



Cape Cornwall School Capability Policy

- 1st Formal Capability meeting
- Monitoring and Review period
- Formal review meeting
- 2nd Formal Capability meeting
- Monitoring and Review period
- Governor's Decision meeting
- Decision to Dismiss
- Dismissal
- Appeal

General principles underlying the policy Appendices

- | | |
|---|------------|
| • Formal interview | Appendix 1 |
| • Formal written warning | Appendix 2 |
| • Evaluation Meeting | Appendix 3 |
| • Final written warning | Appendix 4 |
| • Dismissal hearing | Appendix 5 |
| • Dismissal | Appendix 6 |
| • Procedure for Appeal hearings | Appendix 7 |
| • Example Capability Action Plan | Appendix 8 |
| • CSIT Capability Procedures Outline Protocol | Appendix 9 |

This policy applies to members of staff (including the head teacher) where there are serious concerns regarding their performance that the performance management process has been unable to address.

Where performance is unsatisfactory and has not improved through the normal performance management process (including a period of intense support under the Performance Management process), the individual will be informed in writing at the final Performance Management Review meeting that their is unsatisfactory and will be managed under the Formal Capability process. A formal capability meeting will be convened to review the identified ongoing performance concerns and determine what action should be taken. The employee will be informed of the possible outcomes of this meeting, which may include the issuing of a formal warning in respect of the employee's future capability.

The Governing Body of Cape Cornwall School adopted these policies on March 2013

It will review it in a maximum of 3 years.

Purpose

This policy sets out the framework for a clear and consistent capability performance of all members of staff, including the headteacher, and for supporting their development within the context of the school's plan for improving educational provision and performance, and the standards expected of all staff. It sets out the

arrangements that will apply to staff that fall below the levels of competence that are expected of them.

Application of the policy

The Capability Policy must be applied to the Headteacher and to all teachers employed by the school, except those on contracts of less than one term. In addition the policies may be applied to all other staff contracted to work at the school and in such circumstances, the policies become “Whole School Capability Policy”. Governing Bodies have the option of adopting these policy documents on a ‘whole school’ basis or otherwise. Where this policy is only applied to teaching staff, Governing Bodies should ensure alternative arrangements are in place for other staff groups.

Stage One – First Formal Capability meeting

At least five working days’ notice will be given of the formal capability meeting (see draft template letter App1). The notification will contain sufficient information regarding the concerns about performance and the possible consequences or outcomes of the meeting. This will ensure the employee is able to prepare their response to 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 member of staff of their right to be accompanied by a companion who may be a workplace colleague or a trade union official. It is recommended that the Head/manager arranges for an HR officer to accompany them at the meeting. Arrangements should also be made for a note taker to attend to record the meeting.

Formal capability meeting

This meeting is intended to establish the facts and determine what action needs to be taken. It will be conducted by the Chair of Governors, or nominee, (for head teacher capability meetings) or the head teacher (for other teachers) or the appropriate senior teacher/line manager for department based teachers and support staff. The meeting allows the employee to attend the meeting accompanied by a work companion or TU representative if they wish. At the meeting, the employee will be given the opportunity to respond to the concerns held about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence of unsatisfactory performance, as may be relevant to their case.

Having carefully considered all the information presented at the meeting, the person conducting the meeting may determine one of the following conclusions:

- that there are insufficient grounds to substantiate unsatisfactory performance;
- that there are sufficient grounds to substantiate the concerns of unsatisfactory performance.

Where it is concluded that there are insufficient grounds for pursuing the capability issue, it may be determined 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.

Where there is insufficient evidence to form a conclusion, the person conducting the meeting may adjourn the meeting 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 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 member of staff 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 person improve their performance; examples of support include the appointment of a mentor, observing best practice in school or at an alternative school, additional training courses etc. Support should be tailored to meet the needs of the individual.
- If appropriate, set out what lesson observations will be undertaken and by whom, for instance whether a 3rd party such as CSIT will be called upon to provide an external advisor's view of the person. The number, purpose and timings of the observations should also be discussed
- 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 most cases should be **between four and ten weeks**. It is for the school to determine the set period. It should be reasonable and proportionate to the degree of the unsatisfactory performance, but not excessively long whilst providing sufficient opportunity for an improvement to take place (an example template for a capability action plan is provided in Appendix 8). Guidance is also provided in the CSIT Capability Procedures Outline Protocol (Appendix 9); and
- warn the person that failure to improve within the set period could lead to dismissal. A **formal Written warning** may be issued detailing the issues, support measures, actions to be arranged (e.g. lesson observations) and timescales. In very serious cases, this warning could be a final written warning. (See draft template letters App 2 & 4)

Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the person will be informed in writing of the matters covered in the bullet points above, information on the timing and handling of the review stage, confirmation of the employee's right of appeal against the warning and the procedure and time limits for appealing. It is recommended that a review date be agreed at this stage in order to ensure that all parties are aware of the proposed timescales.

