



Schools Managing Employee Performance (Capability) Procedure For Teachers

Produced by the HR Advisory Service

This policy has been adopted by: Fox Wood School

Date: 6.03.2024

DOCUMENT STATUS

Version	Date	Action
1	November 2009	New procedure
2	April 2010	Further draft for consultation
4	July 2010	Further amendments following consultation
5	October 2010	Redraft following TU consultation
6	April 2012	Redraft of Teachers sections due to D of E Legislation
6	October 2012	Issued with failure to agree with TU's
7	January 2015	Agreed at JCC April 2015
8	November 2023	Agreed at JCC Feb 2024

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1. INTRODUCTION

- 1.1 The School and its Governors recognise that its employees are its best asset and encourage improved performance by putting into place a range of policies, practices, procedures and systems that are vital in achieving excellence in teaching and learning.
- 1.2 This procedure has been designed to complement other School policies, procedures and initiatives aimed at developing employees and improving performance management.
- 1.3 The procedure sets out the steps to be followed by the Headteacher or other nominated person where there is serious underperformance which the appraisal process has been unable to address.
- 1.4 A clear distinction is drawn between poor performance due to performance that is not attaining and maintaining the required standard, after any external mitigating circumstances have been considered (what someone cannot do even when trying their best) and a matter of conduct that would be dealt with under the School's Disciplinary Procedure.
- 1.5 The procedure focuses on helping the employee to achieve appropriate levels of work performance through training, coaching, target setting and monitoring. It is therefore essential that the employee receives appropriate support and guidance both on a work based and personal level.
- 1.6 The procedure contains the steps to be taken in cases where the employee's performance does not improve, for whatever reason, and further action may be required. Due account must be taken of the circumstances of any protected characteristic of an employee whose situation may be unique and requires consideration of their condition in accordance with the Equality Act 2010.
- 1.7 Effective management, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through performance management and review will help avoid the need for the implementation of formal capability procedures. In some cases, an improvement may be achieved informally with a minimum of support and attention.
- 1.8 This procedure should only be invoked once the 'Training and Support' section of the appraisal policy has been exhausted.

2. SCOPE OF THE PROCEDURE

- 2.1 This policy applies to Teachers (including the headteacher) within schools and should be adopted by the Governing Body accordingly. This policy does not apply to Early Career Teachers.

Role of Governors

- 2.3 Governors will not normally be involved with the Managing Employee Performance procedure before the Capability Hearing. The exception to this is when a headteacher is the subject of the procedure when the chair of governors will be involved in the monitoring and evaluation of performance.
- 2.4 Governing Bodies must by law have procedures for managing the performance of staff. They must have regard to guidance from the Secretary of State in determining staff performance. This document is compliant with this statutory guidance.

3. SETTING STANDARDS

- 3.1 The statutory framework for performance management in England is set out in The Education (School Teacher's Appraisal (England) Regulations 2012.
- 3.2 Each teacher should receive a written appraisal report at the conclusion of the appraisal cycle. This should be compiled with reference to the employee's objectives, the employee's performance against those objectives, training and development needs and a recommendation on pay.
- 3.3 Teachers are bound by the professional standards expected of a teacher. They are also bound by the terms contained within the School Teachers Pay and Conditions document. Clear job descriptions and clearly defined expectations will assist in establishing clear performance standards.
- 3.4 Headteachers must ensure that employees are aware of the expected level of performance and agree targets to achieve the required goals.
- 3.5 The nature of any performance concerns, their level of seriousness and causes must be investigated and identified by structured information gathering and systematic recording e.g. a review of workload to ensure there is reasonable time to fulfil the duties or whether personal circumstances are impacting on their performance.

