

## **CAPABILITY PROCEDURE FOR SCHOOLTEACHERS**

### Lakeside Primary School

#### **SCOPE OF DOCUMENT**

1. This procedure is designed within DfES guidelines to ensure that concerns about the standard of professional performance achieved by teachers in schools are dealt with in a systematic and fair way. It is not intended to deal with the following matters:
  - (a) discipline and conduct;
  - (b) staffing reductions, school closures and displacement;
  - (c) ill health;
  - (d) professional competence of newly qualified teachers who have not yet successfully completed their initial period of assessment;
  - (e) the professional competence of teachers in central services.
  - (f) headteacher capability issues

Separate procedures exist for dealing with these matters.

2. In the case of a deputy and assistant headteacher it might be more appropriate to deal with the case under the Headteacher Capability Procedure because of the close working relationship with the Headteacher.
3. This code provides a framework for dealing with performance issues. Its main aim is to allow any professional difficulties to be identified, addressed and resolved. These difficulties might relate to the teaching duties or to managerial/pastoral responsibilities. These issues tend to be complex and it is undesirable to lay down a rigid procedure for dealing with them, particularly in the early stages.
4. The over-riding requirements are fairness and reasonableness. This is just as much in the interests of the employer as it is in the interests of the employee, who is naturally entitled to expect fair treatment, including appropriate guidance and advice from the headteacher, colleagues on the school's teaching staff and from the officers of the Authority. There can be a conflict of interest in the processes of monitoring the performance of a teacher and supporting a teacher in improving their performance. Wherever possible, the person who monitors the performance of the teacher should not be the one who offers support. However, the procedure has to operate in the context of limited resources and of the nature and requirements of a teacher's job.
5. **No formal action will be taken against an official of a teachers' professional association unless the Corporate Director (Education and Lifelong Learning) and a full time official of the association have been notified with an invitation to discuss the case first.]**

#### **INFORMAL STAGE**

6. Where the headteacher believes that a teacher is under-performing, (s)he should investigate and collect evidence either personally or through another line manager. The headteacher will consider the evidence and the context within which it was collected and pursue one of three options:
  - (a) drop the matter because there is little or no under-performance;

- (b) provide informal support to improve performance where the under-performance is not serious [*see paragraph 7ff*];
  - (c) initiate the formal procedure where the under-performance is sufficiently serious [*see paragraph 11ff*].
7. Counselling or informal coaching aims to help the teacher to improve his/her performance. The headteacher (or nominated line manager) will discuss the problem areas with the teacher, who must be informed before the meeting that it is proposed to implement the informal stage of the procedure and that (s)he has the right to be accompanied by a trade union or other representative.
8. The meeting will indicate:
  - (a) what is required of the teacher;
  - (b) what support will be provided (**Annex 1** contains examples of possible support).
  - (c) how future performance will be reviewed and over what period;
  - (d) that the formal procedure will be initiated if there is insufficient improvement;This will be confirmed in a brief note to the teacher.
9. The meeting should be supportive and avoid creating undue stress for the teacher.
10. After a period of review (which will not normally be less than 6 weeks) a firm conclusion should be reached. The options will be either to:
  - drop the matter; or
  - initiate the formal stage of this procedure.

## FORMAL STAGE

### Formal Interview

11. The headteacher will prepare a report on his/her concerns with the teacher's performance. The headteacher will arrange a formal interview to discuss this with the teacher, who should be strongly advised to be accompanied by a trade union or other representative. The teacher will be given notice of the interview and a copy of the headteacher's report at least 5 working days beforehand.
12. The interview may provide new information or put a different interpretation on evidence collected. If it becomes clear that further investigation is needed the interview should be adjourned for an appropriate length of time to allow this to happen.
13. Having discussed the report with the teacher, the headteacher will adjourn the meeting to consider how to proceed. The options are:
  - drop the matter;
  - counselling (except where already undertaken without improvement);
  - oral or written warning;
  - final written warning.
14. The first two options are only relevant where new information, a different interpretation on the information collected, or further investigation suggests that the matter is not as serious as it first seemed. The third and fourth options are relevant to any exceptional

case where the headteacher remains seriously concerned about the standard of performance.

