

CAPABILITY PROCEDURE FOR CENTRALLY MANAGED TEACHERS

1. PREAMBLE

- 1.1. The line manager has a responsibility to help and encourage all staff in the service to achieve and maintain an acceptable standard of performance. The procedure outlined below should be seen as a guide towards the achievement of this objective and reflects conditions of service, the articles of government and appropriate legislation. This procedure is quite separate from grievance procedures and disciplinary procedures in respect of conduct and special provisions in respect of ill health absence which are detailed elsewhere.
- 1.2. Capability refers to the ability to carry out the duties of the post to the required standard. This standard should be appropriate to the level of the job and the skills and experience reasonably expected in that position. Line managers will need to ensure that each member of staff has the ability, knowledge, guidance and support to perform his or her job to an adequate standard and in accordance with his or her job description. Job descriptions should be reviewed regularly in consultation with the employee and form the basis of the annual performance management review.
- 1.3. This procedure provides a fair and consistent method of dealing with alleged failures to achieve the expected standard. Normally the Director of Children and Learning Learning would expect the line manager to follow the provisions of this code.
- 1.4. Expectations and standards of performance should be agreed at the earliest opportunity. Where a minor problem in performance first occurs, it should be the normal practice for the line manager to support the teacher in the matter by counselling, advice, guidance, training and example. It is not intended that the capability procedure should replace this normal interchange between the line manager and the teacher in the day to day running of a school or department. If the minor problem in performance continues, or is repeated, the case could then be dealt with under the procedure set out below.
- 1.5. This capability procedure is based on the statutory guidance of the DCFS, issued under the provision of the School Standards and Framework Act 1998. It has been adopted by the Executive Committee and recognises that no procedure should be more elaborate.
- 1.6. The capability procedure may be invoked at any time if the teacher's lack of performance warrants it. Where the circumstances are considered to be serious, potentially jeopardising the education of pupils, the time for identification, investigation and assessment should be appropriate but short. An employee will not be dismissed under the capability procedure unless at least one warning has been given, with the opportunity to improve, as described in this procedure. There could however, be exceptional circumstances when incapability could result in instant dismissal and advice should be taken from the HR Team. Once the procedure has been invoked appeals will be considered in accordance with the procedure and precedence will not be given to a grievance raised as part of the procedure.
- 1.7. The Conditions of Service for Teachers in England and Wales (the Burgundy Book) require that any procedure which may lead to dismissal must include the opportunity

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for the individual concerned to make a representations to an identified body before a decision to dismiss is taken. In Luton Borough Council's Capability Procedures this responsibility has been delegated to named, designated officers, who have received appropriate training. In the event of a dismissal there is the right of appeal to elected members..

- 1.8. It should be noted that a representative from Children and Learning HR and the line manager have the right to be present, for the purpose of giving advice and witness statements, at all proceedings when dismissal is being considered.
- 1.9. A manager should not take part in consideration of matters in which he or she or a relative living with him or her have a pecuniary interest.
- 1.10. This procedure has been drawn up after consultations with the recognised trades unions. It applies to all staff on teachers Conditions of Service who are centrally managed within the Children and Learning Department with the exception of the following, for whom there are alternative procedures or systems in place:
 - i) Newly qualified teachers during their period of induction (normally one year) where issues can be addressed through the induction review
 - ii) Casual or temporary teachers appointed for less than 13 weeks

2. CAPABILITY OF TEACHERS

Informal Stage

- 2.1. Management assistance and support at paragraph 1.4 may not result in improvement. Where a teacher may be under-performing the line manager should investigate and collect evidence. Once the facts are gathered and the seriousness of the problem established there are three initial options:
 - drop the matter (no case to answer or trivial)
 - arrange counselling (support without using the formal procedure)
 - arrange a formal interview (formal approach for more serious cases)

Counselling

- 2.2. The line manager should monitor the performance of the teacher and act in a timely way, bearing in mind the needs of the Department. The nature of the problem, its level of seriousness and cause(s) must be identified by structured information gathering and systematic recording. Counselling and informal coaching should aim to encourage and help the teacher to improve. Explanations should be considered carefully and the matter dropped if it becomes evident there is no case to answer. At a meeting arranged by the line manager for this purpose, the teacher must be told what is required, how performance will be reviewed, the review period and that the formal procedure will commence if there is no improvement. This should be confirmed in writing and notes retained of counselling and support.
- 2.3. The counselling nature of this stage must be preserved and discussion must not

harass the teacher or turn into a formal interview. Should a more structured, objective approach be deemed necessary, for example if the teacher expresses discontent or indifference to the counselling and support, then the formal procedure should commence.

