



UTC PLYMOUTH

UTC Teachers Capability Policy

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INTRODUCTION

1. Governing bodies have a statutory duty to adopt formal policies and procedures for dealing with staff performance issues (School Staffing (England) Regulations 2003). The effective management of schools is underpinned by having a policy and procedure which supports and maintains acceptable standards of performance.
2. This procedure is primarily concerned with ensuring that any teacher whose standard of performance is unacceptable in one or more areas is clearly informed what standards are expected and receives support towards achieving those standards. This formal process should only be initiated when other support mechanisms in the school have failed to resolve the issues.
3. This procedure is designed to help the school maintain the required teacher standards of performance. From a position of knowing what shortcomings in performance have been identified, what improvements are required and in what time frame this policy will allow those who do not maintain expected standards of performance the opportunity to improve. It provides a method of dealing with shortcomings in performance including the provision of reasonable levels of support and monitoring. It provides for matters to be dealt with in a fair and consistent manner and always considering the well-being of those involved.

SCOPE

4. This procedure is informed by Sections 35(8) and 36(8) of the Education Act 2002, and the ACAS Code of Practice on Disciplinary and Grievance Procedures 2009. It has been drawn up following consultation with the recognised Teachers' Professional Associations. It applies to and is designed to help and encourage teaching staff within schools maintain acceptable standards of performance.
5. The procedure applies to all teachers directly employed by the school. It does not apply to support staff or persons working at the school who are not employees of the school e.g. agency staff, employees of external contractors' or the LA.
6. This procedure does not apply to matters of:
 - Misconduct; i.e. cases where it is clear an employee is capable of performing at a required standard but chooses not to do so, should be dealt with under a separate, disciplinary procedure adopted by the Governing Body.
 - Ill health; for which there is a separate procedure adopted by the Governing Body. (Managing Attendance Policy) The ill health procedure should be used if there is good reason to believe that the employees inability to meet set standards is linked to health problems.

LINK TO APPRAISING TEACHER PERFORMANCE POLICY

7. This capability procedure will apply to those teachers (including the Principal) about whom serious concerns exist regarding their performance and will be initiated where the appraisal process or other support has sought but not been able to address these concerns. The capability process should only be implemented where performance concerns have been identified and the teacher made aware of them, by their line manager/principal, and any corrective action, facilitated under the teacher's appraisal process, has failed to bring about the required improvement.
8. If the appraiser is not satisfied with progress following the review held as part of the appraisal process, the teacher will be notified in writing that the appraisal process will no longer apply and that their performance will be managed under the capability procedure.

LINK TO PAY PROGRESSION

9. Where concerns about a teacher's performance have resulted in the commencement of the capability procedure, it is recommended that pay progression is withheld on the basis that the teacher will not be meeting the required standards as outlined in the Professional Standards for teachers.
10. If the reviewer for the purposes of pay progression is not directly involved in the capability procedure, they should be informed that the capability procedure has commenced but no details of the concerns should be made known to the pay reviewer.
11. The employee will, under the pay policy, have the right to appeal the decision to withhold progression.

WHO IS RESPONSIBLE FOR MAINTAINING STANDARDS OF PERFORMANCE?

12. The Governing Body has overall responsibility for ensuring acceptable standards of performance are maintained. Under the Education Act 2002 School Staffing (England) Regulations 2003, Headteachers should be given responsibility for the day to day management and implementation of appraisal and performance management procedures. Governors may also delegate authority to the Principal to take disciplinary action up to and including initial decisions to dismiss, following which a right of appeal to a panel of Governors would be given.

SICKNESS ABSENCE

13. If a period of long-term absence appears to have been triggered by the commencement of capability procedures, the case may be referred to Occupational Health, for the purpose of identifying any support that needs to be taken.

WHAT ARE THE PRINCIPLES?

