



**London Borough
of Hounslow**

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MODEL POLICY FOR SCHOOLS

CAPABILITY PROCEDURES FOR TEACHERS & SCHOOL BASED STAFF



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1. SCOPE AND AIMS

1.1 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 in relation to performance. It is intended to cover those cases where an employee's work performance is below the required standard through lack of capability. For this policy and procedure, lack of capability is defined as a situation in which a staff member fails **consistently** to perform his or her duties to a professionally acceptable standard, which the appraisal process has been unable to address with appropriate support.

1.2 This policy and procedure applies to staff employed directly by the school under the Local Management of Schools arrangements, where the school has adopted this policy except those in the following circumstances:

- Employees within their probationary period
- Those on Apprenticeship schemes
- For dealing with issues of misconduct, attendance (including absence due to ill health) or resolving issues at work, for which separate policies apply.
- Employees in the induction period of Newly Qualified Teachers (NQTs),

1.3 It is important that professional performance problems are clearly identified and given appropriate consideration and support at the earliest possible stage. The nature of the problem, its level of seriousness and cause(s), must be investigated and identified by structured information gathering and systematic recording during the period when that performance is giving cause for concern. **Prior to entering the formal stages identified in this procedure it is expected that concerns will already have been discussed with the staff member via the performance management cycle, 1-1s and appraisals.**

1.4 The aims of the procedure are:

- To improve the performance of the employee to an acceptable level, for teachers this will include the Teachers Standards published by the Secretary of State.
- To provide as much support as possible at the beginning of the procedure, reducing over a mutually agreed timescale
- To improve competence against agreed SMART targets and maintain records of progress
- To provide regular monitoring of performance.

1.5 This policy will be kept under review and may be amended in accordance with changes in employment legislation as and when required.



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1.6 Appraisal management will be suspended when an employee enters the Capability Procedure. Confirmation of this must always be given in writing.

Movement up the pay spine may be delayed, subject to statutory and contractual terms of employment providing advance notification has been given to the employee

2. CAPABILITY PROCEDURE

2.1 The stages of the capability procedure would normally follow in sequence. In cases where performance is giving rise to grave concern (i.e. where the education of pupils is jeopardised) then the procedure may be shortened. This may be achieved by starting at a later stage, but in no circumstance will the period given for improvement after entering into the formal stage be less than four weeks. If a school is giving consideration to breaking the sequence advice should be sought from Human Resources.

2.2 The timescale for achieving a satisfactory level of performance will normally be no more than two terms following the outcome of the first formal stage. In all cases if the employee's performance does not improve to a satisfactory standard it could result in dismissal by the Governing Body (or Director of Children's Services for centrally employed teachers).

2.3 At all interviews and hearings outlined in this procedure the staff member will have the right to be accompanied by a workplace colleague or trade union representative.

2.4 In proceedings involving a head teacher the chair of governors should consult the Director of Children's Services. The Chair of Governors (or other appropriate Governor) will be responsible for carrying out the functions normally allocated to the Head Teacher in this procedure.

2.5 The Director of Children's Services and/or their representative will be present to give advice at Formal Hearings and Appeals against decisions taken at Formal Hearings. For informal interviews, formal interviews and appeals against decisions taken at formal interviews the head teacher/governors panel may invite the Director or their representative to be present to give advice.

2.6. Where appropriate, professional counselling should be provided to assist the employee to improve his/her competence. Written notes should not be kept of counselling, other than a brief record that the meeting took place.

2.7 Confidentiality should be maintained by all those involved, including the member of staff, at all stages throughout the Capability procedure by ensuring that only those people who need to know have access to details. No other member of staff should be informed that a colleague is subject to action under the Capability procedure. While respecting confidentiality, it is important that the member of staff is free to discuss issues with their trade union representative or work colleague who may be able to assist or support them



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through what is acknowledged to be difficult circumstances. Written records of capability issues will be treated as confidential and kept no longer than is necessary in accordance with the Data Protection Act 1998.

3. FORMAL STAGE

3.1 First formal Interview

3.1.1 When capability is considered by the head teacher (or deputy Head for teaching staff, line manager in central services & non teaching staff) to be unsatisfactory the staff member shall be interviewed and the position discussed.

