

Teacher Capability

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Teacher capability

Guidance for schools when dealing with serious under-performance

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Introduction to capability

This publication provides non-statutory guidance from the Department for Education.

The term 'capability' is defined as the ability of an employee to perform their duties to the standards required. Capability procedures apply only to teachers and school leaders where there are concerns, which the appraisal process has been unable to address, of not meeting the required standards of work performance.

Except in the most serious cases of persistent failures to meet job expectations, resulting in negative consequences on the pupils and the organisation, teachers and school leaders should not be placed on capability procedures without first undergoing a period of informal support. This support should have clear objectives, timelines and goals that are achievable. Informal support should be provided for a reasonable period (for example a minimum of 6 weeks) to allow for performance improvement. The duration will be determined based on the specific circumstances, with appropriate support in place to facilitate improvement. If no, or insufficient, improvement has been made over this period, the process should move to the formal capability procedures.

The aim of this procedure is to provide a clear formal framework in which capability issues and concerns around performance are managed, reflecting the ACAS Code of Practice on disciplinary and grievance procedures[1]. A robust and fair teacher capability process combines support, evidence, and careful management to foster improvement and maintain a high-quality education system.

Schools should follow the ACAS code of practice on disciplinary and grievance procedures.[2] Under The School Staffing (England) Regulations 2009[3], all maintained schools are required to have a capability policy. The model capability policy below provides a framework and a process that schools could adopt in full or adapt. Schools should consult with staff or their representatives in developing their capability policy. It also provides useful context and guidance on each stage of the process.

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[1] https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures

[2] Code of Practice on disciplinary and grievance procedures | Acas

[3] The School Staffing (England) Regulations 2009, Section 8

Model policy for dealing with capability issues

The governing board of Stone Bay School adopted this policy in October 2025

It will review it annually.

Purpose

This policy sets out the arrangements that will apply in serious cases where there have been persistent failures to meet job expectations, resulting in negative consequences on pupils and the organisation. This procedure applies only to teachers and school leaders, where there is a capability issue that the appraisal process, including any informal support arrangements, have been unable to address.

Capability procedure

Notification of a formal capability meeting should never come as a surprise to the teacher concerned. Informal support and a performance improvement plan should mean that the teacher is fully aware of the concerns being raised and they should have had every opportunity to improve in a supportive environment. At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the teacher to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. Teachers are entitled to reasonably request an alternative date where they are unable to attend the original date proposed[4].

[4] Section 10 of Employment Relations Act 1999 (legislation.gov.uk)

While a teacher or school leader is in capability procedures, pay progression should be withheld.

Formal capability meeting

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for headteacher capability meetings) or headteacher for other teachers . The meeting sets out the required standards which are believed to have been failed by the teacher.
The meeting allows the teacher to respond to concerns about their performance and to make any relevant representations, with the option of being accompanied by a work colleague, union representative or an official employed by a trade union. This may provide new information or a different context to the information/evidence already collected. During the meeting, evidence shall be presented, and witnesses shall be called where appropriate and necessary.
The teacher shall be allowed to ask questions, present their own evidence and rely on their own witnesses where appropriate and necessary, and will be permitted to respond to the evidence and ask questions.
The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end.

The person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person 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);

- explain any support that will be available to help the teacher improve their performance;
- set out the timetable for improvement taking into account the teacher's personal circumstances. This may include any medical conditions, working pattern, wellbeing support needs, or disabilities protected by the Equality Act 2010. The timetable will depend on the circumstances of the individual case but in straightforward cases could be between 4 - 10 weeks; and
- explain how performance will be monitored and reviewed. warn the teacher formally that failure to improve within the set period could ultimately lead to dismissal.

Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the teacher will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

Formal review meeting

As with formal capability meetings, at least five (or insert alternative) working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. Teachers are entitled to reasonably request an alternative date where they are unable to attend the original date proposed (for example a date that is within five working days of the original proposed date).

If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease, and the appraisal process will re-start. 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 which will set out the areas where performance standards have not been met, targets for improvement, any measures (training and supervision) which will be taken to improve performance, a period for the review and the consequences of not meeting expected performance standards.

As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final written warning wording will mirror any previous warnings that have been issued. 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 and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The teacher will be invited to a decision meeting.

Decision meeting

As with formal capability meetings and formal review meetings, at least five (or insert alternative) working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

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 performance remains unsatisfactory, a decision (if in regard to a teacher), or recommendation to the governing board or an appropriate member of the Trust (if in regards to a headteacher), will be made that the final written warning should be extended (where possible or appropriate), or the teacher should be dismissed or required to cease working at

the school. Redeployment into an alternative role may be considered where appropriate and possible.[5]

Before the decision to dismiss is made, the school will discuss the matter with the local authority or Trust. For maintained schools the local authority may attend and offer advice at all proceedings relating to the dismissal of any teacher, and the governing body must consider any such advice.

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

Decision to dismiss

The power to dismiss staff in this school has been delegated one or more governors acting with the headteacher

Dismissal

Once the decision to dismiss has been taken, the governing board will dismiss the teacher. Usually this will be with notice or pay in lieu of notice.

Appeal

If a teacher feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be

[5] *In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing board is the employer but the power to dismiss can be delegated to the head teacher, to one or more governors, or to one or more governors acting with the head teacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) who acts on the decision and issues notice to the teacher (or – for those who work in more than one school – requires them to cease to work at the school).*

accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken, and a copy sent to the teacher.

The appeal will be dealt with impartially and by managers or governors who have not previously been involved in the case.

The teacher will be informed in writing of the results of the appeal hearing as soon as possible.

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

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and governing board to quality-assure the operation and effectiveness of the appraisal system. Schools to say here how they might achieve this, for example, the headteacher or appropriate colleague might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The headteacher might also wish to be aware of any pay recommendations that have been made.

Consistency of Treatment and Fairness

The governing board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled teachers. The governing board is aware of the guidance on the Equality Act 2010 issued by the Department for Education.

References

"If a teacher has been subject to formal capability procedures in the previous two years", as stated in The School Staffing (England) (Amendment) Regulations

2012 and the Staffing and employment advice for schools, “this must be disclosed to new potential school employers when requested”.

Staffing and employment advice for schools (publishing.service.gov.uk)

Definitions

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

Delegation

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

Grievances

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related, including as part of the capability process, 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 performance at any stage of the procedure or a formal capability procedure, the case will be dealt with in accordance with the school’s absence policy. (e.g. referred immediately 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 monitoring and/or formal procedures to continue during a period of sickness absence.

Monitoring and Evaluation

The governing board and headteacher will monitor the operation and effectiveness of the school’s capability policy. This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

Retention

The governing board and headteacher will ensure that all written capability records are retained and stored in a secure place in line with their Retention and Disposal Policy

Department for Education

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