2.4. After the period of review a firm conclusion should be reached, the options being either to:

- drop the matter
- convene a formal interview

Where the line manager feels there is further and on-going cause for concern about the professional competence or performance of a teacher, he or she shall orally inform the employee of his or her concern and encourage the seeking of advice of his or her trades union. It shall be explained that the line manager intends to follow the procedure outlined in paragraphs 2.5 to 2.7. This should be confirmed in writing and a copy of the procedure given to the employee.

2.5. The line manager shall continue to observe, monitor and assess the employee in the performance of his or her duties and identify any specific problems. It may be appropriate to invite another officer of the Authority at this stage to observe the employee and inform the headteacher. The line manager shall prepare a written report listing his or her observations and suggestions.

2.6. Undue delay may not be in the interest of all parties. In extreme cases where the education of pupils is jeopardised, the line manager may move directly to the procedure at paragraph 2.19.

Formal Interview

2.7. The line manager shall then arrange a meeting with the employee and a more senior manager of the Department to discuss the report, **which will be given to the employee at least 7 calendar days before the meeting.** The employee shall have the right to be accompanied at the meeting by a friend or trades union representative. A representative of Departmental HR will advise the senior manager. The line manager may be accompanied by another officer of the Department or an HR Adviser.. The line manager will talk through the concerns, and may call relevant witnesses, and the teacher will have an opportunity to prepare a response to allegations about performance, and to make a case. If it becomes clear that further investigation is needed the interview should be adjourned to allow for this to happen.

2.8. At the end of the formal interview there will be a withdrawal of parties to allow for deliberation. The senior manager has four options available at this stage:

- drop the matter
- counselling (except where already undertaken without improvement)

These are only relevant where new information, a different perspective on information collected, or further investigation suggests that the matter is not as serious as it at first seemed

- oral or written warning

- final written warning

The decision on which level of warning to issue will depend on the seriousness of the problem. If performance is unsatisfactory a written warning will normally be the next step. **The timescale for improvement will recognise the requirement to achieve satisfactory performance or to have concluded the procedure within two terms of the date of entry. An oral warning should not normally be necessary in cases where counselling has already taken place.**

- 2.9. The senior manager shall issue THE FORMAL WARNING to the teacher that continued failure to improve performance could lead to the institution of further procedures which might ultimately involve the termination of employment. This constitutes the date of entry into the formal procedure.
- 2.10. Where a formal warning is issued the senior manager should use the remainder of the meeting to identify the professional shortcomings, give clear guidance on the improved standard of performance needed to end the capability procedure, identify and clarify support and how performance will be monitored and define the timescale for improvement and review. An oral or first warning will remain on file for two terms.
- 2.11. After the meeting, the senior manager shall confirm the warning and date of entry into the formal procedure in writing, listing any specific problems, the advice given, the targets established and the period set for review. A second copy of the letter should be presented to the teacher for signature to indicate receipt. If the teacher contests any aspect of the warning, he or she should indicate this in writing to the line manager, who will sign this statement to acknowledge receipt and the contents.
- 2.12. Clear written guidance must be given to the teacher as to what is expected of him or her. In support of the meeting outcome, the line manager and the teacher should explore together ways of assisting the teacher to achieve set targets: for example, support and training either within the Department, by attendance on a training course or by visits to schools.
- 2.13. During the period established for improvement of performance in paragraph 2.10, the line manager shall observe the teacher and make notes for future use. The line manager or teacher may wish to bring in another officer of the Authority (the officer) at this stage to observe and offer advice to the employee. Particular attention should be given to the targets set and the degree to which they have been met.

