

RIVERSIDE SCHOOL



CAPABILITY PROCEDURE FOR TEACHING STAFF

APPROVED BY GOVERNORS ON – 23rd FEBRUARY 2010

DUE FOR REVIEW - FEBRUARY 2012

RESPONSIBLE PERSON – HEADTEACHER

SIGNED BY CHAIR OF GOVERNORS _____

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1. PURPOSE AND SCOPE

- 1.1 This procedure is designed to help and encourage all staff achieve and maintain good standards of job performance.
- 1.2 This procedure does not cover the normal day-to-day supervision where a Line Manager may have to counsel, train or otherwise discuss with employee instances of poor performance. It is intended to cover those cases where an employee's work performance is below the required standard through lack of capability. It does not cover instances of misconduct or incapability due to ill-health, both of which are dealt with under separate procedures.
- 1.3 If an employee commences sick leave whilst subject to the capability procedure, the capability procedure should continue unless medical advice sought from an Occupational Health Adviser reveals an underlying medical condition, in which case the situation will be considered in the light of the facts and circumstances of the particular case.
- 1.4 Concerns about a Head Teacher's performance may be identified by the Governors or LA Officers at an early stage through their normal involvement in the management of the school. The Director of Children and Young People Services should also be advised of such concerns at an early stage.
- 1.5 An OFSTED inspection or similar formal review of the school might also reveal deficiencies in performance which need to be addressed. However, it is not possible to use information from an OFSTED inspection or from appraisal to instigate a capability procedure.
- 1.6 The procedure is designed to provide assistance and encouragement to staff to achieve and maintain good standards of performance in their duties. With this objective in mind, the procedure provides for the employee to receive guidance, support and feedback over a reasonable period of time to meet realistic targets and standards. The employee must also accept responsibility for meeting any standards and targets set. These procedures are therefore aimed at achieving the required improvement, not punishment, but if all else fails, they will help ensure a fair dismissal.
- 1.7 As part of normal supervision and in consultation with the Head Teacher, a Line Manager may have to advise an employee about the need for improvement in an area of his/her performance; this does not form part of the formal capability procedure, nor does the guidance on informal supervision attached as Appendix 1.
- 1.8 Not until informal supervision, training and/or counselling have failed to produce a satisfactory improvement in job performance should this formal capability procedure be used. However, the Line Manager or Head Teacher should make it clear that formal proceedings may occur if improvement does not take place. The Line Manager must make clear to the employee when the formal procedure is being used.
- 1.9 The procedure applies to all teachers, including Head Teachers, employed under the School Teachers' Pay and Conditions Act 1991 and any successor Act, and the Conditions of Service for School Teachers in England and Wales with the exception of staff employed on a casual day-to-day basis.
- 1.10 In the circumstances where a Newly Qualified Teacher is significantly failing to meet the requirements of his/her statutory induction period, the formal capability procedure will be used including the fast track, where appropriate, to resolve the matter.

2. RIGHTS OF REPRESENTATION

- 2.1 Employees have the right to be accompanied at all stages of the formal capability procedure. They may be accompanied by a trade union representative, a work colleague or a friend of their choice.

- 2.2 Employers also have the right to be accompanied at all stages of the formal capability procedure. The Director of Children and Young People Services or his/her representative has a right to attend to give advice as to the law and procedure only when a dismissal is being considered.
- 2.3 The Director of Children and Young People Services may also attend any other stage of the procedure to give advice as to the law and procedure as required at the invitation of the Head Teacher or Governors' Committee.
- 2.4 It is also possible for the Chairman of Governors or Head Teacher to request that the LA or some other professional adviser either conducts or assists in the conduct of the investigation, and the operation of this procedure.

EQUAL OPPORTUNITIES ISSUES

- 2.5 If the employee is a trade union official, no formal action under the procedure should be taken until the circumstances of the case have been discussed with the appropriate branch secretary or full-time official.