4. SUPPORT

- 4.1 Individuals should be encouraged to contact their trade union or professional association for advice and guidance. All employees have a legal entitlement to be accompanied by a colleague or union representative at any formal meeting under this procedure. Best practice would recommend that there be an opportunity for an employee to be accompanied at informal meetings, if agreed by all parties.
- 4.2 Those monitoring the performance should offer feedback and instruction to help the employee improve performance; this should be done in line with the school's appraisal process. If training courses or assistance from colleagues would be helpful, these should be arranged as soon as possible but should not interrupt the timing of the procedure.
- 4.3 A referral to Occupational Health should be considered when reviewing the health and welfare of the employee during this process.

6. FORMAL CAPABILITY MEETING – STAGE 1

- 6.1 This procedure applies only to teachers or Headteachers where there are serious concerns about their performance that the appraisal process has been unable to address.
- 6.2 At least five working days' notice will be given of the formal capability meeting. The invitation 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 make reference to 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 work-based colleague or trade union representative.
- 6.3 The formal meeting is intended to establish the facts. It will be conducted by the Headteacher/Nominated person for all teachers within the school; however if the Headteachers performance is in question, this meeting will be conducted by the chair of governors. The meeting allows the teacher, to respond to concerns about their performance and to make relevant representations. This may provide new information or a different context to the information/evidence already collected.
- 6.4 The person conducting the meeting will:
 - Identify the shortcomings, for example which of the Teaching standards are not being met;
 - Give clear guidance on the improved standards of performance needed to ensure that the teacher can be moved out of the formal capability procedure. This may include a discussion around setting of new Smart objectives focussed on specific areas of concern 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 relevant training (training sources by the school, via the trade union or by the employee themselves) and support that will be available to help the teacher improve their performance, in line with the Teachers Professional Standards;
- Set out the timetable for improvement and explain how performance will be monitored and reviewed.
- Confirm that the normal appraisal process will be suspended from the point of the Formal Capability meeting.
- Due regard should be made to the health and welfare of the individual and consideration given to a referral to the Council's Occupational Health Service;
- The detail should be brought together in an action plan; templates can be sourced from Human Resources.
- Conduct a workload impact assessment based on a clear directed time statement.

6.5 A timetable for this process will depend on the individual circumstance of each case, it should be between four and twelve weeks; it is for the school to determine the time period taking into consideration that it should be reasonable, proportionate, but not excessively long (a 4 week period should only be set in exceptional circumstances); it should also provide sufficient opportunity for improvement to take place. Teachers must be advised at this stage, that failure to improve within a set time period could ultimately lead to dismissal.

6.6 The teacher will be informed in writing of the matters covered in the bullet points above and given information about the timing of the review stage. The action plan should be included with the letter, ensuring it is clear what programme of action and support is to take place, the monitoring and timescales and the possibility of terminating the teacher's employment should sufficient improvement not be made.

6.7 It may be the case, that following discussions held through the course of the meeting that 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 if they decide that further investigation is needed, or that more time is needed in which to consider the additional information. Again, the teacher should be informed in writing if this is the case. In these circumstances the teacher will not be considered to have entered formal capability.

7. FORMAL REVIEW MEETING – STAGE 2

7.1 At the end of the formal performance monitoring and review period the member of staff will be invited to a formal review meeting.

- 7.2 The teacher should be given at least five working days' notice of the meeting in writing which will provide details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a work-based colleague or trade union representative.
- 7.3 If, following a review of progress against the action plan, 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.

NB: It is important to note that if the teacher's performance causes concern within 12 months of returning to the appraisal process, consideration will be given to them returning to the capability procedure at the point from which they left it.

- 7.3 In other cases, if some progress has been made and there is confidence that more progress is likely, it may be appropriate to extend the monitoring and review period for a further short period of time. If this decision is made a date for the re-convened formal review meeting should be arranged at this meeting and confirmed in writing.
- 7.4 If insufficient or no progress has been made during the monitoring and review period, the teacher will be invited to a Stage 3 capability hearing.
- 7.5 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 teacher will be invited to a capability hearing.

