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Teaching Staff Capability Policy (LLT)



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1. Application of the Policy/Procedure

The Capability Policy/Procedure will apply only to staff (including Headteacher) about whose performance there are serious concerns that the appraisal process has been unable to address.

Formal capability can begin at any time as indicated verbally. Where the Headteacher determines that a meeting should be convened to apply the capability procedure a formal meeting will be convened. The teacher will be given 5 working days' notice of the meeting.

2. Formal Capability Meeting

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Headteacher capability meetings) or Headteacher (for other teachers). The meeting allows the member of staff, accompanied by a companion 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.

The person 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 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.

In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the professional shortcomings, for example which of the standards expected of staff are not being met;
- give clear guidance on the improved standard of performance needed to ensure that the member of staff 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);
- reinforce any support that will be available to help the teacher improve their performance e.g. mentoring, co-planning, observing best practice and will be tailored to each individual member of staff;
- 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 between 8 and 13 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; and
- warn the member of staff 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.

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Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the member of staff 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.

3. Monitoring and Review Period Following a Formal Capability Meeting

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance, and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

4. Formal Review Meeting

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 member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If the person conducting the meeting is satisfied that the member of staff 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 member of staff 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 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 and the procedure and time limits for appealing against the final warning. The member of staff will be invited to a decision meeting.

5. Decision Meeting

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 member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

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 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.

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The member of staff 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 Headteacher.

7. Dismissal

Once the decision has been taken, the Headteacher will dismiss the member of staff with notice.

8. Appeal

If a member of staff 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 the 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 and Governors who have not previously been involved with the case.

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

9. General Principles Underlying the Policy

ACAS Code of Practice on Discipline and Grievance Procedures

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

Confidentiality

The capability process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and Governing Body to quality-assure the operation and effectiveness of the appraisal system.

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.

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Definitions

Unless otherwise indicated, all references to teacher/staff include the Headteacher.

Delegation

Normal Rules Apply in respect of the delegation of functions by Governing Bodies, Headteachers and local authorities.

Grievances

Where a member of staff raises a grievance during the capability procedure it 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 absence appears to have been triggered by the commencement of monitoring or formal capability procedure, the case will be dealt with in accordance with the school's absence policy. In such cases a detailed referral to the Occupational Health Service will be made at the earliest opportunity, normally within the first three weeks of non-attendance, to assess the member of staff's health and fitness in regard to consideration of a return to work and continuation with the formal procedure.

Retention of Records

The Governing Body and Headteacher will ensure that all documents referred to as part of the capability procedure are retained in a secure place for the appropriate period and then destroyed. For instance, Appraisal records must be retained for six years, whilst a warning issued may be removed after the stipulated period. Where dismissal is the outcome, it is advised that all documents relating to the process are retained for six years and then destroyed.

Review and Monitoring

This policy will be reviewed annually, in consultation with the recognised unions, to ensure consistency, fairness, and effectiveness, and to reflect any changes in employment legislation.

The Trust will monitor, review and report on the outcomes and impact of this policy on an annual basis and in line with the Equality Act 2010.

On the application of this policy, The Trust will share with the recognised unions and/or the workplace Health and Safety Committee information such as appropriate anonymised data broken down by equality characteristics in line with the General Data Protection Regulations (GDPR), including the number of requests granted and the outcome of any appeal. Should analysis of this data cause concern then this will trigger a review of the policy and the application of the policy.

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