

Teachers Capability Policy and Procedure

November

2022

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1. Introduction

1.1 Aim

- 1.1.1 By law all governing boards must have procedures in place to deal with cases of poor performance by staff. The aim of the Capability Policy and Procedure is to enable employees to perform effectively in their role and to ensure that cases of poor performance are dealt with fairly and consistently, with the prime objective of improving an individual's performance to the required level.

1.2 Scope and Application

- 1.1.2 This policy and procedure applies only to teachers or Headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.
- 1.1.3 For the purpose of this policy an individual's capability to do their job is assessed by reference to their skills, knowledge, responsibilities, applicable professional standards, and qualifications.

2. Responsibilities

2.1 Teachers are responsible for:

- Performing their duties to an acceptable standard
- Participating in appropriate training and development
- Maintaining professional standards

2.2 Headteacher/line managers are responsible for ensuring that:

- The standards of performance required and the arrangements for monitoring and review are clear to all teachers
- Ensuring that teachers receive appropriate training and development
- Arrangements for dealing with incapability for work and poor performance are brought to the attention of all staff
- They take all reasonable measures to promote capability of teachers under their responsibility
- Occupational health advice is sought, where relevant to a case of incapacity for work
- Where disability related issues emerge they are addressed in a positive way and, where necessary, the requirements to make reasonable adjustments are met
- Full and accurate records are kept of all meetings.

2.3 Schools Human Resources (HR) are responsible for:

- Providing advice and support throughout the process
- Monitoring the application of the procedure, reporting trends and non-compliance to the Chair of Governors and the Director of Children's Services (where applicable) or other appropriate body.
- Where applicable, notifying the teaching agency.

2.4 Governing boards are responsible for:

The Governing Board is responsible for:

- Approving this policy



- Ensuring that the policy is complied with
- Participating in the process when appropriate, e.g. Appointing panel for decision meeting.

3. Principles

3.1 Process

- 3.1.1 Capability procedures are designed around support mechanisms to assist teachers to achieve the desired levels of performance.
- 3.1.2 It is part of the normal day to day responsibilities of management to inform staff of concerns about standards of performance and where these are not speedily resolved they should be addressed via the appraisal process.
- 3.1.3 The capability procedure applies only to teachers or Headteachers about whose performance there are serious concerns that the appraisal process has been unable to address and may be applied only after support has been offered as part of that process.
- 3.1.4 Under normal circumstances a “transition” meeting will have previously been held under the appraisal process when the teacher or Headteacher is advised that progress in addressing concerns has not been sufficient and that performance will be managed under the capability procedure. Further details about the transition meeting may be found in the appraisal policy.
- 3.1.5 When issues arise, it is important that the Headteacher/line manager identifies the performance gap and investigates the cause or causes. Once the reason for the gap has been discovered actions can be agreed with the teacher to assist them to bridge the gap or work towards other acceptable solutions. Headteachers/line managers and teachers should regularly discuss performance against agreed objectives, identifying areas of concern, either to the teacher, the Headteacher/line manager or both, and identifying strategies for improvement.
- 3.1.6 Headteachers/line managers need to be clear about the objectives they believe should be achieved by staff, such objectives should always be reasonable and realistic, and teachers need to understand what is required of them in terms of their work or attendance and the standards to be met.
- 3.1.7 Performance matters should be dealt with sensitively and with respect for the privacy of individuals involved. All employees and governors must treat as confidential any information communicated to them in connection with a matter which is subject to this procedure.
- 3.1.8 In all meetings under the capability process, the employee will have the right to be accompanied by a work colleague or trade union representative.

3.2 Equalities Issues

- 3.2.1 Where the employee has a disability, the Headteacher/line manager will discuss with the teacher any reasonable adjustments to support them in their work and ensure that these are made. Schools’ Human Resources and other appropriate specialist advice should be sought and the teacher should be advised of their right to seek advice and support from their trade



union.

- 3.2.2 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the working arrangements, including changing duties or providing additional equipment or training. Adjustments to this procedure may also be considered in appropriate cases.
- 3.2.3 An employee who wishes to notify of a medical condition, or discuss reasonable adjustments, should contact their line manager or School's HR.
- 3.2.4 Where the teacher asserts that the capability proceedings being undertaken are unlawfully discriminatory or are motivated by reasons other than addressing poor performance, the teacher can raise a complaint. If the teacher raises this complaint in writing at any stage before the appeal stage of a dismissal, this can be dealt with as part of the capability procedure. If the teacher raises the complaint only after the capability procedure has finished and it is on substantial new grounds then it will be necessary for the teacher's complaint to be dealt with in accordance with the Grievance Policy and Procedure.
- 3.2.5 The submission of a complaint by a teacher during capability proceedings will not normally prevent the continuation of the capability process. Where appropriate, a complaint related to the capability proceedings should be dealt with as part of the capability process and not pursued through the Grievance Policy and Procedure.

