



# WALSH

M E M O R I A L

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C.E. (Controlled)

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## TEACHER PERFORMANCE CAPABILITY POLICY

### DATE FOR REVIEW:

This Issue	Last Issue	Review Date
September 2020		May 2023

Note on delegation of power to dismiss:

This procedure assumes that the power to dismiss staff remains with the governing body and has not been delegated to the headteacher. Schools with different models of delegated power will need to amend references to roles and responsibilities accordingly.<sup>1</sup> For further advice or assistance with this, please contact your HR Consultant.

## 1. Scope and purpose

- 1.1. This policy applies to teachers including the headteacher where there are serious performance issues that cannot be addressed through an informal process.
- 1.2. In progressing to this procedure the teacher will have been assessed through the school's appraisal process and will have received constructive feedback throughout the year including any relevant support to assist in improving their skills and competence to the required level.
- 1.3. The teacher will have been notified in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure.
- 1.4. In its oversight of the capability procedure, the governing body is committed to ensuring consistency of treatment and fairness and to stay within the prevailing legal framework applicable to all employers, for example legislation on equality, employment protection and data protection. The procedure reflects the ACAS Code of Practice on grievance and disciplinary. It includes:
  - a written statement from the employer setting out the grounds for action and inviting the employee to a meeting;
  - a meeting where certain requirements must be observed;
  - the employer's decision and notification to the employee of the right of appeal; and an appeal process.

## 2. Statement of Principles

- 2.1. In addressing circumstances where a teacher's performance fails to reach an acceptable level, or where there is a sudden and serious deterioration in these standards, the governing body will seek to ensure through the application of this procedure that a focus is placed first and foremost on support and improvement. In so doing, the governing body also acknowledges its duty to give high priority to the education of young people and will therefore take into account the likely impact on pupils when considering what progress must be made and in what timeframe
- 2.2. At every stage in the formal procedure, the teacher will have the right to be accompanied by a companion who may be a colleague, or a trade union representative.
- 2.3. No teacher will be dismissed on grounds of capability until the programme of improvement and assistance has been exhausted without the teacher achieving satisfactory results and there remains an insufficient prospect of improvement within a reasonable timescale.

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<sup>1</sup> 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 headteacher, to one or more governors, or to one or more governors acting with the headteacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to dismiss can be delegated in the same way as above but it is the local authority (as the employer) that has responsibility for giving effect to the dismissal.

- 2.4. The teacher will have the right to appeal against any formal decision at each stage of the process.
- 2.5. Teachers suffering from ill health will be dealt with under the school's absence management policy.
- 2.6. 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 absence policy and will normally be referred 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 formal procedures to continue during a period of sickness absence. However, the views of the occupational health physician will always be taken into account before a decision is reached.
- 2.7. 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.

### **3. Confidentiality**

- 3.1. The capability process is subject to the requirements of data protection legislation. The information will be confidential and only shared with relevant individuals for the purpose of managing performance, training and professional development, pay and capability/disciplinary matters. All written capability records will be retained and stored in a secure place in line with the school's retention and disposal policy.

### **4. Formal Capability Meeting**

- 4.1. Once it has been established that there are serious concerns about a teacher's performance that have not been addressed through the appraisal process then the teacher will be given 5 working days' notice that they will be required to attend a formal capability meeting. Please see the flowchart at the end of this document.
- 4.2. This notification will contain details about the concerns around performance and their possible consequence to enable the teacher to prepare to answer the case. It will contain copies of any written evidence including written feedback given through the appraisal process and details of any support offered.
- 4.3. The meeting will be conducted by a panel of one or more governors (for headteacher capability) or the headteacher for other teachers. The meeting allows for the teacher to respond to the concerns raised about their performance and make any relevant representations.
- 4.4. The local authority will be informed of any proposed investigation into the performance of the headteacher and of any proposed meetings to discuss this with the headteacher.
- 4.5. 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. They may also halt or adjourn the meeting, for example if they decide that further investigation is needed, or that more time is needed in order to consider additional information.

