



CAPABILITY (PERFORMANCE) POLICY – TEACHERS

1. Introduction

1.1

The School Staffing (England) Regulations 2009 require Governing Boards to have procedures for dealing with any lack of capability of their employees. This policy is linked to the Education (School Teachers' Appraisal) (England) Regulations 2012.

1.2

This procedure applies only to teachers or the Headteacher about whose performance serious concerns have arisen. These concerns may be identified by the teacher's appraiser under the School Teacher Appraisal Policy and referred to the Headteacher following insufficient improvement under Section 8 of that policy.

If serious concerns are identified by other means, they must be referred to the teacher's appraiser and managed in line with Section 8 of the School Teacher Appraisal Policy.

This procedure does not apply to Early Career Teachers (ECTs), whose performance is managed through the appropriate induction process.

1.3

Good management, clear expectations and appropriate support will often address weaknesses in performance. Early identification of concerns will help to avoid the need to use the Teacher Capability (Performance) Policy and, in most cases, improvement may be achieved through appropriate support and attention, as set out in Section 8 of the School Teacher Appraisal Policy.

1.4

Before commencing the Teacher Capability (Performance) Policy, the Headteacher, Governors or managers should consider whether the teacher's professional performance may be affected by ill health or another external influence or concern.

Where this is the case, the matter should be dealt with under the appropriate procedure before consideration is given to the Capability (Performance) procedure.

Management should also consider whether the issue is a matter of conduct and, if so, whether the Disciplinary Policy should be invoked.

1.5

A teacher has the right to be accompanied at any stage of the Capability (Performance) procedure by a representative of an independent trade union or professional association, or by a work colleague.

1.6

Teachers have the right to appeal against any formal action taken under this procedure. Appropriate arrangements will be made for any appeal.

1.7

Where formal capability (performance) action is to be taken against an employee who is a recognised trade union official, including safety and learning representatives, no action will be taken until the circumstances of the case have been discussed with a full-time officer of the trade union concerned.

2. Identification of Capability (Performance) Issues

2.1

Where performance issues have been identified via a route other than through the School Teacher Appraisal Policy, transition to the Teacher Capability (Performance) Policy should only be considered following a Formal Review Meeting in line with Sections 8 and 9 of the School Teacher Appraisal Policy.

2.2

Where performance issues have been identified via a route other than through the School Teacher Appraisal Policy, the Formal Review Meeting should be conducted by the Headteacher or another nominated senior leader, or, in the case of Headteacher performance, the Chair of Governors.

2.3

Meetings under the Teacher Capability (Performance) Policy will normally be conducted by the Headteacher or another nominated senior leader, or, in the case of Headteacher performance, the Chair of Governors.

2.4

Where evidence has arisen of concerns regarding a teacher's or Headteacher's performance, progression to the Teacher Capability (Performance) Policy will only be made following a Formal Review Meeting in line with Section 8 of the School Teacher Appraisal Policy. This will be deemed to be the informal stage of the Teacher Capability (Performance) Policy.

2.5

Where a teacher's performance has not improved following the review period agreed under Section 8 of the School Teacher Appraisal Policy, they will be informed in writing that their performance will now be considered under the Teacher Capability (Performance) Policy and that they will be invited to a Formal Capability Meeting.

2.6

At every stage of this procedure, including all formal meetings, the teacher has the right to be accompanied by a representative of an independent trade union or professional association, or by a work colleague.

3. Formal Capability Meeting – Stage 1

3.1

At least five school days' notice will be given of the Formal Capability Meeting.

The notification will contain sufficient information and evidence about the concerns regarding performance and their possible consequences to enable the teacher to prepare to respond to the concerns at the Formal Capability Meeting.

3.2

The teacher must be given copies of any written evidence that will be referred to during the Capability (Performance) process.

3.3

The Formal Capability Meeting is intended to establish the facts.

It will be conducted by the Chair of Governors in the case of Headteacher capability, or by the Headteacher or nominated senior leader in the case of other teachers. The person conducting the meeting may be accompanied by a nominated Local Authority or HR adviser.

The meeting will allow the teacher, accompanied by a representative in accordance with Section 2.6, to respond to concerns about their performance and make any relevant representations. This may provide new information or a different context to the information or evidence already collected.

3.4

Once the facts and any additional information have been considered, there are two initial options:

- 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 adjourn the meeting, for example if further investigation is required or additional time is needed to consider information provided during the meeting.

3.5

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, including which standards expected of teachers are not being met, with reference to relevant evidence such as appraisal reports or formal letters of complaint. This list is not exhaustive;
- give clear guidance on the improved standard of performance required for the teacher to be removed from formal capability procedures. This may include setting new objectives focused on the specific weaknesses that need to be addressed;
- identify appropriate success criteria and the evidence that will be used to assess whether the necessary improvement has been made;
- explain the 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 and should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for improvement to take place. Except in the most extreme circumstances, the monitoring period should normally be no less than 13 school weeks;
- consider issuing a formal warning to the teacher and indicate that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning; and
- advise the teacher of their right to appeal the warning if one is issued.

3.6

Notes will be taken of the Capability Meeting and a copy will be provided to the teacher.

Where a warning is issued, the teacher will be informed in writing of the matters covered above and given information about the timing and handling of the review stage, together with the procedure and time limits for appealing against the warning.

