

HASSENBROOK SCHOOL Specialist Technology College



CAPABILITY PROCEDURES FOR TEACHING STAFF

NOTES OF GUIDANCE AND COMMENTARY FOR THE OPERATION OF THE CAPABILITY PROCEDURE FOR TEACHING STAFF

1. Introduction

- 1.1 In November 1997 the Minister of State required that new procedures be drawn up to deal with the lack of capability of teaching staff where this arose in schools. In July 2000 further statutory guidance was issued and this procedure meets the requirements therein. The use of procedures to deal with capability issues has to be seen in the context of a move towards the development of performance management which has included the introduction of induction periods for newly qualified teachers and developments in in-service training.
- 1.2 Managers in schools have the right and obligation to expect a high quality of performance from teaching staff working at the school. This procedure seeks, where necessary, to bring about improvements in the accuracy, quality or quantity of teachers' work whilst ensuring that staff are treated consistently and fairly. At every stage, concerns about a teacher's performance will be discussed with the teacher who will be advised of any complaints made against him or her and will be given an opportunity to state his or her case before any decisions are made.
- 1.3 The capability procedure will be invoked where a teacher fails consistently to perform his or her duties to a professionally acceptable standard. The objective of the procedure will be to remedy professional performance problems. It is important to recognise that the approach to individual cases, including decisions on whether to use a formal procedure, should reflect the seriousness of the capability problems.
- 1.4 This procedure was adopted by the Governing Body in January 2005 and gives full delegated powers to any Panel, headteacher or other authorised manager within its processes.

2. The scope of the Capability Procedure

- 2.1 This procedure is applicable to all teaching staff, including members of the leadership group. However, capability matters involving Newly Qualified Teachers in their statutory induction period will normally be dealt with through the statutory induction procedures, except where there is judged to be a 'severe risk' to childrens' welfare or development in which case the 'fast track' procedures described in 2.2 of the procedure may be applied.
- 2.2 This procedure does not deal with lack of capability due to ill health, nor with misconduct, the latter being considered as an act or omission by the teacher which is considered to be unacceptable professional behaviour and will be dealt with under the school's disciplinary procedure.

3. Interpretation

3.1 Any question as to the interpretation or application of this procedure shall be determined by the Governing Body.

3.2 In the procedure the following expressions have the meanings assigned to them:

- “chairman” shall be taken to refer to a man or woman chairing a panel of governors or the governing body itself;
- “manager” or “management” shall be taken as reference to any person exercising his/her managerial responsibilities including governors who are managing a process involving the headteacher;
- “normal pay” means normal contractual salary as determined by reference to the contract of employment of individuals concerned;
- “receipt” shall be deemed to be the end of the second day after postage;
- “term” shall be taken to mean the normal notional school term length of four months;
- “weeks” shall be taken to mean the 39 working weeks outlined in the School Teachers’ Pay and Conditions Document;
- “working days” shall mean the days Monday to Friday and shall include the days on which any communication is sent and received.

4. The role of governors, managers and other parties

4.1 Governors should not normally be involved in the capability procedure before the dismissal stage. The exceptions are:

- in a capability procedure against a headteacher, when the Chairman of Governors will depute a member(s) of the governing body to carry out the role of the manager in implementing the capability procedure;
- in cases of appeals against warnings or grievances, when one or more (where this does not compromise the availability of previously uninvolved governors for dismissal and appeal hearing) governors may hear the appeal or grievance.

4.2 Normally at least three governors are required to sit on the Staff Dismissal Committee and no fewer on the Appeal Committee, but this can be reduced to two in circumstances where this number is not reasonably practicable.

4.3 Although headteachers will normally implement the capability procedure, it may, exceptionally, and at the discretion of the headteacher, be delegated to an appropriate senior manager either in part or in its entirety. In such circumstances the authorised manager will be empowered to issue warnings short of a final written warning, at which stage the manager must involve the headteacher. Where differences of opinion arise, the headteacher’s decision will prevail.

