



**Oakwood Academy
Working in Collaboration
with Salford LA**

TEACHER CAPABILITY POLICY

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1. GENERAL PRINCIPALS UNDERLYING THIS POLICY

For use for all teachers employed in Community Schools and those who are centrally employed.

This policy may also be used for all teachers employed in Voluntary Controlled Schools, Aided Schools, Academies and Trusts where the appropriate body has adopted this policy.

ACAS CODE OF PRACTICE ON DISCIPLINARY AND GRIEVANCE PROCEDURES

This policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

CONFIDENTIALITY

Throughout this procedure, Teachers are entitled to confidentiality. It therefore follows that any discussions that take place at meetings are confidential to the individuals concerned, but action plan targets will, if necessary, be passed to those responsible for ensuring action on them is taken.

The Headteacher, at his/her discretion, may inform the Chair of Governors that matters relating to the capability of a Teacher are being addressed through this procedure. However the Teacher should not be named. No other members of the Governing Body should be informed except at the specific stages highlighted in the formal procedure.

the capability process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and governing body to quality-assure the operation and effectiveness of the capability system.

DEFINITIONS

Unless indicated otherwise, all references to "Teacher" include the Headteacher.

DELEGATION

Normal rules apply in respect of the delegation of functions by governing bodies, Headteachers and local authorities.

GRIEVANCES

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

SICKNESS

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be referred immediately to the Occupational Health service to assess the Teacher's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Absences should not delay any part of the formal stage of the formal capability Procedure. Reasonable steps should be made to enable the Teacher to attend evaluation meetings, but where the Teacher is unable to attend, the meeting may proceed in the Teacher's absence if delay would otherwise compromise the maximum time set aside for the procedure. If the Teacher does not attend the evaluation meetings due to absence a full account of the evaluation should be provided in a letter to the individual confirming the decision taken.

2. EQUALITY STATEMENT

The Schools' HR Team aims to regularly review all the policies and procedures we operate to ensure there are no negative equality impacts on staff based on their age, disability, gender, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief and sexual orientation as outlined in the Equality Act 2010. Consultation with our customers is an important part of how we achieve this. If you feel, on reading these policies, that there may be a negative equality impact within your school, please tell us about this. Please also let us know if you need to access this policy in a different format. You can do this by contacting the following officer:

Laura Coluccio, Acting Schools HR Manager – Tel: 0161 607 8657

3. INTRODUCTION

This policy has been prepared by The Schools' HR Team and is recommended for schools/services to use.

At a local level this policy has been consulted upon with members of the Teachers Associations and any deviation to the policy must be consulted with the Teacher Associations representatives and Teaching Staff employed within the school.

This policy sets out the formal capability procedure and reflects the Local Authority agreed policies and ACAS Code of Practice on disciplinary and grievance procedures. On 1 September 2012, it replaces the statutory guidance “Capability Procedures for Teachers” that was issued in July 2000. Capability procedures apply only to Teachers, unattached Teachers and Headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.

4. POLICY FOR DEALING WITH CAPABILITY ISSUES

The Governing Body of _____ School adopted this policy on _____

It will review it in _____ years

(Recommendation minimum of 2 years / maximum of 3 years)

4.1 PURPOSE

This policy sets out the framework for a clear and consistent assessment of the overall performance of Teachers, including the Headteacher, and for supporting their development within the context of the school’s plan for improving educational provision and performance, and the standards expected of Teachers. It also sets out the arrangements that will apply when Teachers fall below the levels of competence that are expected of them.

This procedure applies only to Teachers or Headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.

The purpose is to encourage and support improvement where a Teacher is failing to meet the Teacher Standards.

The purpose is to ensure consistent and fair treatment for all Teachers with respect to action taken in response to failing to meet the required Standards.

This procedure does not deal with lack of capability due to ill-health, nor with misconduct, which may be defined as an act or omission by the Teacher which is considered to be unacceptable professional behaviour. Separate procedures exist and have been adopted by Governing Bodies to deal with such matters.

