



Capability Policy Staff

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Signed by Chair of Governors:

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1. Introduction

School leaders have a responsibility to ensure that pupils receive the best educational opportunities available to them. One of the key elements to learning is the quality of teaching provided ensuring that all teachers are performing to professionally acceptable standards. Schools and local authorities must have a Capability Procedure for teachers and a policy, covering all staff, which deals with lack of capability. This policy sets out the school's formal capability procedure. It replaces the statutory guidance "Capability Procedures for Teachers" that was issued in July 2000. Capability procedures apply only to members of staff (including Head teachers) about whose performance there are serious concerns that the appraisal process has been unable to address

This model policy is compliant with the revised statutory School Staffing Regulations (England) (Amendment) 2012 and applies to teachers, including Head teachers and all other school staff.

It is a statutory requirement for schools to have a Capability Policy and Procedure for teaching staff and Head teachers. Whilst there are no statutory regulations for support staff regarding performance, it is good practice to provide a fair and equitable scheme for all school based staff, therefore, Delius Special School has adapted this policy for use with all school staff, subject to the appropriate consultations. It has been written in the context of schools, but the same principles apply to unattached teachers.

The revised performance standards for Head teachers and teachers need to be applied as appropriate to the role in school and the context within which the member of staff is practicing. Head teachers will determine professional standards against key school priorities and staff will need to demonstrate that their practice is consistent with the standards that are being applied in school by which all are being measured.

2. Model Policy

The Governing Body of Delius Special School adopted this policy and procedure on 07/07/14 after consultations with the recognised trade unions. It will be reviewed Summer Term 2017.

The use of Capability procedures in this school will be a supportive and developmental process which is designed to ensure that staff have the skills and support they need to carry out their role effectively. It will help to ensure that staff are able to continue to improve their professional practice and to develop in their professional roles.

The Governing Body is committed to ensuring consistency of treatment and fairness in the operation of its performance management and capability support processes.

Purpose

The Governing Body believes that the school can only be fully effective in delivering a service to pupils and the community if it has well trained motivated, committed and competent staff. In support of these aims this policy and procedure sets out the arrangements that will apply when staff are experiencing difficulties in meeting the standards that are expected of them.

The Capability Procedure will be used to address any general concerns that are raised about a member of staff's performance and to provide a more tightly focussed strategy of support and assessment.

Application of the policy

This policy applies to the Headteacher, other members of the Leadership Team, teachers and all other staff employed by the school.

3. Capability Procedure

This procedure applies to Head teachers, Leadership, teachers and all other staff employed by the school about whose performance there are serious concerns.

The Capability Policy should only be used in circumstances where the formal appraisal process has been complied with and the member of staff has been unable to address concerns regarding their performance.

The right to be accompanied by a trade union representative or work colleague, applies at all the meetings listed under the stages of this procedure.

Stage 1 - Transition meeting

A transition meeting may be held at any stage of the appraisal cycle if the member of staff's performance remains a cause for concern as part of the normal appraisal procedure.

The staff member may be assisted by a trade union representative or work colleague and will have at least 5 working days notice of the meeting if the date had not been agreed at an earlier stage in the appraisal procedure.

The meeting will provide an opportunity to review progress towards meeting the targets for improvement. The process for the meeting will be as follows:

1. A summary of the concerns will be given at this meeting by the Headteacher who may be assisted by the appraiser or another manager.
2. The staff member will be provided with an opportunity to respond.
3. The Headteacher will express a view on whether the appraisal process should remain in place or whether formal capability proceedings continue.
4. The employee, assisted by the trade union representative or accompanying work colleague, may make representations regarding their performance and targets set and progress made in meeting the targets.
5. If it is decided that transition to Stage 2 of the Capability Procedure is inappropriate at this time, then the staff member will continue to be supported under an Action Plan, as described in the Appraisal Policy for staff experiencing difficulties, and a new timescale for improvement will be set together with a date for a review meeting.
6. If it is decided that capability procedures will continue and progress to Stage 2 of the Policy the staff member will be notified in writing that the appraisal system will no longer apply and that their performance will continue to be managed under the capability procedure.
7. The parties should agree a date when the Stage 2 Formal Capability Meeting will be held, ensuring that the written notification of the meeting, the evidentiary documents and a copy of the procedure are supplied to the staff member a minimum of 10 working days ahead of the meeting.

Stage 2 - Formal Capability meeting

The written notification of the meeting, together with the evidentiary documents and a copy of the procedure should be supplied to the staff member a minimum of 10 working days ahead of the meeting.

