

Schools Capability Procedure

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INTRODUCTION

The purpose of this Capability Procedure is to ensure that pupils and students receive the high-quality educational provision they deserve. This requires a well-managed educational environment where employees are equipped to meet students' needs effectively. The procedure establishes a fair and consistent process to address performance where improvements are necessary.

This procedure ensures that employees falling below expected performance standards receive a clear guidance and expectations, and the necessary support to achieve them. It is important that every effort is made to follow a fair procedure at each stage in the capability process and this document sets out guidelines to ensure that this is the case.

Developed to assist governing bodies, head teachers, and managers, this procedure provides a structured approach to managing staff performance within schools.

1 SCOPE

Once adopted by the Governing Body, this Schools Capability Procedure applies to:

- School employees employed on Harrow Terms and Conditions of Employment.
- Teachers and head teachers on School Teacher Terms and Conditions of Employment.

2 ROLES AND RESPONSIBILITIES

2.1 The Governing Body

The Governing body will have ultimate responsibility for:

- the regulation of the capability of employees in the school
- adopting an appropriate Capability Procedure

- deciding whether to collaborate with one or more other Governing Bodies in their arrangements for dismissal and delegate to the head teacher the authority to manage this process, unless the capability concerns relate to the head teacher, in which case the Governing Body will manage the process.

The Governing Body will set up three different committees:

- **A Warning Appeal Committee** – used when the employee appeals against any decision other than dismissal. This Committee should be comprised of at least two Governors.
- **A Capability Hearing (Staff Dismissal Committee)** – set up to hear the final stage of the Capability Procedure in cases where the head teacher has exhausted Stage One and Stage Two of the Procedure, or in cases where the headteacher is the subject of the capability concerns. This Committee should be comprised of at least two Governors with a HR adviser present.
- **A Capability Hearing (Staff Dismissal Appeals Committee)** – set up to hear appeals against decisions to dismiss. This committee should comprise of three Governors and an HR Adviser.
- Each school needs to determine the composition of each committee, however no member involved in a staff dismissal committee should take part in the staff dismissal appeals committee.
- The Governing Body will also notify the Director Education or the Diocesan Director for Voluntary Aided Schools of any Capability meeting which could lead to dismissal and seek advice from HR about notification to the Secretary of State whenever a teacher is dismissed on the grounds of capability.
- The Council will write to the Chair of the Governing Body if it has a serious concern about the performance of the headteacher and will at the same time send a copy to the head teacher. The head teacher will be given an opportunity to make representations to the Chair of the Governing Body about the report and will have the right to be accompanied (Section 6). The Chair of the Governing Body will write to the Director Education to inform them on the action they intend to take.

2.2 The Headteacher

2.2.1 The headteacher has the authority to give formal written warnings through this procedure. The headteacher will also identify those senior employees in school who have the authority to give formal written warnings.

2.2.2 The headteacher and/or chair of the governing body will:

- Set and maintain clear, realistic and fair standards of performance at work.
- Deal with under performance as and when it arises and inform employees when their work is falling below standard.
- Advise, coach and support staff to ensure the role and the required standard of performance is understood.
- Ensure appropriate induction and CPD is provided.
- Set and monitor standards of performance and provide feedback to assist staff in achieving the required levels of performance.
- Ensure staff understand the procedure and their rights if it were to be applied.
- Take action promptly and ensure that performance problems are addressed within the appropriate timescales.
- Handle performance issues informally and promptly during day-to-day interactions, in supervision sessions, one to one sessions, appraisal etc.
- Investigate problems of work performance that may lead to formal action under the procedure, gathering evidence of the shortfall and of the support provided.
- Keep written records of performance concerns and actions taken at all stages of the procedure.
- Monitor the process when the Capability Procedure is used in relation to any employee and report any action taken under the procedure as and when required by the council.
- Be aware of and refer to the Attendance Management Procedure for health-related poor performance and seek medical advice when appropriate.