This procedure shall apply equally to Headteachers as it applies to the teaching staff.

The Local Authority may make reports to the Chair of Governors where it has serious concerns about the discharge of the Headteachers performance.

Where there is reference within this procedure to the Director of Children's Services this may be the Director of Children's Services or his/her nominated representative.

4.2 APPLICATION OF THE POLICY

The policy applies only to Teachers (including the Headteacher) about whose performance there are serious concerns that the appraisal process has been unable to address.

5. CAPABILITY PROCEDURE

The procedure for handling capability issues is agreed between Salford City Council - the Local Authority, and the recognised Teachers' Associations and is recommended for adoption by the Governing Bodies of schools with delegated powers of Local Management. This procedure is consistent with the employment powers granted to Governing Bodies by the School Staffing Regulations and with the Articles of Government of individual schools.

Governing Bodies of community and voluntary controlled schools with delegated powers are recommended to adopt this procedure.

Governing Bodies of voluntary aided and foundation schools are required to adopt either this procedure, an appropriate diocesan procedure, or draw up their own for formal consultation with the recognised Teachers' Associations.

5.1 NEWLY QUALIFIED TEACHERS

In a few particularly serious cases, it may become apparent that the education of the children being taught by an NQT is being seriously affected. In such instances the Headteacher may have to consider instigating a capability procedure at any stage before the end of the induction period, which may lead to dismissal before the end of the induction period. If this is the case, for as long as the NQT remains at the school the induction procedure continues in parallel with the capability procedure.

Before instigating a capability procedure, it is important that the Headteacher is assured that the following has taken place:

- The NQT's performance has been monitored.
- The NQT has been clearly advised about the aspects of their practice which is causing concern and understands the improvements which are expected.

The NQT will have the right to representation at any meetings which take place in relation to their capability.

- A reasonable and time-limited period (at least 4 weeks in very serious cases) of careful and structured support/ training, monitoring, evaluation and evidence gathering has taken place, giving the NQT an opportunity to improve.
- The NQT has been given an informal warning that failure to improve may lead to entry to the formal capability procedure and that this may lead to dismissal.

If an NQT is dismissed on grounds of capability before the end of the induction period, they may seek to complete induction at another school. The Headteacher and Appropriate Body will, however, need to pass on any induction records and documentation to the new school and Appropriate Body.

5.2 RIGHTS OF REPRESENTATION

Teachers have the right to be accompanied by a Teacher Association representative or work colleague, but no one else. The role of the representative is to be present at meetings to support and advise the Teacher and to observe the proceedings and make representation on behalf of the Teacher. If these rights have not been afforded to the Teacher any action taken as part of this procedure will be deemed to be void and any record made will be expunged.

Where the chosen representative cannot attend on the date proposed by the school, the member of staff or their representative can offer an alternative time and date which is reasonable and within 5 working days, beginning with the first working day after the day proposed by the employer.

No formal action shall be taken against a Teacher who is an accredited representative of one of the recognised Teachers' Associations until the circumstances of the concern have been discussed;

- (i) in the case of a school representative or local officer, with the local secretary; or
- (ii) in the case of a local secretary, with a full-time official of the union.

5.3 SUSPENSION

The Headteacher and the Chair of Governors have the power to suspend on full pay if it is deemed necessary. The suspension must be referred to a committee of the Governing Body within 21 calendar days, for their consideration. The purpose of the meeting will be to consider whether:

- to continue the suspension and refer the Teacher to a disciplinary committee of the Governing Body; or
- to revoke the suspension.

Any suspension must immediately be reported in confidence to the Chair of the Governing Body and the Director of Children's Services

5.4 FORMAL STAGE

At least seven calendar days notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and the possible consequences to enable the Teacher to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; and the details of the time and place of the meeting.