- 4.4 Appeals against warnings and grievances must be heard by a manager more senior to the manager implementing the procedure (and one that has not had prior involvement in the implementation of the procedure) or a governor(s).
- 4.5 Managers and governors should seek advice from LEA advisers or other advisers with education and personnel experience and, where appropriate, seek their assistance with the process.
- 4.6 Teachers subject to the capability procedure should be advised to seek advice from their Professional Association at the earliest opportunity.

5. Monitoring arrangements

- 5.1 Monitoring of an individual teacher's performance should include observations of a range of relevant duties and functions.
- 5.2 An objective record of all observations should be kept and used to assist with the evaluation of performance.
- 5.3 Those monitoring performance should offer structured feedback and instruction to help the teacher improve performance. If a training course or assistance from a colleague would be helpful, these should be arranged as soon as possible, but should not unreasonably interrupt the timing of the procedure.
- 5.4 At interviews and evaluation meetings, the teacher has the right to receive explanations of assessments of, and to discuss matters relating to, his/her capability before any formal decisions are reached.

6. Written Records

- 6.1 All relevant documentation shall be made available to the teacher and his or her representative at the earliest reasonable stage.

7. Representation

- 7.1 A teacher has a legal entitlement to be accompanied by a colleague or trade union representative at all formal meetings, hearings and appeals.
- 7.2 If the teacher's chosen companion is not available at the time proposed for any meeting or hearing, an alternative date must be set not normally later than 5 working days from the original date.

8. Timing of Process

- 8.1 Any potential problems over arranging meetings should be avoided by the establishment, at the earliest possible stage, of a timescale for the implementation of the procedure.
- 8.2 The implementation of the procedure should not be subject to undue delay but should recognise the need to accommodate time for training courses and other such assistance to impact on the teacher's performance.
- 8.3 Only in exceptional circumstances and where it is seen as wholly essential will school management seek to hold any meetings within the process during school closure periods.
- 8.4 The 'fast track' procedure of up to four weeks will apply in particularly serious cases where the education of children is in jeopardy. An example 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.

9. Warnings

- 9.1 Except in agreed circumstances, formal warnings will be disregarded for capability purposes after the following maximum periods:
- 2 terms for an oral or written warning;
 - 6 terms for a final written warning.

10. Appeals against formal warnings

- 10.1 All appeals will take the form of a hearing, at which the teacher will have the right to attend, and to be accompanied. Key points for hearings will include:
- no view should be reached until the representations from all parties have been taken into account;
 - information received outside of the process prior to the hearing must be discounted;
 - those hearing cases will report any attempts to influence them and declare as early as possible any issues which could be perceived as undermining their impartiality;
 - all proceedings should be regarded as confidential and only the final decision should be reported to third parties.
- 10.2 Appeals should normally be restricted to considering:
- the reasonableness of the decision made, based on the evidence presented by both parties to the appeal hearing;
 - any relevant new evidence;
 - procedural irregularities.

- 10.3 Where an appeal is upheld, the matter should be referred back to the manager to be reconsidered or for further appropriate action.
- 10.4 Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

11. Dismissal

- 11.1 In making a decision to dismiss a teacher on the grounds of lack of capability the Staff Dismissal Committee should consider:
- the extent of the concerns, evidence gathered during the capability process and the representations made by the manager and the teacher;
 - whether the capability procedure has been followed and applied in a fair and reasonable manner;
 - the advice of any LEA staff or other advisers.
- 11.2 The procedure for dismissal and dismissal appeal hearings shall be the same as for appeals against formal warnings as outlined in 10 above.

