

Greens Norton C. of E. Primary School



Capability Procedures For All School Based Staff

Approved by

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Capability Procedure For All School Based Staff

1. Policy Statement

This procedure is recommended for adoption by the Governing Body. The Governing Body is responsible for ensuring that fair, consistent and objective procedures exist for matters relating to staff capability.

2. Who does this procedure apply to?

This procedure has been drawn up following consultation with the recognised Trade Unions and Teachers' Professional Associations. It applies to all school based staff with the exception of:

- Newly qualified teachers during their period of induction, this is dealt with by the induction regulation.
- Non teaching staff during their probationary period where performance reviews should be held.

3. What are the principles?

This Procedure is designed to help and encourage all employees within schools with delegated budgets to achieve and maintain an acceptable standard of performance.

Lack of capability is defined as a situation in which an employee fails consistently to perform his or her duties to a professionally acceptable standard. The required standard should be appropriate to the level of the job and the skills and experience reasonably expected of an individual in that position. Head Teachers as managers will need to ensure that each member of staff has the ability, knowledge, guidance and support to perform his/her job to an adequate standard.

This procedure is not intended to be used for misconduct, which is handled under the disciplinary procedure. Where there is a lack of co-operation with the process then the disciplinary procedure may be used instead.

The Capability Procedure provides a fair and consistent method of dealing with alleged failures to achieve the expected standard. The role of the Head Teacher is to identify a concern in performance.

The Authority will offer advice at all stages of this Procedure. It is recommended that Head Teachers seek **early advice** from the Director for Schools or his/her representative. Employees are encouraged to seek the advice of their professional association at an early stage.

In this document, where it is the Head Teacher whose competency is in question, the Chair of Governors in consultation with the Director for Schools and/or his/her representative should be substituted for the Head Teacher.

Where a concern in performance first occurs, it should be the normal practice for the Head Teacher to deal with the matter by counselling, advice, guidance, training and example. It is **not** intended that the Capability Procedure should replace this normal interchange between the immediate supervisor and member of staff in the day to day running of a school or department, whereby comments may be made informally.

Meetings associated with this procedure will only be postponed in exceptional circumstances and in any event once only on the grounds of self certified illness. Subsequent arrangements may proceed in the absence of the employee. In this instance the Head Teacher will write to the individual to confirm the outcome of the meeting and ask the individual to comment on this. However in the case of long term absence, where the capability procedure has been invoked on grounds of poor performance, the sickness procedure on the grounds of ill-health will run in parallel.

In order to offer as much support as possible to any employee experiencing difficulty with reaching the required level of performance, the Head Teacher should be aware of the services offered by the Employee Assistance Service and make this contact number available to any employee experiencing difficulty within the workplace.

The duration of the stages in this procedure will not normally exceed one term. In extreme cases where it is judged that the education of pupils may be in jeopardy, the period given for improvement may be no more than four weeks.

Any formal warnings issued under this procedure will remain on file for a period of 12 months for a written warning and 18 months for a final written warning after which they will be expunged. However if this procedure is terminated at any of the formal stages due to an improvement and then subsequently performance within a reasonable time frame falls below the agreed standard then formal procedures can be reinstated at the point where they stopped.

No action will be taken under the formal review stage in respect of a trade union representative until the circumstances of the case have been discussed with a senior representative of the trade union.

For the purposes of this document "Head Teacher" means the senior member of staff who has management responsibility for that employee.

4. Content

Informal Stage

Once the Head Teacher has identified a performance issue an employee will normally be assisted to improve standards through the informal procedure as identified in this section. The importance of supportive action before any formal procedures are involved is important and should be undertaken fully.

The Informal Procedure should begin with a meeting between the Head Teacher and the employee to identify areas of concern and agree a positive way forward.

The purpose of the meeting is to establish:

- that the employee is fully aware of the standards required
- that the standards have been set at a reasonably attainable level
- whether the context in which the employee works has altered significantly
- and explore if there are any underlying health problems that may be affecting performance in which case a referral to occupational health should be discussed
- whether poor performance is a training issue to be addressed
- that support will be given to assist the employee
- the timescale for this informal stage
- an agreed review date

Failure at this stage could lead to formal stages of the Capability Procedure and ultimately dismissal.

Areas for discussion should include mechanisms to support the employee in reaching the desired level of performance e.g. reasonable lesson observations, further training and development, an agreed temporary removal of additional responsibilities, closer supervision by a senior colleague including regular feedback sessions and the observation of other colleagues' practices within the school.

The timescale to monitor improvement will depend on the complexities of the job, the targets set, the advice, support and monitoring provided and the method of evaluation. It is recommended that this timeframe for each stage should be no less than 6 weeks and no more than a full term except in exceptional circumstances.