3. DEFINITIONS AND AUTHORITY TO INITIATE ACTION

- 3.1 The following definitions will apply throughout this procedure:

In accordance with the provisions of the School Staffing (England) Regulations 2003, the Governing Body may delegate its power to dismiss any member of staff to the Head Teacher, an individual Governor or group of Governors with or without the Head Teacher.

The Head Teacher is normally expected to lead in all initial staff dismissal decisions. The Head Teacher may involve other Governors in dismissal processes (ie investigations) but where responsibility for staff dismissal has been delegated to the Head Teacher, the final decision on whether to terminate an individual's employment rests with the Head Teacher. However, if the Head Teacher has been extensively involved in the individual case, he/she may refer the dismissal to a relevant committee.

Where the Governing Body has delegated responsibility for staff dismissal to a relevant committee, the provisions below regarding the constitution of such a committee shall apply.

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| Line Manager | - | anyone who has been delegated supervisory responsibilities by the Head Teacher for the operation of this procedure. Only in secondary schools may this authority be delegated by the Head Teacher to those below Deputy Head Teacher. |
| Head Teacher | - | Head Teacher of the school. Where the person subject to the procedure is the Head Teacher, the Senior Manager should be the Chairman of Governors. |
| Committees and Appeal Committees | - | Committees established by the Governing Body to deal with capability matters in accordance with the provisions of the Education (School Government) (England) Regulations 1999. The Governing Body may establish the committees it thinks necessary to deal with a particular function. However, the 1999 Regulations provide for Governing Bodies to establish a Staff Dismissal Committee and a Staff Dismissal Appeal Committee. The Capability Committee and the Staff Dismissal Committee may be the same Committee. The Appeal Committee and the Staff Dismissal Appeal Committee must be a separate Committee. An Appeal Committee should consist only of Governors who have taken no part in the decision against which the appeal is made. |

All committees should comprise a minimum of three Governors unless exceptional circumstances apply.

Director of Children and Young People Services - includes any Officer or Adviser with specific delegated power.

Days - working days or consecutive days if it is necessary and/or possible to progress matters outside term time.

3.2 Reference throughout this procedure to the Line Manager, Head Teacher, Director of Children and Young People Services, Chairman of Governors and employee shall include their personal representatives as appropriate. In most instances, the Director of Education and Libraries' representative will be a member of the LA's Human Resources Consultancy Service. In some cases the Line Manager and the Head Teacher may be the same person (eg smaller schools).

3.3 The following table details the maximum action which can be imposed at various levels of authority, and the various stages of the formal capability procedure applicable to these levels:

Level of Authority	Authorised to
Line Manager	<ul style="list-style-type: none"> - carry out investigations and assessment and decide what action is required in consultation with the Head Teacher and any other professional adviser - initiate action under the formal capability procedure in consultation with the Head Teacher if s/he is not the Head Teacher - issue formal oral and written warnings in consultation with the Head Teacher if s/he is not the Head Teacher.
Head Teacher	<ul style="list-style-type: none"> - carry out investigations and assessment and decide what action is required. - initiate action under the formal capability procedure - issue formal and oral warnings including a final written warning - withhold an incremental rise - suspend (in consultation with the Chairman of Governors) - refer a case to the Governors' Committee for consideration - dismiss (in consultation with the Director of Children and Young People Services)
Committee	<ul style="list-style-type: none"> - hear appeals against a final written warning issued by a Head Teacher - Suspend or order a Head Teacher to end a suspension - issue formal or final written warnings or some other penalty if appropriate - hear appeals against a decision not to remove a warning from the personal file
Staff Dismissal Committee	<ul style="list-style-type: none"> - conduct formal capability hearings where dismissal is under consideration and also issue formal or final written warnings if appropriate where authority has not been delegated to the Head Teacher or where the Head Teacher has been involved in the preparation of the case - dismiss (in consultation with the Director of Children and Young People Services)
Appeal Committee	<ul style="list-style-type: none"> - hear appeals against any penalty imposed by a Committee except termination of employment. - order an end to a suspension
Staff Dismissal Appeal	<ul style="list-style-type: none"> - hears appeals against the Staff Dismissal Committee or Head Teacher's decision to dismiss.

