



**Beal Academy Trust**  
A COMPELLING VISION FOR SUCCESS

## **Capability Procedure (Teaching Staff)**

# Capability and Performance Management (Teacher) Policy

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## Capability Procedure

### 1. Introduction

- 1.1 The performance of teachers in the Academy is monitored and managed on a day to day basis by the Headteacher/Principal (and other designated teachers) and through Performance Management.
- 1.2 However, where there are serious concerns and the Performance Management process has not resolved these, and subsequent development/support has failed to address performance problems, the capability procedure should be used.
- 1.3 For the purposes of this procedure, lack of capability is defined as a situation where a teacher or the Headteacher/Principal fails consistently to perform his or her duties to a professionally acceptable standard.
- 1.4 In the cases where there may be a capability issue concerning the Headteacher/Principal, reference should be made to section 10 of this procedure.
- 1.5 The Local Governing Body (LGB) is required to establish the following committees:
  - **Capability Committee** - to hear cases concerning the capability of the Headteacher/Principal
  - **Appeals Committee** – to hear appeals against any warnings or dismissal decision as a result of capability.

The quorum for both is at least three Governors, to be chosen from those appointed by the LGB. No member of either Committee should have been involved in the procedure prior to the formal stage. The HR Business Manager will support any Committees.

The DfE advises that dismissal decisions should be delegated to the Headteacher/Principal unless there is a good reason not to do so.

### 2. General procedures

- 2.1 At every stage of the procedure the Headteacher/Principal (or other designated teacher) should clearly identify and specify:
  - The expected performance standards
  - The improvements required and how these will be measured
  - A timetable for monitoring and review
  - Any support which will be put in place

This should be discussed with the teacher concerned and always confirmed in writing.
- 2.2 The teacher's performance should be closely monitored throughout any review period and they should be given feedback on their progress and be invited to comment.
- 2.3 The teacher has the right to be accompanied by their Trade Union representative or Professional Association representative or a work colleague and should be strongly advised to exercise this right.

- 2.4 If the teacher's chosen representative is not available at the time proposed for any meeting or hearing, one alternative date will be set, normally no later than 5 school days from the original date.
- 2.5 The Headteacher/Principal is advised to consult with the HR Business Manager before taking action and to invite an HR Adviser to attend meetings where appropriate.
- 2.6 Where the Headteacher/Principal intends to implement this procedure, s/he should ensure that the teacher concerned is provided with a copy.
- 2.7 The teacher has the right of appeal against any warning issued as part of the procedure and also the right of appeal against dismissal by reason of capability.
- 2.8 In exceptional cases, the Headteacher/Principal (or other designated teacher) may foreshorten or miss out a stage of the procedure. For example:
- Where a teacher's performance falls far short of an acceptable standard and where support and guidance fail to produce any significant improvement
  - Where the teacher's lack of competence is leading to the education of pupils being jeopardised.

Where it appears that this may be necessary, the Headteacher/Principal should ensure that the employee and his/her Trade Union or Professional Association representative are advised of this at the earliest possible stage.

- 2.9 Teachers cannot raise a grievance to complain about, or object to the fact that the Academy may take action under this procedure. The only exception would be if the grievance is that the action amounts to, or would amount to discrimination, bullying or harassment. In such cases, consideration should be given to suspending the capability procedure for a short period whilst this is looked into. The decision about whether or not to suspend the capability procedure, and for how long, is at the sole discretion of the Headteacher/Principal, who should consult HR for advice.
- 2.10 Where the capability concerns a trade union representative, this should be discussed at the earliest opportunity with the Branch Secretary/Convenor or full time official, who should be invited to accompany the individual to any meetings under the Procedure. Advice must be sought from HR before commencing any action under the procedure.
- 2.11 While it is recognised that the capability procedure can be distressing and may sometimes lead to a teacher feeling unwell, it is in everyone's best interest to conclude matters as quickly as possible. The Academy will work with the teacher to achieve this. If sickness absence appears to have been triggered by the commencement of the capability procedure, the teacher will be referred immediately to an Occupational Health Adviser to assess their fitness for participating in the procedure. Where a teacher remains off sick, this will be dealt with in accordance with the Sickness Absence Procedure.

