



Capability policy

Introduction

This policy fulfils the Governing Body's obligation to establish capability procedures for all teaching staff (including the Headteacher) employed in schools or unattached teachers employed by the local authority. The procedure reflects the revised capability arrangements in force from September 2012, as set out in the School Teachers Appraisal (England) Regulations 2012 and reflects the ACAS Code of Practice on Grievance & Disciplinary procedure.

The procedure applies to all teaching members of staff employed by the school, except for Newly Qualified Teachers serving a statutory induction period, (except in cases where there is a likelihood that the teacher will not satisfactorily complete induction and the underperformance is so serious that it could result in the NQT being dismissed before the end of the induction period. In such cases the capability and induction processes will proceed concurrently).

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1 Principles and purpose

Many minor performance issues can, and should, be dealt with through open and constructive dialogue between manager and employee. If however, an individual's performance may not reach an acceptable level or because of personal circumstances, it may suddenly decrease. In these circumstances, the manager should discuss the possible reasons for the deterioration with the individual and offer support where possible.

- 1.1 The purpose of the procedure is to ensure that, where concerns about an individual's work performance, are identified, all the circumstances are properly investigated and support and development given to ensure that the teacher has the skills to carry out their role effectively and that sufficient time is given to assess and review their progress before any formal sanctions are invoked. The overriding aim of the procedure is to encourage teachers to achieve and maintain acceptable standards of performance.
- 1.2 Teachers must be informed of their right to be accompanied at any formal meetings arranged under the procedure and of their right to appeal against any formal decision made.
- 1.3 In the case of capability issues against the Headteacher, the Governing Body may appoint a governor to take the role of manager, to progress the case against the Headteacher and to present it at a Hearing. The Hearing and any appeal will be heard by a panel of governors.
- 1.4 This procedure is not applicable to:
 - concerns about poor attendance as a result of ill-health absence;
 - concerns about an individual's conduct, rather than competence;
 - instances of very serious error, omission or negligence which the Governing Body and/or local authority could not risk occurring again.

In these circumstances the absence management or disciplinary procedures will apply as appropriate.
- 1.5 The capability procedure will be applied fairly and consistently to all teachers regardless of gender, race, colour, national or ethnic origin, nationality, marital/civil partnership status, disability, sexual orientation, gender reassignment, age, religion, pregnancy/maternity, trade union membership/non membership, duration of contract (permanent/temporary/fixed-term status) or number of hours worked.
- 1.6 Any documents relating to capability issues must be stored confidentially for a period of 6 years and then destroyed. The emphasis should be on protecting the employer and the employee. All parties involved in a capability matter are obliged to maintain confidentiality.
- 1.7 The procedure consists of the following stages:
 - a. Preliminary Stage
 - b. Formal Capability Stage 1
 - c. Stage 1 Review Meeting
 - d. Formal Capability Stage 2
 - e. Formal Capability Hearing



2 Preliminary stage

Please note that this stage of the Teachers Capabilities Procedure is covered within the Schools Appraisal Procedure, Section 9 – Teachers Experiencing Difficulties.

- 2.1 Headteachers/managers must ensure that employees are aware of the standards of work required of them and how their performance will be assessed. Clear performance standards must be set and monitored as part of the appropriate performance management scheme for reviewing employee performance and development and as part of normal supervision meetings. Headteachers/managers are required to provide appropriate supervision, training and support to assist employees to reach the required standard of performance. Initially any problems should be discussed with the employee on an informal basis. However, if an employee seriously or consistently fails to meet the required standard then this must be discussed in the normal supervision meetings and as part of any formal review of the employee's performance. Headteachers/managers must set robust and achievable targets, with agreed outcomes for the employee to meet and specify a time period within which they must be met, not normally exceeding 8 weeks. The targets must be reasonable and measurable. A record of these discussions must be kept and a copy provided to the employee concerned.
- 2.2 At this stage, headteachers/managers should also attempt to explore if there are any underlying reasons for the employee's poor performance. For example the employee may require training or could be medically unfit. There could be issues, which have arisen concerning the employee's personal life, which are adversely affecting his or her performance at work. Headteachers/managers are expected to discuss problems in a constructive and sympathetic way, and to identify appropriate action to remedy the situation.
- 2.3 Only when attempts to resolve problems through any informal performance management meetings, supervisory meetings and discussions have been unsuccessful should the matter be progressed to the formal stage of the procedure. No formal capability meeting should be held until the teacher has been monitored and supported through a transition stage under section 9 of the appraisal procedure.

