



Dringhouses Primary School

Teacher Capability Policy

Signature of Chair of Governors

Signature of Headteacher

Date of Adoption: Autumn 2019

Date of Review: Autumn 2022

Reviewing Committee: Staffing Committee

Statutory/Non-Statutory

This is a Local Authority adopted policy.

SECTION 6A – TEACHER CAPABILITY POLICY

Status of Policy

- This policy was published by the Local Authority in the summer term 2012 and has been reviewed October 2016.
- This policy is an adaptation of Part B of the DfE's Model Policy for Schools on Teacher Appraisal and Capability which has a 'strongly recommended' status.

If you have any queries about the application of this policy / procedure, please contact your designated HR Advisor.

Scope

This policy applies to all teaching staff, including the Headteacher employed by the school. This policy should only be invoked where the employee has been subject to the school's appraisal process within which appropriate steps have been taken to deal with any identified under-performance.

Only where this has happened *and serious* concerns about performance remain should action under this procedure be initiated.

Governing Bodies are required to adapt parts of this policy to meet their own specific requirements.

This policy and procedure should be applied in accordance with the aims of the Council's Equalities Policy Statement.

National Conditions with elements which are locally determined.

(Contact – Schools HR Advisor)

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1. Legal Context

1.1. This policy sets out the formal capability procedure and reflects the ACAS Code of Practice on disciplinary and grievance procedures. It is effective from 1 September 2012, replacing the statutory guidance “Capability Procedures for Teachers” that was issued in July 2000. ***Capability procedures apply only to teachers and headteachers about whose performance there are serious concerns that the school’s appraisal process has been unable to address.***

2. Introduction

2.1. York schools are committed to providing high quality education to the community and to establishing appropriate work standards for school employees. It is vital that poor performance is identified and tackled appropriately and in a timely fashion to minimise any negative impact upon education provision.

2.2. Headteachers should take care to ensure that steps are taken to try to avoid capability problems amongst staff by ensuring they have clear and robust practices in place to manage the following issues:

2.2.1. All posts (and staff occupying them) should have a clear job description and there should be a person specification that sets out the skills and qualifications necessary to perform the role.

2.2.2. All Teaching staff should be aware of the requirements of them under the relevant statutory Teachers Standards Document.

2.2.3. Recruitment to posts and the allocation of duties should be based on the requirements of the job descriptions, person specifications and the relevant Teachers Standards.

2.2.4. Selection of staff to posts in the school should be conducted by appropriately senior staff through a robust and thorough process.

2.2.5. The school should have a clear and comprehensive induction programme in place for all staff who are new to the school or for staff who move into a new role within the school. This induction should be conducted in a timely fashion

2.2.6. The school’s appraisal policy should be applied fully and consistently to ensure any concerns about teachers’ performance are raised at an early stage with appropriate steps taken under that policy to address them.

- 2.3. **Before any action is taken against an employee under this capability procedure they must have been subject to the school's appraisal process within which appropriate steps should have been taken to deal with any identified under-performance.**
- 2.4. **Only where this has happened *and serious* concerns about performance remain should action under this procedure be initiated.**
- 2.5. This procedure is in place to deal with *capability* issues. For clarity, capability is assessed with reference to skills and aptitude and, where necessary, qualifications, relevant to the position held by the employee and their competence to perform their duties and responsibilities.
- 2.6. Ill health cases are not to be dealt with through the Capability Procedure. In such cases, the School's Sickness Absence Management Procedure will apply.
- 2.7. Issues to do with an employee's conduct at work are not to be dealt with through the Capability Procedure. In such cases, the School's Disciplinary Procedure will apply.
- 2.8. In the case of disability, as defined within the Equalities Act 2010, where a disabled employee's circumstances change, or if an employee becomes disabled, the Headteacher / line manager should act in accordance with the Council's Guidelines on Disability Issues.