2.3 Employees

- Demonstrate the level of commitment required to improve performance, including taking all reasonable steps to maintain/update skills levels.
- Achieve an acceptable and sustained level of performance.
- Seek help with any work problem.
- Understand the Capability Procedure.
- Co-operate with any investigation into capability, and any further action that may result from such an investigation.
- Attend all relevant counselling, support or review meetings.

2.4 Human Resources

- To provide advice and guidance to the headteacher and governors in the application of this Procedure.
- Attend formal hearings / appeal hearings in the capacity of an advisor.
- Cross check all correspondences including invite letters and outcome letters.
- Advise on procedural matters and best practice.

3 PRINCIPLES

3.1 The Procedure is founded on the following principles:

- That all employees of the school know what performance standards are expected of them.
- Informal action should always be considered in the first instance during day-to-day interactions, in supervision sessions, one to one sessions, appraisal etc.
- That performance standards are reasonable, realistic and achievable, taking into account available resources, the employee's working hours, job description and contractual terms.
- To actively support and encourage employees to improve unsatisfactory performance, as opposed to imposing formal sanctions wherever possible.

- To provide appropriate development, training and support to assist with the above.
- To ensure it is understood that matters dealt with by way of the Capability Procedure are different from misconduct issues.
- Employees have the right to be represented by a trade union representative or work colleague during the formal procedure.
- To ensure a fair and structured process is applied consistently, that the employee's account is heard, that they are informed of their right to be accompanied, and that any formal steps taken are confirmed in writing, clearly stating a right of appeal.
- To ensure that matters are dealt with as quickly and reasonably as possible.
- Not to discriminate against any individual in the application of this Procedure on the protected characteristics of age, sex, race, disability, gender reassignment, marriage or civil partnership, maternity and pregnancy, religion or belief, sexual orientation, or other grounds protected in law e.g. part time worker status, trade union membership/activities or HIV positive status.
- Employees have the right of appeal against any formal warning issued under this procedure.

4 GRIEVANCES

- 4.1 If there is a grievance that relates to ongoing performance improvement proceedings, the employee can raise this during the capability process and not through the grievance procedure (for example during meetings or appeal stage).
- 4.2 If a grievance is raised during the capability procedure that is unrelated to those proceedings, the grievance procedure will normally run independently in parallel.

5 CONFIDENTIALITY AND RECORD KEEPING

- 5.1 The school will deal with capability matters sensitively and with due respect for the privacy of any individuals involved.
- 5.2 Teams to record a meeting may be used to make a written transcript of a meeting instead of using a notetaker and such a note should be commented on by both parties. Neither employee, nor their representative or witnesses, may make any other personal electronic recordings of any meetings or hearings conducted under this procedure.

6 RIGHT TO REPRESENTATION

- 6.1 An employee has the right to be accompanied by their trade union representative or work colleague at any formal capability meeting. The employee should advise the headteacher/Governing Body of the name and job title of their chosen representative.

7 WHAT COULD CONSTITUTE A CAPABILITY ATTER?

- 7.1 A capability matter arises when standards which apply to all employees are not being satisfactorily met e.g. there are work concerns about an individual who is failing to carry out responsibilities or duties in a satisfactory manner and those professional shortcomings are due to the employee's skills or aptitude.
- 7.2 Capability cases may arise due to lack of professional awareness, inability to cope with what is considered reasonable workloads or being unable to meet identified standards. It may also be an inability to prioritise work, insufficient training or difficulty in adapting to change. In all these cases there must be facts to support these concerns which clearly demonstrate that acceptable standards of performance in carrying out the teacher's role are not being met.

- 7.3 Going through a capability procedure can be very stressful, so it is important that the manager considers the wellbeing and the mental health of their employee throughout the process. The employee should be reminded, in the written invitation to the formal review meeting, of the availability of the Employee Assistance Programme and how they may access such assistance.
- 7.4 If the employee is or becomes disabled, under the definitions of the Equality Act 2010, the manager must consider any reasonable adjustments to support them in their work.

