



CAPABILITY POLICY AND PROCEDURES- TEACHERS

Compliance statement

Every policy is reviewed at regular intervals and where applicable, as stipulated by law. Each policy is also available in additional formats including Braille and in additional languages upon request, within reasonable timescales as stipulated by the school.

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1. Introduction

1.1 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. The capability procedure applies to teachers or head teachers about whose performance there are serious concerns that the appraisal process has been unable to address. It applies after support has been offered as part of that process. In normal circumstances a 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 meeting may be found in the appraisal policy.

In exceptional circumstances concerns about the senior leadership of the school will be raised via alternative routes (eg 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.

1.2 A member of staff has a right to be accompanied by an accredited worker's companion (i.e. Trade Union representative) or a work colleague, at all formal stages of this procedure. They should be informed of this right, be given advance notice of such meetings and given reasonable time to contact a representative. 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 5 working days of the originally proposed date.

Employees may not be represented by a person who may prejudice the fairness of the capability process or who may have a conflict of interests.

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

1.4 Where the employee asserts that the capability proceedings being undertaken is unlawfully discriminatory or is motivated by reasons other than addressing poor performance, the employee can raise a complaint. If the employee 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 employee raises the complaint only after the capability procedure has finished and it is on substantial new grounds, then it will be necessary for the employee grievance procedure to be completed in full. The submission of a complaint by an employee 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 employee grievance procedure.

1.5 Seven working days' notice will be given of all formal meetings in this process (formal capability meeting, para 2, formal review meeting, para 4, decision meeting, para 5 and appeals, para 8).

This notice will be in writing and the employee will be given:

- The time, date and venue for the meeting
- The reason for the meeting, including an outline of concerns about performance and possible consequences as well as a summary of any action taken to date
- Copies of any documentation to be relied on at the meeting
- Notification of the right to be represented by a work colleague or trade union representative
- The opportunity to submit any relevant documents that he/she intends to rely on (these must be provided 3 working days prior to the formal meeting)

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 5 working days of the originally proposed date.

2. Formal capability meeting

2.1 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 head teacher capability meetings) or head teacher (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.

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 should be issued. This is likely to occur if:
 - the education or welfare of pupils is in jeopardy
 - 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.

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.

2.2 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 but in straightforward cases could be up to ten 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 or welfare of pupils is in jeopardy or there are significant leadership weaknesses, the period for improvement will be up to four weeks.
- warn the teacher formally that failure to improve within the set period could lead to dismissal.

2.3 Notes will be taken of formal meetings and a copy sent to the member of staff.

2.4 Where a warning is issued, the teacher will be informed in writing within 7 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.

2.5 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. (Further details about the appeals process may be found in paragraph 8)

3. Monitoring and review period following a formal capability meeting

3.1 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:

3.2 Where the employee has been issued with a first written warning they will be invited to a formal review meeting. (see paragraph 4)

3.3 Where the employee has been issued with a final written warning they will be invited to a decision meeting (see paragraph 5)

4. Formal review meeting

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

4.2 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.

4.3 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.

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

4.5 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 including the timescale for the review period which will be no longer than 4 weeks.

4.6 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

5. Decision meeting

5.1 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.

5.2 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.

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

5.4 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.

5.5 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

5.6 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)

5.7 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 5.1 – 5.6 should be followed at the decision meeting.

6. Decision to dismiss

Either: The power to dismiss staff in this school rests with the Governing Body.
(Foundation and Voluntary Aided Schools)

Or: The power to decide that members of staff should no longer work at this school rests with the relevant panel/committee of the Governing Body.
(Community and Voluntary Controlled Schools)

7. Dismissal

Once the decision to dismiss has been taken, the Governing Body will dismiss the teacher with notice.

8. Appeal

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

- a) the proper procedure was not followed in which case the appeal panel will consider whether this materially affected the decision
- b) the decision reached was unreasonable given the information provided
- c) new evidence, which was not reasonably available at the time, has become available

If a teacher wishes to appeal they should do so by 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 5 working days of the originally proposed date.

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

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

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.

9. 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.

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.