8. CAPABILITY HEARING – STAGE 3

- 8.1 A capability hearing will be arranged where an employee has made no, or insufficient improvement during the monitoring and review period and the headteacher/ nominated person will make a recommendation to the Governing Body that the teacher should be dismissed.
- 8.2 As with the formal capability meeting and formal review meeting, teachers should be given at least ten working days' notice of the Capability Hearing, which will give them details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a work-based colleague or trade union representative
- 8.3 The recommendation will be presented by the person who has undertaken the formal capability and review meetings or such other person with sufficient knowledge.

- 8.3 If it is deemed that an acceptable standard of performance has been achieved during the monitoring/further monitoring and review period, the capability procedure will end and the appraisal process will re-start.
- 8.4 If, however, a decision to dismiss the teacher is made, voluntary aided schools are advised to discuss the matter with the local authority, community and voluntary controlled schools must discuss the matter with the local authority.
- 8.5 The teacher will be informed as soon as possible of the reasons for dismissal, the date on which their employment contract will end, the appropriate period of notice and their right of appeal.
- 8.6 The power to dismiss staff in school rests with the Governing Body. In community and voluntary controlled schools this will need to be confirmed with the local authority. The Governing Body will dismiss the teacher on the grounds of capability giving the member of staff the appropriate notice.

9. APPEAL

- 9.1 If a teacher feels that a decision to dismiss them, is wrong or unjust, they may appeal in writing against the decision within ten working days of receiving written notification of the decision. They must set out in their appeal letter the grounds on which they wish to lodge an appeal. The grounds for appeal may include for example: the severity of the outcome, new significant evidence coming to light or alleged procedural deficiencies.
- 9.2 The decision of the Appeals Committee will be final. A statutory right to access an Employment Tribunal is not affected.
- 9.3 Appeals will be heard without unreasonable delay and where possible, at an agreed time and place. Staff will be advised of their right to be accompanied by a work based colleague or trade union representative.
- 9.4 The Appeals Committee of the Governing Body will hear the appeal. The Appeals Committee will consist of a minimum of 3 Governors who were not involved in the previous decision making. The Appeal Committee will review all evidence presented by the Headteacher/Governing Body and employee and should have access to impartial advice from a HR Business Partner (who has not been involved in the case previously). The procedure to be followed is set out at Appendix 1.

10. GENERAL PRINCIPLES

- 10.1 **Grievances** - 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.
- 10.2 **Sickness** - 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 attendance policy (*e.g. referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment*).
- 10.3 **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.
- 10.4 **Definitions** - unless indicated otherwise, all references to "teacher" include the Headteacher.
- 10.5 **Delegation** - normal rules apply in respect of the delegation of functions by governing bodies, Headteachers and local authorities.

11. MONITORING, EVALUATION AND REVIEW

- 11.1 The governance board and headteacher will monitor the operation and effectiveness of the school's appraisal arrangements. This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

12. FURTHER INFORMATION

- 12.1 Further advice and guidance on this procedure or a specific case can be obtained from HR Advisory Service.
- 12.2 If you would like to comment on the content of the procedure or require it in an alternative format, please contact HR Advisory Service.

TIMESCALES FOR TEACHERS FORMAL PROCESS

STAGE	ACTION	TIMESCALE
NOT PART OF PROCEDURE	Normal performance management appraisal process. Initial concerns raised through normal performance management appraisal process. Guidance and support provided.	Ongoing In most cases performance will improve and support will cease.
MEP PROCEDURE COMMENCES		
FORMAL CAPABILITY MEETING STAGE 1	Performance has still not improved sufficiently. <ul style="list-style-type: none"> • Formal meeting takes place • Concerns raised • Action plan agreed • Review to take place at end of agreed period 	Review Period between 4 and 12 weeks (4 weeks should only be used in exceptional circumstances) 5 Working days notice to attend
FORMAL REVIEW MEETING STAGE 2	Review of performance/improvement against action plan <ul style="list-style-type: none"> • If some progress made, option to extend review period • If insufficient or no progress made, teacher invited to Capability Hearing 	5 Working days notice to attend
CAPABILITY HEARING STAGE 3	Recommendation for dismissal made <ul style="list-style-type: none"> • Capability Hearing convened • Recommendation for dismissal made • Governors to discuss recommendation and make a decision. 	10 Working days notice to attend
APPEAL	Appeal committee set up (if appropriate).	10 Working days notice to submit