3 Formal Capability Procedure: Stage 1 meeting

Preparing for the meeting

- 3.1 Where the support previously provided at the performance appraisal transition stage or through an appropriate alternative process of review and support has failed to bring about a sufficient improvement, the formal capability procedure will be applied. The Headteacher (or another senior manager, as appropriate) will arrange a stage 1 meeting under the capability procedure, giving the teacher at least 5 working days' notice in writing. Where possible, the teacher should be given a say in the date and time of the meeting. If either the teacher or his/her trade union rep/work colleague cannot attend on the date or at the time notified, an alternative date and time should be negotiated with all parties involved as long as this is reasonable and is ideally not more than five working days after the original date.
- 3.2 The written notice should give the following information to the employee:
 - the evidence of unsatisfactory performance (i.e. which of the standards expected of teachers are not being met);
 - sufficient information regarding the concerns about performance;

- a copy of the Appraisal Transition Stage Action Plan (where applicable) detailing the support that has been provided;
- the date, time and location of the meeting, and the names of those who will be present;
- the possible consequences for the employee in terms of the capability procedure;
- copies of any written evidence which the manager intends to refer to at the meeting;
- confirmation of the right to be accompanied by a trade union representative or work colleague of their choice and to state his/her case and present evidence at the meeting;
- a copy of the Teachers Capability Procedure.

Conducting the meeting

3.3 The meeting should be conducted in a quiet, uninterrupted location and a note-taker should be available. In order to establish whether or not action under the capability procedure is warranted, the Headteacher, Chair of Governors (for Headteacher capability meetings) or senior manager will conduct the meeting and will use it to:

- identify which of the teaching standards are not being met and explore the evidence provided;
- give clear guidance on the improved standard of performance needed to enable the teacher to be removed from the capability procedure;
- set out the timetable for improvement and explain how performance will be monitored and reviewed (the length of the review period will depend upon the circumstances of the case but it should be reasonable, proportionate and sufficient to enable improvement to take place, it should however, not be excessively long);
- warn the teacher concerned that failure to improve within the timeframe could lead to dismissal;
- provide the teacher and/or his/her representative with the opportunity to state their case and respond to the concerns raised including providing suggestions for specific or additional support;
- establish any special circumstances which should be taken into account during decision-making.

The meeting should be adjourned if new facts come to light which require further investigation or if a third party needs to be consulted.

After the meeting

3.4 After the meeting the Headteacher or senior manager (or panel of governors if the meeting concerns the capability of a Headteacher) will consider the evidence and discussion which took place and decide on an appropriate course of action. Where new information or the employee's explanation suggests that the matter is not as serious as it first seemed, the Headteacher or senior manager or governors panel may decide not to proceed with the capability procedure. In this instance, performance will continue to be monitored in accordance with normal management procedures.

3.5 Where a formal warning is deemed appropriate, the Headteacher or senior manager or panel of governors will proceed to consider the level of warning, as follows:

a. First written warning

Where concerns about performance are confirmed, the usual response will be to give the employee a first written warning. Continued unsatisfactory performance during the period the warning is 'live' (normally 12 months) would usually result in a final written warning being issued. A first written warning will invoke an initial assessment period of 6 weeks.

b. Final written warning

In cases of particularly serious concern, where the lack of capability is so severe that an



immediate improvement must be secured to ensure the safety and wellbeing of others, or where a teacher's classroom control is so poor that no order can be established to enable teaching to take place, it is possible to move directly to a final written warning. HR advice will be sought when such an outcome is being considered. A further period of monitoring and support will usually be equivalent to 6 weeks; however this may be shortened where there are serious concerns. A final written warning will usually remain 'live' for 12 months.

