chair of Governors (Further details about the appeals process may be found in paragraph 10)

7.7 In cases where the performance issues relate to leadership rather than to classroom teaching, consideration will be given to demotion. In these situations, salary safeguarding will not apply. The same process described in paras 6.1 – 6.6 should be followed at the decision meeting.

8. Decision to dismiss

Either: The power to dismiss staff in this school rests with the governing board or Trust

Or: The power to dismiss staff in this school has been delegated to the headteacher/ or an appropriate member of the Trust /to one or more governors/to one or more governors acting with the headteacher (delete as appropriate).

9. Dismissal

Either: Once the decision to dismiss has been taken, the governing board or Academy Trust (or insert details of person or people to whom the power to dismiss has been delegated) will dismiss the teacher. Usually this will be with notice unless otherwise stipulated in the terms and conditions of employment.

(or insert details of person or people to whom the power to dismiss has been delegated) will dismiss the teacher. Usually this will be with notice.

Or: Once the governing board (or insert details of person or people to whom the power has been delegated) has decided that the teacher should no longer work at the school, it will notify the Local Authority in writing of its decision and the reasons for it. Where teachers work solely at this school, the Local Authority must dismiss them with notice within 10 working days of the date of the notification. Where they work in more than one school as a teacher, the local authority must require them to cease to work at this school. This applies to Community (Maintained) and Voluntary Controlled schools.

10. Appeal

10.1 If a teacher feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing to the Chair of Governors within ten working days of receiving 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 teacher. If the employee's chosen companion is not available at the time fixed for the meeting, it should be rescheduled to accommodate the availability of the companion, as long as a reasonable alternative date is offered which is within 7 working days of the originally proposed date.

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

10.3 The teacher will be informed in writing of the results of the appeal hearing within 10 working days.

10.4 The arrangements for an appeal hearing at the earlier stages of this process will not delay meetings that are required to monitor and review performance and the timescales that have been set for improvement.

11. Centrally Employed Teachers

The same process will be followed for Centrally Employed Teachers. The Service Manager will lead the formal capability meeting. A panel of two, including the service manager will hear the case at the formal review meeting, and a panel of two, including a director will hear the case at the decision meeting.

Appendix 1 General Principles Underlying This Policy.

ACAS Code of Practice on Disciplinary and Grievance Procedures

The policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The appraisal and 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 appraisal system. Schools to say here how they might achieve this, for example, the headteacher or appropriate colleague might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The headteacher might also wish to be aware of any pay recommendations that have been made.

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 for those teachers who require it. The governing board is aware of the guidance on the Equality Act 2010 issued by the Department for Education

An Equality Impact Assessment (EIA) may be undertaken to ensure that the application of the policy does not disadvantage any group with a protected characteristic(s) as defined by the Equality Act 2010.

References

"If a teacher has been subject to formal capability procedures in the previous two years", as stated in The School Staffing (England) (Amendment) Regulations 2012 and the Staffing and employment advice for schools, "this must be disclosed to new potential school employers when requested".

Staffing and employment advice for schools (publishing.service.gov.uk)

Definitions

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

Delegation

Normal rules apply in respect of the delegation of functions by governing boards, head teachers 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, including as part of the capability process, 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 performance at any stage of the procedure or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy. (e.g. referred immediately to the occupational health service 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 formal procedures to continue during a period of sickness absence. The school should be also applying its sickness procedures in these circumstances.

Monitoring and Evaluation

The governing board and headteacher will monitor the operation and effectiveness of the school's capability policy. This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

Retention

The governing board and headteacher will ensure that all written capability records are retained and stored in a secure place in line with their Retention and Disposal Policy

General Principles Underlying This policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

Part B of the policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The capability processes will be treated with confidentiality.

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 head teacher.

Delegation

Normal rules apply in respect of the delegation of functions by governing bodies, head teachers 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 school's absence policy. In some cases, it may be appropriate for formal procedures to continue during a period of sickness absence.

Receipt of letters

All letters advising of arrangements for meetings or the outcome of hearings will be sent by first class mail and it will be assumed that will normally be received within two days of posting. Additionally, letters may also be sent by email.

You can download this booklet online at: <http://publications.education.gov.uk/>

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