

# Capability Procedure for Teachers

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## Document information

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Purpose	The Capability Procedure relates to teachers who have been taken through a supportive improvement plan, but who have failed to make sufficient progress. Such staff will then be subject to the formal Capability Policy and Procedure.		

## Document accessibility

If you would like this information in another language or format please speak to your Headteacher/Principal

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## **1. Introduction**

- 1.1 This procedure applies to all school teachers employed by the school, other than those staff undergoing a period of induction.
- 1.2 It is important that suitable rules and procedures are in place within schools which promote fairness and consistency in the treatment of individual employees and reflect both the relevant policy on equal opportunities and legislation on the avoidance of discrimination.
- 1.3 This Capability Procedure is separate and distinct from Disciplinary, Grievance and Sickness Absence Management Procedures; however the particular circumstances of an individual case may also involve action under one of these procedures.
- 1.4 Ill health issues that arise during the course of the Capability Procedure should be treated sensitively on a case-by-case basis. It is recommended that such cases should be treated in a considerate and sympathetic manner and should be subject to advice given from the Occupational Health Adviser, if appropriate.
- 1.5 The procedure will be initiated by the Headteacher within the school. If a Headteacher is subject to this procedure, then the role normally undertaken by them will be carried out by a nominated governor (usually the Chair of Governors), advised by a nominated representative.
- 1.6 This procedure aims to ensure that any teacher who is subject to action under this procedure is dealt with as speedily as practicable, in a fair and supportive manner.
- 1.7 A copy of the procedure is available to all staff and any teacher who becomes subject to this procedure shall be provided with a copy.
- 1.8 Any teacher who is subject to this procedure should be advised that they are entitled to be accompanied by a work colleague or a trade union/professional association representative.
- 1.9 In exceptional circumstances, for example when delegated powers are withdrawn from a school, the Capability Procedure will be appropriately amended to take account of statutory or other related provisions in place at the time. Such amendments shall be the subject of consultation between Walsall Council and the recognised professional associations/unions.
- 1.10 It should be noted that many potential problems can and should be resolved in a timely manner in order to avoid the use of this procedure where possible. This procedure is intended to operate in respect of formal, recorded action and does not affect the right of the Headteacher and other managers to give guidance, support and encouragement as part of their day to day management role which shall not form part of a teacher's record.
- 1.11 Appended to this procedure (Appendix 1) is the Record of Previous Support Programme pro-forma to be used to document the work that has been already completed in school to support the teacher, prior to the Headteacher taking the decision to progress to the formal capability procedure. If the teacher has reached the formal capability procedure

via the Appraisal Process, then this activity will already have been recorded within section 5 of the Walsall Appraisal Record.

- 1.12 This formal procedure is intended to be used in those situations where a teacher fails consistently to perform their duties in compliance with the Teachers' Standards applicable at the time, at a level that is consistent with what can be reasonably expected of a teacher in the relevant role and at the relevant stage of their career.
- 1.13 Under this procedure, alternative employment within the school may be recommended. The employee may request alternative employment, or consideration may be given to a different balance of duties.
- 1.14 Advice may be sought from your human resources advisor during this procedure and it is recommended that advice is sought prior to any action being taken.

## **2. Capability**

- 2.1 Either actions or omissions may call into question the capability of a teacher. The Capability Procedure will be invoked when a teacher fails consistently to perform their duties to an acceptable standard.
- 2.2 The following list gives examples of issues relating to teaching capability and should not be regarded as exhaustive.
  - (a) Organisation of the teaching area and management of resources
  - (b) Maintenance of an appropriate level of discipline and control
  - (c) Planning and preparation of the teaching/learning programme in an appropriate form
  - (d) Appropriate setting, marking and assessment of pupils' work
  - (e) Keeping suitable records of pupils' work, progress and attainment
  - (f) Subject knowledge in the teacher's specialist area(s)
  - (g) Adequate discharge of defined responsibilities
  - (h) Reasonable co-operation with colleagues on professional matters
  - (i) Failure to meet the standards of performance required by the Teachers Standards' applicable at the time

## **3. Identification**

- 3.1 Concerns regarding teacher performance should be clearly identified and appropriate support given at the earliest opportunity. Concerns may arise during the routine operation of the school or when the appraisal process has not addressed performance issues, even after a period of supportive measures have been put in place. The nature of the problem, its level of seriousness and cause(s) must be investigated, identified and recorded in a structured and systematic way. Appendix 1, The Record of Previous Support Programme

pro-forma at Appendix 1 of this policy, or section 5 of the Walsall Appraisal Record, provides a standardised pro-forma, to facilitate the documentation of concerns identified.

- 3.2 A teacher's progress should have been monitored via a supportive action plan and evidenced prior to action being taken under this procedure. This will apply in circumstances where the capability issue arises outside of the appraisal process.
- 3.3 The Headteacher must approve the initiation of the formal Capability Procedure.