3.3 Ill Health

- 3.3.1 An individual's capability to carry out their role to the expected standard may be affected by their health and their attendance at work. The process for managing long-term periods of sickness absence (4 weeks or more) and managing repeated short-term absence is set out in the Schools Sickness Policy and Procedure.
- 3.3.2 There may be situations where the Sickness and Capability procedures, may be required to run in parallel.

3.4 Standards of Work

- 3.4.1 Headteachers/line managers are responsible for establishing the required reasonable standards of work expected from teachers, whilst teachers are responsible for understanding and meeting those standards. Headteachers/line managers should support and assist teachers to achieve these standards, providing appropriate training and support.

3.5 Exceptional circumstances where capability proceedings start without the Appraisal process

- 3.5.1 In very limited and exceptional circumstances, the Headteacher/line manager may issue a final warning at the first formal capability meeting. Advice from the HR provider should be sought at this stage. Circumstances where this may occur will only include instances of severe/gross incompetence and which would have a serious and direct impact on the safeguarding or health and safety of clients, service users or colleagues or where the education of pupils is at risk.
- 3.5.2 In exceptional circumstances, concerns about a senior leader may arise outside the normal appraisal process for example (LA monitoring of schools causing concern, Ofsted). In these



circumstances, the issues will be highlighted to the senior leader involved and maybe addressed via the formal capability procedure.

3.6 Investigation of Concerns

- 3.6.1 If a teacher is failing to achieve the expected standard of work, the Headteacher/line manager should investigate the problem in an attempt to identify the causes for the poor performance, and work with the teacher to improve performance providing appropriate support and guidance, and interventions where needed. The manager will have investigated concerns and offered support during the appraisal process; this will continue during the capability process.

4. Capability Meeting

4.1 Capability meeting

- 4.1.1 A capability meeting is intended to examine the facts. It will be conducted by the 'manager' – i.e. the Chair of Governors or a designated governor acting on his/her behalf (for Headteacher capability meetings) or Headteacher/line manager (for other teachers). In relation to the Headteacher, it is usually best if a governor other than the Chair undertakes the manager role, so that the Chair can remain impartial e.g. to deal with the appeal stage.
- 4.1.2 Between the transition meeting and the capability meeting the manager will have carried out further investigation and / or produced a summary of the issues and will discuss ongoing concerns with the employee at the capability meeting.
- 4.1.3 The Employee will be given at least 5 working days' written notice of the capability meeting and will be informed in writing of the right to be accompanied by a work colleague or a trade union representative.
- 4.1.4 The capability meeting allows the teacher 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.
- 4.1.5 The manager conducting the meeting could 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 not proceed further
 - A first written warning should be issued
 - In exceptional circumstances a final written warning could be issued. This is likely to occur if:
 - The education, safeguarding or welfare of pupils is at risk
 - Instances of severe/gross incompetence and which would have a serious and direct impact on the safeguarding or health and safety of clients, service users or colleagues or where the education of pupils is at risk;
 - There are serious leadership weaknesses;
 - Concerns arising following monitoring by the local authority or Ofsted;
 - In circumstances where an individual's performance had been managed under the capability procedure in the previous 12 months and concerns about the standard of performance re-emerge
- 4.1.6 The manager 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.

4.1.7 During the meeting, or any other meeting which could lead to a formal written warning being issued, the manager conducting the meeting will:

- Identify the professional shortcomings, for example which of the standards expected of teachers are not being met;
- 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);
- Discuss the most effective way of supporting the teacher to improve their performance taking into account the views of the teacher and where possible agree on the support that will be available;
- 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 and should not usually be longer than half a term. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place. In cases where the education, safeguarding or welfare of pupils is at risk or there are significant leadership weaknesses, the period for improvement will be up to 4 weeks.
- Warn the teacher formally that failure to improve within the set period could lead to dismissal (if a final warning) or warn that the final outcome from the process may be dismissal (for non-final warning).

4.1.8 Notes will be taken of formal meetings and a copy sent to the member of staff.

4.1.9 Where a warning is issued, the teacher will be informed in writing within 5 working days of the matters covered in the bullet points above and given information about the timing and handling of the review stage. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal.

