



Capability of Staff Policy

ALLEN EDWARDS PRIMARY SCHOOL

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Capability of Staff Policy

Capability Procedure for Teachers

Informal stage

There is no requirement for an informal stage, however this encouraged and may be considered where appropriate.

- A brief note of any counselling/informal support should be maintained for reference. Any note should be signed and dated by the employee as well as the school to ensure the record/note provides an accurate account of what is discussed.
- Where a teacher is considered to be under-performing, either arising from the performance appraisal process or otherwise, the Headteacher, line manager or other nominated officer may exercise their discretion to address the matter informally, rather than starting a formal process.
- The areas of concern will be highlighted to the employee and the appropriate action, for example relevant assistance, support or training, will be discussed and agreed.
- The employee will be informed as soon as possible of the decision to either end the informal monitoring or to start the formal procedures.

The employee will be kept up-to-date throughout the informal process, at least every two weeks. An informal process of monitoring will not normally extend beyond a period of six weeks, unless there are exceptional circumstances.

Formal capability meeting – Stage 1

The formal meeting initiates the formal capability procedure. It provides an opportunity to deal with capability concerns in a structured way. It allows the teacher to prepare (verbal and/or written) a response to allegations about performance and make a case in the company of a trade union representative or colleague if they so wish. The representative can speak and present the case if the teacher so wishes, however factual questions should be answered personally by the teacher.

The formal capability meeting will be conducted by a nominated governor for Headteacher capability meetings, or the Headteacher or a line manager for other teachers.

At least five working days' advance notice will be given for the meeting, which should take place within the directed time. The written advance notice of the meeting should set out the following:

- That the formal process is being initiated.
- Specific details of the concerns regarding performance and the associated evidence which has given rise to those concerns, and which will be presented to the employee during the meeting. This should include details of any witnesses who will be providing (normally written) evidence.
- Details of who will be involved at each stage of the process.



- The range of possible outcomes resulting from such a process.
- The teacher's right to be accompanied by a union representative or colleague.
- The teacher's right to seek and present their own evidence, including (normally written) evidence from witnesses.
- The date, time and location of the meeting, and the deadline by which the teacher must respond confirming both attendance at the meeting and details of the union representative or colleague who will accompany him/her.

During the meeting, the above points should be explained in detail, making clear how the teacher's performance is considered to be below the standards expected. The meeting will provide a fair opportunity for the teacher and his/her representative to answer the concerns and to present their evidence.

The meeting may provide new information or put a different slant on evidence collected. If it becomes apparent that further investigation is needed, the meeting will be adjourned for an appropriate and suitable length of time in order for this to happen. This is less likely in cases where an informal process has been used from the outset.

No decision regarding the next step should be made during the meeting. However, the options following the formal meeting are:

- Where new information provides a different slant/version on the information collected, or further investigation suggests that the matter is not as serious regarding capability as it first appeared, a decision may be made to take the matter no further because there is insufficient evidence to pursue the matter on the grounds of capability, and it is more appropriate to continue addressing the issues through the appraisal process.
- Continue with the formal process and apply the appropriate level of disciplinary sanction, if the concerns regarding the standard of performance are upheld/confirmed, for example a written warning or, for the most serious of cases, a final written warning.

A decision should be made only after all the facts and any representations from the teacher or her/his representative have been fully considered. Where a decision is made to take the matter no further, this decision will be confirmed to the teacher in writing as soon as possible without delay.

In cases where the performance concerns are upheld, a decision will be reached as to the appropriate level of disciplinary sanction. Notes will be taken of the formal meeting and a copy sent to the member of staff. Notes should be signed and dated by the employee to confirm they are an accurate record of what has been discussed. Any notes are confidential and should not be disclosed to any other party without the employee's consent.

This decision will be communicated to the employee in writing as soon as possible. The letter to the employee should include the following:

- Details of how the teacher's performance has fallen short of expectations and fell below the standard expected of the employee.



