

## NORTH LINCOLNSHIRE COUNCIL

### **CAPABILITY PROCEDURE (TEACHERS) THE GRANGE PRIMARY SCHOOL**

#### INTRODUCTION

1. This procedure sets out the arrangements that will apply when teachers fall below the levels of competence that are expected of them.
2. It also describes the steps to be taken at a capability hearing (paragraph 16 onwards), where the earlier stages of the Sickness Absence policy have been exhausted, the required standard of attendance has not been achieved and there is insufficient or no evidence that it will.
3. The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

#### APPLICATION OF THE PROCEDURE

4. This procedure applies only to teachers or head teachers, about whose performance there are serious concerns that the appraisal process has been unable to address.
5. A capability hearing (paragraph 16 onwards) in accordance with the sickness absence procedure will also apply in the following circumstances:
  - Where the required standard of attendance has not been achieved and all other possibilities have been explored.
  - Where, in the case of long term absence cases, there is no likelihood of a return to work within a reasonable period of time and ill-health retirement is not recommended.

6. At all stages of the procedure the teacher whose capability is in question should be reminded of the availability of the council's confidential staff welfare and counselling service.

#### FORMAL CAPABILITY MEETING

7. At least five working days' notice will be given of a formal capability meeting. The notification will contain sufficient information about the concerns regarding performance and their possible consequences to enable the teacher to prepare to answer 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 teacher of their right to be accompanied by a workplace colleague or trade union representative.

8. If the teacher or their representative is not available on the date given for the meeting an alternative date will be sought, and the meeting will be convened normally within 10 working days of the original date.
9. This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for head teacher capability meetings) or head teacher (for other teachers). The meeting allows the teacher, if they wish, to respond 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.
10. 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.

*Note 1: The person conducting the meeting 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.*

11. 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:
  - 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 but in straightforward cases could be between 4 and 10 weeks. It is for the school/academy 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); and
  - 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.
12. Notes will be taken of formal meetings and a copy sent to the teacher whose performance is in question. Where a warning is issued, the teacher will be informed in writing of 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.

#### **MONITORING AND REVIEW PERIOD FOLLOWING FORMAL CAPABILITY MEETING**

13. A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a capability hearing.

*Note 2: Monitoring and review periods may vary from case to case but will be sufficient to give the teacher reasonable time to reach the required standard, e.g. where teachers work part time. Regular review meetings should take place throughout the period and notes kept of all meetings with copies provided to the teacher. Teachers who go on maternity leave or are absent for an acceptable reason for a large part of the monitoring and review period may have it suspended until they return to work. Advice should be sought from HR in these circumstances.*

### **FORMAL REVIEW MEETING**

14. As with formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied. 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:
  - 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;
  - If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning.
15. As before, notes will be taken of formal meetings and a copy sent to the teacher. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the teacher 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. The teacher will be invited to a capability hearing.

### **CAPABILITY HEARING**

16. At least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied.
17. The person conducting the hearing will listen to the factual submissions of the manager and the teacher and/or their companion and make a decision as to whether there is any realistic expectation of the teacher achieving an acceptable level of attendance/performance by extending the time-scale and/or assistance offered at any previous Sickness Absence/Capability meeting. The agenda for the hearing is given in Appendix 1.

## POSSIBLE OUTCOMES/SANCTIONS

### **No further action**

18. If an acceptable standard of attendance/performance has been achieved during the further monitoring and review period, the capability procedure will end and the sickness absence/appraisal process will re-start.
19. The teacher will be advised of the decision and this will be confirmed in writing and a copy provided, where relevant, to the trade union representative.

### **Written warning & further review**

20. If there is evidence that acceptable attendance/performance may be possible within a reasonable timescale, or where new issues or mitigation has arisen during the hearing, a further monitoring period may be set.
21. The length of this monitoring period will be determined by factors such as previous record, personal circumstances, medical opinion and the likelihood of improvement. The nature of the work and the impact of poor attendance/performance on service provision and colleagues will also be taken into account.
22. The teacher will be issued with clear objectives detailing the improvement required, the timescale for the review and the support to be provided. This will be accompanied by a written warning, which makes it clear that failure to meet the required standard may result in dismissal.
23. A further capability hearing will be arranged at the conclusion of the review period.

### **Potential dismissal**

24. If attendance/performance remains unsatisfactory the following options should be considered before reaching a decision to dismiss.

#### **Redeployment**

- a. If the decision of the governors hearing the matter is that performance or attendance will not become acceptable in the current post, consideration should be given to whether or not suitable alternative employment is currently available as per the redeployment code of the school.

- b. The governors hearing the matter may ask HR to advise them on any available posts. If necessary the meeting will be adjourned and re-arranged to allow this to take place.
- c. The offer of another post in these circumstances is an alternative to dismissal. The job will be offered without any protection of terms and conditions of employment. If the teacher accepts the post they will be subject to a further monitoring period in accordance with this procedure, of a maximum of three months.

### **Career break**

- d. In cases of long-term absence, where there is no likelihood of a return to work within a reasonable period of time and ill-health retirement is not recommended or available, a career break may be considered as an alternative to dismissal, subject to the needs of the school and individual circumstances.
  - e. A career break may also be appropriate in circumstances where performance has deteriorated as a result of a life event which will improve given time (e.g. relationship breakdown, bereavement etc.)
  - f. The terms of the career break will be in accordance with the school's agreed policy.
25. If no suitable alternative employment opportunities are identified, the teacher rejects redeployment as an alternative to dismissal or a career break is not suitable, the teacher will be dismissed with contractual notice.

### **DECISION TO DISMISS**

26. Head teachers and the governing body have the authority to dismiss an employee. However in the majority of schools the head teacher will have been involved in the case. Therefore the designated committee of the governing body will hear the matter.
27. The Director of Learning, Skills and Culture or their representative, as joint employer, is entitled to attend and offer advice on all proceedings relating to a potential dismissal from employment within maintained schools.
28. The teacher will be advised of the decision and this will be confirmed in writing and a copy provided, where relevant, to the trade union representative.

### **APPEAL**

29. If a teacher 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 five days of the decision, outlining the grounds for appeal.

30. 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 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 teacher.
31. The appeal will be dealt with impartially and, wherever possible, by governors who have not previously been involved in the case. The Appeals Committee will have the authority to uphold the original decision or to substitute a lesser penalty or to reject the original decision. The minutes of the Appeals Committee will be circulated to the governing body.
32. The Director of Learning, Skills and Culture or their representative, as joint employer, is entitled to attend and offer advice on all proceedings relating to a potential dismissal from employment within maintained schools.
33. The teacher will be informed in writing of the results of the appeal hearing as soon as possible.
34. Action to implement decisions to dismiss will not be suspended pending the appeal but should the appeal be upheld, the appellant will be reinstated to their original post without a break in service.

#### **Referral to Regulatory Bodies**

35. In circumstances where a teacher is dismissed for capability (performance) reasons or leaves in circumstances where dismissal was a possibility, the school with support from HR will refer the matter to any relevant statutory body as appropriate.
36. All teachers who are subject to referral in accordance with the above paragraph should be given confirmation of this action in writing.

#### **Retention of records and references**

37. Records will be retained to fulfil obligations to provide factual information for employment references.

#### **Review**

38. This procedure be reviewed every 3 years or sooner as required by any changes in regulation and/or statutory guidance.