15. The decision on which level of warning to issue will depend on the seriousness of the problem. A written warning will normally be the next step and will invoke an assessment period of up to two terms. An oral warning should not normally be necessary in cases where counselling has already taken place. In cases of serious concern, where the health and safety or education of children is in particular jeopardy, it is possible to move directly to a final written warning. This will invoke an assessment period not exceeding 4 weeks.
16. Where a warning is issued, the headteacher will use the remainder of the meeting to:
  - identify areas of under-performance;
  - give clear guidance on the improved standard of performance needed to end the capability procedure;
  - explain the support that will be available, and how performance will be monitored over the assessment period;
  - identify the timetable for improvement and agree a date for the next/final evaluation meeting; and
  - make it clearly understood that failure to improve may lead to dismissal.
17. 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, confirming the decision and (where a warning is issued) giving information about the handling of the assessment stages of the procedure. The letter will also indicate that the teacher has a right of appeal against a written or final written warning to the Chair of Governors. To initiate this the teacher must make an appeal in writing within 5 working days and the appeal must be heard within 10 working days of notification of the appeal.

### **First Assessment Stage**

18. **Review Process (up to 20 weeks max.):** Guidance, training if necessary, and support to the teacher will be offered. At the same time, monitoring and evaluations of performance will be undertaken, including classroom observation (in cases concerning teaching competence). If the period at this stage is more than 10 weeks, there will be an Initial Evaluation of progress within the first 10 weeks involving the headteacher, the teacher and his/her representative. This mid-stage evaluation gives an opportunity for the withdrawal of any additional support which has been provided in the first period, should the evaluation have shown satisfactory progress by the teacher up to that point.
19. If, at any point during this stage, the circumstances suggest a more serious problem, the review period may be curtailed and the procedure will move to the initial evaluation.
20. **Initial Evaluation (following final week of reviews):** The teacher will be given a written evaluation and notice of the meeting at least 5 working days beforehand. The teacher may be accompanied by a trade union or other representative. If the level of performance has been satisfactory and there is confidence that it can be sustained, the capability procedure will cease and this will be confirmed in writing to the teacher.
21. If performance continues to be unsatisfactory a **final written warning** should be issued. Formal monitoring, evaluation, guidance and support should continue for a second assessment stage. Arrangements for this should be explained at the meeting.

The teacher will be told explicitly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal. The decision and main points of the meeting should be recorded in a letter to the teacher.

22. The teacher may appeal to the Chair of Governors against a final warning. An appeal must be made within 5 working days of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

### **Second Assessment Stage**

23. **Review (up to 4 weeks):** This involves regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the teacher.
24. **Final Evaluation:** The procedure will follow that for the initial evaluation. If performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure will cease and this will be confirmed in writing.
25. If performance is unsatisfactory, the teacher should be informed that the matter will be referred a committee of the governing body.

### **Dismissal Committee Stage**

26. The governing body should set up a committee. This must hear the representations and recommendations brought by the head, or other line manager conducting the capability evaluation, and any representations that the teacher may wish to make. The governing body should also set up an appeal committee to hear any appeal against a dismissal decision. None of the governors on the first Committee should be on the appeal committee.
27. The headteacher will prepare a report to the first committee summarising the concerns with the teacher's performance and the outcomes during the assessment stage(s).
28. The teacher will be given notice of the date of the meeting and a copy of the headteacher's report at least 5 working days beforehand. The teacher may be accompanied by a trade union or other representative. The procedure for the meeting is attached as **Annex 2**.
29. The Committee may decide:
  - (a) to drop the matter because it is not satisfied that there is under-performance;
  - (b) to allow a further period for improvement;
  - (c) to dismiss the teacher with notice;

Its decision will be confirmed in writing. A model letter is attached as **Annex 3**.