First Assessment Stage

- 2.14. In normal circumstances the first assessment stage will be weeks 1-20 (excluding school closure periods). Under exceptional circumstances an oral warning will have been issued, in which case the first assessment will be 1-6 weeks at which point the procedure in paragraphs 2.4 to 2.7 should be followed. Should a formal interview at the end of six weeks result in a written warning, there will then be a further period of assessment from weeks 7-20.
- 2.15. During weeks 1-20 there will be regular observations, oral and written feedback, monitoring and evaluation of performance. The line manager may bring in external (or Departmental) objective support, advice and feedback and the teacher will be provided with guidance, training, if necessary, and support.
- 2.16. If at any point during this stage the circumstances suggest a more serious problem a

decision may be taken by the line manager to bring forward the evaluation meeting planned for week 20.

- 2.17. At the end of the period established for review, the line manager shall meet the teacher to review his or her performance. If the line manager is satisfied with the teacher's performance and confident that this can be sustained this must be clearly stated and the procedure brought to an end. This shall be confirmed in writing within 7 calendar days of the review meeting. The teacher will be reminded of the need to sustain improvement and the warnings will remain on file until they expire. Any further evidence of under-performance could result in the procedure being recommenced at this point, whilst the warning is still live on file. If the line manager has ongoing concerns about improvement, the line manager will convene a meeting with a senior manager, who may, for continuity, be the same senior manager involved at the first formal stage (Designated Manager). The line manager and officer (if involved) shall prepare a written report recording their observations and shall give both parties a copy of this report **at least 7 calendar days before the meeting**. The teacher shall have the right to be accompanied by a friend or trades union representative and to put their case. The line manager may be accompanied by a representative of the HR Team, and may call other officers to present evidence.. The Designated Manager will be accompanied by an HR representative.. Parties should withdraw from this meeting to enable the Designated Manager to assess the information and reach a decision.

Final Written Warning

- 2.18. Should the teacher's performance have shown only marginal improvement, remain unchanged or deteriorated, this should be clearly stated and the teacher informed that failure to improve performance, and sustain this improvement, could lead to termination of employment. Again any appropriate means of helping the teacher to improve performance should be identified. The Designated Manager shall, specify the period of time in which it will be reasonable to expect an improvement, which will be four weeks. At this stage alternative employment or alternative responsibilities can be explored with the teacher. Such consideration would not normally be appropriate for headteachers.
- 2.19. The Designated Manager shall then issue a FINAL WRITTEN WARNING to the teacher, a copy of which should be countersigned by him or her and returned to the line manager to indicate that the warning has been received. The final written warning shall state:
- i) the reasons why the teacher's performance is not considered acceptable;
 - ii) what improvements are required and the four week timescale within which they are expected to improve;
 - iii) the fact that failure to improve may result in the dismissal of the teacher;
 - iv) the right of appeal to an officer panel or nominated representative(s) of the Director of Children and Learning, in writing, to the line manager, within 7 calendar days of the date of the final written warning.

2.20 Procedure to be followed at the Appeal Hearing

An appeal shall be heard within 14 calendar days of the written request and will not

interrupt the progress of the procedure. The appeal against a final written warning may be heard by one officer if it is not possible to convene up to three officers.

An officer panel will comprise a Head of Service, an HR representative and a senior manager from the division concerned.

Presentation of the Case against the Teacher

- (a) The Designated Manager makes an opening address outlining the case.
- (b) The Designated Manager calls witnesses, if any, so that taking each one in turn:
 - he or she questions each witness;
 - the member of staff or his or her representative has the opportunity to put questions to each witness;
 - the line manager may clarify any issues by further questions to the witness;
 - the member(s) of the officer/appeals panel have the opportunity to question each witness;
 - each witness withdraws after giving evidence;
 - the member of staff or his or her representative has the opportunity to put questions to the presenter of the case;
 - the member(s) of the officer/appeals panel have the opportunity to question the line manager.

Presentation of the Employee's Case

- (a) The member of staff or his or her representative makes an opening address outlining his or her case
- (b) The member of staff or his or her representative calls witnesses, if any, so that taking each one in turn:
 - he or she questions each witness;
 - the line manager has the opportunity to put questions to each witness;
 - the member of staff or his or her representative has the opportunity to clarify any issues by further questions to the witness;
 - the members of the officer/appeals panel have the opportunity to question each witness;
 - each witness withdraws after giving evidence;
 - the line manager has the opportunity to put questions to the employee;
 - the members of the officer/appeals panel have the opportunity to question the employee.