- 3.6 The employee should be notified of the decision, in writing, within 5 working days of the meeting and also be sent a copy of the notes of the meeting. The letter must clearly outline:
- what, if any, formal action is being taken, including an explanation of the decision;
 - what improvements in performance are required and the consequences of a failure to improve;
 - how long the warning (if any) will remain current;
 - the right to appeal against any formal sanction by confirming this in writing to the Clerk to the Governing Body within 5 working days of receipt of the letter and outlining the grounds for appeal. (See Section 8 for details of the Appeal Process.)

In addition, the employee must be given an improvement plan for the assessment period, either at the same time as the letter, or shortly afterwards. This improvement plan will set out:

- the improvement required and the timescale for achieving this (including targets where appropriate);
- a review date;
- details of any support, which should be commensurate with concerns, including any training or coaching that the employer will provide, how the support will be provided and the timescale for each strand of support;
- how performance will be monitored over the review period.

4 Formal stage 1 review

A review meeting will be held to decide whether or not performance has reached the appropriate standard (the teacher will be entitled to be accompanied at this meeting by a trade union rep or work colleague of their choice). If it has, the employee should be informed that the capability procedure is ending. A meeting should be convened at which the employee will be formally told this. Any ongoing arrangements for monitoring and support will be confirmed.

- 4.1 If satisfactory performance has not been reached or maintained, or if performance has decreased further, the employee will be invited to attend a Stage 2 meeting.

5 Formal Capability Procedure: Stage 2

At least 5 working days notice will be given of the meeting and the teacher must be advised of their right to be accompanied. The contents of the invitation letter, documentation provided and the conduct of the meeting will be the same as the process at the stage 1 meeting. In the case of more serious concerns about performance emerging since Stage 1, evidence of the matters causing such concern should also be included in the documentation circulated prior to the meeting.

- 5.1 In other cases:
- If limited improvement is deemed to have taken place but there is confidence that further improvement is likely, the period of monitoring and review may be extended, or further action may be taken if either:
 - satisfactory performance has still not been reached or maintained, or



- at any point during the review period the standard of performance decreases further.
- 5.2 If, as a result of a final written warning being issued at Stage 1, dismissal is a possible outcome, the matter should instead be referred directly to the Capability Hearing.
- 5.3 If the person conducting the meeting deems that further action is required as a result of insufficient progress being made, this will usually take the form of a final written warning which should mirror any previous warnings that have been issued.
- 5.4 **Final written warning**
If the Headteacher/manager deems that further action under the capability procedure is required as a result of insufficient progress being made, this will usually take the form of a final written warning. The length of the next review period will depend on how long the employee has already been subject to the procedure. It will usually be equivalent to 6 weeks, however this may be shortened where there are serious concerns. It is recognised that it isn't in the interests of either the school, the local authority or the individual for these matters to take longer than necessary and it is expected that the process would be concluded after a maximum of two terms from entry. A final written warning will usually remain 'live' for 12 months.
- 5.5 The outcome of the hearing should be notified to the employee in writing in accordance with the procedure detailed under stage 1, including details of the right of appeal. The support plan, revised as appropriate, should also be reissued at the same time, or shortly after.

6 Formal Capability Procedure: Capability hearing

Delegated powers

References within this section to the Governors' Disciplinary/Capability Panel may be read as references to the Headteacher in schools where the governing body has formally delegated certain powers to dismiss. However, where the Headteacher has been responsible for the capability review process up until this point, a consideration of dismissal will be referred to a panel of governors to ensure impartiality.