- 3.4 To ensure fairness throughout the procedure, different people must participate at the original committee and appeal committee hearings. However, where the case concerns a continuing or related matter, the same Committee can hear the case on subsequent occasions.
- 3.5 In the event that the school's delegated budget is suspended then dismissal decisions will be taken by the Director of Children and Young People Services, and any subsequent appeal will be heard by a Committee appointed under arrangements agreed by the Children and Young People Portfolio Holder. In other cases the Staff Dismissal Committee and Staff Dismissal Appeal Committee should have regard to the LA's financial interest in dismissals, including the requirement to consult Human Resources in such circumstances.

4. STAGES IN THE FORMAL CAPABILITY PROCEDURE

- 4.1 This procedure applies where informal supervision has failed to bring about sufficient improvement in the employee's performance or where the education of pupils is jeopardised, ie the period given for improvement under the formal procedure is to be not more than four weeks (in which case a final written warning will be issued). The stages are as follows:
- (i) Clear identification and assessment of performance problems.
 - (ii) Problems are investigated and the level of seriousness assessed through structured information gathering (e.g. information obtained from interviews and relevant documentation and systematic recording) and a second opinion from an appropriate professional adviser to confirm the existence of performance problems, where this has not already been sought.

In undertaking the investigation the Line Manager/Head Teacher must establish:

- (a) the level and nature of the poor performance (have there been any complaints from colleagues, parents, the public?);
- (b) the timescale (has job performance recently gone into decline or has it always been below the standards required?);
- (c) any factors contributing to poor performance (eg personality clashes, inappropriate supervision, inadequate training, unclear instructions, ill health);
- (d) any change in the standards required and whether appropriate training has been provided;
- (e) has the employee asked for assistance to overcome any problems and what was the outcome?

During the course of the investigation an employee might raise a grievance against the actions of the manager handling the case or against other Senior Managers. Normally this will be dealt with as part of consideration of the facts of the case. However, the manager investigating the case will seek advice from the appropriate professional adviser and, depending on the circumstances, it may be appropriate to suspend the formal capability procedure for a short period until the grievance can be considered.

- (iii) Finally a decision must then be made as to whether
 - (a) no further action is appropriate or
 - (b) to arrange for the provision of informal counselling or support or
 - (c) to arrange for a formal interview with the employee to discuss what further action is required under the formal capability procedure. The employee will also be given copies of all relevant documents in

advance of this interview.

Action Plans

- 4.2 The outcome of a formal interview between the Line Manager or Head Teacher or and the employee under the capability procedure must be translated into a written action plan. This will include the specific targets and/or performance standards to be met, together with an appropriate assessment and support programme and structured timetable indicating dates for further review interviews and when/how feedback on progress will be provided. This well structured written notification, which shall include a formal oral or written warning and a statement of the possible consequences of failure to improve (which could include dismissal), will constitute the date of entry into the formal procedure.

Timetable

- 4.3 The timetable adopted for improvement will be in accordance with the seriousness of the lack of capability of the employee. Consideration must be given to whether the problem is a specific or broader professional difficulty or whether it is a very recent concern or spanning a longer period of time. Should the teacher be absent due to ill health, this may need to be reviewed accordingly in the timescale allowed for improvement. In such circumstances, the employee must be referred immediately to the Occupational Health Physician to enable an assessment to take place of his/her health and fitness for continued employment. Schools must adopt a sympathetic approach but the length of time they must wait for health to improve before considering whether to terminate employment on health grounds must be subject to occupational health guidance.
- 4.4 **Normally, the period given for improvement will be no more than two terms after the date of entry into the formal procedure. In extreme cases, where the education of pupils is jeopardised, the period given for improvement after the date of a final written warning will be no more than four weeks.**