In exceptional cases where the Headteacher has identified a clear link between the individual's performance and serious detrimental effects upon students' performance, the Headteacher may issue a **Final Written Warning** and move immediately to a final review period.

Ofsted Subsidiary Guidance.

Lesson observations made by Ofsted inspectors **must not** be used by the school to make judgements about performance of an individual teacher. Performance should be judged fairly over a period of time, whilst a single Ofsted observation is a snapshot in time and therefore it is not realistic to base judgements on such limited assessments, without taking into account the employee's performance in general over a reasonable period.

Monitoring and review period following a formal capability meeting

A performance monitoring and review period of up to ten weeks will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. All monitoring, evaluation, guidance and support should be agreed and recorded in the Capability Action Plan. At the end of the review period, in most cases the member of staff will be required to attend a formal review meeting (the date of which may have been agreed at the 1st Formal Capability meeting). However, in exceptional cases where the employee received a final written warning at Stage One, they will be required to attend a decision meeting (see below).

Prior to the formal review meeting, the manager conducting the meeting will need to consider the employee's progress during the course of the review period. If there is a concern for continued unsatisfactory progress, this should be made clear to the employee in advance of the meeting, including the likelihood of any further sanction that may be issued.

Formal Capability Review meeting

As with the first formal capability meeting, at least five working days' notice in writing will be given. The written notification will give details of the time and place of the meeting and will advise the person of their right to be accompanied at the meeting by a companion who may be a workplace colleague, or a trade union representative (See Appendix 1). Additionally, the letter will inform the employee of the possible outcome in respect of any further sanction that may be issued.

As with the first formal capability meeting, it is recommended that the Head/manager arranges for an HR Officer to accompany them at the meeting. Arrangements should also be made for a note taker to attend to record the meeting.

At the meeting, the employee will have the opportunity to respond to the ongoing 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, as may be relevant to their case.

Having carefully considered all the information presented at the meeting, the person conducting the meeting may determine one of the following conclusions:

- that there are insufficient grounds to substantiate unsatisfactory improvement or continued unsatisfactory performance;
- that there are sufficient grounds to substantiate the concerns that there has been unsatisfactory improvement and the performance continues to be of a concern.

If the person conducting the meeting is satisfied that the member of staff has made sufficient improvement, the Capability Procedure will cease and the appraisal process will restart.

If some progress has been made and the person conducting the hearing is satisfied that there is capacity to continue to improve, it may be appropriate to extend the monitoring and review period at Stage One.

If it is concluded that there has been insufficient or no improvement and the employee's performance continues to be a concern, the employee may be issued with a final written warning and Stage 2 of the Capability Procedure will be invoked (see draft template letter Appendix 4).

As before, a copy of the notes of the formal review meeting will be provided to the member of staff.

Stage Two

Stage 2 of the Procedure is invoked where there has been insufficient improvement following the completion of the Capability Action Plan and review period undertaken at Stage 1 of the Procedure.

In such circumstances, the employee would have been issued with a final written warning at the formal capability review meeting at the conclusion of Stage 1. 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, **normally between four & ten weeks**), may result in dismissal. The final written warning will acknowledge any previous warnings that have been issued and will also confirm the areas of insufficient improvement in respect of the Action Plan agreed at Stage 1. The letter will also confirm arrangements for the further monitoring and review period, the employee's right of appeal and the procedure and time limits for appealing against the final warning.

As before, an updated action plan should be put in place including a support package, continued monitoring and assessment arrangements including any lesson observations if appropriate and a review date should be scheduled.

Monitoring and Review

The employee's performance against the agreed standards and objectives as set out in the Stage 2 updated Capability Action Plan should be monitored during the

review period and then formally reviewed on the date previously agreed. This review meeting should be minuted.

The review meeting can, as previously, reach a number of conclusions. If it is determined that sufficient progress has been made, it may be appropriate to agree to end the capability process. If it is determined that some, but insufficient, progress has been made, it may be appropriate to extend the review period. However if no or insufficient progress has been made, the matter should be referred to the Governors to consider the question of the employee's continued employment at a Governors' Decision Meeting.

Governors' Decision meeting

The Governors' Decision meeting will consider the case of the continued unsatisfactory performance where there is insufficient or no progress in improvement and serious concerns for the employee's capacity to improve in the future.