30. If the decision is to dismiss, the teacher will have the right of appeal to the appeal committee. An appeal must be made within 5 working day and heard within 10 working days of notification of appeal. The procedure for the meeting is attached as **Annex 2**.

## **COMMENTARY**

### **1. Role of Governors**

Governors should not normally be involved with a capability procedure before the dismissal stage. The exception to this is where a governor or governors are involved in considering an appeal against a warning, or in a capability procedure against a headteacher when the Chair of Governors will undertake the monitoring and evaluation of performance supported by County Council officers. It is important to be prepared for the possibility of dismissal. The use of governors to hear any grievances or appeals against warnings should be limited to ensure a sufficient number of impartial governors remain available for the first and appeal committees. Normally at least three governors are required for each committee

### **2. Role of Advisers**

County Council advisers or other advisers with education and personnel experience should advise the school and where appropriate assist with the process, including classroom observation and providing support.

### **3. Representation at formal interview, evaluation meetings and dismissal hearing**

A teacher has a legal entitlement to be accompanied by a colleague or union representative. If the teacher's chosen companion is not available at the time proposed for the interview, meeting or hearing, and the teacher proposes an alternative that is reasonable and falls within 5 working days of the day proposed for the interview, the school must rearrange the event to the time proposed by the teacher.

### **4. Notice**

Notice of 5 working days must be given for an initial formal capability interview. The date of successive evaluation meetings should be fixed at the preceding interview or meeting and notice should only be necessary if it is rearranged. Notice of at least 5 working days must be given for a first committee or appeal hearing.

### **5. Support for the teacher**

Those monitoring the performance should offer feedback and instruction to help the teacher improve performance. 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.

### **6. Monitoring arrangements**

Monitoring should include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

### **7. Written records**

A written record should be made of all interviews with the teacher and any action taken following such an interview. Except in agreed circumstances any formal warnings should be disregarded for disciplinary purposes after a specified period of satisfactory performance. These periods are 2 terms for an oral or written warning and 6 terms for a final written warning.

## **8. Time Scales**

The time scales in this procedure are expressed in working days. These are days on which the school is open for teaching staff. It is not intended that if a teacher works one day per week, a period of 5 working days means 5 calendar weeks.

The procedure should normally be dealt with during term time. If it is essential on educational grounds to deal with an issue during school closure the periods involved will be an equivalent period of consecutive days (i.e. 5 working days are equivalent to 7 consecutive days).

## **9. Staff who are absent through illness during the procedure**

Absence which is triggered by the capability procedure, and which management believe is likely to be long term, is covered in the key points above and should be referred immediately to the occupational health adviser to assess whether the teacher is fit for continued employment. Short absences should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the teacher to attend evaluation meetings, but where the teacher is unable to attend, these may proceed if the absence is protracted and the operation of this procedure is a substantial factor in the illness. In such cases the failure to meet targets will not be discounted because of illness. If the teacher is absent from such meetings a full account of the evaluation should be provided in the letter confirming the decision taken.

## **10. Decisions on continuing the procedure and recommending dismissal**

Normally the decision to continue a capability procedure or recommend dismissal should be taken by the head, or by the line manager with the head's agreement (except where the head's performance is being considered). If there is a difference of opinion, the head's decision should prevail (except where the head's performance is being considered).

## **11. Disputes about the procedure**

Any disagreements or grievances about the interpretation of this procedure, or the application of any related matters not covered in the procedure, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling any particular case.

## **12. Grievances**

In exceptional circumstances a teacher may raise a grievance about the behaviour of a head or other manager during the course of a capability procedure. Depending on the circumstances it may be appropriate to suspend the 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. Any records should be passed to the new manager and, if appropriate, the case should be continued within the same timetable.