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Headteacher capability meetings) or Headteacher (for other Teachers). The meeting allows the Teacher, accompanied by a Teachers' Association representative or work colleague if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

At the formal capability meeting, the Chair of Governors or Headteacher will:

- identify the professional shortcomings, and provide the Teacher with the opportunity to comment;
- give clear guidance on the improved standard of performance needed to ensure that the Teacher can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- A formal action plan will be drawn up by the Chair of Governors or the Headteacher to assist the Teacher to achieve the required standards. The plan will, wherever

possible, be drawn up in partnership with the Teacher and will include the areas of concern (professional standards not being met), and appropriate support programme to improve their performance;

- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases could be at a minimum 6 weeks. The period should always be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place); and
- warn the Teacher formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal meetings and copies of the notes and action plan will be sent to the Teacher. Any comments submitted by the Teacher will be appended to the notes.

Where a warning is issued, the Teacher will be informed in writing of the matters covered and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

Within seven calendar days of the formal capability meeting, the Headteacher/Chair of Governors will provide the Teacher and his/her representative with:-

- (i) confirmation of the appropriate warning.
- (ii) a copy of the notes of the meeting for agreement; and
- (iii) a written copy of the action plan setting out clearly:
 - the targets/performance standards to be attained,
 - the support and resources to be made available;
 - details of how progress will be monitored and by whom; and
 - the timescale for the review meeting.

5.5 MONITORING AND REVIEW PERIOD FOLLOWING A FORMAL CAPABILITY MEETING

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support as detailed in the action plan

will continue during this period. The Teacher will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting.

5.6 FORMAL REVIEW MEETING

As with formal capability meetings, at least seven calendar days notice of the review meeting will be given. The notification must be advised in writing, advising the Teacher of their right to be accompanied by a Teacher Association representative or work colleague.

If the person conducting the meeting is satisfied that the Teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will restart.

In other cases:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- If no, or insufficient improvement has been made during the monitoring and review period, the Teacher will receive a final written warning;
- Referral to a decision meeting if a final written warning has previously been issued.

As before, notes will be taken of formal meetings and a copy sent to the Teacher. Any comments submitted by the Teacher will be appended to the notes. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the Teacher will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal, and information will be given about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The Teacher will be invited to a decision meeting.

5.7 DECISION MEETING

As with formal capability meetings and formal review meetings, at least seven calendar days notice of the decision meeting will be given. The notification must be advised in writing, advising the Teacher of their right to be accompanied by a Teachers' Association representative or work colleague.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal

process will re-start. If the performance remains unsatisfactory, a decision, or recommendation to dismiss the Teacher will be made to the Governing Body.

The decision meeting will be before the Headteacher or a Committee consisting of at least three members of the school's Governing Body (where this number is not reasonably practicable it can be reduced to two). The meeting will be held in accordance with the attached Schedule.

Before the decision to dismiss is made, the school will discuss the matter with the local authority.

The Teacher will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

5.8 DECISION TO DISMISS

Community, Voluntary Controlled and Maintained Nursery Schools

In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).

The power to decide that members of staff should no longer work at this school has been delegated to:

- the Headteacher
- OR
- a committee of Governors to make a clear decision

Foundation, Voluntary Aided Schools

In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated to the Headteacher, to one or more governors, or to one or more governors acting with the Headteacher.

The power to decide that members of staff should no longer work at this school has been delegated to:

- The Governing Body

OR

- The Headteacher

OR

- One or more governors

OR

- One or more governors acting with the Headteacher

5.9 DISMISSAL

Once the Governing Body (or insert details of person or people to whom the power has been delegated) has decided that the Teacher should no longer work at the school; it will notify the Local Authority of its decision and the reasons for it. Where Teachers work solely at this school, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school.

5.10 APPEAL

If a Teacher feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within seven calendar days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the Teacher. The appeal will be dealt with impartially by the appeals committee of the governing body who have not previously been involved in the case. The Teacher will be informed in writing of the results of the appeal hearing within seven calendar days.