



Fierté Multi Academy Trust

CAPABILITY PROCEDURE FOR TEACHERS 2018-19

At the heart of our Trust are both the UNICEF Rights Respecting values and articles and Learning Behaviours. Through these, we aim to put **children's rights** at the heart of our schools. We work together to embed children's rights in our ethos and culture; to improve well-being and develop every child's talents and abilities to their full potential. We aspire to give children a sense of pride and achievement in all that they undertake.

SCOPE OF DOCUMENT

1. This procedure is designed to ensure that concerns about the standards of professional performance achieved by Headteachers and teachers in schools are dealt with in a systematic and fair way. It is not intended to deal with the following matters:
 - (a) Discipline and conduct;
 - (b) Staffing reductions, school closures and displacement;
 - (c) Ill health;
 - (d) Professional competence of newly qualified teachers who have not yet successfully completed their initial period of assessment;

Separate procedures exist for dealing with these matters.
2. This procedure provides a framework for dealing with performance issues. Its main aim is to allow any professional difficulties to be identified, addressed and resolved. These difficulties might relate to the teaching duties or to managerial/pastoral responsibilities. These issues tend to be complex and specific to the individual and therefore it is undesirable to lay down a rigid procedure for dealing with them, particularly in the early stages.
3. The over-riding requirements are fairness and reasonableness. The employee is naturally entitled to expect fair treatment, including appropriate guidance and advice from the Headteacher, colleagues on the school's teaching staff and external advisers as appropriate. There can be a conflict of interest in the process of monitoring the performance of a teacher and supporting a teacher in improving their performance. Wherever possible, the person who monitors the performance of the teacher should not be the one who offers support. However, the procedure has to operate in the context of limited resources and of the nature and requirements of a teacher's job.
4. No formal action will be taken against an official of a teachers' professional association or trade union until a full time official of the association have been notified first.

HEADTEACHER PERFORMANCE and TEACHER PERFORMANCE

5. Action in relation to the Headteacher/Principal will normally be co-ordinated by the Chair of Governors, who has a general responsibility for monitoring performance in the school.
6. In a maintained school, the Chair must inform the Local Authority about any concerns before providing informal support or taking more formal action. The Local Authority has intervention powers, which it may exercise to advise the Chair of any perceived performance issues prior to being notified by the Chair of his/her concerns.
7. The Local Authority may wish to assign an Officer to advise the Chair of Governors.

ROLE AND RESPONSIBILITIES

Appropriate Manager

- 8 The Headteacher or other senior leader usually undertakes the role of evaluating and reviewing the performance of teachers subject to the capability procedure. In case of a Headteacher subject to this procedure, this would usually be the Chair of Governors. The person undertaking this role is referred to as the Appropriate Manager for the purposes of this procedure.

Governors

- 9 Governors should not normally be involved with a capability procedure, relating to a teacher, before the dismissal stage. The exception to this is where a governor or governors are involved in considering an appeal against a warning, or in a capability procedure against a Headteacher when the Chair of Governors will undertake the monitoring and evaluation of performance supported by an appropriate Professional Lead. It is important to be prepared for the possibility of dismissal. The procedure requires that a sufficient number of impartial governors remain available for the first and appeal committees. Normally at least three governors are required for each committee.

Professional Lead

- 10 An appropriate professional should be appointed to support the Chair of Governors when undertaking the monitoring and evaluation of performance of a Headteacher. This could be a representative of the local authority, a professionally qualified and experienced school leader or external consultant.

Professional Advisers

- 11 School improvement advisers or other advisers with education and personnel experience may advise the school and where appropriate assist with the process, including classroom observation and providing support and advice at formal meetings.

Trade Unions and Professional Associations

- 12 A teacher has a legal entitlement to be accompanied by a trade union representative or colleague at all formal meetings. If the teacher's chosen companion is not available at the time proposed for the meeting or hearing, an alternative time should be arranged within 5 working days of the original date.
- 13 Schools are advised to consider allowing teachers to be represented at the informal stage of the procedure, this helps to ensure that appropriate external advice is available and that the relevant action plans for monitoring and support are agreed as appropriate in the circumstances.