- The appropriate level of disciplinary action, ie written warning or final written warning.
- Clear guidance regarding the expected standard of performance required and the likely timescale that is required in order to bring an end to the capability procedure.
- Where appropriate, the setting of new objectives that focus on the specific weaknesses/issues that need to be addressed, clear targets and the evidence that will be used in order to assess whether or not the necessary improvement has been made.
- An explanation of the support that will be made available, including any appropriate training or mentoring, to assist the teacher in improving his/her performance.
- The timetable for improvement and an explanation of how performance will be monitored and reviewed over the following weeks. The timetable will depend on the circumstances of each individual case. Any time period set should be reasonable and proportionate, but not excessively long, and it should provide a sufficient opportunity for an improvement in performance to take place.
- Details of a date for the next meeting.
- The teacher should be warned of the likely outcome in the event that s/he fails to improve and bring their performance up to the required standard expected within the set period.
- The teacher's right to appeal the decision to the governing board, and the appropriate process.

Monitoring and review

A performance monitoring and review period will follow the formal capability meeting, unless it is agreed that no further performance management is required. Formal monitoring, evaluation, guidance and support will continue during this period. A record of any meeting arranged during the period of monitoring should be kept in writing, including specific details of what was discussed and agreed, which should be signed and dated by the employee.

The length of the review period will depend upon the type of concern. However, CEFM suggests that it should not normally exceed six weeks.

Formal review meeting – Stage 2

At the end of the review period, the employee will be invited to a formal review meeting, unless s/he was issued with a final written warning, in which case the teacher will be invited to a decision meeting (see below). The purpose of the formal review meeting is to assess performance over the previous weeks. At least five working days' advance notice will be given for the meeting, and a trade union representative or work colleague may accompany/represent the teacher. No decision will be reached during the meeting because the nominated officer will need to consider the evidence presented in detail in due course.

If the level of performance has been at the acceptable required standard and there is confidence that this level can be sustained, the capability procedure will end and the appraisal process will restart. This will be confirmed by letter from the line manager/Headteacher.



In other cases, the following options apply:

- 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 insufficient improvement in performance has been made during the monitoring and review period, where the teacher has been subject to a written warning, s/he will receive a final written warning.

In either case, formal monitoring, evaluation, guidance and support will continue for a further extended period. The detail of this will be explained at the meeting and the time limits set, again CEFM recommends no more than six weeks. The teacher will be informed that failure to achieve an acceptable performance standard, with confidence that it can be maintained, may result in dismissal. The teacher will be invited to a decision meeting. Notes will be taken of the formal meeting and a copy sent to the member of staff. The teacher may appeal against any decision by informing the nominated officer, in writing, of such appeal (see procedures regarding appeal) and s/he will be invited to a decision meeting.

Any appeal against a final written warning must be made within five working days of receipt of the outcome of the formal review meeting and should be heard within ten working days of notification of appeal (unless it is not reasonably practicable), and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

Decision Meeting – Stage 3

Where there has been a final written warning, a formal decision hearing will be held in order to carry out a final evaluation. A full assessment of performance over the previous weeks will take place during this hearing. At least five working days' advance notice will be given for the time and place of the hearing. A trade union representative or work colleague may accompany/represent the teacher.

If during the hearing, the nominated officer feels there is sufficient additional evidence that there has been an acceptable level of improvement towards the required standard of performance, s/he may choose to provide a further opportunity for the teacher to achieve the required standard. However, CEFM recommends that a strict time limit is imposed in such cases and this should be for no longer than six weeks. 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 restart. This decision will be confirmed to the teaching in writing and during this period the review and monitoring procedures will apply (see above).

If performance remains at an unsatisfactory standard, a recommendation will be made to the governing board that the teacher should be dismissed. A meeting of the staff dismissal committee will be convened and details of the decision regarding the evaluation of performance, a copy of the notes of the formal decision meeting and the date and time of the staff dismissal committee hearing should be recorded in a letter to the teacher and sent to the employee as soon as is reasonably practicable.

The teacher will be notified in writing of his/her right to appeal the decision.



Dismissal

Any decision to dismiss must be in accordance with the arrangements adopted by the school and, in the case of community and controlled schools, by the LA.

The staff dismissal committee of the governing board shall comprise three governors.

This committee will hear the representations (verbal and/or written) and recommendations brought by the nominated officer conducting the capability evaluation, and any representations that the teacher or their representative may wish to make. It shall determine whether or not to uphold the recommendation.