### **3 First capability meeting**

#### **Prior to the meeting**

- 3.1 If the teacher's performance is unsatisfactory and has not reached the required standard despite target setting, monitoring and support as part of the Performance Management process, they will be required to attend a capability meeting.

- 3.2 The meeting will be conducted by the Headteacher/Principal or another designated teacher. Where the Headteacher/Principal is the subject of the procedure the meeting will be conducted by a Chair of Governors.
- 3.3 The teacher will be given at least 5 school days notice, in writing, of the time, date and location of the meeting. The letter should also:
- Specify the nature and details of the unsatisfactory performance;
  - Include a copy of any evidence which is to be considered at the meeting;
  - Confirm the teacher's right to be accompanied by a Trade Union or Professional Association representative or a work colleague;
  - Inform the teacher of who will be involved in the meeting;
  - Give an indication of the possible sanction which could be imposed if the concerns are found to be substantiated.
- 3.4 If the teacher intends to be represented or accompanied at the meeting (by their Trade Union representative or Professional Association representative or a work colleague), they must supply the name and status of their representative no later than 2 school days before the meeting.
- 3.5 If the teacher intends to submit a written statement or other supporting written evidence they may do this either directly or through their representative no later than 2 school days before the meeting.

#### **The meeting**

- 3.6 At the meeting, the Headteacher/Principal should set out the specific concerns regarding the teacher's performance, together with any evidence to support this, referring as appropriate to how this was dealt with under the Performance Management Procedure and any support that has been offered to the teacher.
- 3.7 The teacher and their representative will then be given an opportunity to give their response, and to present their case. This may provide new information or a different context to the information/evidence already collected.
- 3.8 Having considered all the statements and evidence presented, The Headteacher/Principal 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 through the Performance Management process. In such cases, the capability procedure will come to an end.
- Specify the nature and details of the unsatisfactory performance;
  - Include a copy of any evidence which is to be considered at the meeting;
  - Confirm the teacher's right to be accompanied by a Trade Union or Professional Association representative or a work colleague;
  - Inform the teacher of who will be involved in the meeting;
  - Give an indication of the possible sanction which could be imposed if the concerns are found to be substantiated.
- 3.9 The Headteacher/Principal 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.

- 3.10 In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the Headteacher/Principal will:
- Confirm the standards of performance which 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);
  - Explain any 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. In extreme cases where the education of pupils is jeopardised, the period given for improvement after the date of a formal warning should be no more than 4 school weeks. In very serious cases, this warning could be a final written warning.
  - Warn the teacher formally that failure to improve within the set period could lead to dismissal.

#### **Following the meeting**

- 3.11 A letter summarising the content and outcome of the meeting should be sent to the teacher within 5 school days of the meeting taking place. If no further action is to be taken under the procedure, this should be confirmed to the teacher, explaining that performance will be monitored through the Performance Management Procedure. If this is not the case, the letter should clearly set out all the points covered in section 3.10 above. The teacher will be responsible for forwarding a copy to their representative.
- 3.12 Where a warning is issued, the teacher must be informed of the duration of the warning (normally one year) and of their right to appeal (please see section 7 below).

#### **4 Monitoring and review process**

- 4.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period.
- 4.2 The length of the monitoring period will depend on the circumstances of the individual case. In extreme cases where the education of pupils is jeopardised, this should be as soon as possible, within a reasonable period of time.
- 4.3 The teacher will be invited to a second capability meeting, unless they were issued with a final written warning, in which case they will be invited to a capability hearing (please see section 6 below.)

