



**SOMERVILLE FEDERATION
PERFORMANCE CAPABILITY
PROCEDURES
FOR
TEACHERS AND HEADTEACHERS**

**Section 8 of Authority Guidelines
on Staffing Procedures for Community,
Voluntary Controlled and Special Schools**

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SECTION 8

PERFORMANCE CAPABILITY PROCEDURES FOR TEACHERS INCLUDING HEADTEACHER

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SECTION 8

PERFORMANCE CAPABILITY PROCEDURES

8.1 PERFORMANCE CAPABILITY PROCEDURE – TEACHERS INCLUDING HEADTEACHERS

1. INTRODUCTION

The aim of this policy is to establish the principles that _____ School will follow managing teachers or headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.

Lack of capability is defined as a situation in which an employee fails consistently to perform his/her duties to a professionally acceptable standard. Performance capability can be assessed by reference to skill or aptitude.

The following procedure sets out a framework for dealing with cases involving incapability or other poor performance which is considered not to be attributable to a willful disinclination by the employee to carry out his/her duties efficiently or effectively, but which is thought to be attributable to a lack of skill. In a case where it is considered that there is a willful refusal by an employee to carry out his/her duties on a proper basis, the matter should be dealt with under the school's separate disciplinary procedure.

It is an employee's responsibility to ensure that his/her work performance is maintained at a satisfactory level. Where an employee's work or omission is such as to call into question his/her capability the matter should be dealt with in accordance with the provisions of this procedure.

It is the headteacher / Governors' responsibility to set appropriate performance standards for all employees. National standards for teachers and headteachers and standards set by other relevant professional organisations will form part of the standards for these groups of staff.

Once an acceptable improvement in relation to the identified issue(s) has been achieved, at any stage in this procedure, the procedure should be halted and no further action taken.

The main emphasis of this procedure is to identify and assess failing professional standards as early as possible; to introduce a mutually agreed support programme; and to monitor and evaluate that programme to enable an employee to fully contribute to the aims of the school.

2. SCOPE

The procedure applies to all teachers (including headteacher) employed to work at _____ school, who have completed their NQT Induction period, whether they be full-time or part-time.

3. CONFIDENTIALITY

The procedure must at all times be dealt with on a **professional and confidential** basis.

Records need to be kept, detailing the action taken and the reasons for it, whether an appeal is lodged, its outcome and any subsequent developments. These records should be carefully **safeguarded** and kept **confidential**.

4. SICK LEAVE WHILST SUBJECT TO CAPABILITY PROCEDURES

Should teachers take extended sick leave whilst subject to Capability Procedures, especially where the illness is brought on by the job, they will automatically be referred to the Schools designated Occupational Health provider. If the illness is such that an employee is absent long term, then the absence will be dealt with under the Sickness Absence Capability Procedure, and outstanding performance capability concerns will be addressed on return to work.

In such circumstances, either the capability procedures should continue where monitoring and assessment of performance has reached a stage where the absence of the teacher would not significantly affect the outcome, or ill-health procedures should be triggered. Capability Procedures should not be put "on hold" indefinitely and the Governing Body (the Headteacher) must make reasonable and responsible judgements as to when to progress these matters if the monitoring and assessment of performance has been omitted through staff absence.

Reasonable steps should be made to enable a teacher to attend all discussions outlined in this Procedure, but where a teacher is unable to attend, these may proceed in the teacher's absence, if delay would otherwise compromise the maximum time set aside for the Procedure. In such circumstances a full account of the discussions should be provided in a letter confirming the decision taken.

The Governing Body would be entitled to consider absence due to sickness as forming part of the Capability submission.

5. CAPABILITY PERFORMANCE AND THE GRIEVANCE PROCEDURE

Governors should note that no procedure should automatically take precedence over another. Complaints from a teacher under the school based Grievance Procedure should not, as a general rule, be taken as a justification for delaying the Capability Performance Procedure. Equally the Grievance Procedure should not be delayed by the Capability Performance Procedure.

6. TRANSITION TO CAPABILITY (please refer to Performance Appraisal Policy for Teachers & Headteachers)

Where there are concerns about the performance of a teacher or Headteacher **before** making a decision to consider moving from the Performance Appraisal Process to the Capability Procedure, a meeting with the member of staff, the Headteacher and Professional Association or work colleague must be held. In the case of the Headteacher a meeting would be held with the Chair of Governors and Professional Association or work colleague. The teacher/headteacher must be given 5 working days notice of this meeting.

