

Teacher Capability : Model Procedure

Content	Page
1. Introduction	2
2. Formal Capability Meeting	2
3. Monitoring and Review Period Following a Formal Capability Meeting	3
4. Formal Review Meeting	3
5. Records	4
6. Decision Meeting	5
7. Decision to Dismiss	5
8. Dismissal	6
9. Appeal	6
10. Supporting Documentation	8
11. General principles underlying the procedure	9

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Capability Procedure

1. Introduction

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

This Procedure should only be instigated following the implementation of an Improvement and Support Action Plan within the appraisal process and where following a review of that plan, a judgment has been made that improvements to performance can no longer be achieved within the framework of the appraisal process. This judgment must only be made following a Transition Meeting at which the teacher or head teacher has been provided with the opportunity to make a representation about the conclusions being drawn from the plan and has had the opportunity 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, when making such representations.

2. Formal Capability Meeting

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. If the companion is not available at the proposed meeting time and the teacher suggests another time that is reasonable and falls within five working days of the original time, the meeting will be postponed until the new time proposed by the teacher.

The Formal Capability Meeting is intended to establish the facts.

The Chair of Governors will conduct head teacher Formal Capability Meetings unless the Chair of Governors is a member of the appraisal panel, in which case the meeting will be conducted by one or more governors. The head teacher will conduct Formal Capability Meetings for other teachers unless the head teacher is the appraiser, in which case the meeting will be conducted by one or more governors. The Formal Capability 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.

The person conducting the Formal Capability 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 formal capability procedure will come to an end.

The person conducting the Formal Capability 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 Formal Capability Meeting will continue. During the Formal Capability 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;
- 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; and
- warn the teacher formally that failure to improve within the set period could lead to dismissal – this is a Written Warning. In very serious cases, this warning could be a Final Written Warning.

Notes will be taken of Formal Capability Meetings and a copy sent to the teacher. Where either a Written Warning or a Final Written Warning is issued, the teacher will be provided with a completed copy of the Capability Action Plan Form (attached) and they will be informed in writing of the matters covered in the bullet points above and be 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 of a Formal Review Meeting 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 the companion is not available at the proposed meeting time and the teacher suggests another time that is reasonable and falls within five working days of the original time, the meeting will be postponed until the new time proposed by the teacher.

If the person conducting the Formal Review Meeting is satisfied that the teacher has made sufficient improvement, the formal 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.

Notes will be taken of Formal Review Meetings and a copy sent to the teacher. Any 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 and 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. Where the teacher fails to achieve an acceptable standard of performance within the set timescales, the teacher will be invited to a Decision Meeting.

5. Records

Full details of all warnings will be entered on the teacher's personal record.

It is not intended that warnings should remain active for an indefinite period:-

Written Warnings - the time limit will be 12 months, effective from the date it was given.

Final Written Warning - the time limit will be between 12 months and 2 years, effective from the date it was given.

6. 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 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 the companion is not available at the proposed meeting time and the teacher suggests another time that is reasonable and falls within five working days of the original time, the meeting will be postponed until the new time proposed by the teacher.

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

Before the decision to dismiss is made, the School will discuss the matter with the Local Authority (N.B. this is not a legal requirement but the School may find it helpful).

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 teachers in this School rests with the Governing Body.

Or: The power to decide that teachers should no longer work at this School has been delegated to the head teacher unless the head teacher is the reviewer, in which case the decision has been delegated to one or more Governors.

The power to decide that the head teacher should no longer work at this school has been delegated to one or more Governors.

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

Or: The power to decide that teachers should no longer work at this School rests with the Governing Body.

Or: The power to decide that teachers should no longer work at this School has been delegated to the head teacher unless the head teacher is the reviewer, in which case the decision has been delegated to one or more Governors.

The power to decide that the head teacher should no longer work at this School has been delegated to one or more Governors.

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

8. Dismissal

Either: Once the decision to dismiss has been taken, the Governing Body or head teacher or one or more Governors will dismiss the teacher with notice. In the case of the head teacher, the decision to dismiss has been delegated to one or more Governors. *(Voluntary Aided, Foundation and Foundation Special schools only).*

Or: Once the Governing Body or head teacher or one or more Governors has decided that the teacher should no longer work at the School, or where one or more Governors has decided the head 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 teachers 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).*

9. Appeal

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 ten 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 Meetings and Formal Review Meetings and Decision Meetings. As with those other formal meetings, notes will be taken of the Appeal Hearing and a copy sent to the teacher.

The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case.

The teacher will be informed in writing of the results of the Appeal Hearing as soon as possible.

10. Supporting Documentation

1. Teacher Capability Flowchart

See HR Consultancy Pages of the VLE – Teacher Capability “Teacher Appraisal and Capability Process Flowchart”

2. Model Teacher Capability Action Plan

See HR Consultancy Pages of the VLE – Teacher Capability “Template 11”

Wakefield Council

11. General principles underlying the procedure

ACAS Code of Practice on Disciplinary and Grievance Procedures

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

Confidentiality

The capability process will be treated with confidentiality.

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.

Definitions

Unless indicated otherwise, all references to “teacher” include the head teacher.

Delegation

Normal rules apply in respect of the delegation of functions by Governing Bodies, head teachers and Local Authorities.

Grievances

Where a teacher raises a grievance during the formal capability procedure, the 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.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or the formal capability procedure, the case will be dealt with in accordance with the School Sickness Absence Policy and will be 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.