#### **5 Second capability meeting**

##### **Prior to the meeting**

- 5.1 The Headteacher/Principal should write to the teacher concerned, giving at least 5 Academy days notice of the formal review meeting. The letter should advise the teacher:

- Of the purpose of the meeting (i.e. to formally review the Teacher's progress/improvement in the areas of performance and/or targets set at the first capability meeting);
  - Of any evidence which is to be considered at the meeting (including a copy of any written evidence);
  - Of their right to be accompanied by a Trade Union or Professional Association representative or a work colleague;
  - Who will be involved in the meeting;
  - That should the meeting find that no or insufficient improvement has been made, the likely outcome will be a final warning.
- 5.2 If the teacher intends to be represented or accompanied at the meeting (by their Trade Union representative or Professional Association representative or a work colleague), they must supply the name and status of their representative no later than 2 school days before the meeting.
- 5.3 If the teacher intends to submit a written statement or other supporting written evidence they may do this either directly or through their representative no later than 2 school days before the meeting.

#### **The meeting**

- 5.4 At the meeting, the Headteacher/Principal should summarise the performance improvements/targets which were set at the first capability meeting and review how far these have been met by the teacher concerned, considering evidence to support this. This should include the outcomes of any interim meetings at which progress was reviewed.
- 5.5 The teacher and their representative will then be given an opportunity to give their response, and to present their case.
- 5.6 If the Headteacher/Principal is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the Performance Management process will re-start.
- 5.7 In some circumstances, if the teacher has made some improvement and the Headteacher/Principal feels that the performance problems can be eliminated within a reasonable time, s/he may extend the monitoring and review period;
- 5.8 Where there has been no improvement or insufficient improvement in the teacher's performance, the Headteacher/Principal may, depending on the severity of the performance issues and the circumstances:
- Issue a final warning (which will normally be of 1 year's duration) **OR**
  - Move to a capability hearing (which could lead to dismissal) - see section 6.

#### **Following the meeting**

- 5.9 A letter summarising the content and outcome of the meeting should be sent to the teacher within 5 school days of the meeting taking place. If no further action is to be taken under the procedure, this should be confirmed to the teacher, explaining that performance will be monitored through the Performance Management Procedure.

- 5.10 Where a final warning is issued, the teacher must be informed:
- Of the duration of the warning (normally one year);
  - That failure to achieve an acceptable standard of performance within the set timescale, may result in dismissal (following a capability hearing – see section 6 below);
  - Of the procedure and time limits for appealing against the final warning (see section 8).
- 5.11 The teacher will be responsible for forwarding a copy of the letter to their representative

## **6 Capability Hearing**

### **Prior to the hearing**

- 6.1 The Headteacher/Principal has delegated authority to dismiss by the Governors; s/he will convene and chair the capability hearing and issue correspondence accordingly as set out below.
- 6.2 In cases where the Headteacher/Principal is the subject of the capability hearing, the case will be heard by the Capability Committee.
- 6.3 The Headteacher/Principal/Capability Committee should write to the teacher concerned, giving at least 5 school days notice of the capability hearing. The letter should advise the teacher:
- Of the purpose of the hearing (i.e. to consider the teacher's capability and whether their employment at the Academy should continue);
  - Of any evidence which is to be considered at the hearing (including a copy of any written evidence);
  - Of their right to be accompanied by a Trade Union or Professional Association representative or a work colleague;
  - Who will be involved in the hearing;
  - That should the hearing find that the teacher's performance is unacceptable, the likely outcome will be dismissal.
- 6.4 If the teacher intends to be represented or accompanied at the hearing (by their Trade Union representative or Professional Association representative or a work colleague), they must supply the name and status of their representative no later than 2 school days before the hearing.
- 6.5 If the teacher intends to submit a written statement or other supporting written evidence they may do this either directly or through their representative no later than 2 school days before the hearing.

### **The hearing**

- 6.6 At the hearing, the Headteacher/Principal should set out the specific concerns regarding the teacher's performance, together with any evidence to support this, referring as appropriate to previous capability meetings held with the teacher, targets set, support offered and degree of improvement or lack of improvement.
- 6.7 The teacher and their representative will then be given an opportunity to give their response, and to present their case. This may provide new information or a different context to the information/evidence already collected.