NB May be part way through Performance Appraisal cycle and any time during the academic year.

NB the outcome of the meeting may be:-

- **to continue managing the performance issues in the Performance Appraisal Process**
- or
- **transfer the outstanding concerns into the Capability Procedure.**

7. FORMAL CAPABILITY MEETING

At least five working days' notice will be given of the formal capability meeting. The notification letter (Appendix 1) will contain:

- Sufficient information about the concerns about performance e.g. failure to meet new teacher standard(s) (and other relevant standards), insufficient progress on performance objectives.
- possible consequences to enable the teacher to prepare to answer the case at a formal capability meeting.
- contain copies of any written evidence, this should include the written performance appraisal report, support provided prior to transition to capability meeting and notes of the transition to capability meeting .
- the details of the time and place of the meeting
- advise the teacher of their right to be accompanied by a trade union /professional association or a work colleague. (*A trade union/professional association official must have been certified by their union as being competent).

This meeting is intended to establish the facts. It will be conducted by:

- The Chair of Governors for head teacher capability meetings or
- Head teacher or other appropriate senior leader of the school for other staff. For teachers they must hold QTS.

The formal meeting initiates the capability procedure, and provides an opportunity to address serious concerns in a more structured way.

The employee has the right to be accompanied by a trade union/professional association official or a work colleague.

Format for the formal capability meeting

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 teachers are not being met*;
- Allow the employee or his/her representative to:
 - Respond to the concerns
 - provide new information
 - put a different perspective on the evidence collected
- 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 between four and ten 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.

NB: Subject to timing of provision of support implemented by the school.

- Formally warn the teacher that failure to improve within the set period could lead to dismissal.

NB The person conducting the meeting may also adjourn the meeting for further investigation, or where more time is needed to consider any additional information.

Outcome of Formal Capability meeting

The person conducting the meeting, based on the information reviewed in the formal capability meeting, may decide to:

- Revert back to the appraisal process
- Issue a formal warning which may be an oral, written or final written warning, based on the nature and seriousness of the concerns. (A Final Written Warning may be issued where the concerns are so extreme that the education and/or health and/or wellbeing of pupils is seriously compromised, including failure to meet the revised teacher standards.)

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

8. 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).

9. FORMAL REVIEW MEETING (where a warning other than Final Written Warning has been issued)

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 trade union/professional association* official or a work colleague.

If the person 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.

NB where the employee has been absent due to sickness, it may be appropriate to extend the review period (see section 4)

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 written warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance, 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 teacher will be invited to a employment decision meeting.

10. EMPLOYMENT DECISION MEETING (where a Final Written Warning has been issued)

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 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 by the school. A dismissal on the grounds of Capability Performance would result in notice with pay or pay in lieu of notice.

Power To Dismiss An Employee On Capability Grounds

Schools must choose their preferred option

Options below available only to 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.

The power to decide that members of staff should no longer work at this school rests with the Governing Body.

Or:

The power to decide that members of staff should no longer work at this school has been delegated to ***the head teacher or the Staff Dismissal Committee (delete as appropriate)***.

Options below are available only to Foundation/Trust Schools, Voluntary Aided Schools and Foundation Special and Academies/Free Schools.

The power to dismiss staff in this school rests with the Governing Body.

Or:

The power to dismiss staff in this school has been delegated to ***the head teacher or the Staff Dismissal Committee (delete as appropriate)***

NB Academies and free schools can choose to make alternative arrangements on dismissal. In those circumstances schools will need to consult with recognised trade unions and professional associations.

11. FORMAL CAPABILITY PROCEDURE CONDUCTED BY THE STAFF DISMISSAL COMMITTEE OF THE GOVERNORS

- The teacher should be notified by the Headteacher in writing and (unless varied by mutual agreement) given a minimum of **ten working days** notice that the hearing is to be heard by the Staff Dismissal Committee under the terms of the School's Performance Capability Procedure. Only in exceptional circumstances should the hearing take place out of term time.
- The teacher is entitled to be represented by an association representative or a work colleague and this entitlement should be included in the above letter.
- The above letter should also include full details of the previously identified capability issues, including copies of any documentation to be used.
- The employee should also be advised in the above letter that he/she is able to request the attendance of third parties to substantiate any points they may wish to make in respect of the identified capability issue(s). Persons to be called by the Headteacher should be listed in the letter.
- The employee should also be advised that he/she should send to the Headteacher and the Correspondence Clerk of the Governing Body copies of any documents that he/she intends to refer to at the hearing together with a list of third parties requested to attend **not less than 5 working days before the hearing**. In the case of Community, Voluntary Controlled, Community Special, and Maintained Nursery schools a copy of the above letter should be sent to the Director of Children's Services or his nominated officer well in advance of the hearing.
- In the case of a capability performance hearing being conducted with a teacher who is an accredited official of a recognised professional association, consultation should take place prior to the above letter being sent with a senior official of their professional association.

