

Capability Policy (Teaching)

This policy aims to provide a framework for managing performance where a teacher consistently fails to perform their duties to a professionally acceptable standard. It should be used where the performance issues are causing serious concern which day to day management and/or the appraisal process have been unable to address.

Throughout this document 'headteacher' may be substituted by 'appropriate person' or if the headteacher is the subject of the procedure 'headteacher' may be substituted by the 'Chair of Governors' or 'nominated Governor'.

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1 Aims of the process

The capability process is not designed to be a punitive management process but aims to encourage improvement in work performance at an early stage before the issues become unmanageable.

The process allows for fair and consistent treatment of teaching staff and, through co-operation of all involved, a positive outcome can be achieved. The appraisal process is suspended whilst employees are subject to the capability process.

This process does not apply to NQTs, as their performance is managed through the NQT induction programme.

2 Stage 1 - Capability performance meeting

Where there are serious performance concerns, that have been unable to be resolved through the appraisal process, the teacher will be invited to meet with the headteacher to discuss the concerns. The headteacher should provide the teacher with at least 5 school days' notice of the meeting, in writing. A template letter is available on the extranet.

During the meeting, the following areas should be discussed as part of their ongoing supportive action plan:

- Which area(s) of their performance is causing concern i.e. teaching or leadership or what standards or objectives are not being met;
- Share and discuss any available written evidence demonstrating performance concerns;
- Ensure the teacher is aware of the required level of performance;
- Identify if there are any reasons why the performance is causing concern e.g. domestic difficulties or health issues and deal with these using the appropriate policy;

- Explain and agree the improvements that need to be made to the teacher's performance;
- Set a reasonable timescale within which the teacher should achieve the improved performance. The maximum timescale should be no more than 4 school weeks, unless there are exceptional circumstances and agreement of both parties to extend this;
- Explain what remedial action needs to be taken and agree an action plan of support with the employee which has clear and achievable timescales and success criteria. A template action plan is available on the extranet. This is intended only as an example and can be amended as appropriate to ensure it meets the school's requirements;
- Set a date for a review meeting – this should be as soon as possible after the end of the review period;
- Explain and clarify the implications for the teacher if improvement is not achieved i.e. that the process will move on to stage 2;
- A written record of the meeting and the agreed outcomes and actions should be kept, and a copy provided to the teacher. A template letter is available on the extranet;
- During the review period formal monitoring and evaluation of the teacher's performance should continue, along with any guidance and support and the teacher should be kept informed of their progress.

The headteacher should consider the following support mechanisms, where appropriate:

- In house training;
- Help with planning and content of work and any follow up;
- Observation by the teacher of good practice;
- Observation of the teacher's work by someone not involved in the process and constructive feedback provided. This could be someone from the school or, where appropriate, other external support e.g. Local Authority;
- Team teaching with an experienced teacher;
- Visits to other schools or workplaces.

2.1 Review meeting

At the end of the agreed action plan period, a review meeting will be held with the employee to assess their overall progress.

If satisfactory improvement has been made, this will be discussed and noted on the action plan and they should be encouraged to maintain the improvement. The teacher's performance will be managed as part of the usual appraisal process. If an employee fails to maintain the performance improvements, they can be moved onto stage 2 of the capability process.

If satisfactory performance has not been achieved, this will be discussed and the headteacher will inform the teacher that they will move to stage 2 of the process.

3 Stage 2 - Capability performance meeting

Where a teacher fails to make the required improvement set out in stage 1 or where a teacher has failed to maintain the required improvements in performance having made satisfactory improvement at stage 1 previously they will be invited to meet with the headteacher to discuss the ongoing concerns. The headteacher should provide at least 5 school days' notice of the meeting and should advise the teacher of their right to be accompanied by a trade union representative or work colleague.

A template letter is available on the extranet.