Where the staff dismissal committee determine the case against the teacher to be proven, they shall dismiss the teacher from the school's employment, normally giving contractual notice.

Should the staff dismissal committee or other relevant committee determine that, on the balance of probabilities, ie it is more probable than not that the case against the teacher has not been proven, they shall determine either:

- To end the capability procedure because an acceptable standard of performance has been achieved. or
- To revert to an earlier stage in the capability procedure.

A letter will be sent to the teacher informing them of the decision and the associated reasons.

The teacher may appeal against the decision by informing the clerk to governors of such appeal.

Any appeal against dismissal must be made within five working days and heard within ten working days of notification of appeal (unless not reasonably practicable), and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

The dismissal appeal committee (usually three governors) of the governing board will hear any appeal, at this stage of the procedure. It will hear both the reasons for the appeal and the reasons for the staff dismissal committee's decision before determining whether or not to uphold the appeal. In cases involving the Headteacher, it is likely that the chair of governors will have been involved at the dismissal stage so it is likely to be necessary to appoint external panel members.

None of the governors on the staff dismissal committee will be on the dismissal appeal committee.

The Right to Appeal

Should the teacher wish to exercise their right to appeal a decision at any stage, this should be made by informing the nominated officer in writing. The teacher should set out the specific grounds for appeal and the evidence to support the appeal. An appeal should be made as soon as possible, and in any event within five working days of receipt of the decision regarding the outcome of the formal meeting. The nominated officer will then convene a meeting of the appeals panel of the governing board.



A member of the appeals panel will write to the teacher confirming the date, time and location for the hearing, giving reasonable notice, and informing the teacher of his/her right to be accompanied by a trade union representative or colleague. Except for where it is not reasonably practicable, the appeal will be heard within ten working days of notification of appeal.

The appeals hearing will provide the teacher with a fair opportunity to present their case fully and any supporting evidence they wish to rely on.

No decision will be made during the appeals hearing, because the panel will adjourn the hearing in order to consider all the evidence available and any representations that have been made by the teacher and/or his/her representative during the hearing. The panel will then decide whether or not the sanction applied is to be upheld and this decision will be confirmed to the teacher in writing without delay, setting out the reasons for the panel's decision. The decision of the appeals panel of the governing board is final.

Review

This policy will be reviewed annually.

Capability Procedure for Support Staff

Informal stage

There is no requirement for an informal stage, however this is encouraged and may be considered where appropriate.

- A brief note of any counselling/informal support should be maintained for reference. Any note should be signed and dated by the employee as well as the school to ensure the record/note provides an accurate account of what is discussed.
- Where an employee is considered to be under-performing, either arising from a performance appraisal process or otherwise, the Headteacher, line manager or other nominated officer may exercise their discretion to address the matter informally, rather than starting a formal process.
- The areas of concern will be highlighted to the employee and the appropriate action, for example relevant assistance, support or training, will be discussed and agreed.
- The employee will be informed as soon as possible of the decision to either end the informal monitoring or to start the formal procedures.

The employee will be kept up-to-date throughout the informal process, at least every two weeks. An informal process of monitoring will not normally extend beyond a period of six weeks, unless there are exceptional circumstances.

Formal Capability Meeting – Stage 1

The formal meeting initiates the formal capability procedure. It provides an opportunity to deal with capability concerns in a structured way. It allows the employee to prepare a verbal and/or written response to allegations about performance and make a case in the company of a trade union representative or colleague, if they so wish. The representative can speak and present the case on behalf of the employee, if the employee so wishes. However, factual questions should be answered personally by the employee.

The formal capability meeting will be conducted by the Headteacher or a line manager.

At least five working days' advance notice will be given for the meeting, which should take place within directed time. The written advance notice of the meeting should set out the following:

- That the formal process is being initiated.
- Specific details of the concerns regarding performance and the associated evidence which has given rise to those concerns, and which will be presented to the employee during the meeting. This should include details of any witnesses who will be providing (normally written) evidence.
- Details of who will be involved at each stage of the process.
- The range of possible outcomes resulting from such a process.
- The employee's right to be accompanied by a union representative or colleague.
- The employee's right to seek and present their own evidence, including (normally written) evidence from witnesses.
- The date, time and location of the meeting, and the deadline by which the employee must respond, confirming both attendance at the meeting and details of the union representative or colleague who will accompany him/her.