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

4.1 This will be carried out where the Headteacher concludes that deficiencies in performance warrant action. The Headteacher will write to the teacher arranging to meet with them, giving at least five working days notice of the date of the formal capability meeting and including the following points:

- (a) Details of the concerns regarding performance
- (b) Details of who will be in attendance at the meeting, for example; Headteacher and a HR Adviser
- (c) The teacher's right to be accompanied/represented throughout the procedure by a colleague or trade union/professional association representative
- (d) Confirm that the teacher will be given the opportunity to respond to the concerns raised, challenge any evidence presented and offer a statement in mitigation

4.2 The Headteacher should ensure that the meeting takes place in private and all parties should be reminded that the issues discussed are to be treated as confidential. At the end of the meeting, the Headteacher may require an adjournment to consider her decision and/or seek further advice. The teacher will be advised of the decision at the end of the meeting, or as soon as possible thereafter, and this decision will be confirmed in writing at the earliest opportunity. With the teacher's agreement the Headteacher may request another manager to be present to take notes of the meeting.

4.3 The decision will be one of the following:

No further action i.e. the Headteacher considers that the alleged deficiencies are unfounded and the teacher is performing to an acceptable standard

- (b) Formal Written Warning – issued at Formal Capability Meeting (1)
- (c) Formal Final Written Warning – issued at Formal Capability Meeting (2)

4.4 Formal Written Warning (1st Stage, Capability Procedure)

Formal action in the form of a warning will normally include the establishment of targets and/or performance standards along with an appropriate support programme and timescale for improvement. The recommended timescale for improvement is 4 working weeks, or longer if required by the agreed supportive action plan (excluding schools holidays). The

date of the formal recorded interview when the teacher is notified of such action will be regarded as the date of entry in to the formal procedure. The period given for improvement following entry in to the formal procedure at Stage 1 will usually be 4 working weeks. At the end of this first period, Formal Capability Meeting (2) will take place.

- 4.5 All warnings will be confirmed in writing and will include the following:
- (a) The level of the warning and the length of time that it will remain in place
  - (b) Details of the teacher's deficiencies as identified at the meeting
  - (c) Confirmation of the improvement in performance which is expected along with advice/instruction on how the improvement can be achieved
  - (d) The support and advice available to assist the teacher in achieving the required standard of performance
  - (e) The timescale for improvement
  - (f) Details of arrangements for monitoring and review meetings
  - (g) The likely consequences of insufficient improvement
  - (h) The right of appeal
- 4.6 Where the teacher has made satisfactory progress against his/her performance targets, the Headteacher will stop the capability procedure at Formal Capability Meeting (2). If after 12 months performance remains satisfactory the record of this warning will be expunged from the teacher's file.
- 4.7 Where a teacher's supportive action plan and performance targets have not had the desired effect, a final formal written warning may be issued at Formal Capability Meeting (2). The record of this warning will be retained on the personal file and expunged after a period of 2 years satisfactory performance following completion of the prescribed period. Performance will not be deemed to have been satisfactory if a further warning relating to the original deficiency has been issued within the 2 year period.
- 4.8 A further four week monitoring and review period of the employee will be undertaken, except in extreme cases where the education of pupils is seriously compromised. In such circumstances, a teacher may be fast tracked directly to the dismissal procedure.
- 4.9 This second monitoring period moves into the final stage of the Capability Procedure and will be the subject of a final, formal written warning.

#### **4.10 Final Formal Written Warnings**

- 4.11 The record of a final warning will be retained on the personal file and expunged after a period of 2 years satisfactory performance following the completion of the four week monitoring and review period.
- 4.12 Where a teacher has made satisfactory progress against his/her performance targets and action plan, the Headteacher will stop the capability procedure at Formal Capability Meeting (3).

- 4.13 If the outcome of Formal Capability Meeting (3) is that the teacher has not made satisfactory progress and is still performing below the expected standard, the Headteacher will initiate the dismissal procedure.

#### **4.14 Formal Capability Monitoring Record**

- 4.15 Appendix 2 of this document, Formal Capability Monitoring Record, will assist with detailing the areas of improvement required from the teacher, the support provided and the impact/outcome at each stage of the process prior to the initiation of the dismissal procedure.

