

TITLE: Teacher Capability Policy & Procedure
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Tithe Barn School – Teacher Capability Policy & Procedure

1. Context

This Policy & Procedure applies only to teachers or Headteachers about whose performance there are serious concerns that the Appraisal process has been unable to address.

This Procedure relates to teachers whose performance at any time during the previous 12 months has not met the required standards; support staff are subject to the Capability Policy and Procedures of the Local Authority.

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 School's 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 Regulations a reference for any teacher (including the Headteacher) 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 the 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:-

- copies of any written evidence;
- a copy of this Capability Procedure;
- the details of the time and place of the meeting;
- and will advise the teacher of their right to be accompanied by a work colleague or Trade Union representative.

3. Formal Capability Meeting (Stage One)

This meeting is intended to establish the facts.

In the case of the Headteacher it will be conducted by the Chair of Governors. In the case of other teachers it will be conducted by the Headteacher or other appropriate member(s) of the Leadership Team.

The meeting allows the 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 Headteacher or appropriate member(s) of the Leadership Team 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 Headteacher or appropriate member(s) of the Leadership Team conducting the meeting 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 Headteacher or appropriate member(s) of the Leadership Team conducting the meeting will:-

- identify the professional shortcomings, eg which of the standards expected of teachers are not being met; the lack of progress towards meeting appraisal objectives; etc
- 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.

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

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 were issued with a final written warning, in which case they will be invited to a Decision Meeting (see 5 below).

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 work colleague or Trade Union official.

If the Headteacher or appropriate member(s) of the Leadership Team 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.

As before, notes will be taken of formal meetings and a copy 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 work colleague, a Trade Union official, or a Trade Union representative who has been certified by their Union as being competent.

The panel will consist of the Headteacher and/or members of the Governing Body who have the power to dismiss / determination to dismiss 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 expunged from their record. 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 Governing Body, will be made that the teacher should be dismissed or required to cease working at the School.¹

Before the decision to dismiss is made, the School will discuss the matter with the Local Authority (*N.B. this is not a legal requirement but schools may find it helpful*).

The dismissal process will follow the School Policy for dismissal hearings.

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. Decision to Dismiss

The power to decide that members of staff should no longer work at this School has been delegated to the Staffing Committee of the Governing Body.

¹ In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the Governing Body is the employer but the power to dismiss can be delegated to the Headteacher, to one or more Governors, or to one or more Governors acting with the Headteacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery Schools, the power to determine that the member of staff should no longer work at the School can be delegated in the same way as above but it is the Local Authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the School).

6a. Dismissal

Once the Staffing Committee of the Governing Body has decided that the teacher should no longer work at the School, it will notify the Local Authority of its decision and the reasons for it. Where teachers work solely at this School, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the Local Authority must require them to cease to work at this School.

6b. 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 working 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 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.

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 Procedures. In some cases, it may be appropriate for monitoring and/or formal Procedures to continue during a period of sickness absence.

Appendix 1 - General Principles Underlying This Procedure

ACAS Code of Practice on Disciplinary and Grievance Procedures

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

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 Headteacher.

Delegation

Normal rules apply in respect of the delegation of functions by Governing Bodies, Headteachers and Local Authorities.