3. Scope

- 3.1. These procedures and guidelines should be applied in all capability situations relating to Teachers and Headteachers.
- 3.2. In respect of cases involving the Headteacher, it is expected that the Chair of Governors or nominated Governor will report this to the Director of Adults, Education and Children's Services and request that the investigation be carried out or supported by a LA representative on the Governors behalf.
- 3.3. No formal action should be taken against a recognised trade union Representative until the circumstances of the case have been discussed with a full time official from the Trade Union concerned.

4. Roles and Responsibilities

4.1. Role of Headteachers and Governors:

- 4.1.1. It is the prime responsibility of Headteachers and Governors to ensure that inadequate and unsatisfactory performance is dealt with reasonably, **promptly** and in accordance with the school's appraisal process initially, and then through this procedure if necessary.
- 4.1.2. Governors should not normally be involved with a capability procedure before the dismissal stage. The exception to this is where a governor or governors are involved in considering an appeal against a warning or in a capability procedure against a Headteacher when some governors may be involved in the monitoring and evaluation of performance.
- 4.1.3. It is important to be prepared for the possibility of a dismissal. The use of Governors to hear any complaint or appeals against warnings should be limited to ensure a sufficient number of impartial Governors remain available for the dismissal and dismissal appeal committees. Normally at least three Governors are required for the dismissal committee and no fewer for the appeal, but where this number is not reasonably practical it can be reduced to two.

4.2. Role of Local Authority Staff

- 4.2.1. School Improvement Service staff, HR staff or other advisors with relevant experience are available to advise the school and where appropriate, assist with the process, including classroom observation and providing support.

4.3. Role of Representatives

- 4.3.1. An employee has a legal entitlement to be accompanied by a colleague or union representative during this process i.e. formal interviews / meetings, and dismissal hearings. If the employee's chosen companion is not available at the time proposed for the interview, meeting or hearing, and the employee proposes an alternative that is reasonable and falls within 5 working days of the day proposed for the interview, the school must rearrange the event to the time proposed by the employee.

5. Principles

- 5.1. It is expected that during the course of employment, performance will regularly be appraised as part of the normal appraisal process, which will involve measuring performance against the relevant statutory Teachers' Standards, agreeing objectives, setting targets and identifying training and developmental needs.
- 5.2. There are several possible outcomes of formal meetings under this capability procedure, which will be determined by the information that is obtained from discussions with the employee as to the reasons for their failure to achieve a satisfactory standard of performance.
- 5.3. Even though this procedure should only have been invoked when all other informal arrangements via the appraisal process have been exhausted, **the main aim of the procedure is still to encourage and help employees to improve their performance to the required standard.**
- 5.4. Employees will be encouraged to help in identifying the reasons for their failure to achieve a satisfactory standard of performance, and how this can be improved.

6. The Formal Capability Meeting

- 6.1. The formal capability procedure begins when an employee is invited to attend a formal capability meeting.
- 6.2. The formal capability meeting provides an opportunity to deal with more serious concerns, that have not been resolved via the appraisal process, in a structured and timely fashion.
- 6.3. The purpose of the meeting is to:
 - Establish the facts regarding the employee's performance.
 - Consider the evidence of serious concerns regarding the employee's performance
 - Allow the employee to prepare a response to allegations about their performance and make a case in the company of a union representative or colleague.
 - Determine what formal action, if any, needs to be taken in relation to the employee's performance.

- 6.4. The employee must be provided with at least 5 working days' notice of the meeting in the form of a written request to attend the meeting.
- 6.5. The written request should contain sufficient information about the concerns regarding their performance, and their possible consequences, to enable the employee to prepare to answer the case at the meeting.
- Copies of any written evidence to be referred to at the meeting
 - Details of the date, time and place of the meeting
 - Advice that the employee may be accompanied at the meeting by a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.
- 6.6. An appropriate member of the HR Service and /or appropriate member of staff from the School Improvement Service will be present at the meeting if requested.
- 6.7. If it becomes clear that further investigation is needed the meeting should be adjourned for an appropriate length of time to allow this to happen.
- 6.8. Following consideration of all the facts and any representations from the employee, the person Chairing the meeting should adjourn it briefly to consider the appropriate options before delivering a decision to the employee

7. The Decision following Formal Capability Meeting

7.1. Option 1 - Insufficient Grounds for Pursuing a Capability Issue, Move back to Appraisal process.

- 7.1.1. Where the Headteacher / Chair of the meeting, believes 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, this should be made clear to the employee and confirmed in writing.