Preparing for the meeting

- 6.1 Where performance has still not improved to a satisfactory standard, following a Stage 1 and Stage 2 meeting (or following a Stage 1 meeting where the shortened procedure has been implemented and where dismissal is a possible outcome of a further formal meeting to consider the employee's performance, the matter should be referred to the Governors' Disciplinary/Capability Panel who will convene a formal hearing to consider the case. In hearings for unattached teachers, the local authority will nominate a senior manager to chair the panel.
- 6.2 The Chair of the Hearing Panel should write to the employee giving him/her the following information in writing at least 10 working days' in advance:
- information about the nature of unsatisfactory performance, and details of the process and support to date;
 - the date, time and location of the meeting, and the names of those who will be present;
 - the possible consequences for the employee in terms of the capability procedure, including the fact that dismissal could be an outcome;
 - copies of any relevant reports, written evidence or statements;



- names of witnesses to be called;
- confirmation of the right to be accompanied by a trade union representative or work colleague and to state his/her case and present evidence at the meeting (employees will be required to provide copies of any written evidence he/she intends to present and names of any witnesses at least 5 working days before the hearing);
- a copy of the capability procedure (where this has not already been given);
- a copy of the procedure for the hearing.

An officer of the authority will attend any proceedings in community or voluntary controlled schools where a possible outcome could be dismissal (and, if accorded advisory rights, in foundation and voluntary aided schools). HR advice will be called upon in all cases.

Conducting the meeting

- 6.3 The meeting should be conducted in a quiet, uninterrupted location and a note-taker should be available. The order of proceedings which will usually be followed at the hearing can be found at Appendix 1.
- 6.4 The meeting may be adjourned if, in the view of the Chair of the Panel, the meeting cannot continue until new evidence is investigated.

After the meeting

- 6.5 After the meeting, the Governors' Disciplinary/Capability Panel will consider all the evidence presented to them and, on the balance of probabilities, whether the concerns about the individual's performance are justified and, if so, what appropriate outcome should be reached and decide whether or not there has been sufficient improvement to performance. If there has, the capability process should end. If sufficient improvement hasn't been achieved action should be taken which may include dismissal.
- 6.6 In reaching the decision on appropriate action, consideration should be given to:
- whether there is evidence that the concerns are justified;
 - the degree of underperformance, the employee's capability record (including current warnings) and the opportunities to improve already presented to the individual;
 - whether the support to be made available to the individual was delivered, and whether it was appropriate to the circumstances;
 - whether standards of other employees are acceptable, and that this employee is not being unfairly singled out;
 - any special circumstances which might make it appropriate to adjust the severity of the formal action;
 - the likely impact on the school (and particularly on pupils) of a decision to allow the individual to remain in post;
 - whether the proposed course of action is reasonable in view of all the circumstances.
- 6.7 Where dismissal is being considered, the panel should first discount options which could be put forward as an alternative to dismissal, such as demotion or transfer to another post which more closely matches the employee's capabilities.
- 6.8 The employee should be notified of the decision as soon as possible, and in any event this should be confirmed in writing within 5 working days, including:
- whether the panel has found that there is a case to answer;
 - what, if any, formal action is being taken, including an explanation of the decision;



- where the outcome does not result in a decision to dismiss but where there are still concerns, what actions, improvements and learner outcomes are needed to obviate the need for a further Stage 3 meeting;
- how long the warning (if any) will remain current;
- the right to appeal against any formal action, by writing to the Clerk to the Governing Body within 5 working days of receipt of the letter, outlining the grounds for appeal.