Summing Up and Withdrawal

- (a) The Designated Manager and the member of staff, or his or her representative, have the opportunity to sum up their case if they so wish, the member of staff to have the last word.
- (b) Both parties then withdraw.

The Decision

- (a) The officer/appeals panel with the HR representative will deliberate in private, only recalling the parties to clear points of uncertainty on evidence already given. If recall is necessary both parties are to return even if only one is concerned with the point giving rise to doubt.
- (b) The decision will be announced at the close of the hearing whenever possible. The chairperson will confirm the decision in writing within 7 calendar days of the decision.

2.21 The final written warning shall remain on file for two years.

Second Assessment

- 2.22 Regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the teacher will continue during weeks 20-24.
- 2.23 A final review meeting will take place in week 24. **The teacher shall be given at least 7 calendar days' notice** and shall be entitled to be accompanied by a friend or trades union representative. The line manager will prepare a written report which will be sent to the employee at least 7 calendar days in advance of the meeting.
- 2.24 If, at the conclusion of week 24 and after a further assessment of the teacher by the line manager and where appropriate, the officer, the line manager feels that the teacher's performance is sufficiently improved, he or she should inform the employee accordingly and the formal procedures brought to an end. The written warning will remain on file for the specified period of time and if performance falls below the agreed standard during the period then formal procedures can be reinstated at that point. If the line manager is satisfied with the teacher's performance at the end of the specified period of time, this must be clearly stated, the procedure brought to an end and details expunged from personal records.

Dismissal

- 2.25 If the teacher's performance is still below an acceptable level, the line manager shall initiate arrangements for a meeting of an officer panel to consider the matter and, in particular, to consider whether steps should be taken to dismiss the employee in accordance with the articles of government and relevant conditions of service. The panel will comprise the Departmental Director, a Head of Service with the designated responsibility to dismiss and not previously involved in the case, and an HR representative. **The employee shall be given at least 7 calendar days' notice in writing of the meeting and shall be entitled to be accompanied by a friend or trades union representative.** Copies of all documents to be considered by the panel shall be given to the employee at least 7 calendar days before the meeting.
- 2.26 The format of the hearing shall be as outlined in 2.20 above.
- 2.27 The officer panel may determine that the teacher should be dismissed or they may decide that there is sufficient improvement, or insufficient evidence to result in a dismissal, in which case performance will continue to be monitored whilst the final written warning remains on file.

- 2.28 Where the decision of the officer panel is that a teacher should be dismissed, he or she should be suspended from duty, on full pay, for the duration of the notice period.
- 2.29 The outcome will be confirmed in writing, along with the right of appeal to elected members. Any appeal should be lodged within 14 calendar days of receipt of the letter.
The format of the appeals hearing shall be as outlined in 2.20 above.

3. VARIATION IN ACTION

- 3.1 The following variations in action may be appropriate in certain circumstances:
- i) the Appeals Panel, when considering an appeal against the decision of the officer panel to dismiss, may decide to issue a further or final warning rather than dismiss;
 - ii) redeployment to an alternative post in the LA, with any appropriate adjustment to pay.
- 3.2 Where it appears that the employee has committed a single error on grounds of capability and the actual or potential consequences of that error are so serious as to render it impossible to allow the employee to continue in employment, the gross misconduct provisions of the disciplinary procedure in respect of conduct will be invoked and the employee will be liable to summary dismissal if the complaint is upheld.

4. TRADES UNION REPRESENTATIVES

- 4.1 If the member of staff involved in the capability procedure is an official representative of a trades union, no action should be taken beyond the informal procedure until the circumstances of the case have been discussed with the relevant local, regional or national trades union official. In such cases line managers will seek first the advice of Children and Learning HR.
- 4.2 Normal standards should, however, be applied to the capability of the trades union representative.

5. ILL HEALTH ABSENCE

- 5.1 Short absences should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the teacher to attend review meetings but, where the teacher is unable to attend, these may proceed in the teacher's absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances the teacher may be represented by a trades union representative. The outcome of the review will be confirmed in writing.
- 5.2 Longer term absence which starts when the capability procedure commences when there is an indication that this may be prolonged, should trigger an immediate referral to Occupational Health to assess whether the teacher is fit for continued employment.

CAPABILITY PROCEDURE FOR CENTRALLY EMPLOYED TEACHERS

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