4.6. The aims of the formal meeting will be to:

- (a) Explain clearly the shortfall between the teacher's performance and the required standard;
- (b) Give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from the capability procedure. This could include setting clear objectives focussing 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 the necessary improvement has been made;
- (c) Obtain the teacher's commitment to reaching the required standard;
- (d) Explain any support that will be available to help the teacher improve their performance and any welfare and other support available;
- (e) Set a reasonable period for the teacher to reach the standard and agree on a monitoring and review programme between 4 and 12 weeks;
- (f) Warn the teacher that dismissal is a possible outcome if the standard is not met. If the outcome of the meeting is unsatisfactory a first written warning will be given. In very serious cases this warning could be a final written warning.

4.7. The outcome of this meeting will be recorded in writing and a copy will be given to the teacher together with details of the timing and handling of the review stage and procedure. The letter will also confirm the teacher's right to appeal the warning in writing within 5 days of receipt.

4.8. Progress will be monitored throughout the review period and formal monitoring, evaluation, guidance and support will continue during this period.

## **5. Formal Review Meeting**

- 5.1. 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 decisions meeting (see below).
- 5.2. The teacher will be given 5 working days' notice that they will be required to attend a formal review meeting and will be advised of their rights to be accompanied.
- 5.3. If the teacher has made sufficient improvement then the capability procedure will cease and the appraisal process will re-start.
- 5.4. If an improvement has been made but the standard has not yet been met, the review period may be extended if the headteacher/governors panel believes there is a realistic expectation of satisfactory performance.
- 5.5. If no, or insufficient improvement has been made during the monitoring and review period the teacher will receive a final written warning.
- 5.6. As before, the outcome of this meeting will be recorded in writing and a copy will be given to the employee together with details of any further monitoring and review periods. The letter will also confirm the teacher's right to appeal the final written warning in writing within 5 days of receipt.
- 5.7. If a final written warning is issued the teacher will be informed that failure to achieve an acceptable standard of performance (within the set timescales) may result in dismissal and the teacher will be invited to a Decisions Meeting.

## **6. Decisions Meeting**

- 6.1. The teacher will be given 5 working days' notice that they will be required to attend a formal Decisions Meeting and will be advised of their rights to be accompanied. Please see the flowchart at the end of this document.
- 6.2. If the teacher has made sufficient improvement through the further monitoring and review period then the capability procedure will cease and the appraisal process will re-start.
- 6.3. If the 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.
- 6.4. Before the decision to dismiss is made, the school will discuss the matter with the local authority. In Community and Voluntary Controlled schools, or in Foundation or Voluntary Aided schools where the local authority has been given Local Authority Advisor Rights, the local authority has the right to attend any meetings where dismissal is involved. The school's HR Consultant will be contacted to provide advice about these matters.
- 6.5. The teacher will be informed in writing within 5 working days of the meeting of the reasons for dismissal, their right to notice, the date on which their contract will cease, and their right of appeal.

## **7. Decision to Dismiss and Dismissal Arrangements**

- 7.1. The power to dismiss staff in this school rests with the governing body therefore any Decisions meetings will be held with Governors.

7.2. Following a decision to dismiss in a foundation or voluntary aided school, the school will issue notice of termination in accordance with the employee's contractual or statutory notice period (whichever is greater). In community schools and voluntary controlled schools the decision to dismiss will be communicated to the local authority which, as the employer of staff, will issue confirmation of the termination of employment within 14 days of notification.

## **8. Appeals**

8.1. The teacher will be told of their right of appeal to an Appeals Committee of the governing body. All appeals must be notified in writing, to the Clerk to the Governing Body within 10 calendar days of the date of the dismissal letter setting out at the same time the grounds for appeal.

8.2. The teacher will be given 5 working days' notice that they will be required to attend a formal appeal meeting and will be advised of their rights to be accompanied.

8.3. The same arrangements for notification and right to be accompanied by a companion or trade union representative will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the teacher.

8.4. The appeal will be dealt with impartially and by a panel of governors who have not previously been involved in the case.

8.5. The Chair of the original governors' panel will be invited to outline the case against the teacher.

8.6. If an appeal against dismissal is successful then the teacher will be re-instated and salary owing back paid.

**Capability Procedure**