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors for Headteacher capability meetings, or the Headteacher (or a Deputy Headteacher) for all other staff. The meeting allows the staff member, accompanied by a work colleague or a trade union representative who has been certified as being competent by the union to respond on behalf of their member 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 procedure for the meeting is set out in the document ***Recommended Procedure for Meetings and Appeals. (Appendix A)***

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 through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting if, for example, 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:

1. Identify the professional areas for development to enable performance standards to be met, (for example which of the standards expected of teachers are not being met);
2. Give clear guidance on the improved standard of performance needed to ensure that the staff member has every opportunity to improve their performance. This may include the setting of new objectives focused on the specific areas of development 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;
3. The staff member may request an adjournment at any point in order to consider the management proposals and develop alternative or additional suggestions;
4. Explain any support that will be available to help the staff member to improve their performance;
5. 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 straightforward cases there could be between four and ten weeks depending on the time required for support and assessment processes. 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.

6. In very serious cases, where the progress of pupils is being seriously jeopardised or where there are serious concerns on the grounds of health and safety this warning could be a written/final written warning being issued with a four week period for improvement being given. (see appendix B for details)
7. Advise the staff member formally that failure to improve within the set period could lead to dismissal. Normally, a warning will be issued where applicable. (see appendix B for details)

Notes of this formal meeting will be taken and a copy sent to the member of staff. Where a warning is issued, the staff member will be informed in writing in addition to the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning. There is a right of appeal to the Appeals Committee. Details of the appeal should be provided in writing within 5 days of the decision being communicated.

Stage 3 – Formal Capability meeting

Again, the staff member has the right to be accompanied by a work colleague or trade union representative or someone who has been certified by their union as being competent.

The written notification of the meeting, together with the evidentiary documents and a copy of the procedure should be supplied to the staff member a minimum of 10 working days ahead of the meeting.

The procedure for the meeting is set out at Appendix A.

If the person conducting the meeting is satisfied that the staff member has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. In other cases:

1. 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;
2. If no, or insufficient improvement has been made during the monitoring and review period, the staff member will receive a final warning.

Where a warning is issued, the staff member will be informed in writing in addition to the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning. The final warning will mirror 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.

There is a right of appeal to the Appeals Committee. Details of the appeal should be provided in writing within 5 days of the decision being communicated.

At the end of the improvement period there will be a discussion with the staff member and their trade union or colleague supports at which progress towards improvement will be discussed. If the manager remains dissatisfied then the staff member will be invited to a Stage 4 final capability decision meeting at which dismissal can be considered. The staff member must be advised that dismissal is a possible outcome of the Stage 4 meeting.

Although it is not a legal requirement, before a decision is made to move towards dismissal, the school may discuss the matter with local authority specialist education advisers and its HR Advisory Service.

Stage 4 – Final capability decision meeting

Unless the Governing Body has formally delegated powers of dismissal to the Headteacher, this meeting will be held by the Governing Body's Discipline, Grievance and Dismissals Committee.

As with formal capability meetings and formal review meetings, at least 10 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of their right to be accompanied by a work colleague who has been certified by their union as being competent or trade union representative. If the Stage 4 meeting finds that an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start.

If performance remains unsatisfactory, the Committee may make a decision to dismiss the employee on the grounds of lack of professional capability.

The Committee (or the persons hearing the case) also have the power to order a further period of improvement if they believe that there has been some progress and that there is a likelihood of the staff member being able to reach the required standard of performance with additional support and time for improvement. In this case the Committee will adjourn the meeting for a period of four working weeks when it will reconvene to consider whether an appropriate standard of work has been achieved or whether to go ahead with a decision to dismiss the employee.

NOTE:

In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, and Academies the Governing Body is the employer but the power to dismiss can be delegated to the Headteacher, to one or more governors, or to one or more governors acting with the Headteacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).

The staff member will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal. Any Appeal will be heard by the Governing Body's Appeals Committee.

The decision to dismiss

For Community, Voluntary Controlled, Community Special, and Maintained Nursery schools:

The power to decide that members of staff should no longer work at this school rests with the Governing Body, including sub-Committees formed for the purpose of conducting formal capability meetings and appeals. Once the decision has been taken to dismiss the staff member, the school will notify the Local Authority of its decision and the reasons for it. Where the staff member works solely at this school, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school.

Appeal

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

Appeals will be heard by the Governing Body's Appeals Committee 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 who has been certified by their union as being competent will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the staff member.

The format of the Appeal will be as set out in appendix A and will be dealt with impartially and, wherever possible, heard by managers or governors who have not previously been involved in the case.

References

When providing references or responding to reference requests, school has a responsibility to comply with The School Staffing (England) Regulations 2009, paragraph 2, Regulation 8 -

The school recognises that it has a duty to other employers to give truthful and balanced references and it is the policy of the school that any references provided will state, in accordance with the above regulation, if an employee had been subject to formal capability procedures in the preceding 2 year period. For the purposes of clarity, it will be deemed that an individual has entered the formal capability procedures, once they have attended the stage 1 Transition Meeting.