7.2. Option 2 - Sufficient Grounds for Pursuing Capability – Issue of a Warning

- 7.2.1. Where there is continued concern about the standard of performance, the Headteacher / Chair of the meeting will decide to issue either a written or final written warning. The decision on which level of warning to issue will depend on the seriousness of the problem.

8. Warnings

- 8.1. The penalty for unsatisfactory performance is usually a written warning with an assessment period of between 4 and 10 working weeks. *The timetable for improvement will need to be reasonable and proportionate, but not excessively long, and will provide sufficient opportunity for an improvement to take place.*
- 8.2. In cases of particularly serious concern, where the education of children is in jeopardy, it is possible to move directly to a final written warning and an assessment period of a minimum of 4 and maximum of 6 working weeks.

9. Final Written Warning issued in first instance

- 9.1. Where the matter is so serious that a final written warning is issued, an assessment period of a minimum of 4 working weeks and a maximum of 6 working weeks is normally invoked.
- 9.2. *This short procedure of up to 6 working weeks applies to particularly serious cases where the education of children is in jeopardy.* Examples of this might be where an employee's classroom control is so poor that no order can be established to enable teaching to take place, or where all the children under an employee's care fail to progress in lessons.
- 9.3. Where a final written warning is issued follow the procedure as set out from paragraph 12.4.

10. Written Warning Issued Initially

- 10.1. Where a written warning is issued initially, the Headteacher / Chair of the meeting should use the remainder of the meeting to;
- Clearly identify professional shortcomings, for example which of the relevant teachers' standards are not being met;
 - Give clear guidance on the improved standard of performance needed to end the capability procedure; (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 the support that will be available to help the teacher improve their performance.
 - Clarify the timetable for improvement and an explanation of how performance will be monitored and reviewed. **The timetable** will depend on

the circumstances of the individual case but in straightforward cases **could be between four and ten weeks**. *The timetable for improvement will be reasonable and proportionate, but not excessively long, and will provide sufficient opportunity for an improvement to take place.*

- Explain that a warning is being issued to the teacher to notify them 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.
- Agree a date for the next / final evaluation meeting; and make it clearly understood that failure to improve in accordance with the action plan may lead to dismissal

10.2. A letter should be sent to the employee immediately after the formal meeting recording the decision made at the meeting. Where a warning is issued, the letter should also contain details of the nature of that penalty, full details of the associated Formal Action Plan and the right of appeal (see paragraph regarding appeals).

11. Formal Action Plan

11.1. The purpose of the formal action plan is to provide the individual with a clear framework of expected action, targets and standards to be monitored and achieved within a specific timescale in order to demonstrate acceptable improvement.

11.2. Those monitoring the performance should offer feedback and instruction to help the employee improve performance. If training courses or assistance from colleagues would be helpful these should be arranged as soon as possible but should not interrupt the timing of the procedure.

11.3. During the assessment period, regular evaluation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee should be undertaken. If at any point during this stage the circumstances suggest a more serious problem, a decision may be taken to move directly to a final written warning.

12. Review Meeting

12.1. After this period, a meeting to review and assess performance over the previous weeks should take place. At least 5 working days' notice must be given for the meeting and the employee may be accompanied by a union representative or colleague.

12.2. The purpose of the review meeting is to:

- Establish the facts regarding the employee's performance over the previous weeks.
- Consider whether there is still evidence of serious concerns or not regarding the employee's performance
- Allow the employee to prepare a response to any continuing allegations about their performance and make a case in the company of a union representative or colleague.
- Determine what formal action, if any, needs to be taken in relation to the employee's performance.

12.3. **Option 1 – Satisfactory Performance Achieved return to Appraisal Process**

- 12.3.1. If the level of performance has been satisfactory and there is confidence that it can be sustained the capability procedure can end here with a letter from the Headteacher / Chair of the meeting confirming that the employee will re-enter the usual appraisal cycle.