14. Staff will be aware of the school's expectations regarding standards of performance and the possible consequences of failing to meet these standards
15. A teacher who becomes subject to these procedures will be encouraged, at an early stage, to seek advice either from their professional association or a work colleague. The Academy welcomes and supports the input and involvement of trade union representatives in these procedures including the right of staff to be accompanied during any meeting conducted as part of this process.
16. Those involved in implementing this procedure will do so fairly and equitably ensuring that the employee is given the opportunity to respond to concerns regarding poor performance and that no decisions are made until all relevant and appropriate information has been considered.
17. The procedure will be withdrawn when improvements in performance have been both achieved and maintained. The decision to withdraw the procedure will be confirmed in writing.
18. Where the Principal is the subject of the capability procedure, the Chair of Governors or other designated Governor, will be responsible for initiating any required actions and for fulfilling duties that would otherwise be undertaken by the Principal. In such cases (it is recommended) that the Chair of Governors should notify and contact their HR Adviser for further advice before any action is taken. Support may also be given by a fellow colleague or 3rd party.
19. It is recognised an employee being supported through this procedure is likely to find the situation stressful, and the Principal will make the employee aware of the wellbeing services available.

RAISING A GRIEVANCE

20. Where an employee raises a grievance during a capability procedure the process may be temporarily suspended in order to deal with the grievance. Where the grievance and capability concerns are related it may be appropriate to deal with both issues concurrently. It is recommended that discussion takes place with the Academy's HR Adviser and the employee (normally through their professional association or directly if they are not

represented) about whether or not the capability procedure should be suspended so that the grievance issues can be dealt with separately under the grievance procedure, or whether the grievance should be raised by the employee at relevant capability interviews, reviews, hearings or appeal.

21. Suspending the capability procedure because a grievance has been raised would normally take place when:
- There is an allegation that management have failed to follow procedure;
 - There is possible discrimination.
 - The employee feels that evidence produced has not been considered appropriately.

INFORMAL SUPPORT

22. This process will run alongside appraisal.
23. Following the identification of a need for support, an informal support meeting with the Professional Tutor will take place to clarify the areas of concern. Where appropriate; a mentor will be assigned and a support plan drawn up.
24. Where a support plan is deemed appropriate, then it will be reviewed after 3 to 5 weeks. There is a possibility of continuing informal support for a further agreed period, if deemed appropriate. If significant improvements have been evidenced appraisal will continue as normal. If the concerns still remain a formal meeting with the employee will be triggered.

FORMAL CAPABILITY MEETING

25. Concerns about a teacher's performance that have not been resolved through the appraisal process or informal support will be confirmed in writing by their appraiser along with confirmation that the appraisal process will no longer apply and that their performance will from this point be managed under the capability procedure.
26. The Principal with appropriate notice will meet formally with the member of staff to discuss the perceived shortcomings and will advise that the capability procedure has been reached.
27. The employee will be informed in writing of their right to be accompanied by their professional association representative or workplace colleague. During the meeting discussion will take place with the member of staff on ways of providing further opportunity to improve their performance. The meeting will:
- Clarify perceived shortcomings. The member of staff will be given a copy of any documents being used to record areas for improvement, objectives

to be achieved, the support and guidance provided and progress being made.

- Seek to agree a formal course of action to effect the required improvement, which will include the provision of support and advice from experienced sources both within and outside of the school. Support arrangements will be kept separate and distinct from monitoring arrangements. In each case individuals with appropriate experience will be selected to undertake these roles. Where the concern relates to the performance of the Principal, support and advice could be provided by another Principal(s) in consultation with the Governors.
- Set an appropriate period of time for the member of staff to improve and arrange a formal review meeting. Suggestion is between 4 and 10 weeks.
- Inform the member of staff that a continued failure to improve performance could lead to a formal hearing being convened.

28. At the conclusion of the agreed period a formal review meeting will take place. That meeting will involve the Principal, line-manager / appraiser (if appropriate) and Governor representative(s) if required. Where the concern relates to the performance of the Principal, the review meeting will involve the Chair of Governors if required.

29. If the Principal concludes 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, the capability procedure will come to an end.

FORMAL REVIEW MEETING

30. The employee will be informed of their right to be accompanied by their professional association representative or workplace colleague.

