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## **Capability Policy for Teachers**

Author – Mrs G Theobald and Mrs J Lowe

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Reviewed by –

# Capability Procedure

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## **1. Context**

This policy and procedure applies to teachers or Heads of School or the CEO about whose performance there are serious concerns that the Appraisal process has been unable to address.

This procedure relates to individuals whose performance at any time during the previous 12 months has not met the required standards.

This procedure will be followed if concerns have been raised with the teacher and the required improvements have not been made in line with the Trust's Appraisal policy. The teacher will be informed in writing that they are now subject to the Capability Procedure. They will also be informed that any reference request will contain the fact that they are subject to a Capability procedure in line with the Appraisal regulations.

During this procedure emphasis is placed upon the forms of support and assistance to improve the performance of the individual within the stated timescales.

In line with the Appraisal regulations a reference for any teacher (including the Head of School and the EHP) who has been subject to capability procedures in the previous two years will include details of the duration of capability and an explanation of the outcome.

## **2. Entry into Capability Procedure**

A teacher who has had concerns about their performance raised as part of the Appraisal process will be subject to a review of their performance. If the appraiser is not satisfied with progress the Capability procedure will commence. The teacher will be notified in writing that the Capability procedure has commenced and invited to a formal meeting as outlined below.

At least five working days' notice will be given of the formal capability meeting. 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 the formal capability meeting. It will also contain

- i) copies of any written evidence;
- ii) a copy of this Capability procedure
- iii) the details of the time and place of the meeting;
- iv) and will advise the teacher of their right to be accompanied by a companion or trade union representative

## **3. Formal capability meeting (Stage One)**

This meeting is intended to establish the facts and determine if the capability procedure should proceed. In the case of the CEO, EHP and Head of School, it will be conducted by three nominated Trustees. In the case of the Deputy Head of School it will be conducted by the CEO. In the case of other teachers, it will be conducted by an SLT member not previously involved in the process. The meeting allows the Senior Leader/teacher, accompanied by a companion or trade union representative if they wish, 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.

Following the presentation and discussion of the facts and evidence from management and the teacher, the Chair of the nominated group 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 Chair of the nominated group may also adjourn the meeting if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

In all other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the Chair of the nominated group will:

- identify the professional shortcomings, *for example which of the standards expected of teachers are not being met*; the lack of progress towards meeting appraisal objectives
- 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 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 four weeks with a maximum period for the most complex cases of ten weeks
- formally warn the teacher that failure to improve within the set period could lead to dismissal. In very serious cases, where the education of pupils is jeopardised this warning could be a final written warning.
- advise of the teacher's right to appeal against the warning. An appeal will not suspend the procedure unless the appeal decision leads to the matter being reconsidered.
- advise the teacher that this constitutes a formal written warning

The teacher will be informed in writing, within 10 working days, of the outcome and 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.

### **3a. Monitoring and review period following a formal capability meeting**

A performance monitoring and review period will follow the formal capability meeting. The length of the monitoring period will be determined by the complexity of the individual case but sufficient time will be specified to allow the expected improvements to be achieved. The minimum period will be four weeks and the maximum ten weeks. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting to be held at the end of the monitoring and review period, unless they have already completed a review period and been issued with a final written warning, in which case they will be invited to a decision meeting (see 5).

### **4. Formal review meeting (Stage two)**

As with formal capability meetings, at least five 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 or trade union representative or official.

If the Chair conducting the meeting is satisfied that the teacher has made sufficient improvement, the Capability procedure will cease and the Appraisal process will re-start. 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.

A written outcome including the key points of the meeting will be sent to the member of staff. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing and will include

- that failure to achieve an acceptable standard of performance, may result in dismissal
- information about the handling of the further monitoring and review period
- the length of the monitoring and review period. The minimum period will be four weeks and the maximum ten weeks.
- the right to appeal against the final written warning. An appeal will not suspend the procedure unless the appeal decision leads to the matter being reconsidered.

Following the conclusion of this period of monitoring and review the teacher will be invited to a decision meeting.

## **5. Decision meeting (Stage three)**

As with formal capability meetings and formal review meetings, at least five 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.

The panel will consist of a combination of the CEO, EHP, Head of School or members of the Trust as determined by school policy. Under normal circumstances the member of the Leadership team who has held the previous formal capability meetings will present the management case for dismissal.

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. It is recommended that after a period of satisfactory service (not exceeding one year) with the teacher meeting the required level of performance that references to that period of underperformance are disregarded from their record in line with school policy. However, legislation requires any references requested include details of any capability procedures for two years. If performance becomes unsatisfactory again during this period, the teacher will move back into the formal capability process. The stage at which they enter will be determined by the school but may be the stage at which it was previously concluded.

If performance remains unsatisfactory, a decision or recommendation to the Trustees will be made that the teacher should be dismissed or requested to cease working at the school. The Governing Body will also be advised.

The teacher will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

## **6. Dismissal**

In addition to the Trustees, the power to dismiss staff in a school rests with the CEO, the EHP and the Head of School. Once the decision to dismiss has been taken, the CEO, the EHP or the Head of School will dismiss the teacher with notice.

## **7. Appeal**

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 against the decision within five days of 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.

The appeal will be dealt with impartially by Trustees 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.

## **7. 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. In the majority of cases where the grievance and capability cases are related both issues will be dealt with concurrently.

## **8. 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 and will be 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 procedure. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

## Equality Impact Assessments

<p>Names and titles of people involved with this assessment</p> <p>Title of Policy – <b>Capability Policy for Teachers</b></p>	<p><b>Wendy Searle - Acting SENCO</b> <b>Dave Brown – Deputy Headteacher</b></p>
<p>Impact assessment carried out with regard to identified characteristics</p>	<p>Pregnancy &amp; Maternity <input checked="" type="checkbox"/></p> <p>Race <input checked="" type="checkbox"/></p> <p>Disability <input checked="" type="checkbox"/></p> <p>Sex <input checked="" type="checkbox"/></p> <p>Gender reassignment <input checked="" type="checkbox"/></p> <p>Age <input checked="" type="checkbox"/></p> <p>Religion &amp; belief <input checked="" type="checkbox"/></p> <p>Marriage and Civil Partnership <input checked="" type="checkbox"/></p> <p>Sexual orientation <input checked="" type="checkbox"/></p>
<p>Summary of any issues/proposed changes</p>	<p><b>None required</b></p>
<p>Date</p>	<p><b>30.5.17</b></p>
<p>Date of review</p> <p>Date of next review</p>	<p><b>June 2017</b></p> <p><b>June 2018</b></p>