During the meeting the above points should be explained in detail, making clear how the employee's performance is considered to be below the standards expected. The meeting will provide a fair opportunity for the employee and his/her representative to answer the concerns and to present their evidence.

The meeting may provide new information or put a different slant on evidence collected. If it becomes apparent that further investigation is needed, the meeting will be adjourned for an appropriate and suitable length of time in order for this to happen. This is less likely in cases where an informal process has been used from the outset.

No decision regarding the next step should be made during the meeting. However, the options following the formal meeting are:

- Where new information provides a different slant/version on the information collected, or further investigation suggests that the matter is not as serious regarding capability as it first appeared, a decision may be made to take the matter no further because there is insufficient evidence to pursue the matter on the grounds of capability, and it is more appropriate to continue addressing the issues through the appraisal process.
- Continue with the formal process and apply the appropriate level of disciplinary sanction, if the concerns regarding the standard of performance are upheld/confirmed, for example a written warning or, for the most serious of cases, a final written warning.

A decision should be made only after all the facts and any representations from the employee or her/his representative have been fully considered. Where a decision is made to take the matter no further, this decision will be confirmed to the employee in writing as soon as possible, without delay.



In cases where the performance concerns are upheld, a decision will be reached as to the appropriate level of disciplinary sanction.

Notes will be taken of the formal meeting and a copy sent to the member of staff. Notes should be signed and dated by the employee to confirm they are an accurate record of what has been discussed. Any notes are confidential and should not be disclosed to any other party without the employee's consent.

This decision will be communicated to the employee in writing as soon as possible. The letter to the employee should include the following:

- Details of how the employee's performance has fallen short of expectations and fell below the standard expected of the employee.
- The appropriate level of disciplinary action, ie written warning or final written warning.
- Clear guidance regarding the expected standard of performance required and the likely timescale for improvement that is required in order to conclude/complete the capability procedure.
- Where appropriate, the setting of new objectives that focus on the specific issues that need to be addressed, clear targets and the evidence that will be required in order to assess whether or not the necessary improvement has been made.
- An explanation of the support that will be made available, including any appropriate training or mentoring, to assist the employee in improving his/her performance.
- The timetable for improvement and an explanation of how performance will be monitored and reviewed over the following weeks. The timetable will depend on the circumstances of each individual case. Any time period set should be reasonable and proportionate, but not excessively long, and it should provide a sufficient opportunity for an improvement in performance to take place.
- Details of a date for the next meeting.
- The employee should be warned of the likely outcome in the event that s/he fails to improve and bring their performance up to the required standard expected within the set period.
- The employee's right to appeal the decision to the governing board, and the appropriate process. This *must* be included in the letter.

Monitoring and review

A performance monitoring and review period will follow the formal capability meeting, unless it is agreed that no further performance management is required. Formal monitoring, evaluation, guidance and support will continue during this period. A record of any meeting arranged during the period of monitoring should be kept in writing, including specific details of what was discussed and agreed, which should be signed and dated by the employee.

The length of the review period will depend upon the type of concern. However, CEFM suggests that it should not normally exceed six weeks.

Formal Review Meeting – Stage 2

At the end of the review period, the employee will be invited to a formal review meeting, unless s/he was issued with a final written warning, in which case the employee will be invited to a decision meeting (see below). The purpose of the formal review meeting is to assess performance over the previous weeks. At least five working days' advance notice will be given for the meeting, and a trade union representative or work colleague may accompany/represent the employee. No decision will be reached during the meeting, because the Headteacher will need to consider the evidence presented in detail in due course.

If the level of performance has been at the acceptable required standard and there is confidence that this level can be sustained, the capability procedure will end and this will be confirmed by letter from the line manager/Headteacher.

In other cases, the following options apply:

- 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 insufficient improvement in performance has been made during the monitoring and review period, where the employee has been subject to a written warning, s/he will receive a final written warning.

In either case, formal monitoring, evaluation, guidance and support will continue for a further extended period. The detail of this will be explained at the meeting and the time limits set, again CEFM recommends no more than six weeks.