At least ten working days' written notice will be given of the meeting. The written notification of the meeting will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a workplace colleague or trade union rep (see App1). The letter will include all documents to be referred to in respect of the case and a copy of the Capability Procedure. Additionally, the letter will inform the employee of the possible outcome, which may include dismissal.

The Governing Body will convene a Panel of three Governors to chair the Governors' Decision Meeting. The Headteacher/Chair of Governors/Senior Manager (as appropriate) will be required to attend the meeting to present the background to the case, including all the relevant information relating to the management of the capability process. The meeting should be formally minuted by the Clerk to Governors.

As with the previous formal meetings convened under this Procedure, it is recommended that the Head/manager arranges for an HR Officer to accompany them at the meeting, and also arranges for the Panel of Governors to be advised by an HR Officer who has no prior involvement in the case.

At the meeting, the employee will have the opportunity to respond to the ongoing concerns about their performance. This may provide new information or a different context to the information/evidence already collected, as may be relevant to their case. The employee will have the right to question the information and make representations as to why they should not be dismissed, including any mitigating circumstances. The member of staff has the right to be accompanied by either a workplace colleague or a trade union official.

Both parties will then be given an opportunity to sum up their case. No new information can be introduced during the summing up stage.

Governors will then adjourn to reach a decision. The Governors may wish to take advice from the Local Authority before the decision to dismiss is made. Where an HR Officer from the Local Authority's Schools' HR Team is present as advisor to the

Panel, he/she will take on the role of representative of the Local Authority to advise in this respect (*N.B. this is not a legal requirement but schools may find it helpful*).

Wherever possible the Panel of Governors will re-convene the meeting to announce the decision to all parties after the adjournment. If the Panel's deliberations are likely to take a considerable period of time, as an alternative it may be sensible for the parties to be allowed to leave and the decision confirmed in writing. The decision will be confirmed in writing within 5 working days.

(In Academies, Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated to the head teacher, to one or more governors, or to one or more governors acting with the head teacher. 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).

Decision to dismiss

Either: The power to dismiss staff in this school rests with the Governing Body.

Or: The power to dismiss staff in this school has been delegated to the head teacher/to one or more governors/to one or more governors acting with the head teacher (delete as appropriate).

(NB: the two options above are available only to Foundation Schools, Voluntary Aided Schools and Foundation Special Schools).

Or: The power to decide that members of staff should no longer work at this school rests with the Governing Body.

Or: The power to decide that members of staff should no longer work at this school has been delegated to the head teacher/to one or more governors/to one or more governors acting with the head teacher. (delete as appropriate).

(NB: these two options are available only to Community, Voluntary Controlled, Community Special, and Maintained Nursery schools,

Dismissal

Either: Once the decision to dismiss has been taken, the Governing Body/head teacher will dismiss the person with notice, (*Academies, Voluntary Aided, Foundation and Foundation Special schools only*).

Or: Once the Governing Body/head teacher has decided that the teacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it. Where teachers work 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 (*Community, Voluntary Controlled, Community Special and Maintained Nursery Schools only*).

The teacher 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.

In cases of dismissal for capability, the dismissal will be with notice. Where the dismissed employee is a teacher, the notice issued will be in accordance with the notice terms of the Burgundy Book. Where the dismissed employee is not a teacher, the notice issued will be in accordance with the notice terms of their contract of employment

Appeal

If the member of staff 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 ten days of receipt of the decision in writing. The written appeal letter should also confirm the grounds for appeal. 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 companion 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 member of staff.

Suggestion: All appeals will be heard by a Panel of Governors from the Appeals' Committee of Governors.

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

The member of staff will be informed in writing of the outcome of the appeal hearing as soon as possible. The decision of the appeals' panel is final.

General Principles Underlying these policies

ACAS Code of Practice on Disciplinary and Grievance Procedures

The Capability policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head teacher and governing body to quality-assure the operation and effectiveness of the appraisal system. *Schools to say here how they might achieve this, for example, the head teacher or appropriate colleague might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The head teacher might also wish to be aware of any pay recommendations that have been made.*

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.

Definitions

Unless indicated otherwise, all references to "teacher" include the head teacher.

Delegation

Normal rules apply in respect of the delegation of functions by governing bodies, head teachers and local authorities.

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.

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. In accordance with the Whole School Attendance policy, in such cases the employee will 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 and after seeking advice from OH, it may be appropriate for formal procedures to continue during a period of sickness absence however performance monitoring can only be undertaken when the employee is fit to return to work.

Monitoring and Evaluation

The governing body and head teacher will monitor the operation and effectiveness of the school's appraisal arrangements.

Retention

The governing body and head teacher will ensure that all written performance management records are retained in a secure place for six years and then destroyed.