Outcomes of Monitoring and Support

- 4.5 Following this structured period of assessment, support, monitoring and evaluation, the next stage will be to arrange a further interview to provide feedback and review progress and outcomes. Where a satisfactory and sustained level of performance has been achieved there will be no further action under the formal procedure except to monitor the situation as part of normal management meetings. Any formal warning issued will remain on file until the Head Teacher/Committee is of the view that this can be removed. In the event that the employee has failed adequately to satisfy or maintain targets and/or performance standards set, consideration must be given to whether any of the following is required:
- (a) a further formal written warning (which may be a final written warning) and a further period of support, monitoring and evaluation. The teacher must be told clearly that failure to achieve an acceptable and sustained standard of performance may result in dismissal. This letter must also record the main points of this meeting and improvements required.
 - (b) a different balance of duties, if possible and appropriate;
 - (c) an alternative suitable post in the school, if possible and appropriate;
- (NB: (b) and (c) would not normally be appropriate for Head Teachers)
- (d) referral of the matter to a Governors' Committee for consideration of dismissal due to failure to improve, in which case consideration will also need to be given to suspension of the teacher and/or alternative teaching arrangements. This Committee must be convened as a 'Staff Dismissal Committee.
 - (e) referral of the matter to the Head Teacher where responsibility for consideration of dismissal has been delegated by the Governing Body and the Head Teacher has not been directly involved in the procedures leading

to capability action and instigated the proposal to dismiss in question.

5. FORMAL CAPABILITY HEARINGS

5.1 If the final decision is to deal with the matter under (d) or (e) above, the employee must be written to confirming the decision to refer. The letter to the employee must be received not less than **5 working or 7 consecutive days** before the hearing itself and must:

- (i) instruct the employee to attend a formal hearing;
- (ii) contain a written statement of the specific concerns against the employee (confirming the seriousness and that dismissal could be a possible outcome);
- (iii) advise the employee that the hearing forms part of the formal capability procedure (including a copy of the procedure if this has not already been provided);
- (iv) advise the employee of his/her rights of representation;
- (v) contain copies of any relevant documents to be submitted to the hearing;
- (vi) request details of any documents to be submitted and witnesses to be called by the employee.

A duplicate copy of the letter and all documentation must be included for his/her representative.

5.2 Preparing for the Hearing

5.2.1 It is good practice to agree a mutually convenient date for the capability hearing with the employee and their representative. This is to ensure that the hearing does not have to be delayed or postponed at the last minute. Where the chosen representative cannot attend the date proposed, the employee can offer an alternative date and time so long as it is reasonable and falls before the period of **5 working or 7 consecutive days** beginning with the first day after the day proposed by management.

5.2.2 The employee must have regard to the availability of the managers involved in the case. The location and timing of any alternative hearing should be convenient to both the employee and management.

The Head Teacher/Governing Body must arrange for a clerk to be available to take note of the key points during the hearing.

5.2.3 Consideration must be given to requesting the presence of LA advisers for any hearing conducted by the Head Teacher, the Staff Dismissal Committee or Staff Dismissal Appeal Committee. The Director of Education and Libraries' **representative has a right to attend in cases where dismissal could be the outcome**. Any advice given in this respect must be considered before any decision is taken.

5.2.4 The Line Manager/Head Teacher presenting the case is also entitled to be assisted by an officer of the LEA acting in an advisory capacity. Such an officer should at no time take part as a witness in the proceedings.

5.2.5 The Head Teacher/Committee will decide at the hearing whether the case for further formal action has been established after considering all the evidence presented by both sides.