6.9 A decision to dismiss must be with notice, although in most cases the employee will not be expected to attend work. In community schools and voluntary controlled schools, any decision to dismiss and the reasons for it, must be confirmed in writing to the local authority (via the Schools Personnel Team), as it is the local authority which is responsible for issuing a notice of termination of contract within 14 days of such a notification

7 Ill health absence

The sickness absence of an employee during the procedure will not result in any delay to review meetings or hearings beyond what is reasonable. One attempt to reschedule the hearing will be made where sickness absence has intervened and it should be explained to the employee that if she/he is still unable to attend on the rescheduled date that the meeting will proceed in their absence. The employee will be offered the alternative option of making a written submission.

7.1 Absence which appears to have been triggered as a result of the instigation of the formal procedure, especially if it is likely to be long term, will be referred to Occupational Health for advice on the prognosis and the likelihood that the employee will be able to return to work

8 Appeals procedure

Right of appeal

There shall be a right of appeal against any decision to impose a formal warning or other formal sanction as a result of action taken by the manager, Headteacher or by governors. In exercising this right, an employee must confirm the grounds on which he/she is making the appeal. The process of assessing and reviewing capability in accordance with the formal procedure will continue pending the outcome of any appeal i.e the review process will continue whilst the appeal is heard.

8.1 Appeals against warnings may be heard by the Headteacher or one or more governors, in accordance with the scheme of delegation in place and bearing in mind the need to secure impartiality at every stage of the process. The Headteacher will not hear an appeal against his/her own decision. Appeals against dismissal will always be heard by the Governors' Appeals Panel. References to the Governors' Appeals Panel hereafter may therefore be interpreted accordingly, depending on the nature of the appeal.

Preparing for the meeting

8.2 The appeal shall be heard by a panel of governors who have had no previous involvement in the case. It should be arranged to take place as soon as practicable, allowing the employee 10 working days' notice of the date. The progress of the capability procedure will continue pending the outcome of any appeal.



- 8.3 Any additional documents to be used at the hearing (e.g. new statements or evidence) or details of any third parties to be called should be exchanged by the parties no later than 2 working days before the hearing to allow for preparation time.

Conducting the meeting

- 8.4 The purpose of the meeting is for the Governors' Appeals Panel to consider the grounds for appeal and to review the fairness of the outcome of the original meeting. New evidence may be considered at the appeals stage, but no additional grounds for action against the employee may be introduced. The usual format for conducting appeal hearings is included as Appendix 1.

After the meeting

- 8.5 Within 5 working days of the appeal hearing, the employee should be notified of the outcome and any actions which have been determined. There is no further right of appeal.
- 8.6 In community and voluntary controlled schools, the local authority is responsible for confirming the termination of contract with the employee. The local authority must, therefore, be kept informed about the outcomes of appeals against dismissal.
- 8.7 If a dismissed employee is reinstated on appeal, his/her salary will be back-paid to the date of the original termination, minus any monies already paid in respect of notice.

9 Considerations and specific circumstances

Scheduling formal meetings

- 9.1 Meetings should be held during the employee's usual working day. Other arrangements can be made, by mutual agreement. School closure periods will generally result in a suspension of the procedure.
- 9.2 The employee is expected to make every effort to attend at the required time. If this presents serious difficulties, or the employee's representative is unable to attend, an alternative date may be suggested by the employee. This will not be unreasonably declined, provided it does not result in an unacceptable delay (usually a delay of no more than 5 working days will be acceptable). Any subsequent postponements, or a failure of the employee to turn up to a scheduled meeting on more than one occasion, is likely to result in the formal capability meeting proceeding and being decided on the basis of written evidence.

Formal action against Trade Union representatives

- 9.3 Where a formal investigation or capability meeting is being arranged in relation to a trade union representative employed by the school, the case must first be discussed with a full-time official from the appropriate union (after obtaining the employee's agreement).

Suspension

- 9.4 There may be exceptional instances where suspension is necessary while investigations into concerns about competence are carried out. Suspension is not an assumption of wrongdoing and is not considered a formal sanction. It is most likely to be deemed appropriate in cases where incompetence could put other parties or property at risk. The provisions relating to suspension (including consideration of alternatives to suspension) contained within the disciplinary procedure will apply in such circumstances.