31. The employee must be given at least five working days written notice of the meeting and confirmation of the nature of the concerns, and any accompanying documents that will be referred to at the meeting, including a further copy of the procedure.

32. At the meeting and prior to any decision being taken the employee will be given an opportunity to comment on the concerns and to ask any questions.

33. The Principal will then consider what action should be taken. Following the meeting the Principal will inform the employee both verbally and in writing of their decision. The options at this stage of the procedure are:

The outcome of the review will be either:

- Significant improvement; no further action required.

- Partial improvement; further review needed after specified period.
- No significant improvement - move to a formal hearing with the Governors' Panel

HEARING WITH GOVERNORS PANEL

34. If, after the conclusion of the formal review meeting, it is decided that there has been no significant improvement in performance, or that the improvement has not been sustained, arrangements will be made for the member of staff to attend a formal hearing.

35. The Governing Body will nominate three of its members, who are not staff members, to form the Staffing Panel. Three different Governors will also be nominated to form the appeals panel. No Governor will serve on either panel if they have had any previous involvement in the matter or have a pecuniary interest. Where the Chair of Governors acts as critical friend to the Principal he/she will not sit on either panel.

The employee will be:

- Given at least five working days written notice.
- Advised of the right to be accompanied by a workplace colleague or professional association representative.
- Informed of the nature of concerns, and provided with all relevant evidence that will be discussed at the hearing.
- The Principal will present the evidence for the areas of concern, the process followed and the support and training given and make recommendations.
- The employee will be given the opportunity to respond.
- The panel of governors will consider the evidence regarding the employee's performance and consider the recommendations and determine whether to:
 - (a) Withdraw the procedure because sufficient improvement has taken place.
 - (b) Consider whether alternative employment is available within the school and can be offered to the employee.
 - (c) Issue a written or final written warning and give the employee further time to improve.
 - (d) Dismiss the employee with notice.

36. The decision must be confirmed in writing within five days of the hearing. If the decision is to issue a written warning or dismissal then the employee must be notified of their right to appeal.

RIGHT OF APPEAL

37. An employee may lodge a letter of appeal against any formal action taken under this procedure. A letter of appeal should be addressed to the Clerk to the Governing Body and forwarded within five working days of the date on

which they receive the confirmation of the formal action. The appeals panel of the Governing Body in accordance with the schools agreed appeals procedure will hear the appeal.

38. The appeal panel will consist of governors who have not taken part in any early stages of the procedure.
39. The member of staff will be given at least five working days' notice of the hearing.
40. The decision of the appeal panel will be confirmed in writing within five working days.
41. If the appeal is upheld the letter will only convey the grounds for the action taken.
42. If the decision is not to uphold the employee's appeal, the letter will confirm the grounds on which the panel reached their decision.
43. Where the outcome to the above hearings falls short of dismissal and concerns regarding performance remain the employee will be informed of:
 - Those areas of work that continue to be a cause for concern.
 - The targets that will need to be met to demonstrate appropriate improvement.
 - The timescale for achieving this improvement.
 - The support provided to assist the employee.
 - The date on which a review will be conducted and by whom.
44. In these circumstances the above procedure will recommence from paragraph 7.

WRITTEN RECORDS

45. A record of the documentation relating to each stage of the process will be retained and will include:
 - Details of the shortfall in performance standards.
 - The employee's views.
 - Names of participants, their role, findings and actions taken.
 - The reason for actions taken.
 - Whether an appeal was lodged.
 - Outcome of the appeal.
 - Subsequent developments.
 - Notes of any formal meetings.