The Governing Body must, at the request of a governing body or proprietor of the employer requesting the reference, provide written details of the duration and outcome of the proceedings and the concerns which gave rise to the actions carried out under the Capability Procedure.

4. General Principles Underlying This Policy

ACAS Code Of Practice on Disciplinary and Grievance Procedures

The conduct of the formal capability stage will be undertaken in accordance with the provisions of the ACAS Code of Practice.

Consistency of Treatment and Fairness

The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will normally be referred to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases it may be appropriate for formal procedures to continue during a period of sickness absence. However, the views of the occupational health physician will always be taken into account before a decision is reached.

Grievances

Where a member of staff raises a grievance during the appraisal or capability process, the appraisal or capability process may be temporarily suspended in order to deal with the grievance. Where the grievance and appraisal or capability cases are related it may be appropriate to deal with both issues concurrently.

Confidentiality & Professional Relationships

The appraisal and capability processes will be treated with confidentiality. Only the appraiser's line manager or, where s/he had more than one, each of her/his line managers will be provided with access to the appraisee's plan recorded in her/his statements. This will be done upon request and only where this is necessary to enable the line manager to discharge her/his line management responsibilities. Appraisees will be consulted on requests for access to statements in the context of this policy.

The process of gathering evidence for performance review will not compromise normal professional relationships between staff. The Governing Body recognises that the appraiser will consult with, and seek to secure the agreement of, the appraisee before seeking information from other colleagues about the work of the appraisee.

However, the desire for confidentiality does not override the need for the Headteacher and Governing Body to quality-assure the operation and effectiveness of the appraisal system. The Headteacher or appropriate colleague might, for example, review all staff members' objectives and written appraisal records personally – to check consistency of approach and expectation between different appraisers. The Headteacher might also wish to be aware of any pay recommendations that have been made.

Monitoring and Evaluation

The Governing Body and Headteacher will monitor the operation and effectiveness of the school's appraisal arrangements.

The Headteacher will provide the Governing Body with a written report on the operation of the school's/academy's appraisal and capability policies annually. The report will not identify any individual by name. The report will include an assessment of the impact of these policies on:

- Race
- Sex
- Sexual Orientation
- Disability
- Religion and Beliefs
- Age
- Part-time Status
- Maternity and Pregnancy

The Headteacher will report on whether there have been any appeals or representations on an individual or collective basis on the grounds of alleged discrimination.

Retention

The Governing Body and Headteacher will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.

Appendix A

Recommended Procedure for Meetings and Appeals

The Chair is in control of the procedure.

The Chair (and through him/her the other governors, if appropriate) may question either side and any witnesses called at any time. If new evidence is brought out both sides will have an opportunity to comment.

The sequence listed below enables both sides to present their evidence fairly and fully. It is:

1. The Chair shall introduce those present, explain the procedure to be used and ensure that it is agreed by the employee and/or his/her representative.
2. The management representative shall present his/her case and may call witnesses to clarify evidence.
3. The employee and/or his/her representative may question the management representative and any witnesses he/she has called.
4. The employee and/or his/her representative shall present his/her case and may call witnesses to clarify evidence.
5. The management representative may question the employee and any witnesses he/she has called.
7. The management representative shall be given an opportunity to sum up his/her case.
8. The employee and/or his/her representative shall be given an opportunity to sum up his/her case.
9. The Chair shall ask both parties to leave while the decision is made; only recalling the two parties to clear points of uncertainty in evidence already given. If recall is necessary both parties will return notwithstanding only one is concerned with the point giving rise to doubt. The advice of a Human Resources Adviser and/or a Legal Officer during their deliberation on points of law; procedure of the Council's declared HR Policies is available if required.

The Decision

The Chair shall recall the two sides and give the decision. He/she shall explain the reasons for the decision. Alternatively, he/she may inform the employee that the decision will be made known to him/her later. The Chair shall explain that the decision and reasons shall be confirmed in writing.

The Chair is either the Chair of the Discipline, Dismissal and Grievance Sub-Committee of the Governing Body or the Headteacher. (See the school's procedure).

Appendix B

FIRST WARNING	The time limit shall be 6 months (excluding the Summer Break) from the date the decision is confirmed in writing.
WRITTEN WARNING	The time limit shall be 9 months (excluding the Summer Break) from the date the decision is confirmed in writing.
FINAL WARNING	The time limit shall be 12 months (excluding the summer break) from the date the decision is confirmed in writing.
DISMISSAL	<p>In Trust Schools, Voluntary Aided and Foundation Schools the dismissal shall take effect in accordance with individual contractual terms and conditions</p> <p>In schools where the employer is the Local Authority, the dismissal will take effect in accordance with individual contractual terms and conditions</p>