5.2.6 If an employee is dismissed as a result of serious professional incompetence or resigns before the formal capability process is completed, the Head Teacher will inform him/her of their statutory duty to report the case to the DCSF Teacher Misconduct Unit

5.3 Penalties

The possible penalties available to the Head Teacher/Staff Dismissal Committee are:

Level of Performance	Possible Capability Penalty
Continued failure to work to required standards after previous	Final written warning, withholding of an increment, transfer or relegation to another

formal written warning(s)

post, dismissal with notice

5.4 **Decision Letters**

5.4.1 The decision on the outcome of the formal capability hearing will be given to the employee at the end of the hearing whenever possible and in any case in writing, within **5 working or 7 consecutive days** of the hearing. At the same time as the employee is informed of the outcome of the hearing, he/she will be advised of any right of appeal.

5.4.2 If a penalty is to be imposed, the employee must be informed in writing, as appropriate, of:-

- (i) details of the specific concerns;
- (ii) a brief summary of the findings as to the facts presented at the capability hearing;
- (iii) the nature of the penalty imposed or alternative course of action decided upon;
- (iv) the opportunity to ask for clarification of the action to be taken and from whom.

5.4.3 Where dismissal is not the outcome, the decision letter must state:

- (a) the level of performance required in the future;
- (b) the time scale within which the performance will be monitored and improvement assessed and who will be responsible for carrying this out;
- (c) arrangements for guidance, feedback, supervision or training, where appropriate;
- (d) what will happen if work performance fails to meet the required standards;
- (e) the specified period of time after which he/she may request removal of a warning from file and to whom;
- (f) the employee's right of appeal and how and to whom this should be presented.

5.4.4 A copy of this letter should be sent to the employee and his/her representative, the Director of Children and Young People Services, and a copy retained on file. As indicated in the letter an employee may request the Committee or Head Teacher, after a specified period of time, to have any warning letter on file removed for the purpose of future capability proceedings. Such a request shall be fully considered and not unreasonably refused and the Committee or Head Teacher will respond in writing to this request normally within **5 working or 7 consecutive days**, giving reasons if this request is refused.

5.4.5 If an employee is dismissed as a result of serious professional incompetence or resigns before the formal capability process is completed, the Head Teacher will inform him/her of the statutory duty to report the case to the DCSF Teachers' Misconduct Unit.

6. APPEALS

6.1 Under this procedure an employee has the right to appeal against:

- a final written warning
- a decision not to remove a warning from the employee's file
- dismissal.

6.2 In all other cases the employee is entitled to register his/her dissent against a formal

warning and to have his/her reason(s) for this recorded as part of the decision letter.

- 6.3 The appeal will be heard by an Appeal Committee as appropriate but there will be no further right of appeal beyond a hearing by one such Committee. In the case of an appeal against dismissal the Appeal Committee must be convened as the Staff Dismissal Appeal Committee.
- 6.4 The Appeal hearing provides an opportunity for a rehearing of the case to determine whether the original decision was reasonable in the circumstances.

APPEAL AGAINST	RIGHT OF APPEAL
Final written warning issued by Head Teacher	Committee
Head Teacher's decision not to remove a warning from the personal file	Committee
Any decision of the Committee except a decision arising from an earlier appeal stage	Appeal Committee or Staff Dismissal Appeal Committee

- 6.5 A request for an appeal must be made to the Head Teacher within **5 working or 7 consecutive days** of the receipt of the letter detailing the decision.

7. DISMISSAL

- 7.1 A Staff Dismissal Committee or Head Teacher (where in receipt of delegated powers) is authorised to determine the dismissal with notice of an employee (in consultation with the Director of Children and Young People Services). The Capability Committee and the Staff Dismissal Committee may be the same Committee.
- 7.2 The decision to dismiss will be confirmed in writing to the employee, his/her representative and the Director of Children and Young People Services. The letter will also contain the reasons for the dismissal and the right of appeal to the Staff Dismissal Appeal Committee within **5 working or 7 consecutive days** of receipt of the letter.
- 7.3 Where the Staff Dismissal Appeal Committee decides to uphold the decision of the Staff Dismissal Committee to dismiss there will be no further internal right of appeal. This decision may be communicated verbally to the employee at the conclusion of the hearing but will in every case be confirmed in writing to the employee, his/her representative and the Director of Education and Libraries within **5 working or 7 consecutive days**.
- 7.4 Within **5 working or 7 consecutive days** of the date of written notification of the decision to dismiss by the Head Teacher / Staff Dismissal Committee, the Director of Children and Young People Services will give notice to terminate the employee's contract of employment at the school.
- 7.5 If the appeal to the Staff Dismissal Appeals Committee overturns the decision of the Staff Dismissal Committee to dismiss, the termination notice may be rescinded.