The employee will be informed that failure to achieve an acceptable performance standard, with confidence that it can be maintained, may result in dismissal. The employee will be invited to a decision meeting. Notes will be taken of the formal meeting and a copy sent to the member of staff. The employee may appeal against any decision by informing the Headteacher, in writing, of such appeal and s/he will be invited to a decision meeting.

Any appeal against a final written warning must be made within five working days of receipt of the outcome of the formal review meeting and should be heard within ten working days of notification of appeal (unless it is not reasonably practicable), and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

Decision Meeting – Stage 3

Where there has been a final written warning, a formal decision hearing will be held in order to carry out a final evaluation. A full assessment of performance over the previous weeks will take place during this hearing. At least five working days' advance notice will be given for the time and place of the hearing. A trade union representative or work colleague may accompany/represent the employee.

If during the hearing, the Headteacher feels there is sufficient additional evidence that there has been an acceptable level of improvement towards the required standard of performance, s/he may choose to provide a further opportunity for the employee to achieve the required standard. However, CEFM recommends that a strict time limit is imposed in such cases and this should be for no longer than six weeks. If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will



end. This decision will be confirmed to the employee in writing and during this period the review and monitoring procedures will apply (see above).

If performance remains at an unsatisfactory standard, a recommendation will be made to the governing board that the employee should be dismissed. A meeting of the staff dismissal committee will be convened and details of the decision regarding the evaluation of performance, a copy of the notes of the formal decision meeting and the date and time of the staff dismissal committee hearing should be recorded in a letter to the employee and sent to the employee as soon as is reasonably practicable.

The employee will be notified in writing of his/her right to appeal the decision.

Dismissal

Any decision to dismiss must be in accordance with the arrangements adopted by the school (TUPE regulations may apply).

The staff dismissal committee of the governing board shall comprise three governors. This committee will hear the representations and recommendations brought by the Headteacher, or line manager conducting the capability evaluation, and any representations (verbal and/or written) that the employee or their representative may wish to make. It shall determine whether or not to uphold the recommendation.

Where the staff dismissal committee determines the case against the employee to be proven, they shall dismiss the employee from the school's employment, normally giving contractual notice.

Should the staff dismissal committee or other relevant committee determine that, on the balance of probabilities, i.e. that it is more likely than not that the case against the employee has not been proven, they shall determine either:

- To end the capability procedure because an acceptable standard of performance has been achieved, or
- To revert to an earlier stage in the capability procedure.

A letter will be sent to the employee informing them of the decision and the associated reasons.

The employee may appeal against the decision by informing the clerk to governors of such appeal.

Any appeal against dismissal must be made within five working days and heard within ten working days of notification of appeal (unless it is not reasonably practicable), and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

The dismissal appeal committee (usually three governors) of the governing board will hear any appeal, at this stage of the procedure. It will hear both the reasons for the appeal and the reasons for the staff dismissal committee's decision before determining whether or not to uphold the appeal.

None of the governors on the staff dismissal committee will be on the dismissal appeal committee.



The right to appeal

Should the employee wish to exercise their right to appeal a decision at any stage, this should be made by informing the Headteacher in writing. The employee should set out the specific grounds for appeal and the evidence to support the appeal. An appeal should be made as soon as possible, and in any event, within five working days of receipt of the decision regarding the outcome of the formal meeting. The Headteacher will then convene a meeting of the appeals panel of the governing board.

A member of the appeals panel will write to the employee confirming the date, time and location for the hearing, giving reasonable notice, and informing the employee of his/her right to be accompanied by a trade union representative or colleague. Except where it is not reasonably practicable, the appeal will be heard within ten working days of notification of appeal.

The appeals hearing will provide the employee with a fair opportunity to present their case fully and any supporting evidence they wish to rely on.

No decision will be made during the appeals hearing, because the panel will adjourn the hearing in order to consider all the evidence available and any representations that have been made by the employee and/or his/her representative during the hearing. The panel will then decide whether or not the sanction applied is to be upheld and this decision will be confirmed to the employee in writing without delay, setting out the reasons for the panel's decision. The decision of the appeals panel of the governing board is final.

Review

This policy will be reviewed annually.