

Cheshire East Schools HR Consultancy

Model Capability Policy for Teachers

This policy has been consulted on with relevant Cheshire East trade union representatives and is recommended to all School and Academies who buy back the Education HR Consultancy Package through ChESS.

Where schools/Academies do not adopt this policy they need to ensure that any policy that they do adopt has been subject to consultation with recognised trade unions.

The governing board of _____ School adopted this policy on _____

1. Introduction

- 1.1 The aim of this policy is to establish the principals that Middlewich Primary School will follow in managing employees about whose performance there are serious concerns that the appraisal process has been unable to resolve.
- 1.2 Capability issues are not part of the Disciplinary Procedure. However, if after careful investigation, poor performance is identified as an issue of misconduct, it may become necessary to use the Disciplinary Procedure.

2. Policy

- 2.1 The head teacher/manager and governors will support employees of the school to reach the required level of performance.
- 2.2 The Capability Procedure should be followed by the headteacher/manager and governors to assist in the identification and investigation of a possible cause of incapability and where necessary in the drawing up of an action plan. The employee should fully understand the process and that if there is no improvement further action will be taken.
- 2.3 A consistent approach will be applied across the school, promoting fairness and equity throughout.
- 2.4 A decision to dismiss someone will be taken only after a full and proper process has been followed with proper safeguards to the individual.

- 2.5 Capability issues (non health related) must normally be resolved within two terms.
- 2.6 It is the headteacher's/governor's responsibility to set appropriate performance standards for all employees. National standards for teachers and head teachers and other standards set by the school or other relevant professional organisations will form part of the standards for these groups of staff.
- 2.7 It is the head teacher/manager and governor's responsibility to ensure that employees are aware of their required performance level.

Please note: Where the head teacher/manager and governors have concerns about an employee's performance they must not wait until the appraisal discussion to initially raise their concerns. Performance issues should always be discussed at the earliest possible opportunity.

3. Principles

- 3.1 Middlewich Primary School recognises that when an employee cannot perform the duties required to an acceptable standard it does not necessarily constitute misconduct.
- 3.2 The Capability Procedure should be followed where an employee is not able to perform his or her duties because they do not have the skills, knowledge, experience physical ability or aptitude they need to fully carry out their job. Mental health may also be an issue.
- 3.3 There are six main principles underlying the operation of the capability procedure:
 - (a) Employees must know what is expected of them, have concerns raised as they occur and be given help, advice and the opportunity and time to improve their performance.
 - (b) To enable, wherever possible, the employee with a capability problem to perform in the contractual job. The contractual job will be that which has been agreed between the school and the employee.
 - (c) To confirm that the responsibility for resolving capability situations rests with the head teacher/manager and governors who may wish to take HR and/or Occupational Health advice.
 - (d) To ensure that capability difficulties are dealt with efficiently, within agreed time periods and with clear outcomes resulting at all stages.
 - (e) To recognise that whilst every effort will be made to help an individual with a capability problem, the school cannot guarantee to maintain employment.

- (f) The procedures should be applied irrespective of the age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation of the person concerned. If the person has a health issue or a disability this will be taken into consideration, before formal capability procedures are started and at each subsequent stage.

3.4. Where additional measures are put in place to support an employee consideration will be given as to whether it is appropriate to undertake a risk assessment to inform this process

4. Scope/Application

This Policy and the associated Procedure applies to all teaching staff of Middlewich Primary School who have completed their ECT Induction.

5. Definitions

Capability is in relation to aptitude and the inability or limited ability of someone to perform their full job description to the required standard of performance. It may be due to poor standards of work, even with training and close supervision, or low output of work – where the person can produce work to the right standard but not in the right quantity.

Equality

The governing body should ensure that when implementing the model Capability policy, no employee will be disadvantaged on the basis of their gender, transgender, marital status or civil partnership, racial group, religion or belief, sexual orientation, age, disability, pregnancy or maternity, social or economic status or caring responsibility. This means that the policy may need to be adjusted to cater for the specific needs of an individual including the provision of information in alternative formats where necessary.

Monitoring

Data relating to capability cases will be collated and monitored regularly to ensure that the policy is operating fairly, consistently and effectively. Issues that are identified from the data will be dealt with appropriately.

In formulating this policy account has been taken of other relevant legislation and policies including the Human Rights Act, the Equality Act 2010.

Useful links:

[Model School Teachers Capability Procedure](#)
[Model School Teachers Appraisal Policy](#)
[Model Disciplinary Procedure](#)
[Model Managing Attendance Procedure](#)

Prepared by:

[Education HR Consultancy](#)

Date of Revisions and Reasons:

Model Capability Procedure for Teachers

This procedure applies only to teachers and headteachers where there is serious underperformance which the appraisal process has been unable to address. 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 request an alternative date which is within five days of the original date.

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 allows the teacher, accompanied by a companion if they wish, 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.

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 and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases should not exceed one term or equivalent and
- warn the teacher formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning or other serious implications such as no pay progression.

Notes will be taken of formal meetings and a copy sent to the member of staff within 5 days of the meeting. 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 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 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.

As before, notes will be taken of formal meetings and a copy sent to the member of staff within 5 days of the meeting. The final written warning 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

At least 10 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, or recommendation to the governance board, will be made that the teacher should be dismissed or required to cease working at the school.¹

In Community and VC schools, or in Foundation or VA schools where the local authority has been given LA Advisor Rights, the local authority has the right to attend any meetings where dismissal is involved.

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.

¹ *In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governance 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) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).*

Decision to dismiss

The power to decide that members of staff should no longer work at this school has been delegated to one or more governors acting with the Headteacher.

Dismissal

Once the governance board 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. Where teachers work solely at this school, the local authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school.

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 ten days of receipt of the letter confirming the action, 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 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, wherever possible, 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 capability policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The process will be treated with confidentiality.

Consistency of Treatment and Fairness

The governance 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 governance board is aware of the guidance on the Equality Act issued by the Department for Education.

Definitions

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

Delegation

Normal rules apply in respect of the delegation of functions by governance 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 it may be appropriate to deal with both issues concurrently.

Sickness

If long term sickness absence appears to have been triggered by the formal capability procedure, the case will be dealt with in accordance with the school’s absence policy and will be *(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 formal procedures)*. In some cases, it may be appropriate for formal procedures to continue during a period of sickness absence.

Prepared by: Education HR Consultancy

Date: September 2020

Reason:

- Capability procedure re-written in line with the March 2019 DFE model procedure.
- Procedure will now normally consist of 3 formal meetings, with the right of appeal at each stage
- In very serious cases final warning could be issued after 1st meeting

- Process in relation to dismissal has been amended to incorporate the confirmation of the decision to dismiss by the LA in the case of community and controlled schools.

Review date: