

# **Schools Capability Policy & Procedure Teachers**

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## 1. Policy

### 1.1 Purpose

By law all governing bodies must have procedures in place to deal with cases of poor performance by staff. This Capability Policy and Procedure has been revised following legislative changes that came into effect from 1st September 2012, to ensure that cases of poor performance are dealt with fairly and consistently.

**This policy and procedure applies only to Teachers or Headteachers about whose performance there are serious concerns that the appraisal process has been unable to address**

### 1.2 Definitions

For the purpose of this policy an individual's capability to do their job is assessed by reference to their skills, competence, applicable professional standards, qualifications and aptitude.

### 1.3 Responsibilities

**Teachers** are responsible for:

- performing their duties to an acceptable standard
- participating in appropriate training and development
- maintaining professional standards

**Headteacher/line managers** are responsible for ensuring that:

- the standards of performance required and the arrangements for monitoring and review are clear to all teachers
- ensuring that teachers receive appropriate training and development
- arrangements for dealing with incapability for work and poor performance are brought to the attention of all staff
- they take all reasonable measures to promote capability of teachers under their responsibility
- occupational health advice is sought, where relevant to a case of incapacity for work
- where disability related issues emerge they are addressed in a positive way and, where necessary, the requirements to make reasonable adjustments are met
- full and accurate records are kept of all meetings

**Schools Human Resources Provider** is responsible for:

- providing advice and support throughout the process
- monitoring the application of the procedure, reporting trends and non-compliance to the Chair of Governors and the Executive Director of Children & Young People's Service (where applicable) or other appropriate body.
- where applicable, notifying the Teaching Agency.

## **2. Introduction**

- 2.1 Capability procedures are designed around support mechanisms to assist teachers to achieve the desired levels of performance.
- 2.2 It is part of the normal day to day responsibilities of management to inform staff of concerns about standards of performance and where these are not speedily resolved they should be addressed via the appraisal process.
- 2.3 The capability procedure applies only to teachers or headteachers about whose performance there are serious concerns that the appraisal process has been unable to address and may be applied only after support has been offered as part of that process.
- 2.4 Under normal circumstances a “transition” meeting will have previously been held under the appraisal process when the teacher or headteacher is advised that progress in addressing concerns has not been sufficient and that performance will be managed under capability. Further details about the transition meeting may be found in the appraisal policy.
- 2.5 When issues arise, it is important that the headteacher/line manager identifies the performance gap and investigates the cause or causes. Once the reason for the gap has been discovered actions can be agreed with the teacher to assist them to bridge the gap or work towards other acceptable solutions. Headteachers/line managers and teachers should regularly discuss performance against agreed objectives, identifying areas of concern, either to the teacher, the headteacher/line manager or both, and identifying strategies for improvement.
- 2.6 Headteachers/line managers need to be clear about the objectives they believe should be achieved by staff, such objectives should always be reasonable and realistic, and teachers need to understand what is required of them in terms of their work or attendance and the standards to be met.

## **3. Exceptional Circumstances**

- 3.1 In very limited and exceptional circumstances, the headteacher/line manager may issue a final warning at the first formal capability meeting. Advice from your HR provider should be sought at this stage. Circumstances where this may occur will only include instances of severe/gross incompetence and which would have a serious and direct impact on the safeguarding or health and safety of clients, service users or colleagues or where the education of pupils is at risk.
- 3.2 In exceptional circumstances, concerns about a senior leader may arise outside the normal appraisal process for example (LA monitoring of schools causing concern, Ofsted). In these circumstances, the issues will be highlighted to the senior leader involved and maybe addressed via the formal capability procedure.

## **4. Setting standards**

- 4.1 Headteachers/line managers are responsible for establishing the required reasonable standards of work expected from teachers, whilst teachers are responsible for understanding and meeting those standards. Headteachers/line managers should support and assist teachers to achieve these standards, providing appropriate training and support.

## **5. Investigation of concerns**

- 5.1 If a teacher is failing to achieve the expected standard of work, the headteacher/line manager should investigate the problem in an attempt to identify the causes for the poor performance, and work with the teacher to improve performance providing appropriate support interventions.