12. Sickness absence

- 12.1 Sickness absence should be treated sympathetically and in accordance with the school's sickness absence management policy.
- 12.2 While such absences should not impede unduly any capability procedure, this will depend upon the level of evidence available regarding the teachers' performance and each individual case will need to be assessed on its merits.
- 12.3 Where appropriate, advice should be sought immediately from an occupational health adviser on cases of sickness absence which may unreasonably impede the discharge of the capability procedure.
- 12.4 Reasonable steps should be taken to enable the teacher to attend formal meetings and hearings. Any teacher claiming inability to attend on health grounds must provide a medical certificate stating that he or she is physically incapable of attending and/or that he or she is unable, on mental grounds, to participate reasonably in the proceedings.
- 12.5 Where sufficient evidence is available meetings under the formal stage of the process may proceed in the teacher's absence, if a delay would otherwise unreasonably compromise the maximum time set aside for the procedure. In such cases a full account of any evaluation of the teacher's performance should be provided in a letter confirming decisions taken. Full consideration must be given to any written submission made by or on behalf of the teacher.

- 12.6 In cases of other forms of absence, consideration will be given to whether the relevant principles above should be applied.

13. Grievances

- 13.1 In exceptional circumstances a teacher may raise a grievance about the behaviour of a headteacher or other manager during the course of implementing the capability procedure.
- 13.2 Normally, however, a grievance cannot be brought purely on the grounds that the capability process has been invoked, unless, for example, there is reason to suppose that the process has been commenced maliciously.
- 13.3 Depending on the circumstances it may be appropriate to suspend the capability procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the teacher has been mistreated and consideration should be given to bringing in another manager to deal with the capability case.
- 13.4 It follows therefore that the grievance procedure is not necessary where the teacher simply wishes to challenge the assertion that they are lacking in capability or the application of the capability procedures since these matters will be dealt with within the capability process itself.

14. Responsibilities of management

- 14.1 Those in management positions are expected, through their delegated authority, to:
- ensure there are clearly defined job descriptions and expectations;
 - ensure that standards of work are established and monitored in a consistent and fair manner;
 - ensure that information is communicated to, and understood by, staff;
 - ensure appropriate induction and training for all staff;
 - develop performance management initiatives;
 - identify professional performance problems and give them appropriate consideration and support at the earliest possible stage;
 - implement the capability procedure in a timely, fair and reasonable manner as appropriate;
 - take all reasonable steps to provide appropriate aids and adaptations where staff have a disability.

15. Responsibilities of staff

15.1 It is the responsibility of each member of staff to:

- achieve a satisfactory standard of work performance;
- take all reasonable steps to maintain and update his or her appropriate level of skill and knowledge;
- seek help with any work problems;
- co-operate with any investigation by management into his or her capability and with the capability procedure where implemented;
- demonstrate the level of commitment required to effect improvement where his or her performance is unsatisfactory.

CAPABILITY PROCEDURE FOR TEACHING STAFF

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1. INFORMAL STAGE

1.1 Where he or she has concerns regarding the professional performance of a teacher, the headteacher or other appropriate manager, will investigate and collect evidence. The Chairman of Governors will make arrangements for this to be done by a governor(s) if the performance of the headteacher is in question.

1.1.1 Once the facts are gathered and the seriousness of the problems established, there are three initial options:

- drop the matter (no case to answer or trivial);
- arrange counselling (support without using the formal procedure);
- arrange a formal interview (formal approach for more serious cases).

1.2 Counselling

Where normal management support and guidance have not resulted in an acceptable level of performance, counselling and coaching within the capability procedure will aim to encourage and help the teacher to improve. Counselling will include observation and assessment. Information and explanations put forward by the teacher will be considered carefully and the matter dropped if it becomes evident that there is no case to answer.

1.2.1 The teacher will be told:

- what is required;
- how performance will be reviewed;
- the review period;
- that the formal procedure will commence if there is no or insufficient improvement.

A brief record of any counselling will be kept for reference.

1.2.2 The maximum length of counselling will normally be one term. If during counselling more serious concerns arise, or if the teacher expresses discontent or indifference to the counselling the formal procedure will be commenced to deal with the matter in a more structured and objective manner.

1.2.3 After a period of review a firm conclusion will be reached. The options will then be either to:

- drop the matter; or
- convene a formal interview.

