



**NEU Capability Procedure for School Staff**  
(alternative model – no support within appraisal)

This policy may apply to all school staff except where reference is made to appraisal, which is a process applicable only to teachers.

**1. Introduction**

1.1 This procedure sets out the steps to be followed when the head teacher/principal believes that an employee is failing consistently to perform their duties to a professionally acceptable standard. The primary objective is to ensure maximum support through guidance, counselling and training in order that the employee's performance improves, and the problem is resolved.

1.2 Concerns about performance should in all cases initially be addressed through support provided within the appraisal process, before consideration is given to use of this capability procedure. The use of this capability procedure must be distinguished and kept entirely separate from initial support provided under the appraisal procedure. It should only be used after such informal support has been provided. The appraisal process will be suspended when the capability procedure is invoked.

1.3 This procedure should not be used in cases of alleged misconduct or lack of capability due to persistent ill health, which should be dealt with separately through the disciplinary procedure and absence management procedure respectively. It is not applicable to newly qualified teachers for whom separate induction procedures should apply.

1.4 At every step of this procedure, including at all meetings, the employee has the right to be accompanied by a representative of an independent trade union or a work colleague.

1.5 Timescales in this procedure may only be shortened with the agreement of both parties.

**2. Principles for handling issues of concern with regard to performance**

2.1 It is intended that, where concerns about perceived under-performance and professional difficulties arise, they are considered, discussed with the employee and progressed in a structured, supportive, non-threatening and open way that takes account of individual circumstances.

2.2 Employees are expected to understand the nature of their role, including the professional duties set out in the School Teachers Pay and Conditions Document (STPCD), the duties set out in their job description and the professional standards set out in the Teachers' Standards.

2.3 Support staff are expected to carry out the duties set out in their job description and classroom-based support staff should also adhere to the Professional Standards for Teaching Assistants (2016).

2.4 Managers are expected to ensure that all employees have a clearly defined and agreed job description, reviewed on a regular basis in order that it remains relevant and employees know what is expected of them, and that relevant school policies and other information are available and drawn to employees' attention.

2.5 Perceived difficulties may cover a range of issues or may be concerned with one issue, eg classroom management. Concerns may be identified at any time and should be addressed promptly.

2.6 Cause(s) of difficulty may be due to one or more of the following:

- the knowledge and technical skills required for the post are changing but the employee does not possess the new skills and knowledge required despite opportunities to acquire them
- circumstances outside the school are affecting the employee's work performance
- circumstances within the school environment – for example redeployment or new or additional responsibility or perceived inadequate management support or unreasonable demands – are affecting the employee's work performance.

2.7 Whenever perceived lapses from acceptable standards of work performance arise, either through the appraisal process or otherwise, they should initially be discussed with the employee concerned by their immediate line manager.

2.8 The line manager should seek to identify the nature and causes of any perceived problems. Some difficulties may be temporary because of family/personal circumstances or short-term health problems. The manager should also consider whether the issues are a matter of lack of capability, or of ill health or misconduct which should be dealt with through separate procedures.

2.9 After this discussion has taken place, the manager may decide that:

- the matter is groundless and should be dropped
- the matter is of a relatively trivial or 'one-off' nature and that informal discussion is enough to resolve the matter without further action
- the matter is not an issue of capability and should be dealt with under separate procedures
- the matter is one where informal support should be provided in relation to performance through the appraisal process.

Where support has already been provided to the teacher as part of the appraisal process and concerns remain, the manager may refer the matter to the head teacher in order that a meeting may be held to consider whether the matter should be dealt with through the capability procedure.

### 3. Capability procedure – stage 1

Formal meeting/support, monitoring and review

3.1 Where the head teacher/principal determines that a meeting should be convened to consider use of the capability procedure, they will write to the employee inviting them to a meeting to discuss the ongoing concerns and discuss and seek to agree a programme of support. The employee will be given at least five working days' notice of the meeting.

3.2 The letter should set out the following:

- the nature of these concerns including the evidence to support them
- evidence of any previous support provided to address the concerns
- the names of those who will be at the meeting (recognising that it is beneficial for the numbers present to be kept to the minimum required to facilitate the meeting)
- the employee's right to be accompanied by a trade union representative or workplace colleague
- an outline of actions which might follow.

An extra copy of the letter, together with any enclosures, will be provided for the employee to pass to their representative.

3.3 At the meeting the head teacher/principal will outline the concerns and the employee (or their representative) will be given the opportunity to respond, ask questions and make comments and representations. The head teacher/principal will then determine whether concerns remain and, if so, whether support should continue to be provided within the appraisal process or whether the capability procedure should commence, and the appraisal process will cease.

3.4 The head teacher/principal may decide to adjourn and reconvene the meeting at any point to provide further time for consideration of issues raised or matters to be determined.