3.1.2 The staff member shall be given five school working days written notice of the interview. The written notice should outline the purpose of the interview and the staff member's right to be accompanied by a workplace colleague or trade union representative. An HR representative may also be invited to attend. A copy of this procedure should also be provided. Any of the parties may request in writing the postponement of a meeting; such a request should be given serious consideration, only in exceptional circumstances should there be more than one postponement of a meeting.

3.1.3 If at the conclusion of the interview the head teacher (or deputy head, line manager) considers the staff member's performance to be below a minimum acceptable standard the staff member will be told the aspects of performance which are considered to be deficient and warned that there must be improvement to a satisfactory level.

3.1.4 The employee shall be given specific targets and timescale to achieve improvement. The date for a second interview to review the position will be agreed. A written notice of the outcome of the interview shall be given to the employee within five working days from the date of the interview.

3.1.5 When review periods are set as part of this procedure, targets and/or performance standards will be established together with an appropriate support programme and structured timescale. The views of the staff member should be taken into account as far as possible in this process.

Targets set should be SMART –

- Specific
- Measurable
- Achievable
- Realistic
- Time-bound

Targets may be weighted in terms of importance. When this occurs the weighting arrangements and how these may affect the overall outcome of the process should be made clear to the employee at this stage and noted as part of the Support Programme.



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3.1.6 Advice may be sought from the LEA over additional support and the setting of targets.

3.1.7 The content of a support programme could include one or more of:

- in-service training
- help with planning and content of work and any follow-up
- observation by the employee of good practice
- observation of the employee's work by someone from the school or an Adviser
- a modified workload or timetable for a specified period
- re-organisation of work area, classes or rooms
- work-sharing or team teaching with experienced teachers
- visits to other schools or workplaces

The support will take account of the experience, needs and particular circumstances of the employee. Where appropriate an independent and external person such as an Adviser or Advisory Teacher may be invited to assess and assist the employee.

Following a full discussion of the issues raised, a structured Support programme will be agreed and confirmed in writing covering the following:

- Key issues to be addressed from the Behaviour and Skills Framework/Teaching Standards, Job Descriptions and Person Specifications
- Any weightings attached to the key issues
- The behaviours the employee needs to demonstrate
- The actions that need to be taken.
- Any additional support and/or resources needed.
- The arrangements for monitoring and assessment and the timescales involved.

The success criteria for each issue must be identified.

3.1.8 During review periods it will be necessary for the head teacher (or deputy head, line manager) to ensure the staff member's performance is monitored. The head teacher (or deputy head, line manager) will have regard to the need for people involved in monitoring to exercise an encouraging and constructive approach to improvement. Towards the end of the period the head teacher (or deputy head, line manager) should ensure that all monitoring records and reports are complete so that they may be considered at any interview/hearing to follow.

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,



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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.

3.1.9 An employee who disagrees with the decision of the head teacher (or deputy head, line manager) regarding capability may object by writing to the head teacher (or line manager) within ten school working days of receipt of the note. This objection will form part of any documentation to be considered at any subsequent Capability Panel Hearing

3.2 Second Formal Interview

3.2.1 On the date previously specified a second interview shall be held between the head teacher (or deputy head, line manager) and the employee. The employee has the right to be accompanied by a workplace colleague or trade union representative.

3.2.2 If the head teacher (or deputy head, line manager) is satisfied that satisfactory standards have been attained this decision shall be recorded and there shall be no further action.

3.2.3 The head teacher will then decide which of the following three outcomes is appropriate: -

- **Successful**

That the employee has achieved and maintained the required standards of job performance, as the Support Programme has been successfully completed.

- **Partially Successful**

That the employee has demonstrated some improvement but not sufficient to fully satisfy all the required standards of the post. This will require a further period of support and monitoring with an updated Support programme, followed by a further review meeting and subsequent decision.

At this further stage it is likely that the decision taken will be either successful or unsuccessful, with a third period of support and monitoring being appropriate only in exceptional cases.