8 TEACHER CAPABILITY

- 8.1 In addition to Section 7, the Department for Education (DfE) has provided 8 Standards for teaching and for personal and professional conduct of teachers as set out in the Toolkit. Failure to meet these standards may result in this capability process being invoked.
- 8.2 At any capability meeting for teachers, or the headteacher, the manager conducting the meetings shall identify the professional shortcomings, for example which of the standards expected of teachers are not being met. Written details shall be provided to the teacher in the form of a Performance Improvement Plan (PIP), see Appendices 2 & 3 in the Toolkit for guidance and pro forma;
- 8.2 When discussing concerns of poor performance managers need to be specific about their concerns and must demonstrate evidence and/or give examples to support their assertions.
- 8.3 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 underperformance that need to be assessed, 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. Written details shall be provided to the teacher in the form of a PIP, see Appendices 2 & 3 in the Toolkit for detailed guidance.

- 8.4 Agree and set out the timetable for improvement in a PIP see Appendices 2 & 3 in the Toolkit and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case. 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.
- 8.5 Explain to the employee that failure to improve within the set period could ultimately lead to dismissal.

9 INFORMAL CAPABILITY

- 9.1 Managers should ensure they have tried to address performance concerns with an employee early on and in a timely manner to avoid the need to pursue formal capability action later. Where managers have tried to manage an employee's performance via supervisions, one to ones, appraisals, clear objectives or other means but this has not resolved the performance issues, then consideration should be given to the informal capability process.
- 9.2 The employee should be invited to a meeting and made aware that there are concerns about their performance, informed of what those concerns are and provided with constructive advice and support to assist in overcoming those concerns.
- 9.3 It should be made clear that the appraisal process has stopped and that the capability process has commenced. A copy of the Capability Procedure shall be given to the employee. Reference must be made to notes of meetings, evidence or lesson observations where concerns have previously been highlighted and the employee should be provided with examples of where their work has not met a satisfactory standard.

- 9.4 All informal discussions and meetings should be on a one-to-one basis between the manager and the employee. The meeting allows the employee to respond to concerns and to make relevant representations.
- 9.5 The employee must be told what is required, how performance will be reviewed, the length of the review period and that the formal procedure will commence if there is no improvement.
- 9.6 A timescale to achieve the standards and targets set should be provided to the employee, which would normally be between 6 and 8 weeks, however where there are serious capability concerns the head teacher / manager will have the discretion to use shorter timescales.
- 9.7 Following the meeting a letter should be sent to the employee to explain the clear outcomes that are required to reach an acceptable standard and the support that will be offered to the employee to improve performance.
- 9.8 At the end of the informal process, a review meeting will take place, and the capability procedure will either cease or a Formal Capability Meeting will be convened.
- 9.9 In some cases where the performance concern(s) is/are so significant it may be acceptable and justified to move straight to the formal process.

10 Stage 1 - FORMAL CAPABILITY

The Capability Policy and Procedure provides a mechanism to invoke the formal capability process where there are serious concerns that the informal process has been unable to address or where the education of children is in jeopardy. For further guidance please go to Section 11 in the Capability Toolkit.

- 10.1 Where a decision has been made to convene a stage 1 capability meeting at least five working days' notice in writing will be given of the formal review meeting. The notice shall also confirm the employee's right to be accompanied by their trade union representative or work colleague.