3.5 If the head teacher/principal decides that the capability procedure should commence, the meeting will discuss and seek to agree the following:

- the issues which continue to give rise to concern about capability and the standards required to bring the capability procedure to an end (including any specific reasonable and achievable objectives, and criteria against which matters will be judged)
- the further guidance, counselling and training to be provided to the employee
- arrangements for monitoring and assessment, including the name of the manager responsible, and the length of the review period over which this will happen (this should, in cases where professional support is to be provided, normally be a period of no fewer than 13 weeks). Where both parties are satisfied that concerns have been addressed in a shorter period and that the improved performance can be sustained, the monitoring period may be ended earlier than scheduled.

3.6 The head teacher/principal will make it clear to the employee that failure to meet the required standards could in due course lead to dismissal. In very serious cases, this could include the issuing of a formal written warning following the meeting.

3.7 The head teacher/principal will write to the teacher to confirm the outcome and decisions of the meeting, including any disciplinary warning, within five working days. The employee will be entitled to record any points of disagreement. Notes will be taken of the meeting and a copy sent to the employee.

3.8 Throughout the review period, the manager and employee will meet to discuss the employee's performance about any agreed objectives and criteria. If, following the final review meeting, the head teacher/principal decides that the employee has made enough improvement, this will be confirmed in writing and the capability procedure will come to an end and appraisal will re-start. If the head teacher/principal decides that no or insufficient improvement has been made, the head teacher/principal will determine that a meeting under stage 2 of this procedure will be arranged. Any remaining concerns managers continue to have during the review period must be discussed with the employee to try to achieve the required improvement.

#### 4. Capability procedure – stage 2

Further formal meeting/support, monitoring and review

[Skip this part where informal support is within appraisal]

4.1 Where the head teacher/principal determines that a meeting under stage 2 should be convened, they will write to the employee informing them of a further meeting, in accordance with the procedure in paragraphs 4.1 and 4.2. The employee will be given at least ten working days' notice of the meeting.

4.2 At the meeting, the head teacher/principal will outline the concerns and the employee (or their representative) will be given the opportunity to respond, ask questions and make comments and representations. The head teacher/principal will then determine whether concerns remain and, if so, will inform the employee that the capability procedure will continue.

4.3 The meeting will then discuss and seek to agree arrangements for further support, monitoring and review in accordance with paragraph 4.3 above. The head teacher/principal will: inform the employee that a formal written warning will be issued which may, in very serious cases, be a final written warning; and inform the employee again that failure to meet the required standards could in due course lead to dismissal.

4.4 The head teacher/principal will write to the employee to confirm the outcome and decisions of the meeting, including any disciplinary warning, within five working days. The employee will be entitled to record any points of disagreement. Notes will be taken of the meeting and a copy sent to the employee.

4.5 Throughout the further review period, the manager and employee will meet to discuss the employee's performance about any agreed objectives and criteria. Any remaining concerns managers continue to have during the review period must be discussed with the employee to try to achieve the required improvement. If, following the final review meeting, the head teacher/principal decides that the employee has made enough improvement, this will be confirmed in writing and the capability procedure will be terminated. If the head

teacher/principal decides that the employee may make enough improvement with further support, this stage of the procedure should be extended and such support provided prior to further review. If the head teacher/principal decides that no or insufficient improvement has been made and the employee shows no sign of doing so, a capability hearing under stage 3 should be convened.

## 5. Capability procedure – stage 2

### Capability hearing

5.1 Where the head teacher/principal determines that a meeting under stage 2 should be convened, the clerk to the governors will write to the employee inviting them to a capability hearing. The employee will be given at least ten working days' notice of the capability hearing. Sympathetic consideration will be given to any request for postponement to allow representation or where there are other extenuating circumstances.

5.2 The capability hearing will take place before a committee of the governing body, comprising governors with no previous involvement in the matter. The purpose of the hearing will be to determine whether the employee is performing to the required standards; whether they should be provided with further support; whether they should be dismissed on grounds of capability; or whether some other course of action is available. Where the employee is employed by a local authority or academy chain, in normal circumstances a representative of that employer will attend to advise the committee on procedure.

5.3 The letter should set out the following:

- a written statement of the concerns to be presented to the committee
- the recommendation which will be made by the head teacher/principal
- any supporting papers which will be referred to during the hearing and the names of any witnesses to be called
- evidence of the support previously provided to the employee
- the names of the members of the committee and others who will be at the meeting
- the employee's right to be accompanied by a trade union representative or workplace colleague
- an outline of actions which might follow, making it clear that dismissal is a potential outcome of the meeting.

The letter will give the employee the opportunity of making a written statement for circulation to the members of the committee in advance of the hearing. An extra copy of the letter, together with any enclosures, will be provided for the employee to pass to their representative.