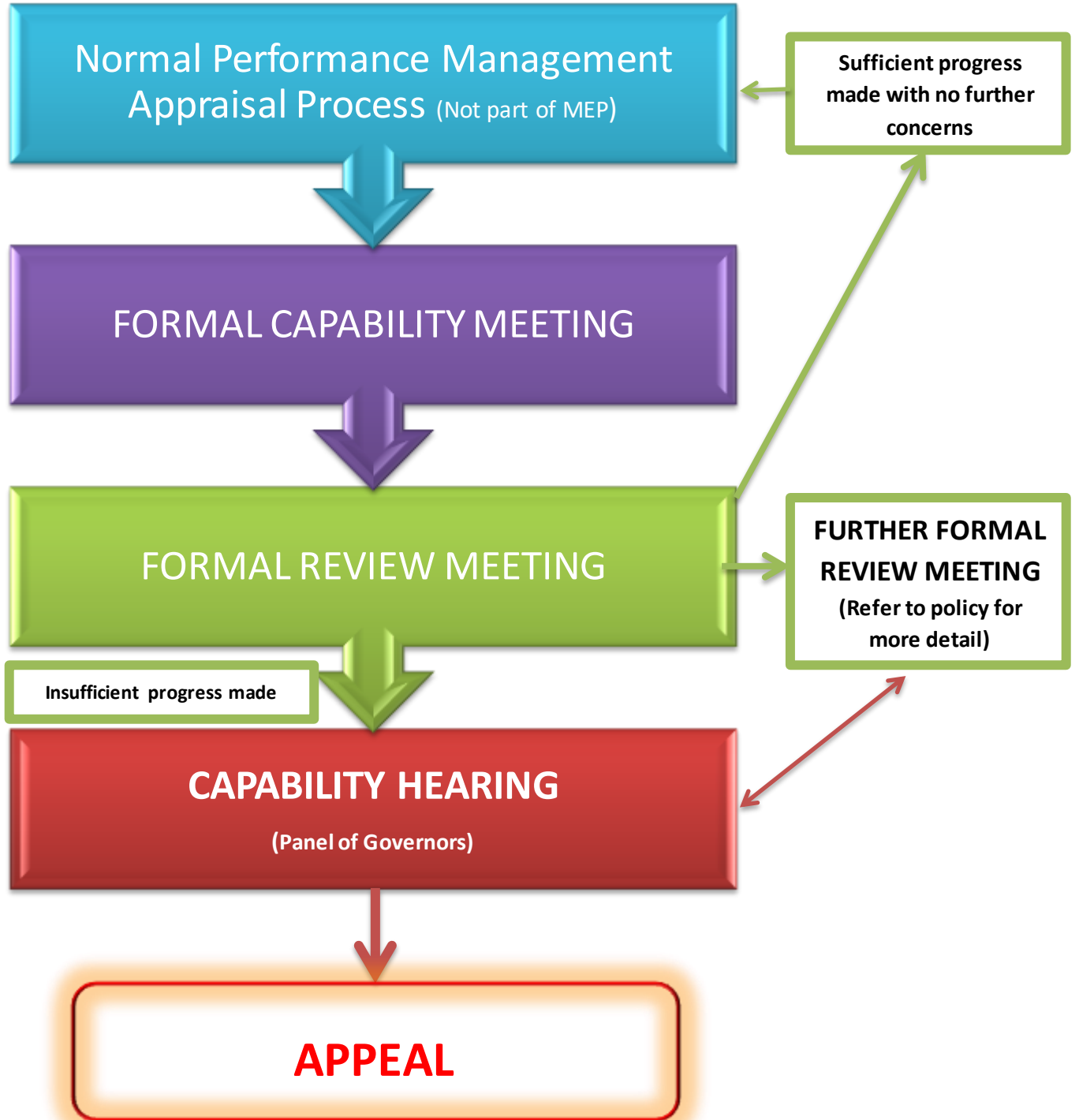
These timescales are in line with the DFE Guidance on capability procedures for Teachers.