There may be occasions where specific targets are given greater weighting, and that if they are not achieved, despite others having been met, a decision is made that the individual has been unsuccessful. In such situations, the individual will be made aware, before the plan has commenced, of the significance of certain targets, when applicable.

- **Unsuccessful**

That the employee has failed to show sufficient improvement towards achieving the targets to satisfy the manager that the individual is capable of



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achieving and maintaining the required standards of performance in the post.
This will result in the invoking of a Capability Panel Hearing.

4. CAPABILITY PANEL HEARING

4.1 Following a decision as outlined in paragraph 3.2.3 the head teacher (or deputy head, line manager) shall convene a formal capability interview.

4.2 The employee shall be informed in writing, within ten school working days of the second formal interview, of the date of the hearing and the hearing shall be held as soon as reasonably practicable thereafter. Documentation shall be provided to all relevant parties at least five school working days in advance of the meeting and include:

- the date, time and purpose of the meeting and those to be invited
- the nature of the concern(s) as to the perceived lack of capability
- any documents or evidence to be considered
- the right to be accompanied by a workplace colleague or trade union representative

4.3 The Capability hearing panel can be made up of the following provided that the parties have had no previous involvement in this matter. The head teacher with two or more governors or/to three or more governors and an HR representative.

The panel has the following purposes:

If the Capability Panel decide that the employee is not capable of undertaking the duties and responsibilities of their post, it should consider: -

- Extending the period for improvement and/or modifying the targets, further monitoring followed by the appropriate review process.
- Dismissal on the grounds of incapability with an appropriate period of statutory or contractual notice (whichever is greater). Or immediately with salary in lieu of notice.
- In some cases redeployment to a suitable post elsewhere in the school may be recommended, if available. which may be at a lower seniority and/or salary grade

4.4 A decision letter of the outcome of the hearing shall be given to the employee within five working days from the date of the hearing. The employee shall be advised of her/his rights to appeal against the decision.

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



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- (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.

4.5 The employee shall have a right to appeal against the decision to an appeals panel of no less than three governors for staff employed in schools with a delegated budget, or for centrally employed teachers, to a panel consisting of two Councillors and an HR Representative.



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5. APPEALS AGAINST DECISIONS

5.1 The appeal panel should consist of a minimum of three governors who have not been previously involved in the matter and an HR representative. A local authority representative can be invited to join the panel.

5.2 After hearing the appeal the Appeals panel shall determine that:

- The decision subject to appeal be upheld
- The decision subject to appeal be rejected

If the decision subject to appeal is rejected the Appeals panel may determine that:

- No further action be taken
- The matter be referred back to the head teacher/line manager for further action and/or supervision, together with any specific recommendations the Appeals Panel wish to make
- There be a recommendation to the Governing Body that the employee be offered an alternative post at the school, which may be a lower seniority and/or salary grade. A similar recommendation can be made to the Director of Children's services for centrally employed teachers.

5.3 There is no further right of appeal against the decision taken by the Appeals Panel.

5.4 The decision of the appeals panel will be confirmed in writing within five working days. For schools with a delegated budget, when the decision to be confirmed is the dismissal of the employee, the Director of Children's Services must be notified.

6. EXPIRY OF WARNINGS & REFERENCES

Any warnings given will remain on file for 12 months or until an appeal has overturned the warning. If an employee is subject to the capability procedure, or has a warning in place at the time of the reference request, this must be referred to in any employment reference.

7. REFERRALS TO STATUTORY BODIES



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There are statutory duties on employers to refer individual cases to national bodies in the event of a dismissal or resignation when dismissal may have been a likely outcome.

In the case of teachers this is the teaching agency. The agency supports the quality and status of the teaching profession by ensuring that in cases of serious professional misconduct, teachers can be barred from teaching. The regulatory function will now include all teachers and instructors in all maintained schools, non-maintained special schools, academies and free schools, sixth-form colleges, independent schools and relevant youth accommodation and children's homes in England.

APPENDIX A



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Flowchart for Capability Procedure

- **Employee's line manager identifies a pattern of under performance**

May result from 1-1s, appraisal, observations, inspections, and complaints, or from unsuccessful outcome of the Performance management process.