At the end of the meeting, both parties should have a clear agreed understanding of the performance issues causing concern, the levels of

support to be put in place, the targets set and the period set for review. This should be confirmed in writing.

If the employee experiences any difficulty during the review period, they should immediately contact their Head Teacher to discuss these issues rather than waiting until the review meeting.

At the end of the review period a meeting to assess performance will take place between the Head Teacher and the employee.

If the employee has reached the desired standard of performance, the employee will be told that the Procedure has ceased and this will be confirmed to the employee in writing. An extension of the informal stage may be considered if the standards have been partially met¹. If the desired standard has not been reached the employee will be informed of this. This will be confirmed in writing, listing any specific problems, the advice given, the target (s) established and the period set for further review. The letter will also confirm that Stage 1 of the Formal Procedure is being invoked.

Stage 1 - Formal Procedure

At the end of the review period a meeting to review performance will take place between the Head Teacher who may be accompanied by a representative from the LEA and the employee, who has the right to be accompanied by a trade union representative or work colleague. If the employee has reached the desired standard of performance, the employee will be told that the procedure ceases and this will be confirmed to the employee in writing within **five** working days of the review meeting. If the desired standard has not been reached then a **First Written Warning** will be issued. This will be confirmed in writing listing any specific problems, the advice given, the target (s) established, any further support identified and the period set for review. The employee will also be informed that Stage 2 of the procedure is being invoked and that a failure to improve may lead to dismissal.

Following consultation with the Senior HR Adviser and in exceptional circumstances, due to the immediate concerns of the unacceptable levels of teaching and learning taking place or other associated risk e.g. health and safety, the Head Teacher may wish to consider fast-tracking the procedure. In extreme cases a final written warning may be issued at the first formal stage. Should a final written warning be issued under this provision, a review period of up to four weeks will be established and the procedure moved to stage 3.

The employee has a right to appeal against this decision to the Appeal Committee of the Governing Body. Any appeal must be lodged within five

¹ An extension of the review period may be considered at the informal and formal stages of the Capability Procedure where it is deemed that the required standards will be met in a reasonably short time frame.

working days following receipt of the letter indicating that Stage 2 of the Procedure has been invoked. The Appeals Procedure will run concurrently with Stage 2 of the Capability Procedure. It is strongly advised that the appeal committee meet within a 4 week period of the appeal being lodged.

Stage 2 – Formal Procedure

At the end of the review period a meeting to assess performance will take place between the Head Teacher and the employee, who has the right to be accompanied by a trade union representative or work colleague. The Head Teacher will be supported by a representative of the LEA. Additionally, other persons who have been providing monitoring or support may be asked to attend for part or all of the meeting. If the employee has reached the desired standard of performance, the employee will be told that the procedure ceases and this will be confirmed to the employee in writing. If the desired standard has still not been reached, the employee will be told that a **Final Written Warning** is being issued. This will be confirmed in writing listing any specific problems, the advice given, the target (s) established, any further support identified and the period set for review. The employee will also be informed that Stage 3 of the procedure is being invoked and that a failure to improve may lead to dismissal.

The employee has a right to appeal against this decision to the Appeal Committee of the Governing Body. Any appeal must be lodged within five working days following receipt of the letter indicating that Stage 3 of the Procedure has been invoked. The Appeals Procedure will run concurrently with Stage 3 of the Capability Procedure. It is strongly advised that the appeal committee meet within a 4 week period of the appeal being lodged.

Stage 3 (Dismissal Hearing)

At the end of the review period if the employee has failed to achieve adequate professional standards, he/she will be informed in writing that a meeting of the Governing Body Staff Dismissal/Disciplinary Committee will be convened. The procedure to be followed is set out in the Disciplinary Procedure, a copy of which should be given to the employee at this stage.

Evidence in connection with the employee's capability which has been collected during all Stages of the Capability Procedure will be admissible as part of the disciplinary proceedings.

The Governing Body Disciplinary Committee may determine that the employee should no longer work at the school on the grounds of capability if he/she is still not performing adequately.

The Governing Body will inform the LEA of its decision.

The employee will be informed of their right to appeal against the decision to dismiss.

Dismissal Decision

The School Staffing (England) Regulations 2003 (in accordance with sections 35 and 36 of the Education Act 2002) allow that the Head Teacher (this is not to be read as senior member of staff as elsewhere in the document) should have the delegated responsibility to make the initial dismissal decision following which there will be an opportunity to appeal to a panel of governors. There are, however, possible exceptions to this arrangement, and it will be important at any appropriate stage to give clear details as to what steps will be followed. If the matter concerns the performance of the Head Teacher under this procedure, any initial decision to dismiss will be made by a panel of governors.

Where the Head Teacher is subject to dismissal then this will be heard by the Governing Body Staff Dismissal/Disciplinary Committee.

Further details relating to this section can be found in the Disciplinary Procedure.