The short procedure of up to four weeks would apply in particularly serious cases where the education of children is in jeopardy. Examples of this might be where a teacher's classroom control is so poor that no order can be established to enable teaching to take place, or where all the children under a teacher's care fail to progress in that teacher's lessons.

The date of entry into the formal procedure will be the date of the first formal interview.

APPENDIX 2

MANAGING EMPLOYEE PERFORMANCE (TEACHERS)



PROCEDURE FOR STAFF DISMISSAL/APPEAL HEARINGS

The procedure to be adopted at any dismissal or appeal hearing will normally be:

- 1 The dismissal hearing will be conducted by the Headteacher (if they have not already been involved in the process) or the Governing Body.
- 2 One or more advisers, who may be from the Local authority, should assist the person or panel conducting the hearing in the conduct of the hearing.
- 3 The panel conducting the hearing will be satisfied that the employee understands the purpose of the hearing, the nature of the issue(s) and the possible implications arising from it.
- 4 The case against the employee will normally be presented by the person who has been managing the matter or such other person with sufficient knowledge. The person presenting the case will describe the case and the presentation may include written statements or other documents where these are considered necessary. (If written statements or other documents are to be presented, copies of these should normally be sent to the employee and/or their representatives with the letter convening the hearing).
- 5 The employee and/or representative will be given the opportunity to question the presenting officer.
- 6 The employee or his/her representative will then be invited to respond to the case as presented. The employee may also produce written statements or other documents in support of his/her case. (Where it is the intention to submit written Statements of Case these must be exchanged by both sides at least three working days prior to the hearing.)
- 7 The person presenting the case will be given the opportunity to question the employee and his/her representative.
- 8 At any stage during the hearing the person/panel conducting the hearing and any adviser(s) may ask questions of the employee, the person presenting the case or such other persons, as they may consider appropriate in order to ascertain the facts and arguments. The employee's representative should be allowed to answer on their behalf as requested. The formulation of views before the end of the hearing should be avoided.

- 9 The person presenting the case will then be invited to make a closing statement not introducing any new material.
- 10 Finally, the employee or his/her representative will be given the opportunity to make a closing statement also without introducing any new material.
- 11 Both parties will withdraw to allow the person/panel conducting the hearing to review and consider the evidence in conjunction with any advisers.
- 12 If the person/panel conducting the hearing require clarification of any point(s) of the case both parties must be recalled in order for questions to be asked of either side.
- 13 The person/panel conducting the hearing will then recall both parties to inform them of his/her/their decision. The decision should normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately, the parties should be informed of this. In any event a decision must be made and communicated to the employee within five working days of the hearing. The decision should be confirmed in writing and delivered to the employee either by hand or recorded delivery with a copy to the trade union or other representatives.
- 14 If it is felt that the details of the case may prove traumatic for any individual involved, support via Occupational Health will be offered at the outset of the proceedings.

Any officer involved throughout the procedure cannot be part of the dismissal panel. This includes the Headteacher if they have been Managing the procedure. Under these circumstances school may revert to the previous procedure whereby a Governing Body Staff Dismissals Panel is formulated as well as a Governing Body Staff Dismissal Appeals Panel. Human Resources will advise the Headteacher and governors as appropriate to each individual case.