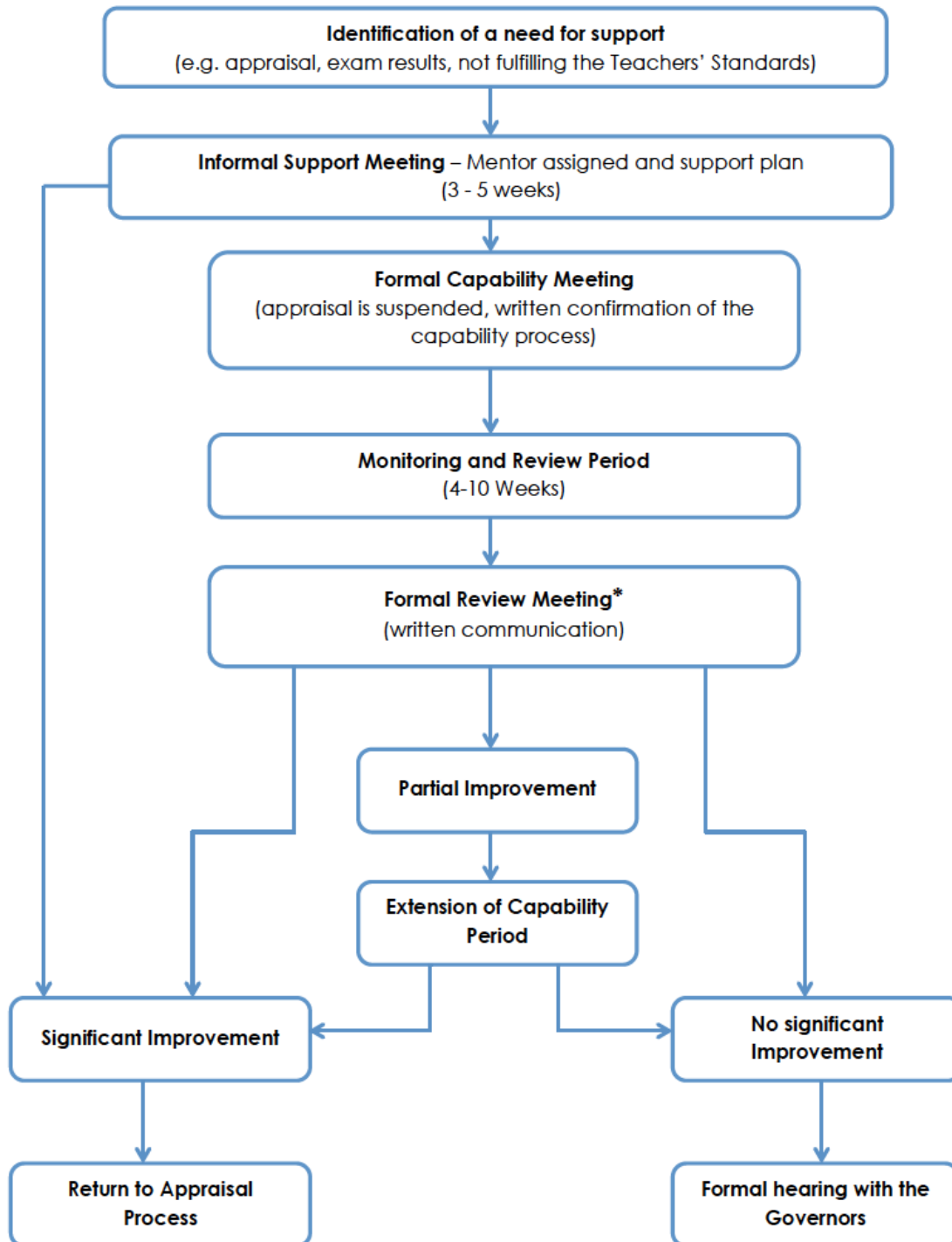
FUTURE REFERENCE REQUESTS

46. In receiving a reference request for an employee who has been subject to formal capability the school must:

- (a) Advise in writing whether or not that member of staff has, in the preceding two years, been the subject of the procedures established by the governing body if so.
- (b) Provide written details of the concerns which gave rise to this, the duration of the proceedings and their outcome.

APPENDIX 1

The capability process



*Should capability occur within 2 appraisal cycles the process will begin at the formal review meeting stage.

UTC PLYMOUTH POLICIES

VERSION CONTROL SHEET

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Policy Prepared by: Polly Lovell

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