



## Capability Policy for Teachers

Date 09/21 Review Date 09/22
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### 1. Purpose.

This Policy applies to those staff on Schoolteachers terms and conditions of employment and will only apply where there are serious performance issues that cannot be addressed through the appraisal process.

In progressing to this procedure the teacher will have been assessed through the school's appraisal process and will have received constructive feedback throughout the year including any relevant support to assist in improving their skills and competence to the required level.

The teacher will have been notified in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure.

The procedure incorporates the key elements of the statutory standard discipline and dismissal procedure required under the Employment Act 2002 and reflects the ACAS Code of Practice on grievance and disciplinary. It includes:

- a written statement from the employer setting out the grounds for action and inviting the employee to a meeting;
- a meeting where certain requirements must be observed;
- the employer's decision and notification to the employee of the right of appeal; and an appeal process.

The procedure takes account of the relevant staffing Regulations and replaces the statutory guidance 'Capability Procedures' for Teachers 2000.

### 2. Statement of Principles

Employees having difficulty in carrying out their duties to the required standard will be treated with sympathy and understanding and will be given help to correct the deficiency.

At every stage in the formal procedure, the employee will have the right to be accompanied by a companion who may be a colleague, or a trade union representative.

No employee will be dismissed on grounds of capability until the programme of improvement and assistance has been exhausted without the employee achieving satisfactory results and there remains an insufficient prospect of improvement within a reasonable timescale.

The employee will have the right to appeal against any formal decision at each stage of the process.

Employees suffering from ill health will be dealt with under the Wellbeing and Attendance procedure.

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 normally be referred to the occupational health service to assess the member of staff'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 formal procedures to continue during a period of sickness absence. However, the views of the occupational health physician will always be taken into account before a decision is reached.

### **3. NQT's**

It may become necessary for the Headteacher to instigate a capability procedure for an NQT at a stage before the end of the induction period, which may lead to dismissal. The induction procedure must continue in parallel with the capability procedure. The NQT should be advised to seek the support of their professional association or trade union at an early stage.

Before commencing a capability procedure (in line with Swindon Schools' Capability Procedure) it is important that the Headteacher is confident that the following actions have first taken place:

- The NQTs performance has been monitored
- The NQT has been clearly advised about performance which is causing concern and that s/he understands the improvements which are expected
- A reasonable time-limited period (of at least 4 weeks) of careful and structured support, training, monitoring, evaluation and evidence gathering has taken place, giving the NQT every opportunity to improve
- The NQT has been given an informal warning that failure to improve may lead to instigation of 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, he or she will still be allowed to seek alternative employment to complete induction at

another institution, as all NQTs must complete a full induction period before they can be judged to have failed.

Where a school has dismissed an NQT on the grounds of capability (or the teacher resigned before being dismissed) the Headteacher must provide the GTCE with all relevant information to allow them to make a decision on any appropriate sanction.

This may be a reprimand, a conditional order, a suspension or if the case is serious enough, de-registration. De-registration would prevent a teacher from teaching in a relevant school in the future.

For further guidance on NQT capability please see the Guidance on NQT's document on Schools on line.

### **3. Formal Capability Meeting**

Once it has been established that there are serious concerns about a teachers performance that have not been addressed through the appraisal process then the teacher will be given 5 working days' notice that they will be required to attend a formal capability meeting. Please see the flowchart on page 6.

This notification will contain details about the concerns around performance and their possible consequence to enable the teacher to prepare to answer the case. It will contain copies of any written evidence including written feedback given through the appraisal process and details of any support offered.

The meeting will be conducted by the Chair of Governors (for headteacher capability) or headteachers for other teachers. The meeting allows for the teacher to respond to the concerns raised about their performance and make any relevant representations.

The person conducting the meeting may halt or adjourn the process at any time depending on the circumstances.

The aims of the formal interview will be to:

- (a) Explain clearly the shortfall between the employee's performance and the required standard;
- (b) Give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from the capability procedure. This could include setting clear objectives focussing 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 the necessary improvement has been made.
- (c) Obtain the employee's commitment to reaching the required standard;

(d) Explain any support that will be available to help the teacher improve their performance and any welfare and other support available.

(e) Set a reasonable period for the employee to reach the standard and agree on a monitoring and review programme between 4 and 10 weeks.

(f) Tell the employee that dismissal is a possible outcome if the standard is not met. If the outcome of the meeting is unsatisfactory a first written warning will be given. In very serious cases this warning could be a final written warning.

The outcome of this meeting will be recorded in writing and a copy will be given to the employee together with details of the timing and handling of the review stage and procedure and time limits for appealing against the warning.

Progress will be monitored throughout the review period and formal monitoring, evaluation, guidance and support will continue during this period.

#### **4. Formal review meeting**

The teacher will be given 5 working days' notice that they will be required to attend a formal review meeting and will be advised of their rights to be accompanied.

If the teacher has made sufficient improvement then the capability procedure will cease and the appraisal process will re-start.

If an improvement has been made but the standard has not yet been met, the review period may be extended if the Headteacher believes there is a realistic expectation of satisfactory performance;

If no, or insufficient improvement has been made during the monitoring and review period the teacher will receive a final written warning

The outcome of this meeting will be recorded in writing and a copy will be given to the employee together with details of any further monitoring and review periods.

If a final written warning is issued the teacher will be informed that failure to achieve an acceptable standard of performance (within the set timescales) may result in dismissal and the teacher will be invited to a Decision Meeting.

#### **5. Decisions Meeting**

The teacher will be given 5 working days' notice that they will be required to attend a formal Decisions Meeting and will be advised of their rights to be accompanied. Please see the flowchart on page 6.

If the teacher has made sufficient improvement through the further monitoring and review period then the capability procedure will cease and the appraisal process will re-start.

If the performance remains unsatisfactory a decision or recommendation to the Governing Body will be made that the teacher should be dismissed or required to cease working at the school.

The teacher will be informed in writing within 5 working days of the meeting of the reasons for dismissal, their right to notice, the date on which their contract will cease, and their right of appeal.

## **6. Decision to dismiss and dismissal arrangements**

### **Options – for Foundation, Voluntary Aided Schools**

**Either**

**The power to dismiss staff in this school rests with the Governing body therefore any Decisions meetings will be held with Governors**

**The power to dismiss staff in this school has been delegated to the headteacher/to one or more governors, to one of more Governors acting with the headteacher**

**and**

**Once the decision to dismiss has been taken the governing body or headteacher will dismiss the teacher. Statutory and contractual notice will apply.**

### **For Community, Voluntary Controlled, Community Special Schools**

**Either**

**The power to decide that members of staff should no longer work at this school rests with the Governing Body**

**The power to decide that members of staff in this school has been delegated to the headteacher/to one or more governors, to one of more Governors acting with the headteacher**

**and**

**Once the Governing Body (or if delegated as above) 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. The Local Authority must give written notice of termination of contract within 14 days of the date of notification.**

## **7. Appeals**

The employee will be told of their right of appeal to an Appeals Committee of the Governing Body. All appeals must be notified in, in writing, to the Clerk to the Governing Body within 10 calendar days of the date of the dismissal letter setting out at the same time the grounds for appeal.

The teacher will be given 5 working days' notice that they will be required to attend a formal appeal meeting and will be advised of their rights to be accompanied.

The appeal will be dealt with impartially and by a panel of governors who have not previously been involved in the case

The Headteacher /Chair of the original governors panel will be invited to outline the case against the teacher

If an appeal against dismissal is successful then the employee will be re-instated and salary owing back paid.

**Capability Procedure**