4.1.10 The teacher may appeal against a first or final written warning within 10 working days of receiving the warning by writing to the Chair of Governors (in relation to the Headteacher or Headteacher (in relation to other teachers). (Further details about the appeals process may be found in the appeal section of this document.)

4.2 Monitoring and review period following a Formal Capability meeting

4.2.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the review period, there will be a formal meeting as follows:

- 4.2.1.1 Where the teacher has been issued with a first written warning they will be invited to a formal review meeting. (See section 4.3)
- 4.2.1.2 Where the teacher has been issued with a final written warning they will be invited to a decision meeting (See section 5).



4.3 Formal review meeting

- 4.3.1 The Employee will be given at least 5 working days' notice of a Formal Review Meeting and will be informed in writing of their right to be accompanied by a colleague or TU representative.
- 4.3.2 The meeting will be conducted by the manager who conducted the capability hearing.
- 4.3.3 If the manager is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.
- 4.3.4 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.
- 4.3.5 As before, notes will be taken of the formal meetings and a copy sent to the member of staff.
- 4.3.6 Where a final warning is issued the member of staff will be informed in writing within 5 working days of the meeting. The required improvements referred to in the final written warning will usually be written with the same wording/ headings as a previously issued warning. The member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period including the timescale for the review period which will usually be no longer than 4 weeks.
- 4.3.7 The teacher may appeal against a first or final written warning within 10 working days of receiving the warning by writing to the Chair of Governors (see appeal section below).

5. Decision Meeting

5.1 Decision meeting

- 5.1.1 A decision meeting will be held at the end of the monitoring and review period after a final written warning has been issued.
- 5.1.2 Lambeth Schools' HR service should be informed¹ of all decision meetings and may provide advice to the Headteacher and / or Governors on the management of the case. The school will notify Lambeth Schools' HR² of the decision meeting in good time and Lambeth Schools'

¹ The School Staffing England) Regulations 2009 Regulation 14 – the Local Authority may offer advice to a Community or Maintained or Controlled School / Nursery on proceedings relating to the dismissal of a teacher. The governing board must consider any such advice. A similar provision applies to Foundation, Voluntary Aided and Foundation Special Schools in Regulation 26.

² The School Staffing England) Regulations 2009 Regulation 14 – in relation to a Community or Maintained or Controlled School / Nursery the Local Authority is entitled to attend and offer advice at all proceedings relating to the dismissal of any teacher. Regulation 26 – in relation to Foundation, Voluntary Aided and Foundation



HR may arrange for an officer to attend the hearing for the purpose of giving advice.

5.1.3 The decision meeting will be conducted by a governor panel. References to 'governor panel' in this document will be a panel of three governors. The governing board will select three governors and will nominate one of them to be chair of the panel. The chair of the panel shall either be trained or suitably experienced in chairing formal panels. No governor who has had prior involvement in a particular case should sit on the panel. If there are insufficient suitable governors available from the school's governing board, then governors from the governing boards of other schools may be appointed to the panel. The panel will make decisions by majority vote, although the chair or the panel may make decisions in relation to procedure for example postponements. If a Governor is not a member of the panel that Governor will be given brief information only about the matter, they will not be given full details in case the Governor is needed as a future decision maker in the matter. It is usually good practice for the Chair of Governors not to be on the Decision Panel, so that the Chair of Governors may sit on the appeal panel if the matter proceeds to appeal.

5.2 Notification of the date of the decision meeting

5.2.1 The manager who dealt with the capability hearing is responsible for convening and managing the arrangements for all meetings held under this procedure, except Appeal Hearings. The manager should write to the teacher instructing him or her to attend the decision meeting. The letter instructing the teacher to attend the decision meeting should:

- Give the teacher at least 5 working days written notice of the meeting
- Set out the date, time and place of meeting and the names of the members of the panel
- Should describe the nature of the capability issue and action taken so far
- Where possible, be accompanied by the documents that the manager will present at the meeting, although these can be sent under separate cover provided they arrive no later than 5 working days before the meeting. Documents to be considered at the decision meeting which should be set out in a logical order, indexed and paginated, with a written introduction, including any conclusions, for the panel.
- Advise the teacher of the right to be accompanied by a work colleague or trade union representative
- Provide a copy of the capability policy & procedure – teachers
- Advise the teacher that they need to provide any documentation/names of witnesses at least 2 full working days before the meeting.
- Explain that dismissal could be an outcome

5.3 Attendance at a decision meeting

5.3.1 The following may attend the decision meeting

- The teacher
- The teacher's colleague or TU representative
- The panel of 3 governors who will hear the case
- A schools' hr representative who shall act as an impartial advisor to the panel
- The Headteacher/line manager (the presenting manager) who may be accompanied by a schools' hr officer
- A note taker

Special Schools the Local Authority is entitled to offer advice on the dismissal of a teacher and the governing board is required to consider that advice.