### **5. Dismissal Procedure**

- 5.1 If, following completion of the prescribed period relating to the issue of the final written warning, in the view of the Headteacher, the teacher's performance is still deficient in those areas previously identified, the Headteacher shall prepare a further report detailing the findings of the Capability process.
- 5.2 The report shall be discussed with the teacher through a further formal recorded interview. Following discussion, if it is the view of the Headteacher advised by their HR Consultant, that consideration is to be given to dismissal of the teacher, dismissal proceedings will be initiated. The Education Act 2002 provides for dismissals to be undertaken by the Headteacher. However in order to demonstrate a fair and objective procedure, schools are strongly advised to refer potential dismissals to a sub-committee of the Governing Body, i.e. the Staffing Committee. This is particularly important in smaller schools/academies where the Headteacher is likely to have implemented, monitored and reviewed the various stages of the Capability Procedure.
- 5.3 Following discussion, if no further action in line with dismissal procedures is deemed necessary, the employee shall be informed in writing within five working days.
- 5.4 Referral to the Staffing Committee shall be initiated by the Headteacher, advised by a Human Resources Consultant and the Headteacher shall notify the teacher in advance in writing, giving the reasons. The teacher shall be entitled to put their case to the Staffing Committee, the composition of which shall comply with the appropriate Regulations in relation to school governance.
- 5.5 The decision shall be one of the following:
- (a) To exonerate the teacher and direct that all references to the matter be removed from their personal file
  - (b) To find that the alleged deficiencies are proven in whole or in part and accordingly:
    - Resolve that no action be taken
    - Extend the period of time for improvement, supported with a warning that if improvements in performance are not achieved, governors may reconsider dismissal, or

- Determine that the teacher ceases to work at the school

- 5.6 The decision shall be given to the teacher in writing by the Clerk to the Governing Body, and a copy shall be sent to the employer. Notification of the decision only shall be conveyed to the rest of the Governing Body.
- 5.7 In cases where the period of time for improvement has been extended, at the end of the prescribed timescale, the Headteacher shall submit a report to the Staffing Committee giving details of progress made. The Staffing Committee will then reconsider the matter as described above.
- 5.8 Where a Committee has determined that a teacher should cease to work at the school, the teacher shall be given the opportunity of appealing against this decision.
- 5.9 Simultaneously written notification is sent to the employer.
- 5.10 The dismissal will then be actioned on behalf of the employer within 10 working days of the notification being given. The teacher will be given notice, or pay in lieu of notice, in accordance with their contract or with the statutory minimum, whichever is the greater.
- 5.11 Attached as Appendix 3 of the document is a flowchart of the Teacher's Capability procedure.
- 5.12 The Headteacher and a representative of the employer shall be entitled to attend, all proceedings of the governing body relating to a determination that a teacher should cease to work at the school to give advice where appropriate.

## **6. Arrangements for Meetings of the Staffing Committee**

- 6.1 Following a decision to initiate dismissal proceedings, or notification, the Clerk to the Governing Body shall arrange a meeting of the relevant Committee within 15 working days or as soon as reasonably possible. The teacher subject to this procedure shall be entitled to:
- (a) Be represented by a work colleague or a trade union/professional association representative
  - (b) Receive prior notice of the date, time and venue of the meeting
  - (c) Before the meeting, receive a copy of the report outlining the concerns over the level of performance, including sufficient detail to enable the employee to prepare a response
  - (d) Be given a copy of any written material which is to be presented at the meeting
  - (e) Be advised of the name of the presenter of the case and of any witnesses to be called
- 6.2 The time periods set out in this procedure may be varied by mutual agreement.

## **7. Rights of Appeal**

- 7.1 An employee will have the right of appeal. If they choose to do so, they will use the Appeals Procedure by giving the required notice in writing to the Chair of the Appeal Committee, setting out the grounds for their appeal.
- 7.2 Where a teacher exercises their right to appeal against a warning, the appeal will run concurrently with any agreed supervision/monitoring that has been put in place.
- 7.3 The decision of the Appeal Committee is final and there is no further right of appeal within school/academy procedures.

## Appendix 1

**Record of Previous Support Programme and Teacher Feedback**

Where a teacher has identified area(s) for improvement, it is the school's responsibility to put in place appropriate support at the earliest opportunity. This form is designed to enable the initial concerns and supportive action to be recorded. This document will support a Headteacher/Principal's decision to progress to the formal capability process.

Teacher's Name		Job Title		Manager	
Meeting 1	Area for Improvement	Action Taken		Timescale	Impact/Outcome
Date					
Attendees					
Meeting 2	Area for Improvement	Action Taken		Timescale	Impact/Outcome
Date					
Attendees					
Meeting 3	Area for Improvement	Action Taken		Timescale	Impact/Outcome
Date					
Attendees					

## Appendix 2

**Formal Capability Monitoring Record**

This document will assist you with the recording of the formal capability monitoring process and the progress made by the teacher at each stage.

Teacher's Name	Job Title	Manager	Capability Start Date				
Formal Meeting 1	Area for Improvement	Example of inadequate performance	Change required	Training Support Provided	Period	Impact/Outcome	
Held on dd / mm / yy							
Attendees							
Formal Meeting 2	Area for Improvement	Example of inadequate performance	Change required	Training Support Provided	Period	Impact/Outcome	
Held on dd / mm / yy							
Attendees							
Formal Meeting 3	Area for Improvement	Example of inadequate performance	Change required	Training Support Provided	Period	Impact/Outcome	
Held on dd / mm / yy							
Attendees							

Appendix 3

Teachers' Capability Procedure Flowchart