**EXAMPLES OF POSSIBLE SUPPORT**

- (1) Advice and encouragement from management, colleagues and for County Council staff;
- (2) Assigning a mutually agreed mentor to the teacher;
- (3) Specific training or other opportunities for professional development or management.;
- (4) Seeking appropriate medical advice where ill-health appears to be a contributory factor;
- (5) The possibility of modifying the school's organisation if this appears to be an obstacle to teachers generally achieving a satisfactory standard of performance (e.g. poor timetabling, insufficient resources, lack of specialist knowledge, unclear allocation of responsibilities);
- (6) Support of experienced staff / subject managers / teacher advisers to lead lessons or team teach or to advise on management processes;
- (7) Opportunities to view practice in the teacher's own or other schools and adapt accordingly;
- (8) Attendance at courses aimed at rectifying specific weaknesses;
- (9) In-school workshops on class management, pupil behaviour, school regulations on pupil movement;
- (10) Observation of particular, agreed issues within the classroom and appropriate supportive feedback;
- (11) Consideration of and adaptation of present commitments if at all practicable (e.g. by the voluntary relinquishing of additional responsibilities and associated responsibility points);
- (12) Opportunities to enhance the individual's status, e.g. specialist teaching in a primary school, leading sessions on areas of expertise, additional non-contact time to carry out specified responsibilities;
- (13) Advice on curriculum and lesson planning procedures;
- (14) Advice on teaching and learning styles.

**SUGGESTED PROCEDURE FOR GOVERNORS' COMMITTEE MEETING TO  
CONSIDER THE DISMISSAL OF A TEACHER ON GROUNDS OF COMPETENCE**

1. Introduction by Chair: explanation of procedure.
2. Headteacher should amplify the report prepared recommending the dismissal of the teacher.
3. Teacher (or representative) may ask questions of headteacher and witnesses.
4. Teacher (or representative) should put case against dismissal.
5. Headteacher may ask questions of teacher and witnesses.
6. The Committee may ask questions of headteacher, teacher and witnesses.
7. Headteacher to sum up case.
8. Teacher (or representative) to sum up case.
9. Parties to retire. Corporate Director (Education and Lifelong Learning) representative may remain with the Committee to offer advice.)

The Committee will consider the case and notify the parties of their decision. This may be conveyed at the conclusion of the hearing and then confirmed in writing or confirmed in writing at a later date by the Committee.

This procedure may be varied by agreement of all the parties.

**NOTE:**

At appeal committee meetings, the role ascribed to the headteacher may be undertaken by a representative of the original committee. In this case the headteacher does not have the right to attend the appeal committee meeting; he/she may only attend by invitation of the Committee and (s)he must withdraw at the same time as the teacher (whether or not the she/he presents the case against the teacher).

**MODEL LETTER CONFIRMING INITIAL DECISION TO DISMISS**

Dear .....,

I write to confirm the outcome of the meeting of the Governors' **...[insert name]...** Committee on **...[insert date]...** which you attended with your representative, **...[insert name]...**

Having considered the report of the Headteacher and the representations made on your behalf, the Committee decided that your level of professional performance has been unacceptably low over a lengthy period and decided that you should be dismissed from your teaching post at the school with effect from **...[insert date]...**

You have a right of appeal against this decision. If you wish to exercise this, you must notify the Clerk to the Governors in writing within two weeks, indicating:

- (a) the grounds of your appeal;
- (b) whether you wish to be represented or accompanied at the meeting of the Appeal Committee and, if so, by whom;
- (c) whether you propose to call witnesses at the meeting and, if so, who those witnesses are;
- (d) whether you wish to introduce any additional documents not used at the **...[insert name]...** Committee's meeting. If so, you should provide copies.

If you do not wish to appeal, it would be helpful if you would confirm this in writing. Appeals are normally held within 10 working days. A copy of the procedure is attached.