The Director of Children's Services, or his nominated officer and the Authority's Head of Legal Services (or his nominated representative) will be invited to attend the hearing of the Staff Dismissal Committee and of the Staff Dismissal Appeal Committee, where the school is a Community, Voluntary Controlled, Community Special, and Maintained Nursery schools.

Staff Dismissal Hearing Procedure

The Staff Dismissal Committee may request the provision of additional evidence and/or the attendance of relevant third parties. The member of staff may also request the attendance of relevant third parties.

1. Introductions
2. The Headteacher to put the case and call third parties if appropriate.
3. The teacher (or his/her representative) to ask questions of the Headteacher and third parties.
4. The members of the Staff Dismissal Committee to ask questions of the Headteacher and third parties.
5. The teacher (or his/her representative) to put his/her case and to call third parties if appropriate.
6. The Headteacher to ask questions of the teacher and/or his/her representative and third parties.
7. The members of the Staff Dismissal Committee to ask questions of the employee and/or his/her representative and third parties.
8. The Headteacher to sum up.
9. The teacher (or his/her representative) to sum up.
10. The Chairperson of the Staff Dismissal Committee may adjourn the proceedings at any stage if it appears necessary or desirable. If adjourning for the purpose of enabling further information to be obtained he/she should specify the nature of that information. Any adjournment should normally be for a stated period.

Following the summing up, both parties, together with their representatives and any third parties called, will withdraw. **Note: Third parties should only be present when giving evidence and should withdraw immediately afterwards.** If it is necessary to recall one of the parties for further information before a decision is taken both parties should be recalled if possible. In case of Community, Voluntary Controlled, Community Special, and Maintained Nursery schools the Director of Children's Services or his nominated officer should remain during the Staff Dismissal Committee's deliberations.

11. On completion of the Staff Dismissal Committee's deliberations the Chairperson should ask the teacher and his/her representative to return and should announce the decision of the Staff Dismissal Committee and the capability action, if any, to be taken.
12. The decision of the Staff Dismissal Committee should be one of the following:
 - To confirm the matter is being dismissed or cannot be substantiated and direct that all reference to the matter be removed from his/her records.
 - To withhold the awarding of an incremental point commencing 1st September (if appropriate).

- To consider a request from a teacher to relinquish his/her TLR (if appropriate).
- To change the duties of the teacher as appropriate.
- To impose a written warning or a final (or combined first and final) written warning.
- To determine that the employee should cease to work at the school

The Chairperson should also give an explanation for the decision and should explain the teacher's right of appeal under the procedure.

13. The Staff Dismissal Committee should confirm the decision in writing as soon as is reasonably practical to the teacher (copy to professional representative and the Director of Children's Services), detailing the identified capability issue(s) and the action taken plus the teacher's right of appeal to the Staff Dismissal Appeals Committee of the Governing Body. If a warning has been imposed the teacher should be asked to acknowledge, in writing, that a warning has been given.
14. The teacher can appeal against the decision of the Staff Dismissal Committee by sending a written appeal for the attention of the Correspondence Clerk to the Governors within 10 working days of receiving confirmation of the warning with a copy to the Director of Children's Services (see Appeals Procedure) to make representations with respect to the proposal.
15. Where the decision of the Staff Dismissal Committee is that a teacher should be dismissed from the school, a copy of the written notification to the teacher setting out the reasons for the decision must be sent to the Director of Children's Services and must include the teacher's right of appeal.

APPEALS PROCEDURE

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 receipt of the written decision, setting out at the same time the grounds for appeal.

The following sets out the format for the school's Appeals Committees.

N.B. In the case of a decision made by the Staff Dismissals Committee, the appeal must be heard by the Staff Dismissals Appeal Committee.

a) The Staff Dismissal Appeals Committee

Membership A Staff Dismissal Appeals Committee must be made up of named governors who were not involved in the decision of the relevant first committee.