- 10.2 The notification will contain sufficient information about the concerns about performance and their possible consequences to enable an employee to prepare to answer the case at a formal capability meeting and will contain copies of any written evidence. All relevant documentation will be provided to the employee no later than 3 working days prior to the Formal Capability meeting.
- 10.3 The employee will be informed that their performance remains unsatisfactory and the purpose of the meeting will be to identify the causes of the continued poor performance and determine what further support can be provided and to obtain the employee's commitment to reaching an effective level of performance.
- 10.4 The head teacher/ manager will decide on an appropriate course of action, which includes setting a further period of time for the employee to reach a satisfactory standard, setting clear targets and objectives to be achieved during the monitoring period, issuing the employee with a first written warning, and advising the employee that their employment may be at risk if their performance does not improve. They can also take any other reasonable action.
- 10.5 Where a further review period is set, the employee will be informed at the end of that period whether their performance is satisfactory. The employee will also be informed of the need to maintain satisfactory performance and that any further cause for concern during the warning period (12 months) may result in the manager progressing to stage 2 of the formal procedure where possible outcome is dismissal.
- 10.6 The head teacher/ manager conducting the meeting will:
- outline the professional shortcomings, for example which of the standards expected of employees are not being met;
 - give clear guidance on the improved standard of performance needed to ensure that the employee 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 employee improve their performance;
- Where a warning is issued, the member of staff will be informed in writing that failure to achieve the objectives set (within the set timescale), will progress to stage 2.
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The length of the review period will normally be between 4 to 6 weeks for support staff; and between 4 to 10 weeks for teaching staff depending on individual circumstances. 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); and
- a monitoring and review period is needed to assess performance. In these circumstances a Performance Improvement Plan (PIP) (see appendices 1 & 2 of the Toolkit) shall be agreed between the employee and their line manager. The purpose of the PIP is to enable formal monitoring, evaluation, guidance and support based on professional dialogue between the employee and line manager to be undertaken during the Monitoring and Review Period.
- afford the employee the opportunity to provide evidence on their performance.
- warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.
- Details of the formal review and any decisions discussed will be confirmed to the employee in writing. The employee will also be informed of their right to appeal any formal warning issued at this meeting.
- Minutes will be taken and a copy sent to the employee and their representative within 5 working days of the meeting.

11 STAGE 1 – FORMAL CAPABILITY REVIEW

- 11.1 A performance monitoring and review period will follow the Stage 1 Capability Meeting that resulted in the issue of a warning. Observations that are to take place as part of the process are to include an agreed number of planned visits.
- 11.2 The purpose is to enable improvement, and adequate time between visits is important. Formal monitoring, evaluation, guidance and support based on professional dialogue between the employee and their line manager will again be agreed and continue during this period. It will be recorded on a PIP (see appendices 1 & 2 in the Toolkit).
- 11.3 If satisfactory performance has been reached to the appropriate standard, 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. Continued unsatisfactory performance during the period the warning is 'live' (12 months) will result in a final written warning being issued.
- 11.4 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.
- 11.5 The purpose of the monitoring and review period will be to enable an assessment to be made against the PIP.
- 11.6 If there is evidence that during the review period the employee's performance will not reach the required standard by the end of the period then it is not necessary to wait until the review period is completed before proceeding to Stage Two

12 STAGE 2 – FORMAL CAPABILITY

Where a decision has been made to convene a stage 2 capability meeting at least five working days' notice in writing will be given of the formal review meeting. The notice shall also confirm the employee's right to be accompanied by their trade union representative or work colleague.

- 12.1 The contents of the invitation letter, documentation provided, and the conduct of the meeting will be the same as before. In the case of more serious concerns about performance emerging evidence of the matters causing such concern should also be included in the documentation circulated prior to the meeting.
- 12.2 The head teacher/ manager will decide on an appropriate course of action, which includes setting a further period of time for the employee to reach a satisfactory standard, setting clear targets and objectives to be achieved during the monitoring period, issuing the employee with a final written warning, and advising the employee that their employment may be at risk if their performance does not improve. They can also take any other reasonable action.
- 12.3 Details of the formal review and any decisions discussed will be confirmed to the employee in writing. The employee will also be informed of their right to appeal any formal warning issued at this meeting.
- 12.4 Minutes will be taken and a copy sent to the employee and their representative within 5 working days of the meeting.

13 STAGE 2 – FORMAL CAPABILITY REVIEW

- 13.1 A performance monitoring and review period will follow the Formal Capability Meeting that resulted in the issue of a final written warning. Observations that are to take place as part of the process are to include an agreed number of planned visits.