2. FORMAL STAGE

2.1 The formal stage of the procedure provides an opportunity to deal with more serious problems in a structured way.

2.2 Formal Interview

The formal interview initiates the formal stage of the capability procedure.

2.2.1 At least 5 working days prior to the interview the teacher will be given written notification of:

- the date, time and place of the interview;
- his or her right to be accompanied at the interview by a colleague, union representative or other appropriate person;
- an outline of the concerns.

2.2.2 If new evidence or a new perspective on existing evidence is presented at the interview and it becomes clear that further investigation is necessary, the interview will be adjourned for an appropriate time to allow this to happen.

2.2.3 There are four options at the formal interview:

- drop the matter (insufficient evidence to support the allegations about performance);
- counselling (except where this has already been undertaken without improvement);

These options will only be relevant where new information, a different slant on information already collected, or further investigation suggests that the matter is not as serious as it first seemed.

- oral or written warning;
- final written warning.

2.2.4 These are relevant to any case where continued concern about the standard of performance is justified. The decision on which level of warning to issue will depend on the seriousness of the problem:

- an oral warning will not normally be appropriate where counselling has already taken place;
- if performance is unsatisfactory, a written warning will normally be issued and this will invoke an assessment period of up to two terms;
- in cases of particularly serious concern where the education of children is in jeopardy, a final written warning may be issued and this will invoke an assessment period not exceeding 4 weeks.

2.2.5 A decision will be reached after all the facts and any representations by the teacher have been considered. The manager will briefly adjourn the meeting to consider the appropriate option before delivering the decision to the teacher. In cases of a final written warning, the headteacher will be consulted prior to any decision, where he or she is not conducting the meeting provided he or she is not the subject of the process.

2.2.6 Where a formal warning is issued, the manager will use the remainder of the meeting to:

- identify the professional shortcomings;
- give clear guidance on the improved standard of performance needed to end the capability procedure;
- discuss and where possible agree, the support that will be made available and how performance will be monitored;
- identify a timetable for improvement according to the level of warning issued and agree a next/final evaluation meeting date;
- make it clearly understood that failure to improve to the required standard may lead to dismissal.

2.2.7 Where the formal warning is a final written warning, the teacher will have only 4 weeks in which to raise performance to a satisfactory level. In these circumstances, the first assessment stage of the procedure will be omitted and matters will proceed directly to the second assessment stage.

2.2.8 A letter will be sent to the teacher immediately after the formal interview, recording:

- the result of the investigations;
- the main points discussed at the meeting;
- the decision made and details of any warning;
- information about the further stages of the formal procedure if appropriate, including notification that failure to improve may result in dismissal.

2.2.9 **Appeal**

The teacher will have the right of appeal against any warning. Any appeal must be made in writing within 5 working days (or 7 consecutive days out of term time) of the receipt of the letter of outcome and must state the grounds upon which the appeal is made and identify any other factors to be taken into account. The appeal hearing will be arranged within 10 working days of notification of appeal. Appeal proceedings will not interrupt the progress of the procedure, unless the appeal decision leads to the matters being reconsidered. The appeal decision will be conveyed in writing to the teacher within 5 working days (or 7 consecutive days out of term time) and will make it clear that there is no further appeal against that decision.

2.3 First assessment stage

20 weeks - regular observation, monitoring and evaluation of the performance with guidance, training if necessary and support to the teacher.

2.3.1 If at any stage during this period the circumstances suggest a more serious problem, a decision may be taken to move immediately to a final written warning. This will mean the immediate cessation of the first assessment stage and matters will proceed directly to the second assessment stage

2.3.2 End of week 20 – evaluation meeting with the teacher concerned to assess performance over the previous weeks. At least 5 working days prior to the interview the teacher will be given written notification of:

- the date, time and place of the interview;
- his or her right to be accompanied at the interview by a colleague or union representative;
- an outline of the key issues.