- Any other member of staff invited by the panel to advise or give information
- Any other employee called as a witness, who shall be present only to give their evidence.

5.4 Request for postponement

5.4.1 At the request of the teacher the meeting may be postponed on one occasion. The reasons for the postponement must be explained to the chair of the panel, who will decide whether to agree or not to the postponement. If agreed, the teacher must give an alternative date, no more than 5 working days after the original date for the meeting.

5.4.2 The meeting will not normally be re-arranged more than once. Further requests for postponement of a meeting will be considered on their merits by the Chair of the panel and will not always be agreed. Following one postponement the meeting may proceed in the absence of the teacher.

5.5 Order of business

5.5.1 The order of business at the decision meeting will normally be:

- Introductions
- Presentation by the manager, which may include the calling of witnesses, who may give their evidence, be cross-examined by the teacher/representative and questioned by the panel
- Questions to management by teacher/representative and the panel
- Presentation by the teacher/representative, which may include the calling of witnesses, who may give their evidence, be cross examined by the manager and questioned by the panel
- Questions to the teacher/representative by manager and the panel
- Summing up by the manager
- Summing up by the teacher/representative
- Decision of the panel
- Panel's decision to be conveyed in writing

5.5.2 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, during the following 12 months, concerns about the standard of performance re-emerge, then they will usually be dealt with under the final stage of this procedure.

5.5.3 If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the teacher should be dismissed. The teacher will be entitled to his/her contractual notice period.

5.5.4 The teacher will be informed in writing within 5 working days of the reasons for the dismissal and the date on which the employment contract will end.

5.5.5 The teacher may appeal against the decision to dismiss within 10 working days of receiving the above letter by writing to the Chair of Governors (Further details about the appeals process may be found below).

5.6 Outcomes at a decision meeting

5.6.1 The panel may decide one or more of the following:

- No action – teacher to return to appraisal process
- Written warning or final written warning;



- Dismissal with notice
- Dismissal with pay in lieu of notice
- By mutual agreement, transfer to another post within the school usually of a lower grade without salary safeguarding. The panel will need to identify a suitable post before making this recommendation
- Any other reasonable action

5.7 Dismissal decision and ratification

5.7.1 If the outcome of the decision meeting is recommendation for dismissal then the chair of the panel will advise Schools' HR of the panel's recommendation and the Local Authority will arrange for dismissal to be confirmed in writing within 14 days³ (the employee will receive the panel's decision and separate dismissal letter from the Local Authority).

5.7.2 The Governing Body of Voluntary Aided and Foundation Schools can make the decision to dismiss and to ratify a dismissal decision.

5.7.3 Dismissals and notice periods are effective from the date of notification of the dismissal decision.

5.7.4 Confirmation of termination of employment will be provided in writing to the teacher along with details of their right of appeal against termination of employment.

5.8 Notification of decision

5.8.1 The decision of the Panel will be notified to the teacher in writing as soon as practicable after the meeting, not normally to exceed 5 working days.

5.8.2 The decision will include:

- A description of the capability issue
- The teacher's response and views
- The findings of the panel
- The right of appeal

5.9 Recording of proceedings

5.9.1 It is important to keep written records during the entire capability process. Records must include:

- The capability issues against the teacher;
- the teacher's defence and response;
- findings made and actions taken;
- the reason for actions taken;
- whether an appeal was lodged;

³ School Staffing (England) Regulations 2009. Regulation 20 – for Community, Voluntary Controlled, Community Special and Maintained Nursery Schools the recommendations to dismiss must be notified to the Local Authority. Within 14 days of being notified the Local Authority's Director of Education and Learning or Director of Children's Services must terminate the contract of employment with or without notice. Regulation 32 – in relation to Foundation, Voluntary Aided and Foundation Special Schools the same procedure as maintained schools applies to Local Authority employees who are being dismissed, otherwise the decision to dismiss sits with the governing board.



- the outcome of the appeal;
- any grievances raised during the capability procedure; and
- subsequent developments.