Written records

- 14 A written record should be made of all meetings with the teacher and any action taken following the meeting. Except in agreed circumstances any formal warnings should be disregarded for disciplinary purposes after a specified period of satisfactory performance. These periods are 2 terms for a first written warning and 3 terms for a final written warning.

Grievances

- 15 In exceptional circumstances a teacher may raise a grievance about the Headteacher or manager during the course of a capability procedure. If the grievance is unrelated to the capability procedure, the matter should be investigated in accordance with the school Grievance Procedure and should not delay the progress of the capability procedure.
- 16 However, depending on the circumstances it may be appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the teacher has been mistreated and consideration should be given to bringing in another manager to deal with the capability case. Any records should be passed to the new manager and, if appropriate, the capability procedure should be continued within the same timetable.

INFORMAL STAGE

- 17 Where concerns regarding underperformance have been raised evidence should be collected and presented to the teacher for discussion in order to identify informal support at an early stage.
- 18 An appropriate manager will consider the evidence and the context within which it was collected and pursue one of three options:
 - (a) Drop the matter because there is little or no under-performance;
 - (b) Provide informal support to improve performance where the under-performance (example types of support can be found at Annex 1)
 - (c) Initiate the formal procedure where the under-performance is sufficiently serious to implement a formal process immediately, after authorisation from a more senior manager.

- 19 The manager will discuss the problem areas with the teacher, who must be informed before the meeting that it is proposed to implement the informal stage of the procedure and that (s)he may be accompanied by a trade union or other representative as appropriate.
- 20 The meeting will indicate:
- (a) What is required of the teacher?
 - (b) What agreed support will be provided?
 - (c) How future performance will be reviewed and over what agreed period;
 - (d) That the formal procedure will be initiated if there is insufficient improvement;

This will be confirmed in writing to the teacher within 5 working days.

- 21 The meeting should be supportive and avoid creating undue stress for the teacher.
- 22 Throughout the informal stage, those monitoring the performance should offer feedback and instruction to help the teacher improve performance. If training courses or assistance from colleagues would be helpful, these should be arranged as soon as possible but should not interrupt the timing of the procedure.
- 23 After a period of review (which will not normally be less than 4 weeks) a firm conclusion should be reached.

The options will be either to:

- drop the matter;
- extend the informal period; or
- initiate the formal stage of this procedure

Staff who are absent through illness during the procedure

- 24 Absence which is triggered by the capability procedure, and which management believe is likely to be long term, should be referred immediately to the occupational health adviser to assess whether the teacher is fit for continued employment. 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 formal meetings, but where the teacher is unable to attend, these may proceed if the absence is protracted and the operation of this procedure is a substantial factor in the illness. In such cases the failure to meet targets will not be discounted because of illness. If the teacher is absent from such meetings a full account of the evaluation should be provided in the letter confirming the decision taken.

FORMAL STAGE

First Formal Meeting

- 25 The manager will prepare a report on his/her concerns with the teacher's performance and arrange a meeting to discuss this with the teacher. The teacher has a right to be represented at all formal meetings and should be strongly advised to be accompanied by a trade union representative or colleague. The teacher will be given notice of the first formal meeting and a copy of the manager's report at least 5 working days beforehand.
- 26 The first formal meeting may provide new information or put a different interpretation on evidence collected. If it becomes clear that further investigation is needed the interview should be adjourned for an appropriate length of time to allow this to happen.
- 27 Having discussed the report with the teacher, the manager will adjourn the meeting to consider how to proceed. 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 the manager will decide to:

- provide continued support (except where already undertaken without improvement);
 - issue a first written warning;
 - Issue a final written warning.
- 28 The first option is only relevant where new information, a different interpretation on the information collected, or further investigation suggests that the matter is not as serious as it first seemed. If some progress has been made and there is confidence that sufficient progress is likely, it may be appropriate to extend the monitoring and review period the second and third options are relevant to any case where the manager remains seriously concerned about the standard of performance. 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);
 - 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. This will usually be between four and ten weeks and should not be longer than one term. It is for the school 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;

- Warn the teacher formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

- 29 A letter will be sent to the teacher following the first formal meeting, recording the result of the investigations, the main points discussed at the meeting, confirming the decision and (where a warning is issued) giving information about the handling of the first formal assessment stage of the procedure. The letter will also indicate that the teacher has a right of appeal against a written or final written warning. Appeals must be to the Clerk to Governors in writing within 5 working days; the appeal will normally be heard within 10 working days of notification of the appeal.