4. Monitoring and Review Period Following a Formal Capability Meeting

4.1

A performance monitoring and review period will follow the Formal Capability Meeting.

Formal monitoring, evaluation, guidance and support will continue throughout this period.

At the end of the monitoring and review period, the teacher 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.

5. Formal Review Meeting – Stage 2

5.1

At least five school days' notice will be given of the Formal Review Meeting.

The teacher will be advised of their right to be accompanied by a colleague, trade union official or professional association representative.

The person conducting the meeting may be accompanied by a Local Authority or HR adviser.

5.2

If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the Capability (Performance) procedure will cease and the appraisal process will restart.

5.3

In other cases:

- If some progress has been made and there is confidence that further improvement is likely, it may be appropriate to extend the monitoring and review period. The timetable will depend on the circumstances of the individual case.
- If no, or insufficient, improvement has been made during the monitoring and review period, the teacher will receive a Final Written Warning and be given a final review period in which to improve their performance.

The final review period should be reasonable in length, for example 4–8 weeks, and should be agreed by all parties where possible.

5.4

As before, notes will be taken of formal meetings and a copy provided to the teacher.

The Final Written Warning will mirror any previous warnings that have been issued.

Where a Final Written Warning is issued, the teacher will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in dismissal from the school's employment.

The teacher will also be given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the Final Written Warning.

6. Decision Meeting – Stage 3

6.1

If performance remains unsatisfactory, a decision, or recommendation to the Governing Board, will be made that the teacher should be dismissed or required to cease working at the school.

6.2

At least five school days' notice will be given to the teacher of the Decision Meeting.

The teacher will be advised of their right to be accompanied by a colleague, trade union official or professional association representative.

6.3

The Decision Meeting will be before a Governors' Committee consisting of at least three members of the Governing Board.

The Committee may be supported by a Local Authority or HR adviser and the meeting will be held in accordance with the school's hearing arrangements.

6.4

Before any decision to dismiss is made, the school may wish to discuss the matter with the Local Authority.

6.5

In the event of a decision to dismiss the teacher, they will be informed as soon as possible of:

- the reasons for the dismissal;
- the date on which their employment will end;
- the appropriate period of notice; and
- their right of appeal.

7. Decision to Dismiss

7.1

As a Community Special School, the power to determine that a member of staff should no longer work at the school may rest with:

- the Committee of Governors;
- the Headteacher; or
- one or more Governors acting with the Headteacher,

in accordance with the relevant statutory arrangements and any delegation made by the Governing Board.

7.2

Where a decision-making power has been delegated, the person or committee exercising that power must act in accordance with the school's Scheme of Delegation and relevant statutory requirements.

8. Dismissal

8.1

Once the Governing Board or person with delegated authority has determined that the teacher should no longer work at the school, the Local Authority will be notified of the decision and the reasons for it.

8.2

Where teachers work solely at Abbot's Lea School, the Local Authority must dismiss them within fourteen days of the date of notification.

Where a teacher works in more than one school, the Local Authority must require them to cease to work at Abbot's Lea School.

These arrangements apply to Community, Voluntary Controlled, Community Special and Maintained Nursery Schools.

9. Appeal

9.1

If a teacher feels that a decision to dismiss them, or other formal action taken against them, is wrong or unjust, they may appeal in writing against the decision within five school days of receiving the decision, setting out the grounds for appeal at the same time.

9.2

Where monitoring of a teacher's performance is continuing through a review or final review period, this should not be halted while an appeal is pending.

9.3

Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place.

The same arrangements for notification and the right to be accompanied will apply as with Formal Capability and Review Meetings.

As with other formal meetings, notes will be taken and a copy provided to the teacher.

9.4

The appeal will be dealt with impartially by Governors who have not previously been involved in the case. The teacher will be informed in writing of the outcome of the appeal within five school days.

10. Grievances

10.1

Where a teacher 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.

11. Sickness

11.1

If 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 Attendance Policy.

11.2

Immediate consideration should be given to referral to Occupational Health to assess the teacher's health and fitness for continued monitoring or formal procedures, and their fitness to attend work.

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

11.3

Sickness absence should not necessarily delay any part of the formal capability process and reasonable steps should be taken to enable the teacher to attend meetings.

11.4

Where the teacher is unable to attend, they should be informed that the meeting may progress in their absence and a full account of the meeting and its outcomes will be provided to the teacher as soon as possible.

12. Monitoring and Evaluation

12.1

The Governing Board will monitor the operation and effectiveness of the Teacher Capability (Performance) Policy.

12.2

The Headteacher will provide the Governing Board with a written report on the operation and effectiveness of the policy annually, where appropriate.

The report will not identify individuals by name and will include consideration of the impact of the policy in relation to the school's equality duties.

12.3

The Headteacher will also report on whether there have been any appeals or representations on equality grounds.

13. Policy Management and Review

Review of Policy

This policy will be reviewed every two years, or earlier where there are changes to legislation, statutory guidance or Local Authority requirements.

The policy may be amended from time to time to reflect changes in legislation, guidance or local arrangements.

Management of Policy

The Governing Board and Headteacher have overall responsibility for the maintenance and operation of this policy.

The school will maintain appropriate records of concerns raised, formal capability proceedings and outcomes, in accordance with its data protection and confidentiality requirements.