The following areas should be discussed with the teacher as part of their ongoing supportive action plan:

- Which area(s) of their performance is causing concern i.e. teaching or leadership or what standards or objectives are not being met;
- Share and discuss any available written evidence demonstrating performance concerns;
- Ensure the teacher is aware of the required level of performance;
- Identify if there are any reasons why the performance is causing concern e.g. domestic difficulties or health issues and deal with these using the appropriate policy;
- Explain and agree the improvements that need to be made to the teacher's performance;
- Set a reasonable timescale within which the teacher should achieve the improved performance. The maximum timescale should be no more than 6 school weeks unless there are exceptional circumstances and agreement of both parties to extend this;
- Explain what remedial action needs to be taken and agree an action plan of support with the employee which has clear and achievable timescales and success criteria. A template action plan is available on the extranet;
- Set a date for a review meeting – this should be as soon as possible after the end of the review period;
- Explain and clarify the implications for the teacher if improvement is not achieved i.e. that the process will move on to a headteacher performance hearing;
- A written record of the meeting and the agreed outcomes and actions should be kept and a copy provided to the teacher. A template letter is available on the extranet;
- During the review period the teacher's performance should be monitored and the teacher should be supported and kept informed of their progress.

The headteacher should consider the following support mechanisms, where appropriate:

- In house training;
- Help with planning and content of work and any follow up;
- Observation by the teacher of good practice;
- Observation of the teacher's work by someone not involved in the process and constructive feedback provided. This could be someone from the school or, where appropriate, other external support;
- Team teaching with an experienced teacher;
- Visits to other schools or workplaces.

3.1 Review meeting

At the end of the agreed action plan period, a review meeting will be held with the employee to assess their overall progress.

If satisfactory improvement has been made, this will be discussed and noted on the action plan and the teacher should be encouraged to maintain the improvement. The teacher's performance will then be managed as part of the usual appraisal process. If an employee fails to maintain the performance improvements, they can be moved back onto stage 2 of the capability process.

If satisfactory performance has not been achieved, this will be discussed and the headteacher will decide whether to extend the action plan period or to convene a headteacher performance hearing. The decision must be confirmed in writing to the teacher. Template letters are available on the extranet.

If it becomes apparent that the poor performance is not caused by capability issues but by a lack of willingness to carry out reasonable duties or due to ill health, the Disciplinary Policy or Attendance Management Policy should be invoked.

4 Headteacher performance hearing

The headteacher should provide at least 7 school days' notice, in writing, of the time, date and place of the hearing.

At the same time as the notice of the hearing is sent, the teacher shall be:

- Informed in writing of the nature of the concern(s) regarding their lack of capability and will be given copies of all documentation previously shared with the teacher in the form of a report documenting the evidence gathered.
- Sent two copies of all documents to be considered at the hearing, the second copy being provided for the use of the teacher's representative.
- Informed them that they have the right to submit a written statement prior to the hearing and that this will need to be received in sufficient time to allow the headteacher/Clerk to the Committee to circulate to all parties.
- Asked to acknowledge receipt of the letter and say whether they will attend the hearing, accompanied or otherwise.

The headteacher may determine that an appropriate formal warning needs to be issued. A teacher will not be dismissed at this stage of the procedure.

If a formal warning is issued, the length of the review period for the ongoing supportive action plan will be no more than the duration of 1 term. In cases of particularly serious concern or where the education of children is in jeopardy, consideration needs to be given as to the appropriate level of warning i.e. final written warning and this will invoke a review period not exceeding 4 weeks. However, under justified exceptional circumstances and only with the agreement of both parties, the timescale can be extended.

A written record of the agreed outcomes and actions should be kept, and a copy given to the teacher. An example letter is available on the extranet.

Formal warnings will remain on record in accordance with the following timescale:

Written warning	12 months after the issue of the warning.
Final written warning	18 months after the issue of the warning

Where a formal warning is issued, the teacher will have the right of appeal against this decision (see section 6).

The procedure to be followed at the Performance Hearing and all template letters are available on the extranet.

If an employee's performance improves leading to a return to the appraisal process, any subsequent poor performance within the live warning period will result in the capability process recommencing at stage 2 of the procedure.

4.1 Review meeting

The headteacher should meet with the teacher at the end of the review period which was noted at the performance hearing. At least 5 school days' notice in writing of the time, date and place of the meeting shall be given to the teacher.