## **6. Equalities Act**

- 6.1 In circumstances whereby the Equalities Act applies the headteacher/line manager will discuss with the teacher any reasonable adjustments to support them in their work. Schools Human Resources and other appropriate specialist advice should be sought and the teacher should be advised of their right to seek advice and support from their trade union.

- 6.2 Where the teacher asserts that the capability proceedings being undertaken are unlawfully discriminatory or are motivated by reasons other than addressing poor performance, the teacher can raise a complaint. If the teacher raises this complaint in writing at any stage before the appeal stage of a dismissal, this can be dealt with as part of the capability procedure. If the teacher raises the complaint only after the capability procedure has finished and it is on substantial new grounds then it will be necessary for the teacher's complaint to be dealt with in accordance with the Schools Grievance Policy and Procedure.

- 6.3 The submission of a complaint by a teacher during capability proceedings will not normally prevent the continuation of the capability process. Where appropriate, a complaint related to the capability proceedings should be dealt with as part of the capability process and not pursued through the Schools Grievance Policy and Procedure.

## **7. Ill health**

- 7.1 An individual's capability to carry out their role to the expected standard may be affected by their health and their attendance at work. The process for managing long-term periods of sickness absence (4 weeks or more) and managing repeated short-term absence is set out in the **Schools Sickness Policy and Procedure**.

## **8. Procedure Capability Meeting**

- 8.1 This meeting is intended to examine the facts. It will be conducted by the Chair of Governors or a designated governor acting on his/her behalf (for headteacher capability meetings) or headteacher/line manager (for other teachers). The meeting allows the teacher 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.

- 8.2 The person conducting the meeting could 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 not proceed
- A first written warning should be issued
- In exceptional circumstances a final written warning could be issued. This is likely to occur if:
  - the education, safeguarding or welfare of pupils is at risk
  - there are serious leadership weaknesses

- in circumstances where an individual's performance had been managed under the capability procedure in the previous 12 months and concerns about the standard of performance re-emerge

**Only in exceptionally serious circumstances will a final warning be issued at the first meeting. Schools should seek the advice of their HR provider before embarking on this course of action.**

- 8.3 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.
- 8.4 During the meeting, or any other meeting which could lead to a formal written 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);
  - discuss the most effective way of supporting the teacher to improve their performance taking into account the views of the teacher and where possible agree on the support that will be available;
  - 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 and should not be longer than 10 weeks. It is for the school to 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. In cases where the education, safeguarding or welfare of pupils is at risk or there are significant leadership weaknesses, the period for improvement will be up to 4 weeks.
  - warn the teacher formally that failure to improve within the set period could lead to dismissal.
- 8.5 Notes will be taken of formal meetings and a copy sent to the member of staff.
- 8.6 Where a warning is issued, the teacher will be informed in writing within 5 working days of the matters covered in the bullet points above and given information about the timing and handling of the review stage. 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.
- 8.7 The teacher may appeal against a first or final written warning within 10 working days of receiving the warning by writing to the Headteacher/Chair of Governors. (Further details about the appeals process may be found in paragraph 21)
- 9. Monitoring and review period following a formal capability meeting**
- 9.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the review period, there will be a formal meeting as follows:

9.2 Where the teacher has been issued with a first written warning they will be invited to a formal review meeting. (See paragraph 10)

9.3 Where the teacher has been issued with a final written warning they will be invited to a decision meeting (see paragraph 12).

#### **10. Formal review meeting**

10.1 The meeting will be conducted by the Chair of Governors or a designated governor acting on his/her behalf (for headteacher capability meetings) or headteacher/line manager (for other teachers).

10.2 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.

10.3 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 no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning.

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

10.5 Where a final warning is issued the member of staff will be informed within 5 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 including the timescale for the review period which will be no longer than 4 weeks.

10.6 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.

#### **11. Decision Meeting**

11.1 A decision meeting will be held at the end of the monitoring and review period after a final written warning has been issued. It will be conducted by the appropriate panel/committee of the governing body.