- 13.2 The purpose is to enable improvement, and adequate time between visits is important. Formal monitoring, evaluation, guidance and support based on professional dialogue between the employee and their line manager will again be agreed and continue during this period. It will be recorded on a PIP (see appendices 1 & 2 in the Toolkit).
- 13.3 If satisfactory performance has been reached to the appropriate standard, 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. Continued unsatisfactory performance during the period the warning is 'live' (12 months) may result in dismissal.
- 13.4 If satisfactory performance has not been reached or maintained, or if performance has decreased further, the employee will be invited to attend a Stage 3 Formal Capability Hearing.

14 STAGE 3 – FORMAL CAPABILITY HEARING

- 14.1 If the employee is still not achieving the required standard of expected then the manager should progress the case to the formal stage 3 Capability Hearing. The Stage 3 Final Hearing will be conducted by the Staff Dismissal Committee. At least five working days' notice in writing will be given of the hearing. The employee must be advised at this stage that the hearing may lead to a dismissal.
- 14.2 The notice shall also confirm the employee's right to be accompanied by their trade union representative or work colleague. Notification will include copies of evidence that have led to the Hearing.
- 14.3 Any decision to dismiss will be confirmed in writing by the Staff Dismissal Committee within 5 working days of the decision. The employee will be entitled to receive their contractual notice entitlement. The letter should confirm the employee's right to appeal the decision of the panel. This will need to be received in writing within 10 working days of written notification of the decision.

- 14.4 Minutes will be taken and a copy sent to the employee and their representative within 5 working days of the meeting.

15 STAGE 4 - APPEAL

- 15.1 If an employee wishes to appeal against any formal action taken against them under the above stages they must do so in writing within 10 working days of written notification of the decision.
- 15.2 Once an appeal has been received in writing an appeal committee will be convened within 20 working days. An appeal may be raised on one or more of the following grounds:
- **Procedure** – failure to follow procedure has had a material effect on the decision
 - **Decision** – the evidence did not support the conclusion of the hearing officer
 - **Warning** – too severe given the circumstances of the case
 - **Alternative action** – should (or should not) have been considered.
- 15.3 The employee should send their letter of appeal to the person and address confirmed in the in the decision letter within **10 working days of receipt**.
- 15.4 Appeals made against written and final warnings will be heard by the Warning Appeal Committee comprising of 2 governors.
- 15.5 An appeal against a dismissal will be heard by the Staff Dismissal Appeal Committee (comprising 3 Governors) and will be a full hearing where both parties will have an opportunity to present their case. The Committee will usually consist of Governors officially delegated to perform the hearing. No Governor previously involved in any appeal can be considered sufficiently impartial to be a member of the Staff Dismissal Appeal Committee. If there are not sufficient governors available the appeal may be heard by 2 governors – but there should be no fewer than the number that made the initial decision.

- 5.6 An advisor from Human Resources should advise the committee, but they are not a member of the committee.
- 15.7 The outcomes from appeals at any stage are:
- To uphold the sanction
 - To overturn the sanction or
 - To impose a lesser sanction
- 15.8 In cases of dismissal the employee will be removed from the payroll. However, if the appeal is successful and the employee is reinstated, then a full reimbursement of remuneration will be made, i.e. a return to the financial position as if the dismissal never happened.
- 15.9 Any decision at the appeal stage is pursued on the basis of fact (not balance of probability) and so the committee should expect sufficient factual information at the appeal to justify the decision. It is likely the appeal will focus more on matters of procedure and the level of action. Consideration should be given to how reasonable or unreasonable the original decision was i.e. did the evidence support the conclusion reached.
- 15.10 The confirmation of the Warning Appeal Committee's decision in respect of outcomes should be given on the day or within 5 working days of the hearing or as soon as possible thereafter. If these timescales cannot be complied with then every effort must be made to keep the employee informed of any likely delay.
- 15.11 The employee should be told that there is no further right of appeal within this Capability Procedure and against this decision.