

**HUMAN RESOURCES
SCHOOL MODEL POLICY & PROCEDURE**

**CAPABILITY PROCEDURE
SUPPORT STAFF**

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1.0 Policy Statement

The Capability Procedure is used where a headteacher has concerns that a support employee is failing to work to the required standard. The procedure has been designed to help and encourage employees to achieve and maintain a satisfactory level of performance where this is found to be lacking.

The Capability Procedure may lead to dismissal if performance does not improve to a satisfactory level.

This procedure has been subject to consultation with the relevant trade unions.

1.1 Eligibility

The Capability Procedure applies to all employees in the school (with stated exceptions)

1.2 Exceptions

- school teachers
- casual workers
- new employees under a probationary period.

1.3 Responsibility

The headteacher will treat any case dealt with under the capability procedure as confidential. However the Chair of Governors may be informed that the procedure has begun without discussing the details of the case.

A headteacher may delegate the implementation of the Capability Procedure to a senior manager such as the deputy headteacher.

The support employee may be accompanied by a trade union representative or person of choice at any meeting held under the Capability Procedure.

The Capability Procedure should not be invoked in respect of a trade union representative until a full time officer of the union is informed.

PROCEDURE

2.0 Investigation Stage

Step One : When a headteacher has concerns regarding the level of performance of an employee he / she will discuss the use of the Capability Procedure with the HR support. The HR support

will establish whether the headteacher's concerns justify an investigation under the Capability Procedure.

- Step Two** : The headteacher will write to the employee to outline his / her concerns regarding the employee's performance and invite the employee to a meeting to discuss the concerns. A copy of this procedure will be enclosed with the letter.
- Step Three** : The headteacher (and HR support) will meet the employee to discuss the concerns regarding performance. The headteacher will explain that he / she needs to investigate whether the concerns regarding the level of performance are valid, and whether they are due to underperformance by the employee due to lack of skill or aptitude. The headteacher will set a timescale to investigate the concerns; confirm details of how the concerns will be investigated; and set the date of the next meeting. The headteacher will write to the employee to confirm the outcome of the meeting.
- Step Four** : The headteacher (and HR support) will meet the employee to discuss the outcome of the investigation into concerns regarding performance. The headteacher will decide whether the concerns are due to underperformance by the employee due to a lack of skill or aptitude, or are due to other factors.

3.0 Support and Monitoring Stage

- Step Five** : If the headteacher determines that the investigation stage has established that the employee is underperforming he / she will confirm details of support and monitoring to be put into place to attempt to improve performance. The headteacher will meet with the employee to explain:
- the nature and extent of the underperformance;
 - the required level of performance;

- the support for the employee that will be put in place;
- how performance will be monitored;
- the length of the support and monitoring period. (This will be between one month and three months depending on the nature of job. Jobs with higher level responsibilities will require a longer period.)

The headteacher will write to the employee to confirm the outcome of the meeting and the date of the next meeting.

Step Six : The headteacher (and HR support) will meet the employee to discuss the outcome of the support and monitoring period.

If the employee has sufficiently improved his / her performance as a result of the support and monitoring period the capability procedure is formally ended. (If the headteacher has further concerns regarding performance in the following **one** year the procedure will begin at Step Five.)

If the employee has not improved his/her performance to the required standard the headteacher will move to Step Seven.

4.0 Final Support and Monitoring Stage

Step Seven : The final support and monitoring period will be similar to Step Five and will last between two weeks and two months. The headteacher (and HR support) will meet the employee to confirm the details of the support and monitoring and the date of the next meeting. The letter will warn the employee that failure to improve performance to the required standard will result in dismissal.

Step Eight : The headteacher (and HR support) will meet the employee to discuss the outcome of the final support and monitoring period. If performance has improved the Capability Procedure will be ended. (If the headteacher has further concerns regarding performance in the following one year the procedure will begin at Step Five.)

5.0 Dismissal

If performance has not improved the headteacher will recommend dismissal to a panel of governors set up in accordance with the School Staffing (England) Regulations 2002. If the headteacher has delegated his / her authority to use the capability procedure to a senior manager the headteacher will normally take the initial dismissal decision. The employee or his / her trade union representative (or person of the employee's choice) will have an opportunity to refute the management case to dismiss if he / she wishes to do so. The employee will be asked by HR to confirm in writing whether he / she wishes to attend the hearing.