11.2 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.

11.3 If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the teacher should be dismissed. The teacher will be entitled to his/her normal notice period.

11.4 Before the decision to dismiss is made, community and voluntary controlled schools must discuss the matter with the local authority. It is recommended that all schools receive support from their HR provider before any decision to dismiss is made.

- 11.5 The teacher will be informed in writing within 5 working days of the reasons for the dismissal and the date on which the employment contract will end.
- 11.6 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 8)
- 11.7 The panel for the decision meeting shall consist of a minimum of three governors who shall not have had any prior involvement in the case. The Chair of the panel shall be either trained or suitably experienced in chairing formal panels.

## **12. Notification of Decision Meeting**

12.1 The headteacher/line manager is responsible for convening and managing the arrangements for all meetings held under this procedure, except Appeal Hearings. The headteacher/line manager should write to the teacher instructing him or her to attend the decision meeting. The letter instructing the teacher to attend the decision meeting should:

- give the teacher at least 5 working days notice of the meeting
- set out the date, time and place of meeting and the names of the members of the panel
- should describe the nature of the capability issue and action taken so far
- where possible, be accompanied by the documents that the headteacher/line manager will present at the meeting, although these can be sent under separate cover provided they arrive no later than 5 working days before the meeting. Documents to be considered at the decision meeting which should be set out in a logical order, indexed and paginated, with a written introduction including any conclusions to the panel.
- advise the teacher of the right to be accompanied represented by a work colleague or trade union representative
- provide a copy of the Capability Policy & Procedure – Teachers
- advise the teacher that they need to provide any documentation/names of witnesses at least 2 full working days before the meeting.
- explain that dismissal could be an outcome

## **13. Representation**

13.1 Employees may be accompanied at any stage of this procedure by a work colleague, or a trade union representative.

## **14. Attendance at a Decision Meeting**

14.1 The following may attend the decision meeting

- the teacher
- the teacher's representative
- the panel of 3 governors who will hear the case
- a School's HR representative who shall act as an impartial advisor to the panel
- the headteacher/line manager (the presenting manager) who may be accompanied by a Schools HR officer
- a note taker
- any other member of staff invited by the Panel to advise or give information
- any other employee called as a witness, who shall be present only to give their evidence.

## **15. Requests for postponement**

- 15.1 At the request of the teacher the meeting may be postponed on one occasion. The reasons for the postponement must be explained to the chair of the panel, who will decide whether to agree or not to the postponement. If agreed, the teacher must give an alternative date, no more than 5 working days after the original date for the meeting.
- 15.2 The meeting will not normally be re-arranged more than once. Further requests for postponement of a meeting will be considered on their merits by the Chair of the panel and will not always be agreed. Following one postponement the meeting may proceed in the absence of the teacher.

## **16. Order of business**

- 16.1 The order of business at the decision meeting will normally be:
- Introductions
  - Presentation by management, which may include the calling of witnesses, who may give their evidence, be cross-examined by the teacher/representative and questioned by the panel
  - Questions to management by teacher/representative and the panel
  - Presentation by the teacher/representative, which may include the calling of witnesses, who may give their evidence, be cross examined by management and questioned by the panel
  - Questions to the teacher/representative by management and the panel
  - Summing up by the management representative
  - Summing up by the teacher/representative
  - Decision of the panel
  - Panels decision to be conveyed in writing

## **17. Outcomes at a Decision meeting**

- 17.1 The panel may decide one or more of the following:
- dismissal with pay in lieu of notice
  - by mutual agreement, transfer to another post within the school usually of a lower grade without salary safeguarding. The panel will need to identify a suitable post before making this recommendation
  - any other reasonable action

## **18. Dismissal decisions & ratification**

- 18.1 The Governing Body can make a recommendation to dismiss a teacher from the school but only the Executive Director of Children & Young People's Service has the authority to dismiss the teacher from the Council/School.
- 18.2 Dismissals and notice periods are effective from the date of the dismissal decision. Where a governing body determines that any person employed or engaged by the Local Authority to work at the school should cease to work there, notification of the decision and the reasons for it must be sent to the LA. If the member of staff is employed by the LA, it must within a period of 14 days, issue notice terminating the employment contract.
- 18.3 If the teacher is successful at appeal they will be re-instated. It is, however possible that an appeal might be concluded within the notice period.
- 18.4 Confirmation of termination of employment will be provided in writing to the teacher along with details of their right of appeal against termination of employment.