Ensure evidence is clear and objective, and there is a pattern of under performance

- **Employee's line manager prepares for initial meeting or the final review meeting of Developing Performance**

Prepare draft Support Programme

- **Formal Meeting held with employee, Line Manager (employee representative if requested), HR representation.**

Aim to gain agreement on the content of the support plan.

- **Finalise Support Plan/timescale**

Ensure those supporting and monitoring are clear about the plan and their responsibilities.

- **Support and Monitor**

Support and Monitoring Functions should be delivered by different individuals where possible.

- **Prepare for 2nd Formal Meeting**

Line Manager to collect monitoring evidence and summarise

- **Hold 2nd Formal Meeting held with employee, line manager (employee representative if required), HR representative.**

Make decision on how the matter will progress
Potential outcomes:



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Decision 1 – Successful – Continue with normal performance management

Decision 2 – Partially Successful – Review Support Plan and continue for a further period within agreed timescale

Decision 3 – Unsuccessful – Arrange Capability Hearing

- **Hold Capability Hearing**
- **Confirm Outcome of Capability Hearing**

Decision 1 – No action required

Decision 2 – Extend period for improvement and/or targets.

Decision 3 – Dismissal on the grounds of capability with notice.

Decision 4 – As an alternative to dismissal and concurrent with notice seek to redeploy.

- **Appeal Hearing**

APPENDIX B

DEFINITION AND SEPARATION OF ROLES

Employees



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Every employee has a contractual responsibility to perform at an appropriate level. Employees are, therefore, expected to be committed to achieving appropriate levels of performance.

The Headteacher & Deputy Head Teacher

In all cases, except where the Headteacher is the subject of concerns, formal Capability meetings for teachers will be arranged and conducted by the Headteacher or deputy head teacher, In the case of support staff this can be delegated to the appropriate Line Manager. The Head / deputy head teacher will consider the evidence, reach a conclusion and issue a warning as necessary. The Headteacher/ deputy head teacher will specify the improvement required and support to be provided as part of the warning process.

Chair of Governors

It is possible that as part of the normal working relationship between the Headteacher and Chair of Governors, they will have discussed details of concerns about the employee. If that is the case, the Chair of Governors can take no part in appeal hearings or in dismissal hearings.

In cases where the Headteacher is the subject of concerns, the Chair of Governors will carry out the functions normally allocated to the Headteacher in this procedure. The Chair of Governors will need to take advice from the HR Business Partner. The Chair of Governors will be responsible for organising appeals..

Other Governors

The governing body has quite specific tasks to perform under this procedure in relation to appeal and dismissal hearings, when they will be expected to form a panel of Governors. Governors who are employees of the school should not form part of the panel. It is inappropriate for Governors to be involved in detailed discussion or consideration of performance concerns at any other time. It is also inappropriate for details of any capability cases to be discussed at a full meeting of the governing body.

Expert Advice

The Headteacher or Chair of Governors may need to seek expert advice at the outset of the process or at any of the formal meetings. For schools that subscribe to the Schools' HR Advice Service, advice from an HR Officer is always available.

Advisory Staff



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It will often be appropriate for the school to seek specialist or outside advice in dealing with sustained and/or serious poor performance or lack of capability. A member of the Schools Effectiveness Team may be involved in giving initial advice to the Headteacher as part of the general support role, in giving or arranging advice and support for individual employees and in providing evidence for formal meetings.

APPENDIX C

General Principles Underlying This policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

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

Confidentiality



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The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head teacher and governing body to quality-assure the operation and effectiveness of the appraisal system.

Consistency of Treatment and Fairness

The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

Definitions

Unless indicated otherwise, all references to “teacher” include the head teacher.

Delegation

Normal rules apply in respect of the delegation of functions by governing bodies, head teachers 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. In some circumstances it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Monitoring and Evaluation

The governing body and head teacher will monitor the operation and effectiveness of the school’s appraisal arrangements/performance management process.

Retention

The governing body and head teacher will ensure that all written performance management/appraisal records are retained in a secure place for six years and then destroyed.