5.4 The format for the hearing will be as follows:

- The head teacher/principal (or their representative), the employee and the employee's representative should enter the meeting room together.
- The chair of the committee will describe the procedure, with any procedural questions resolved at this point.
- The head teacher/principal will set out the concerns about the employee's performance, referring to evidence and calling any witnesses.
- The employee and/or their representative will question the head teacher/principal (and witnesses) on their statement(s) and the evidence.
- Members of the committee will question the head teacher/principal (and witnesses) on their statement(s) and the evidence.
- The employee and/or their representative will make a statement in response, referring to evidence and calling any witnesses.
- The head teacher/principal will question the employee or their representative (and witnesses) on their statement(s) and the evidence.
- Members of the committee will question the employee or their representative (and witnesses) on their statement(s) and the evidence.
- The head teacher/principal will summarise and conclude.
- The employee and/or their representative will summarise and conclude.

- The head teacher/principal, the employee and their representative withdraw while the committee, advised by any adviser present, consider the case.
- The chair of the committee will announce the decision of the committee in the presence of all parties.

5.5 The outcomes of the capability hearing may be that:

- the employee will not be dismissed and that no further action will be taken
- the employee will not be dismissed but that a further period of support will be put in place and a further disciplinary warning issued
- the employee should be dismissed/should cease to work at the school, or
- the employee should be dismissed/should cease to work at the school unless agreement can be reached on suitable alternatives to dismissal, eg redeployment to alternative work within the establishment, if necessary, on a different grade. Where an employee is moved to a lower graded post, an appropriate pay safeguarding arrangement will be considered.

5.6 The clerk to the governors will write to the employee within five working days of the capability hearing, setting out the decision of the committee. Where the decision is to dismiss, the letter will inform the employee that they can appeal against the decision to the relevant appeals committee of the governing body. The employee will be given 15 working days from the date of the letter to write to the clerk to the governors stating their intention to appeal and setting out the grounds for the appeal.

5.7 Where a decision is taken to dismiss an employee employed by a local authority, the director of education for the local authority will be instructed to issue notice of termination when the employee has not appealed against the decision within the set timescale, or immediately following an unsuccessful appeal.

## 6. Capability procedure – right of appeal

6.1 The employee has a right of appeal against any warning issued by the head teacher at any stage of the capability procedure and against any decision taken at a capability hearing. Such appeals will be considered by the appeals committee of the governing body, comprising at least three governors with no previous involvement in the case. The employee may exercise the right to appeal within 15 days of receipt of any warning and the staff appeals committee shall meet to hear the appeal within 15 days of the appeal being lodged. The employee shall be informed in writing of the date and time of the meeting at least five days in advance. It can either confirm the warning or decision, cancel it or impose a lesser penalty.

## Notes

### 1. Trade union representatives

Although normal performance standards should apply to the trade union representative as an employee, the formal capability procedure should not be commenced until the circumstances of the case have been discussed with an appropriate official of the trade union.

### 2. Suspension

Given that the purpose of the capability procedure is to allow a member of staff to demonstrate an improvement in performance, and that this can only happen if the member of staff is at work, it is not appropriate to suspend an employee who is subject to a capability procedure.

### 3. Warnings

Any letter confirming a warning will make it clear that, if the teacher's performance is subsequently judged to have reached the required standard, the warning will be disregarded and will be expunged from the file after no more than 12 months.

#### 4. Confidentiality

When dealing with capability matters the utmost confidentiality must be maintained on a 'need to know' basis. At the commencement of any meetings, the importance of confidentiality will be explained and stressed. Governors, and particularly the chair, will be made aware that their involvement in any stage of the capability procedure will prejudice any involvement at a later stage. The content of any papers that are circulated must not be divulged to anyone. The way in which governors vote and opinions expressed at governors' meetings must always be regarded as confidential. Governors, including parents and employees, are representatives of their appointing bodies rather than delegates and any unauthorised reporting back to persons outside the governing body removes the protection of privilege and action for defamation could result. The minutes of confidential meetings must be kept separate and not made available for inspection.

Governors will be provided with monitoring reports of the use of the capability procedure and this information will also be provided to the recognised trade unions.

#### 5. Appeals and grievances

The capability procedure will not normally be suspended on grounds that the employee has submitted a grievance that they are subject to the procedure. The consideration of such grievances should, however, be expedited, where the grievance relates to alleged discriminatory treatment.

#### 6. Sickness absence during the procedure

It is recognised that on occasions, an employee receiving support through either the appraisal process or the capability procedure may suffer ill health requiring absence from work. In such circumstances, and particularly where the sick leave is of relatively short duration, every attempt will be made to offer the agreed support upon the employee's return to work and exclude the period of absence from the period for support, monitoring and review.

#### 7. Monitoring and review

This policy will be reviewed after 12 months in consultation with the trade unions represented within the school. Anonymised data on the operation of the policy will be provided in order to identify and help to address any adverse impact in relation to:

- age
- disability
- maternity and pregnancy
- part-time status
- race
- religion and beliefs
- sex
- sexual orientation

The results will be shared (anonymised where appropriate) with the recognised trade unions.

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