18.5 The Governing Body of Voluntary Aided and Foundation Schools can make the decision to dismiss and to ratify a dismissal decision.

## **19. Notification of the decision**

19.1 The decision of the Panel will be notified to the teacher in writing as soon as practicable after the meeting, not normally to exceed 5 working days.

The decision will include:

- a description of the capability issue
- the teacher's response and views
- the findings of the panel
- the right of appeal

## **20. Record of proceedings**

20.1 It is important to keep written records during the entire capability process. Records must include:

- the capability issues against the teacher;
- the teacher's defence and response;
- findings made and actions taken;
- the reason for actions taken;
- whether an appeal was lodged;
- the outcome of the appeal;
- any grievances raised during the capability procedure; and
- subsequent developments.

20.2 Copies of meeting records should be taken and if requested, a copy provided to the teacher within 10 working days of the meeting.

## **21. Appeal**

21.1 Lodging an appeal

A teacher may appeal against any formal warning or dismissal decision on the following grounds:

21.2 The grounds of appeal should relate to one or more of the following:

**a) The procedure**

An appeal can be lodged on the grounds that the capability procedure was applied unfairly or inaccurately.

**b) The facts**

An appeal can be lodged where the teacher believes that the facts of the case did not support the decision made; that the facts considered were not relevant; that the facts were not substantiated; or where there are new facts/evidence which need to be considered that has come to light subsequent to the hearing

**c) The decision**

An appeal can be lodged where the teacher feels that the sanction received is unreasonable in view of the circumstances and mitigation offered by the teacher.

21.3 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.

The purpose of an appeal is to review the decision taken by the panel and not to rehear the case.

- 21.4 The appeal must be made in writing, to the Chair of Governors/Clerk to the Governing Body (as appropriate), within 10 working days of the date of the letter confirming of the decision. The notice of appeal must clearly indicate the grounds of appeal.
- 21.5 The appeal will normally be heard within 20 working days from receipt of the appeal letter.
- 21.6 The Chair of Governors or his or her nominee shall arrange for the appeal to be heard by a panel of at least 3 governors who have not had any previous involvement in the case.
- 21.7 The teacher will be informed of the right to be accompanied by either a work colleague or trade union representative.
- 21.8 The appellant will be given 5 working days notice of the appeal hearing along with any documents which management will present at the appeal. The appellant must provide their own documents within 2 working days of the appeal hearing.
- 21.9 Order of Business for Capability Appeal Hearing – refer to 16.1 and note that the sequence of business is changed in that it is the teacher and then the Chair of the decision meeting, in that order to make submissions to the appeal panel.
- 21.10 The panel will review whether the original decision was reasonable having reviewed the grounds for appeal. The Appeal Panel shall go into as much detail as they consider necessary in order to give a fair hearing within the grounds of the appeal.
- 21.11 The decision at appeal shall be either to uphold the original decision of the formal decision meeting, to issue a lesser sanction, or to overturn the original decision and impose no sanction. This decision shall be final and will be confirmed in writing.
- 21.12 Notes shall be taken at an appeal hearing and if requested a copy provided to the appellant within 10 working days of the appeal hearing.

## **22. Details of approval and variation process**

- 22.1 Where the Council/School wishes to amend or terminate this procedure, it will consult with the relevant trade unions with a view to reaching agreement over the proposed amendment(s)/termination. This procedure may be amended or terminated by agreement with the relevant trade unions at any time. Where agreement has not been reached with the relevant trade unions arising from consultations, the Council/School reserve the right to implement its proposed amendment(s)/termination by giving 1 month's notice to teachers of its proposal(s)