



St Ursula's Convent School
A Humanities College and Teaching School

CAPABILITY PROCEDURES FOR TEACHERS

Policy reviewed by:

**HEADTEACHER
GOVERNORS**

Reviewed	Agreed by Governing Body	Next review
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1. Purpose

This procedure applies only to teachers or headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.

2. Scope

2.1 This procedure applies to teaching staff with the exception of:

- Casual or temporary employees appointed for less than 13 weeks
- Agency workers
- Where the employee is incapable of performing their duties as a result of sickness or injury the School's Managing Sickness Absence policy will apply. 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 Managing Absence (*e.g. 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.
- 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. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

3. General

- 3.1 This procedure should be read in conjunction with Management Guidance on Capability for School Staff.
- 3.3 Copies of documentation, from the formal stages, should be kept on file.
- 3.4 Any member of staff being taken through the Capability procedure will be excluded from the appraisal process.
- 3.7 Governors/headteachers can delegate the responsibility for taking formal action regarding poor performance in accordance with the procedure, up until any hearing to consider dismissal.
- 3.8 Any reference to governors/headteachers, shall be construed as relating equally to their representatives, up until any hearing to consider dismissal. (See paragraph 7.3).
- 3.9 If an employee has specific needs relating to a disability then reasonable adjustments will be considered to assist them participating in any meetings/hearings.
- 3.10 Governors/headteachers will seek the support of the Schools' HR Team as appropriate.

4. Stage 1

4.1 Formal Capability Meeting

- 4.1.1 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 a formal capability meeting. It will also contain copies of any written evidence; the 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.
- 4.1.2 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) (*schools to insert any alternative arrangements*). The meeting allows the teacher, 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.
- 4.1.3 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 *e.g. 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, *e.g. which of the standards expected of teachers are not being met;*
- 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 (*insert time period – e.g. 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*); and

- warn the teacher 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.
- 4.1.4 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.
- Guidance regarding the distribution of the minutes of the hearing are in section 8.10 of this procedure

4.2 Monitoring and review period following a formal capability meeting

- 4.2.1 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).

5. Stage 2

5.1 Formal Review Meeting

- 5.1.1 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 who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.
- 5.1.2 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.
- 5.1.3 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 teacher will be invited to a Decision Meeting.
- Guidance regarding the distribution of the minutes of the hearing are in section 8.10 of this procedure

6. Stage 3

6.1 Decision meeting

- 6.1.1 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.
- 6.1.2 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.¹
- 6.1.3 Before the decision to dismiss is made, the school will discuss the matter with The Schools' HR Team.
- 6.1.4 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.

7. Decision to dismiss

Either: 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/to one or more governors/to one or more governors acting with the head teacher (delete as appropriate).*

(NB: the two options above are available only to Foundation Schools, Voluntary Aided Schools and Foundation Special Schools).

Or: 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/to one or more governors/to one or more governors acting with the head teacher. (delete as appropriate).*

(NB: these two options are available only to Community, Voluntary Controlled, Community Special, and Maintained Nursery schools,

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 head teacher, to one or more governors, or to one or more governors acting with the head teacher. 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).*

8. Dismissal

Either: Once the decision to dismiss has been taken, the Governing Body (*or insert details of person or people to whom the power to dismiss has been delegated*) will dismiss the teacher with notice, (*Voluntary Aided, Foundation and Foundation Special schools only*).

Or: Once the Governing Body (*or insert details of person or people to whom the power has been delegated*) 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 (*Community, Voluntary Controlled, Community Special and Maintained Nursery Schools only*).

8.1 Minutes of the Meeting

The Formal minutes taken at all of the hearings must be shared with all parties present, including the employee and their representative within 2 weeks of the date of the hearing.

Copies of the minutes are for information only and no invitation to comment should be made. If the employee and their representative do wish to comment on the minutes they should make their comments in writing which should then be retained and noted for the records.

9. Appeal

- 9.1 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 10 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.
- 9.2 The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case.
- 9.3 Stage 1 and Stage 2 Appeals can be heard by a minimum of one Governor. Dismissals appeals must be heard by a panel of three Governors.
- 9.3 The teacher will be informed in writing of the results of the appeal hearing within 5 working days of the hearing.