Ill-health absence

- 9.5 The ill-health absence of an employee during the procedure will not result in any delay to review meetings or hearings, beyond what is reasonable. One attempt to reschedule the hearing will be made where ill-health absence intervenes and it should be explained to the employee that if he/she is still unable to attend on the rescheduled date that the meeting will proceed in his/her absence. The employee will be offered the option of making a written submission and/or asking their representative to attend the rescheduled meeting to make oral submissions and to question witnesses on their behalf before a final decision is reached.
- 9.6 Absence which appears to have been triggered by the instigation of the capability procedure, particularly if it is likely to be long-term, will usually be referred immediately to Occupational Health to obtain advice on the prognosis and the likelihood that the employee will be able to return to employment.

Procedure to be used where there is no delegation to the Governing Body

- 9.7 In circumstances where there is no Governing Body or where delegation has been removed, the following variations to the procedure shall apply.
- 9.8 Where there is no Headteacher, the role of the Headteacher or Governors Panel in the procedure will be taken by the Director of the Children and Young People’s Service or an officer nominated by him/her.
- 9.9 Appeals will be heard by the Director of the Children and Young People’s Service or an officer nominated by him/her. The officer will have no previous involvement in the case and will, where practicable, be senior to the officer who first heard the matter.

Grievances

- 9.10 Grievances can run concurrently with any formal procedure which includes an appeals mechanism, but with regard to process matters rather than the substantive matters which can be addressed by rights of appeal. This should not cause delay to the formal procedure.

Record keeping

- 9.11 A record of documentation relating to capability hearings and appeals will be retained on file, although live warnings will be disregarded after the appropriate period.
- 9.12 Records will be treated as confidential and kept in accordance with the principles of the Data Protection Act 1998.

Referrals to professional bodies

- 9.13 The school adheres to all procedures in relation to capability referrals to the Teaching Agency.

10 Review

This policy will be reviewed by the Standards committee every 3 years or earlier if required.

Date of policy: FEBRUARY 2018

Policy ratified: (Signature) (Date)

Review due: FEBRUARY 2021

(This policy is currently under review by the LA.)



Capability Hearing order of proceedings

The conduct of the hearing will be the responsibility of the Chair which can be either the Headteacher where they have full delegation or a member of the panel of governors.

The order of proceedings can be adjusted to suit the circumstances if necessary, in consultation with the parties, providing the overall principles, aimed at securing a fair hearing, are adhered to.

- a. The Headteacher/chair introduces all those present and outlines purpose of hearing and any procedural arrangements.
- b. The nominated manager/school representative (supported as necessary by his/her HR Adviser, if any) presents the case against the employee.
- c. The employee and/or representative) have the opportunity to question the nominated manager/school representative.
- d. The Headteacher/panel has the opportunity to question the nominated manager/school representative.
- e. The nominated manager/school representative may call witnesses.
- f. The employee (and/or representative) has the opportunity to question each witness.
- g. The Headteacher/panel may question each witness.
- h. The employee (and/or representative) presents his/her case.
- i. The nominated manager/school representative has the opportunity to question the employee.
- j. The Headteacher/panel has the opportunity to question the employee.
- k. The employee (and/or representative) may call witnesses.
- l. The nominated manager/school representative has the opportunity to question each witness.
- m. The Headteacher/panel has the opportunity to question each witness.
- n. The nominated manager/school representative has the opportunity to summarise the case
- o. The employee (and/or representative) is invited to make any closing remarks.
- p. All persons withdraw, other than the Headteacher/panel, the note-taker and any professional advisers present, while the Headteacher/panel deliberates.
- q. The parties may be either released or recalled to clarify any points of uncertainty.
- r. Where the Headteacher/panel cannot reach a decision before the parties are released, the parties will agree how the decision will be communicated. In any event, formal notification of the outcome will be sent in writing within 5 working days of the hearing.