First Formal Assessment Stage

- 30 The teacher's performance will subject to a first formal assessment stage of no longer than one term. This involves regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the teacher.
- 31 Monitoring and evaluations of performance will be undertaken, alongside a programme of guidance and support. Regular feedback and review should take place in order to provide opportunity for improvement throughout the assessment stage.
- 32 If the period at this stage is of 10 weeks or more, there will be a mid-stage evaluation of progress involving the manager, the teacher and his/her representative. This mid-stage evaluation gives an opportunity for the withdrawal of any additional support provided in the first period, if the evaluation has shown satisfactory progress by the teacher up to that point. Alternatively, it allows for escalation or adjustment of the support, if insufficient progress is demonstrated.
- 33 If, at any point during this stage, the circumstances suggest a more serious problem, the review period may be curtailed and the procedure will move to a second Formal Meeting.

Second Formal Meeting

- 34 The manager will prepare a report on his/her concerns with the teacher's performance and arrange a second formal meeting to discuss this with the teacher. The teacher has a right to be represented at all formal meetings and should be strongly advised to be accompanied by a trade union representative or colleague. The teacher will be given notice of the second formal meeting and a copy of the manager's report at least 5 working days beforehand.

- 35 Having discussed the report with the teacher, the manager will adjourn the meeting to consider how to proceed. If the manager 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 sufficient progress 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 and a second formal assessment stage will be implemented.
- 36 If performance is judged to be unsatisfactory a final written warning should be issued. Formal monitoring, evaluation, guidance and support should continue for a second assessment stage. Arrangements for this should be explained at the meeting. The teacher will be told explicitly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal. The decision and main points of the meeting should be recorded in a letter to the teacher. The letter will also indicate that the teacher has a right of appeal against a written or final written warning. Appeals must be to the Clerk to Governors in writing within 5 working days; the appeal will normally be heard within 10 working days of notification of the appeal.

Second Formal Assessment Stage

- 37 The teacher's performance will subject to a second formal assessment stage of up to 4 weeks. This involves regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the teacher.
- 38 The procedure is the same as for the first formal assessment stage. If performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure will cease and this will be confirmed in writing.
- 39 If performance is unsatisfactory, the teacher should be informed that the matter will be referred a committee of the governing body.

First Committee Stage - consideration of dismissal

- 40 The governing body should set up a committee. This must hear the representations and recommendations brought by the Headteacher, or manager conducting the capability procedure, and any representations that the teacher may wish to make. The governing body should also set up an Appeal Committee to hear any appeal against a dismissal decision. None of the governors on the First Committee should be on the Appeal Committee.
- 41 The Headteacher will prepare a report to the first committee summarising the concerns with the teacher's performance and the outcomes during the assessment stage(s).

- 42 The teacher will be given notice of the date of the meeting and a copy of the Headteacher's/Manager's report at least 5 working days beforehand. The teacher has the right to be accompanied by a trade union representative or colleague. The procedure for the meeting is attached as Annex 2.
- 43 The Committee may decide:
- (a) To drop the matter because it is not satisfied that there is under-performance;
 - (b) To allow a further period for improvement;
 - (c) To dismiss the teacher with appropriate notice;

The Committee's decision will be confirmed in writing and within 5 working days. It will include the reasons for the decision and the teacher's right of appeal.

Right of Appeal

- 44 Following the issue of a formal warning, a final formal warning or a decision is to dismiss, the teacher has the right of appeal to the Appeals Committee.
- 45 A teacher wishing to appeal must notify the Clerk to the Governors in writing, within 5 working days of the written notification of the outcome, of their intention to appeal.