- 6.8 Having considered all the available evidence and the teacher's case, if the Headteacher/Principal/Capability Committee feels that dismissal is not warranted, existing warning will remain in place. And this should be confirmed verbally to the teacher and then in writing.
- 6.9 If the Headteacher/Principal/Capability Committee decides that dismissal is warranted, they will confirm this to the teacher, verbally and then in writing.

### **Following the hearing**

- 6.10 The letter confirming the decision of the meeting should be sent to the teacher within 5 school days. The letter should:
- Summarise the issues discussed at the capability hearing;
  - Confirm the decision of the hearing.

If the decision was to dismiss, the teacher must be informed of their last day of service, their right to appeal and the necessary time limits for this (see section 7 below).

- 6.11 The letter to the teacher confirming dismissal must be authorised and signed by the Chief Executive Officer (CEO).
- 6.12 Dismissal will normally be with notice.
- 6.13 When a teacher is dismissed for reasons of capability or incompetence, or where they resign in circumstances where dismissal was a possibility, the Headteacher/Principal or LGB (where the case involves the Headteacher/Principal) is required to notify the Department for Education (DfE) in writing.

## **7 Appeals against warnings or dismissal**

- 7.1 An teacher may appeal against any disciplinary action taken against him/her by giving notice in writing setting out their grounds for appeal within 5 school days (or 10 school days in the case of dismissal) to the Chair of Governors, who will arrange for a meeting of the Appeal committee to be convened as soon as reasonably practicable (and normally within 15 school days) and inform all concerned of the date, time and place of the hearing at least 10 school days beforehand.
- 7.2 At an appeal hearing, the teacher and the Headteacher/Principal shall each be entitled to appear and to be assisted. The teacher may be accompanied/represented by a representative of a Professional Association, Trade Union or a work colleague. The Headteacher/Principal may be assisted by an HR Adviser.
- 7.3 The purpose of the appeal is to review the decision taken by the Headteacher/Principal/LGB, not to re-hear the case. The Appeal Committee may ratify, nullify or reduce the severity of the disciplinary action taken by the Headteacher/Principal/LGB. The comments of the Appeal Committee may be recorded alongside any warning it ratifies, nullifies or reduces.
- 7.4 The teacher should be notified by the Chair of the Appeal Committee, in writing, of the outcome of the appeal within 10 school days. If this is not possible, the Chair of Governors should write to the teacher and give them an indication of when they will be notified of the outcome.

7.5 The Appeal Committee's decision will be final and may be either to uphold or reject the appeal.

7.6 If the Appeal Committee upholds the appeal it may either nullify or reduce the severity of the disciplinary sanctions (for example, a successful appeal against dismissal may result in the employee being reinstated, with a final warning).

## **8 Records**

8.1 Details of any formal action, including any warnings, should be retained on the teacher's personal file. Warnings should be disregarded after the expiry of their life (normally one year).

## **9 Provision of information about teaching staff capability**

9.1 Where a teacher applies for a teaching post in another school (either a maintained school or an Academy), the LGB (in consultation with the Headteacher/Principal) must, at the request of the other School's/Academy's Local Governing Body/proprietor:

- Advise in writing whether or not the teacher has been the subject of the Academy's Capability Procedure in the preceding two years and, if so
- provide written details of the concerns which gave rise to this, the duration of the proceedings and their outcome

## **10 Capability of Headteacher/Principal**

10.1 In cases where the capability of the Headteacher/Principal is being considered by the LGB of the Academy, Governors are **strongly recommended** to seek advice from a legal HR advisor before taking any action under this procedure.

10.2 In such cases all references to the "Headteacher/Principal" within this procedure should be replaced by "the Chair of the Trust or his/her nominated representative" and any dismissal recommendation must be made to the Capability Committee.

10.3 In dealing with such cases, local governing bodies should follow the procedures outlined above.