Teacher Capability Procedure
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Woodard Academies Trust

Capability Procedure for Teachers

This procedure applies to all Woodard Academy Trust Teachers about whose performance there are serious concerns and for whom the support and monitoring provided under the Performance Management and Appraisal Policy has been unable to address. This policy has been developed in accordance with the provisions of the ACAS Code of Practice. This policy supports effective teaching. It is supportive and it provides a structured framework to support teachers in improving their performance to achieve the professional standard required.

The outcome of the procedure can lead to a return to management under the Appraisal Policy or in cases where performance fails to improve to the required standard, the procedure leads to dismissal.

1. Introduction

1.1 Definitions

Unless indicated otherwise, all references to “teacher” include members of the senior leadership team up to and including Vice Principals.

1.2 Delegation

The responsibility for hearing Appeals has been delegated to the Academy Council.

1.3 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.

1.4 Sickness

While it is recognised that capability procedures can be distressing and may sometimes lead to an employee feeling unwell, Woodard Academies Trust believes that it is in everyone’s best interest to conclude matters as quickly as possible and will work with the employee to achieve this.

If long term sickness absence appears to have been triggered by the commencement of monitoring of the formal capability procedure, the case will be dealt with in accordance with the Academy’s policy and procedure for Managing Sickness Absence and the case will be referred immediately to the Occupational Health Adviser to assess the employee’s fitness for participation in the capability. In some cases, it may be appropriate for monitoring and/or formal capability procedures to continue during a period of sickness absence.
2. **Transfer from the Appraisal Process**

In cases where the Appraiser is not satisfied with a teacher (Appraisee’s) progress following a period of additional support and monitoring, the teacher will have been notified in writing that the appraisal system will no longer apply and that their performance will be managed under the Formal Capability Procedure.

3. **Formal Capability Meeting**

3.1 **Notification**

At least 5 working days’ notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns relating to performance and their possible consequences to enable the member of staff 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 work colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. If the teacher concerned is a TU representative they should be advised to contact their Regional Officer for support.

3.2 **Conducting the meeting**

This meeting is intended to establish the facts. It will be conducted by the Principal unless the Principal chooses to delegate the Formal Meeting to an Assistant Principal or Vice Principal.

At the meeting the teacher may be accompanied by a work colleague or trade union representative 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 “informally” through the appraisal process. In such cases, the capability procedure will come to an end. Where it is the case that capability procedures are not progressed, the matter will not be referred to in any subsequent employment reference supplied for this individual.

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); any new objectives set should be reasonable, realistic and achievable;
- Discuss and agree the 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 could be a period of between four and ten weeks. It is for the Principal to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place;
- Inform the teacher formally that failure to improve within the set period could ultimately lead to dismissal.
- Write to the teacher setting out the points discussed in the meeting.

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

In cases 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 support; the review stage and the procedure and time limits for appealing against the warning (their Right of Appeal).

If, in extremely serious cases a final written warning is issued, the teacher should have a period of support and monitoring before moving to a Decision Meeting.

4. 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 teacher 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.
5. **Formal Review Meeting**

5.1 **Arranging the formal review meeting**

This meeting will be conducted by the Principal, unless the Principal has delegated the meeting at 3.2.

As with formal capability meetings, at least 5 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 work colleague or a trade union official, or a trade union representative who has been certified by their union as being competent.

If the teacher concerned is a TU representative they should be advised to contact their Regional Officer for support.

5.2 **Review of Progress**

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.

5.3 **Final Written Warning**

The final written warning will reflect 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.

6. **Decision Meeting**

The Decision Meeting should be conducted by the Principal in all cases. If the Principal had delegated formal meetings to an Assistant Principal or Deputy Principal then that person should also attend the final decision meeting to ensure continuity.
As with formal capability meetings and formal review meetings, at least 5 working days’ notice will be given and the written 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 work colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

The outcome of the Decision Meeting will be one of the following:

- Performance has improved, the capability procedure will end and there will be a return to the appraisal process
- Performance remains unsatisfactory and the teacher will be dismissed or will cease to work at the Academy

The teacher will be informed of the outcome verbally following the meeting. The outcome will be confirmed in writing, within 5 working days of the meeting. The teacher should be asked to acknowledge receipt of the letter.

7. Notice of Dismissal

Employees should only be dismissed if, despite warnings, their capability has not improved within the specified timescale.

The letter of notice of dismissal must contain:

- the reasons for dismissal
- the date on which employment will end
- the appropriate period of notice
- the right of appeal against dismissal, including the timescales.

8. Right of Appeal

If a teacher feels that a decision to dismiss them, or other action taken against them during this process, is wrong or unjust, they may appeal in writing against the decision within 5 working days of the decision, setting out at the same time the grounds for appeal.

8.1 Appeal to the Clerk of the Academy Council

The appeal letter should be sent to the Clerk of the Academy Council. 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 work colleague or trade union representative will apply as with formal capability and review meetings. As with other formal meetings, notes will be taken and a copy sent to the teacher.

The Clerk to the Academy Council will arrange a meeting of the appeals panel of the Academy Council without unreasonable delay and ideally within 15 working days of receiving the letter of appeal. Wherever possible, no
Academy Councillor who has prior involvement in the case which is the subject of the appeal may be included on the Appeal panel. No Staff Members of the Academy Council should serve on the panel at any time.

8.2 Appeal Hearing

The appeal will be dealt with impartially and, wherever possible, heard by Academy Council members who have not previously been involved in the case.

The panel will consider whether to uphold each of the grounds for appeal and why.

The panel can decide to uphold the appeal, dismiss the appeal or lessen the penalty that was awarded at the first hearing. The panel may not increase the penalty.

8.3 Outcome of the Appeal

The teacher will be informed, in writing, of the results of the appeal hearing as soon as possible.

If the result of the appeal is to reinstate the teacher who had been dismissed they will receive payment of salary for the period from the date of dismissal to the date of reinstatement.

There is no further right of appeal and the decision of the appeals panel will be final.