12.4. **Option 2 – Issue Final Written Warning**

- 12.4.1. If performance continues to be unsatisfactory a **final written warning** should be issued. Formal monitoring, evaluation, guidance and support should continue for a further period. This period should be a minimum of 4 working weeks and a maximum of 6 working weeks. Arrangements for this should be explained at the meeting. The employee must be told clearly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal.

- 12.4.2. The decision and main points of the meeting should be recorded in a letter to the employee. Any appeal against a final warning must be made within 5 working days, and heard where practicable within 10 working days of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

- 12.4.3. During the further period, regular monitoring and evaluation of performance, with guidance, training if necessary, and to support the employee should continue.

13. **Final Review Meeting**

- 13.1. After this period, a final review meeting to report the assessment of performance over the previous weeks should take place. At least 5 working days' notice must be given for the meeting and the employee may be accompanied by a union representative or colleague.

13.2. The purpose of the final review meeting is to:

- Establish the facts regarding the employee's performance over the previous weeks.
- Consider whether there is still evidence of serious concerns or not regarding the employee's performance
- Allow the employee to prepare a response to any continuing allegations about their performance and make a case in the company of a union representative or colleague.
- Determine what formal action, if any, needs to be taken in relation to the employee's performance.

13.3. Option 1 – Satisfactory Performance Achieved return to Appraisal Process

13.3.1. If performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure can end here and the employee notified that they will re-enter the usual appraisal process.

13.4. Option 2 – Recommend Dismissal to Governors

13.4.1. If performance is unsatisfactory the employee should be told that the matter will be referred to the appropriate committee of the governing body with the recommendation that they be dismissed on the grounds of incapability. The result of the assessment, main points of the meeting and date of the governors hearing (if known), should be recorded in a letter to the employee.

14. Dismissal Process

14.1. The governing body should set up a Committee with at least three governors. This must hear the representations and recommendations brought by the Headteacher, or other line manager / governor / officer conducting the capability review, and any representations that the employee may wish to make.

14.2. The governing body should also set up an Appeal Committee to hear any appeal against a dismissal decision. None of the governors on the Committee dealing with the initial dismissal decision should be on the Staff Appeal Committee.

14.3. It is important that those hearing the case, take account of the following:

- 14.4. No view can be reached until the representations from all parties have been taken into account
- 14.5. Any information received outside this process prior to these hearings must be discounted.
- 14.6. Individuals involved in hearing cases or appeals should report any attempts to influence them and declare, as early as possible any issues, which could be perceived as undermining their impartiality.
- 14.7. All proceedings should be regarded as confidential and only the final decision should be reported to third parties
- 14.8. Should an employee be dismissed on grounds of capability normal notice periods will apply

15. Appeals

- 15.1. Any appeal against a warning must be made within 5 working days of receipt of the letter. The appeal should be heard where practicable, within 10 working days of notification of appeal, and must not interrupt the progress of the procedure or monitoring, unless the appeal decision leads to the matter being reconsidered.
- 15.2. Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence or any procedural irregularities.
- 15.3. The appeal decision should be confirmed in writing and the employee told that there is no further appeal against the decision.

16. Staff Absence through the Procedure

- 16.1. Urgent action is required if sickness absence intervenes during a capability procedure. Headteachers should ensure the usual sickness absence procedures are adhered to **without delay**.
- 16.2. If long term sickness absence appears to have been triggered by the commencement of a formal capability procedure, the case should be referred immediately to the employer's occupational health service to assess the person's health and fitness for continued employment.
- 16.3. Schools must take a considerate and sympathetic approach, but in general the length of time they may wait for a person's health to improve before

considering whether to terminate employment on health grounds should be subject to occupational health guidance.

16.4. Short absences should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the employee to attend review meetings, but where the employee is unable to attend, these may proceed in the employee's absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the review should be provided in the letter confirming the decision taken.

16.5. An absence designed to delay proceedings would constitute an abuse of the procedures.