INFORMAL SUPERVISION

In making appointments and considering access to training and promotion opportunities, managers should ensure that each employee is aware of the standards expected of him/her. LA advisers (eg the school's Senior Adviser, the school's Personnel Provider, Standards and Effectiveness Services, etc) will be able to provide advice and guidance on such matters. Useful reference documents would include the following:

- Job Description
- Person Specification
- Performance Appraisal reports
- Training Plans

It is advisable to approach all capability issues from the view that each employee has individual reasons for inadequate performance and to try to remedy the causes as this is a more positive and effective approach.

The emphasis throughout the early informal stages should be on considering support measures and monitoring their effect. Examples would include:

- (i) Training
- (ii) Counselling (accompanied, where appropriate, by additional advice and support)
- (iii) Medical assessments
- (iv) Constructive discussions (aimed at pointing out any shortcomings in job performance and encouraging improvement)
- (v) Other assistance which it is considered would facilitate improvement (eg job redesign, job shadowing, if these are possible)
- (vi) Arranging closer supervision
- (vii) Making more time available for discussions
- (viii) Using trial periods to allow time for the problem(s) to be addressed.

The individual line managing the employee should be of sufficient competence and experience to assist with his/her work. Where an employee's performance is giving cause for concern, the Line Manager will meet with him/her. (If there is a mentor system in place it may be appropriate for the mentor to attend.) The Line Manager will draw the employee's attention to the ways in which his/her performance is considered to be deficient. Any shortcomings should be discussed as specifically as possible, and required standards should be made clear. It may be beneficial to the meeting to allow the employee to be accompanied by a friend.

Discussion must not harass the teacher or turn into a formal interview. If more serious concerns arise, or if the teacher expresses discontent or indifference to the counselling, the formal procedure should be commenced to deal with the matter in a more structured and objective manner.

The employee should be given reasonable opportunity to comment and explain. Appropriate remedies should be discussed with advice from any other relevant adviser (eg, the school's Senior Adviser who may have observed a teacher at work). An action plan detailing objectives and any agreed support and training should be drawn up in writing.

The employee should be advised that the Line Manager will monitor his/her performance over a specified period of time and give regular feedback on progress. The period allowed should be reasonable, having regard to the action planned and the improvement required. During this period, part of the normal work programme will be to provide ongoing advice, support and feedback to the employee as necessary. The employee should also seek and accept help from other sources, as appropriate, and attend relevant training.

The Line Manager should keep management notes of action taken and of warnings issued. This record will not be placed on the employee's personal file but may be used as evidence at a later stage if further action under this procedure is necessary. It is also essential that the Head Teacher is kept generally informed of such concerns where s/he is not the Line Manager.

Where progress is made during the informal stage, the Line Manager may decide, as appropriate, and following consultation with the employee and any relevant or appropriate adviser, to modify or terminate the process without the need for more formal action.

Where, however, following a **reasonable** period of support and supervision no significant improvement is evident and a second opinion has been sought from an appropriate professional adviser to confirm the existence of performance problems, the Line Manager will, in consultation with the Head Teacher, formally warn the employee in writing of the need for improvement with a statement of the aspects of work which are causing concern. S/he should also be advised to consult his/her professional association. **This will constitute the date of entry into the formal procedure.**