Step Nine : The panel of governors (or headteacher) hearing the case may decide that:

- the employee should not be dismissed;
- or that Step Seven should be extended;
- or that the employee should be dismissed.

If the panel of governors decide to dismiss, the employee will be given due notice under his / her contract of employment. HR will advise on rules of natural justice regarding the dismissal hearing and will draft the dismissal letter on request. This HR support will be a different person to the HR support to the headteacher at the earlier stages of Capability Procedure.

Refer to Stage 4 of the Model Disciplinary Procedure for details of the dismissal process under the School Staffing (England) Regs. 2002

If requested to do so by the employee HR will assign the employee a “support officer” to help seek alternative employment within the City Council. An employee who is redeployed into a new post under this procedure will retain their former salary for a period of four weeks for a trial period, before moving to the new salary. However, if the trial period is unsuccessful, and the employee is dismissed he / she will receive all the notice (or pay in lieu of notice) he / she is contractually entitled to at the former salary **in addition** to the four weeks at the former salary paid during the trial period.

To prevent a sub-standard level of performance during the notice period the employee may not be required to attend for work during his / her notice period.

An employee may use this period to seek work elsewhere or he / she may be placed in a different part of the Council as part of the attempt to seek redeployment.

6.0 Appeals

Step Ten : The employee may appeal in writing within ten working days against a dismissal decision to the governing body appeals panel. HR will advise the employee regarding the procedure for appeals.

GUIDANCE

7.0 Advice and Guidance for Headteachers

Specify Satisfactory Performance

Satisfactory performance can be monitored through regular “one to one” meetings with reference to the person specification. In addition, employees should have an annual appraisal meeting and an individual learning plan. Ensure that these meetings are recorded. When you move to Step Two of the Capability Procedure the appraisal cycle should be suspended until the capability procedure ends.

Establish the cause of the underperformance

Concerns may be raised through your own observation of the employee’s work, complaints received, work checked, measurement of output, etc. The Investigation Stage allows you to ascertain whether the concerns are linked to underperformance or to other factors. If the cause is an underlying health reason the case should be referred to the Occupational Health Unit. If the cause is wilful neglect the case should be dealt with under the [Disciplinary procedure](#).

Use the Probationary Period

Good recruitment processes, including obtaining appropriate references, are essential. Appropriate and rigorous use of the probationary period may obviate the need to use the capability procedure. The Capability Procedure should not be used for employees during the probationary period

Provide Support

Listen to ideas from the employee (and his / her TU rep). The employee may need retraining, or may learn from a visit to another class, school or local authority. The employee may need dedicated time to read materials or observe an experienced colleague.

Employees will find the experience of being placed on the capability procedure to be stressful. The employee may wish to seek support from the Employee Advisory Resource (EAR). If you need help from colleagues to support and / or monitor the employee you should agree this with the employee.

8.0 Advice and Guidance for Employees

If you have been given a copy of this procedure your headteacher has concerns regarding the standard of your performance at work.

The procedure begins by investigating whether those concerns are valid. The procedure may end if the investigation reveals that the reasons for these concerns are not related to your standard of performance. In light of the inclusion of this investigation stage you should not submit a grievance on the grounds that your performance is satisfactory. The Investigation Stage will deal with this. However if you believe the application of the procedure is for a reason unrelated to performance you should seek advice from your trade union representative. If you have health or domestic problems which are affecting your performance you should discuss them with your headteacher during the Investigation Stage.

Once underperformance is established the procedure aims to help you improve your performance to a satisfactory level. The procedure allows you to have an input into agreeing what kind of support would help you to improve your level of performance at work. You should take every opportunity to learn from the support on offer. At the same time your performance will be monitored, and if you have any doubts about the standard required you should clarify this with your headteacher.

People generally want to be good at what they do at work, and the procedure will help you if you have the capability to improve. If you don't have the capability to improve the procedure leads to dismissal on the grounds of lack of capability. The City Council will seek to redeploy you to alternative employment during your notice period if the dismissal stage is reached.

You may wish to have a meeting with HR during the course of the Capability Procedure to discuss a negotiated resignation. If you wish to have such a meeting you should contact your headteacher or the HR support. You may wish to be accompanied by a trade union representative or other person of your choice at any meeting held under this procedure.

This will be a potentially stressful time and you may wish to contact the Employee Advisory Resource (EAR) for confidential independent counselling. To access the service please contact: 0800 243 458. If you are a member of a trade union your representative will also offer support.