If the required improvement has been made, the teacher should be told of this and encouraged in writing to maintain the improvement. The teacher's performance will once again be monitored via

the appraisal process. If an employee fails to maintain the performance improvements following the headteacher performance hearing, they will be moved back onto stage 2 of the capability process.

If satisfactory improvement has not been made, the headteacher will either hold another performance hearing (depending on how serious the performance issues are and/or the level of warning issued) or will refer the matter to the appropriate Committee of the Governing Body for a Final Performance Hearing. The headteacher will prepare a report to be presented at the hearing.

Template documents are available on the extranet.

5 Governor performance hearing

At least 7 school days' notice in writing of the time, date and place of the hearing shall be given to the teacher. A representative from Human Resources must attend the Governor performance hearing.

At the same time as the notice of the hearing is sent, the teacher shall be:

- Informed in writing of the nature of the concern(s) regarding their lack of capability and will be given copies of all documentation previously shared with the teacher in the form of a report documenting the evidence gathered.
- Sent two copies of all documents to be considered at the hearing, the second copy being provided for the use of the teacher's representative.
- Informed them that they have the right to submit a written statement prior to the hearing and that this will need to be received in sufficient time to allow this to be circulated to all parties.
- Asked to acknowledge receipt of the letter and say whether he/she will attend the hearing, accompanied or otherwise.

At the hearing the appropriate committee of the Governing Body may determine one or more of the following:

- The matter is referred back to the headteacher for further actions e.g. extension of the action plan, together with any other recommendations the Committee may wish to make.
- The teacher is dismissed with contractual notice on the grounds of poor performance (conditional upon already being in receipt of a formal warning), subject to the right of appeal to the Appeals Committee of the Governing Body.

Where possible, once a decision is reached at the Governor Performance Hearing, the teacher will be given oral notification of the decision and the reasons for the conclusion of the hearing. This will then be confirmed in writing by the Clerk to the Committee and sent by recorded delivery within 5 school days.

If it is decided that further action by the headteacher is required e.g. extension of the action plan and the employee still fails to improve to a satisfactory level, they will be referred back to the Governor Performance Hearing.

6 Appeal

The employee can appeal against any sanction issued under this policy by following the Appeals Policy which is available on the extranet.

This brings an end to the formal procedure.

7 Right to be accompanied

Employees have a statutory right to be accompanied by a work colleague, a trade union representative or an official employed by the trade union at formal capability meetings and hearings. The individual accompanying the employee must not be someone whose presence would prejudice the meeting or who has a conflict of interest.

8 Attendance at meetings and hearings

The teacher must make all reasonable efforts to attend meetings and hearings during this process. If the teacher's chosen representative is not available on the original date for the meeting/hearing, the teacher has the right to one postponement within 5 school days' of the original date, although this can be extended by mutual agreement in exceptional circumstances. The meeting/hearing will not be unreasonably delayed due to the availability of the employee's chosen representative. The teacher should also be offered one alternative date if they are unable to attend due to unforeseen circumstances, such as illness.

If the teacher fails to attend a performance hearing or appeal hearing and a valid reason is not provided, then the Committee of Governors will decide whether to proceed in their absence or provide an alternative date. If an alternative date is provided, the teacher should be advised that if they fail to turn up without a valid reason then the hearing will proceed and decisions will be taken in their absence.



This policy has been developed by the HR Advice and Support team, based on current legislation and best practice. If you would like any advice on the application of this policy, please do not hesitate to contact the team:

Telephone	03000 266688
Email	hradvice@durham.gov.uk

Further support can be accessed by contacting (subject to SLA buy in):

Payroll and Employee Services	pesschools@durham.gov.uk
Occupational Health	occhealthadmin@durham.gov.uk
Health and Safety	hsteam@durham.gov.uk
Employee Assistance Programme	www.healthassuredeap.com Username: durham Password: council 0800 716017

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MM	v 3.3	April 2020	April 2022

The school complies with all relevant statutory obligations. The school privacy notice provides more specific information on data collected and how it is handled, a copy of which can be accessed from the school. For more information please contact the school directly.

If you have any concerns about how your data is handled, please contact either the school Data Protection Officer (details available from the school office), or the Information Commissioner's Office.