It should include:

- (a) the grounds of appeal which may include;
 - Facts disputed
 - Procedural fault or principles not followed
 - Previous evidence not fully investigated
 - Evidence not previously considered
 - Level of warning not considered to be appropriate
 - (b) Whether they wish to be represented or accompanied at the meeting of the Appeal Committee and, if so, by whom;
 - (c) Whether they propose to call witnesses at the meeting and, if so, who those witnesses are;
 - (d) Whether they wish to introduce any additional documents not used Previously. If so, these should be included with the letter of appeal.
- 46 The appeal meeting will normally be heard within 10 working days of notification of appeal. The procedure for the meeting is attached as Annex 3.

EXAMPLES OF POSSIBLE SUPPORT

1. Advice and encouragement from management, colleagues and identified professional support;
2. Assigning a mutually agreed mentor;
3. Opportunities to observe exemplar practice of others in the Teacher's own school or at another school;
4. Opportunities to review own practice and adapt and implement improvements accordingly;
5. Support of experienced staff / subject managers / Headteacher advisers to lead lessons or team teach or to advise on management processes;
6. Specific training or other opportunities for professional development;
7. Attendance at courses aimed at rectifying specific weaknesses;
8. Seeking appropriate medical advice where ill-health appears to be a contributory factor;
9. Consideration of redeployment, changes to role and/or responsibilities, changes to working pattern, suitable adaptations as appropriate;
10. Consideration of and adaptation of present commitments if at all practicable (e.g. by the voluntary relinquishing of additional responsibilities and associated responsibility payments);
11. In-school workshops/coaching for example on class management or pupil behaviour;
12. Observation of particular, agreed issues within the classroom and appropriate supportive feedback;
13. Opportunities to enhance the individual's status, e.g. specialist teaching in a primary school, leading sessions on areas of expertise, additional non-contact time to carry out specified responsibilities;
14. Advice on curriculum and lesson planning procedures;
15. Advice on teaching and learning styles.

Note: the agreed support should indicate the improvement it is intended to secure.

FIRST GOVERNORS' COMMITTEE MEETING**PROCEDURE**

1. Introduction by Chair: explanation of procedure.
2. Headteacher/Manager should amplify the report prepared recommending the dismissal of the teacher.
3. The Headteacher/Manager may present witnesses.
4. Teacher (or representative) may ask questions of Headteacher/Manager and witnesses.
5. Teacher (or representative) should put case against dismissal.
6. Headteacher may ask questions of teacher and witnesses.
7. The Committee may ask questions of Headteacher/Manager, teacher and witnesses.
8. Headteacher/Manager to sum up case.
9. Teacher (or representative) to sum up case.
10. Parties to retire. (Professional Adviser may remain with the Committee to offer advice.)

The Committee will consider the case and notify the parties of their decision. This may be conveyed verbally, at the conclusion of the hearing or soon after. The decision will then be confirmed in writing by no later than 5 working days after the meeting.

This procedure may be varied by agreement of all the parties.

GOVERNORS' APPEAL COMMITTEE MEETING**PROCEDURE**

1. Introduction by Chair: explanation of procedure.
2. Teacher (or representative) should put their grounds of appeal, including any new evidence that is to be presented.
3. Headteacher may ask questions of teacher (or representative).
4. The Headteacher/Manager should summarise the original report recommending the dismissal of the teacher and respond to the grounds of appeal as appropriate.
5. Teacher (or representative) may ask questions of Headteacher/Manager.
6. The Committee may ask questions of Headteacher/Manager and teacher.
7. The Chair should summarise the facts for meeting.
8. Parties to retire. (Professional Adviser may remain with the Appeal Committee to offer advice.)

The Appeal Committee will consider the case and notify the parties of their decision. This may be conveyed verbally, at the conclusion of the hearing or at a later date. The decision will then be confirmed in writing by no later than 5 working days after the meeting.

This procedure may be varied by agreement of all the parties.

Reviewed September 2018

Next review date: September 2019