The Director of Children's Services (or his nominated officer) and the Authority's Head of Legal Services (or his nominee) should be invited to give advice and/or attend the hearing and should be sent copies of all documents to be considered during the hearing.

Size of Committee Can be no less than the original relevant Staff Dismissal Committee.

Powers of the Committee To decide an appeal against decisions taken by the Headteacher or relevant Committee i.e.

- To confirm that decision
- to impose a lesser penalty
- dismiss the case.

b) Appeals Procedure

- Appeals must be made in writing, giving reasons for the appeal, by the employee within **5 working days** of receipt of the letter confirming the action taken. The letter should be sent to the **Clerk of the Governing Body**
- An appeal will be heard by the relevant Staff Dismissal Appeals Committee.
- An appeal against a decision to dismiss an employee can only be heard by the Staff Dismissals Appeal Committee.
- The employee has the right, if they so wish, to be accompanied by an association/trade union representative or any other person of their choice.
- The employee shall be given at least **10 working days** notice of the time, date and venue of the Appeals Hearing and will, at the same time, be supplied in writing with a further copy of the statement of the decision previously taken.
- If, as a result of the appeal, or for any other reason, capability action is withdrawn, any written record of the matter will be expunged from the employee's file.

- Documentation from both parties should only be given to the Appeal Committee **5 working days** prior to the Appeal Hearing to allow the Committee members to be better informed about the issues of the case.

c) Format for the Appeal Hearing

1. The Headteacher or Chair of the relevant first committee to put the case and call witnesses if appropriate
2. The employee (or his/her representative) to ask questions of the Headteacher or Chair of the relevant first committee and witnesses.
3. The members of the Appeals Committee and the Director of Children's Services (or his nominated officer) to ask questions of the Headteacher or Chair of the relevant first committee and witnesses.
4. The employee (or his/her representative) to put his/her case and to call witnesses if appropriate.
5. The Headteacher or Chair of the relevant first committee to ask questions of the employee and/or his/her representative and witnesses.
6. The members of the Appeals Committee and the Director of Children's Services (or his nominated officer) to ask questions of the employee and/or his/her representative and witnesses.
7. The Headteacher or Chair of the relevant first committee to sum up.
8. The employee (or his/her representative) to sum up.
9. The Chairperson of the Appeals Committee may adjourn the proceedings at any stage if it appears necessary or desirable. If adjourning for the purpose of enabling further information to be obtained he/she should specify the nature of that information. Any adjournment should normally be for a stated period.
10. Following the summing up, both parties, together with their representatives and any witnesses called, will withdraw.

Note: Witnesses should only be present when giving evidence and should withdraw immediately afterwards. If it is necessary to recall one of the parties for further information before a decision is taken both parties should be recalled. The Director of Children's Services (or his nominated officer) and the Head of Legal Services (or his nominee) should remain during the Appeals Committee's deliberations.

11. The Appeals Committee may announce its decision to the Headteacher and/or the employee and his/her representative personally or subsequently in writing. Whichever method is chosen both parties should be informed in a like manner. A decision notified orally should be confirmed in writing by the Clerk to the Governors.

d) Cease to work at the school decisions

In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools

Under the Education Act 2002 such a decision is classified as an initial dismissal decision (IDD). Dismissal and notice period will be effective from the IDD although the employee still has a right of appeal against the decision.

The LA will terminate the employee's employment within 14 days. If the employee is successful at appeal he/she will be reinstated. It is possible for an appeal to be concluded within the notice period.

A teacher who has been issued with a notice of dismissal could be potentially damaging to the school, pupils and individual teachers. In order to avoid such situations, the teacher could be suspended on **full** pay (if appropriate) until the notice period has expired.

Where an appeal is lodged but the decision to dismiss is upheld, the LA will dismiss without notice within 14 days of the IDD unless the employee submits a resignation before the end of the 14-day period.

Dismissal Decisions

Termination of the contract of employment on capability grounds will be **with notice pay**.

In the case where an employee is not employed to work solely at the school, the LA will withdraw the employee from work at the school and consider the need to dismiss from other employment with the LA.

This policy/document was reviewed by:-

Signed *M J Forber*

Date: 20th March 2019

Position Executive Headteacher.

Signed *C Griffiths*

Date: 20th March 2019

Position Chair of Governors

The next revision date is:

March 2020