2.3.3 There are two options at the evaluation meeting:

- the capability procedure may end if the level of performance has been satisfactory and there is confidence that this can be sustained;
- a final written warning will be issued if performance continues to be unsatisfactory. The headteacher will be consulted prior to any decision to issue a final written warning, where he or she is not conducting the meeting and provided he or she is not the subject of the process.

2.3.4 A letter will be sent to the teacher immediately after the evaluation meeting, recording:

- the main points discussed at the meeting;
- the decision made and details of any warning;
- information about the further stages of the formal procedure if appropriate, including:
- arrangements for continued monitoring, evaluation, guidance and support notification;
- that failure to improve, with confidence that it can be maintained, may result in dismissal.

2.3.5 Appeal

The teacher will have the right of appeal against a final written warning. Any appeal must be made in writing within 5 working days (or 7 consecutive days out of term time) of the receipt of the letter of outcome and must state the grounds upon which the appeal is made and identify any other factors to be taken into account. The appeal hearing will be arranged within 10 working days of notification of appeal. Appeal proceedings will not interrupt the progress of the procedure, unless the appeal decision leads to the matters being reconsidered. The appeal decision will be conveyed in writing to the teacher within 5 working days (or 7 consecutive days out of term time) and will make it clear that there is no further appeal against that decision.

2.4 **Second assessment stage**

4 weeks - regular monitoring and evaluation of the performance with guidance, training if necessary and support to the teacher.

2.4.1 End of week 4 – final evaluation meeting with the teacher to report on the assessment of performance over the previous weeks. At least 5 working days prior to the interview the teacher will be given written notification of:

- the date, time and place of the interview;
- his or her right to be accompanied at the interview by a colleague or union representative;
- an outline of the key issues.

2.4.2 There are two options at the final evaluation meeting:

- the capability procedure may end if the level of performance has been satisfactory and there is confidence that this can be sustained;
- the teacher will be told that the matter will be referred to the Staff Dismissal Committee if performance is unsatisfactory. The headteacher will be consulted prior to any decision to proceed to a dismissal hearing, where he or she is not conducting the meeting and provided he or she is not the subject of the process.

2.4.3 A letter will be sent to the teacher immediately after the evaluation meeting, recording:

- the main points discussed at the meeting and the result of the assessment;
- details of arrangements for the dismissal hearing.

2.5 **Dismissal**

2.5.1 At least 5 working days prior to the dismissal hearing the teacher will be given written notification of:

- the date, time and place of the hearing;
- his or her right to attend and make representations to the panel;
- his or her right to be accompanied at the hearing by a colleague or union representative.

2.5.2 Both management and the teacher will be entitled to call upon relevant witnesses, but the number of these will be kept to a minimum, consistent with a fair hearing of the case. The headteacher is entitled to attend the dismissal hearing for the purposes of giving advice, where he or she is not presenting the case and is not the subject of the hearing.

2.5.3 The outcome of the dismissal hearing will be notified to the teacher in writing within 3 working days, outlining the right of appeal.

2.6 Appeal

- 2.6.1 The teacher will have the right of appeal against dismissal. Any appeal must be made in writing within 5 working days (or 7 consecutive days out of term time) of the receipt of the letter of outcome of the dismissal hearing and must state the grounds upon which the appeal is made and identify any other factors to be taken into account. The appeal hearing will be arranged in the same manner as the dismissal hearing within 10 working days of notification of appeal. Appeal hearings will normally be complete re-hearings in order to consider the reasonableness of the decision made and to examine any new evidence or claims of procedural irregularity. However, where the grounds of appeal are on a narrow procedural point, the Panel may rule on the specific point rather than re-examine the entire case.
- 2.6.2 The headteacher is entitled to attend the dismissal appeal hearing for the purpose of giving advice, where he or she is not presenting the case and is not the subject of the hearing appeal.
- 2.6.3 The appeal decision will be conveyed in writing to the teacher within 5 working days (or 7 consecutive days out of term time) and will make it clear that there is no further appeal against that decision.
- 2.6.4 Teachers will normally be placed on paid suspension from work pending any appeal by them against dismissal.