5.9.2 Copies of meeting records should be taken and if requested, a copy provided to the teacher within 10 working days of the meeting.

6. Appeals

- 6.1 A teacher may appeal against any formal warning or dismissal decision. The purpose of the appeal is to review the decision taken by the capability panel, not to re-hear the case.
- 6.2 The grounds of appeal should relate to one or more of the following:
- a) The procedure**
An appeal can be lodged on the grounds that the capability procedure was applied unfairly or inaccurately.
 - b) The facts**
An appeal can be lodged where the teacher believes that the facts of the case did not support the decision made; that the facts considered were not relevant; that the facts were not substantiated; or where there are new facts/evidence which need to be considered that has come to light subsequent to the hearing
 - c) The decision**
An appeal can be lodged where the teacher feels that the sanction received is unreasonable in view of the circumstances and mitigation offered by the teacher.
- 6.3 The arrangements for an appeal hearing at the earlier stages of this process will not delay meetings that are required to monitor and review performance and the timescales that have been set for improvement.
- 6.4 The purpose of an appeal is to review the decision taken by the panel and not to rehear the case.
- 6.5 The appeal must be made in writing, to the Chair of Governors/Clerk to the Governing Body (as appropriate), within 10 working days of the date of the letter confirming of the decision. The notice of appeal must clearly indicate the grounds of appeal.
- 6.6 The appeal will normally be heard within 20 working days from receipt of the appeal letter.
- 6.7 The Chair of Governors or his or her nominee shall arrange for the appeal to be heard by a panel of at least 3 governors who have not had any previous involvement in the case (the appeal panel will be formed following same principles as the panel for the decision meeting – see above).
- 6.8 The teacher will be informed of the right to be accompanied by either a work colleague or trade union representative.



- 6.9 The appellant will be given 5 working days' written notice of the appeal hearing along with any documents which management will present at the appeal. The appellant must provide their own documents within 2 working days of the appeal hearing.
- 6.10 Order of Business for Capability Appeal Hearing – refer to decision meeting above and note that the sequence of business is changed in that it is the teacher and then the Chair of the decision meeting, in that order to make submissions to the appeal panel.
- 6.11 The panel will review whether the original decision was reasonable having reviewed the grounds for appeal. The Appeal Panel shall go into as much detail as they consider necessary in order to give a fair hearing within the grounds of the appeal.
- 6.12 The decision at appeal shall be either to uphold the original decision of the formal decision meeting, to issue a lesser sanction, or to overturn the original decision and impose no sanction. This decision shall be final and will be confirmed in writing, not normally to exceed 5 working days.
- 6.13 If the teacher is successful at appeal they will be re-instated. It is, however, possible that an appeal might be concluded within the notice period.
- 6.14 Notes shall be taken at an appeal hearing and if requested a copy provided to the appellant within 10 working days of the appeal hearing.

7. Approval and Variation Process

7.1 Where the School/Council wishes to amend this policy, it will consult with the relevant trade unions with a view to reaching agreement over the proposed amendment(s). This policy may be amended by agreement with the relevant trade unions at any time. Where agreement has not been reached with the relevant trade unions arising from consultations, the School/Council reserves the right to implement its proposed amendment(s) by giving one month's notice to employees of its proposal(s).



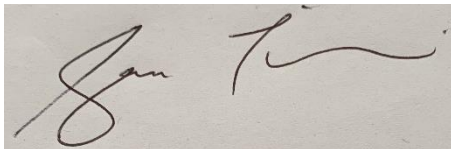
This Policy is approved and signed by:



Director, Education & Learning

Name: Abrilli Phillip

Date: November 2022



On behalf of Trade Unions: Sara Tomlinson Lambeth Trade Union's Joint Education Secretary

Name: Sara Tomlinson

Date: November 2022

Chair of Governors of School or Federation

Name:

Date:



Appendix 1 – Version Details.

	Version date: November 2022
Section	Summary of changes from 2012 version.
Section 5.1.3	Information about composition of governor panels
Section 2.4	Added role of governing board
All	Changed some headings
All	Re-ordered to make more chronological
All	Changed terminology re ‘manager’
Section 5.6	Increased the range of potential outcomes at decision meeting
All	Statutory references updated and moved to footnote rather than body of document
	Revised order to improve chronological flow
	Formatting changes
	Minor changes
Appendix 1	Added a version history section

Date of agreement with trade unions: November 2022

Scheduled review date: 5 years from agreement with trade unions.

