



Drapers' Multi-Academy  
Trust

# **CAPABILITY POLICY FOR TEACHERS**

Version 1

## Capability Policy for Teachers

Section	Contents	Page
1	<b>Purpose</b>	2
2	<b>Scope</b>	2
3	<b>Principles</b>	2 & 3
4	<b>Professional Support for Teachers</b>	3 & 4
5	<b>Management of Procedure</b>	4
6	<b>Dealing with Sickness Absence</b>	4
6	<b>Dealing with Grievances</b>	5
7	<b>Meetings/Hearings</b>	5
8	<b>Timescales &amp; Possible Solutions</b>	5 & 6
9	<b>Expiry of Formal Stages</b>	6
10 & 18	<b>Appeals</b>	6, 14 & 15
11	<b>References</b>	7
12	<b>Period of Notice &amp; Termination of Contract</b>	7
13	<b>Informal - Stage 1 – 7 working weeks</b>	8
14	<b>First Formal - Stage 2 – 13 working weeks</b>	9
15	<b>Final Formal - Stage 3 – 4 working weeks</b>	10
16	<b>Stage 4</b>	11
17	<b>Capability Hearing</b>	12 & 13

### APPENDICES

<b>Appendix 1 - Timescales/Duration of Stages</b>	<b>16</b>
<b>Appendix 2 - Capability Procedure Flowchart</b>	<b>17</b>
<b>Appendix 3 - Template Action Plan</b>	<b>18</b>

## PURPOSE

1. This policy is designed to help and encourage all teachers employed by the Drapers' Multi Academy Trust [the MAT] to achieve and maintain an acceptable standard of performance. This policy provides a fair and consistent method of dealing with alleged failures to achieve the expected standard. Lack of capability is defined as a situation in which a teacher fails consistently to perform their duties, as per the job profile and the national professional standards as published by the DfE.

## SCOPE

2. This policy applies to all teachers (including Vice Principals and Principals) with the exception of:

- Newly qualified teachers during their period of induction\*.

\*Newly Qualified Teachers are subject to specific monitoring and support measures – during their period of induction and any capabilities issues would be addressed within that framework.

2.1 In the case of Principals the policy should be led by the Chair of the Local Governing Body, supported by the MAT's HR Manager.

2.2 Advice on the application of this policy is available from the MAT's HR Manager. It is also anticipated that the MAT's HR Manager will attend all meetings described in this policy.

## PRINCIPLES

3. This policy should be applied when a teacher is unable to carry out the duties of their post because of lack of capability as assessed by reference to skill, competence or aptitude where the person is not wilfully under-performing.

3.1 Lack of capability is defined as a situation in which a teacher fails to consistently perform their duties to a professionally acceptable standard. The required standard should be appropriate to the level of the job and skills and experience reasonably expected of an individual in that position. Principals will need to ensure that each member of staff has the ability, knowledge, guidance and support to perform their job to an adequate standard and in accordance with his/her job description. **For the purposes of this document 'Principal' can also mean a nominated representative of the senior leadership team (SLT).**

3.2 When considering how to deal with a perceived capability issue, the Principal should bear in mind their duty of care for the employee's welfare under the Health & Safety at Work etc Act 1974. Where underperformance is due to other reasons, for example where medical or personal issues are impacting on performance, then the support may consist of a referral to Occupational Health. A discussion should take place with the employee with regard to the options available. Telephone based confidential counselling services can also be accessed via The Trust's Employee Assistance Programme (EAP) provider.

3.3 Failure to comply with clear advice and instruction, where capability is deemed not to be the issue, should be dealt with under the MAT's disciplinary Policy. A judgement will need to be made as to whether a teacher is incapable of carrying out his/her duties to a satisfactory standard or if the teacher is wilfully not meeting the standard expected or required.

## **PROFESSIONAL SUPPORT FOR TEACHERS**

4. The following, although not an exhaustive list, can help to avoid work performance problems arising by:

- careful recruitment and selection methods;
- effective induction;
- clear job description and job profile;
- ensuring expectations of the role are reasonable;
- regular supervision;
- effective communication;
- effective performance management;
- training and development;
- guidance and encouragement;
- regular coaching and mentoring, this could include a performance management coaching plan;
- regular 'team' meetings; and
- external support from the LA..

4.1 The above provides a number of good management practices. References to the above can, if appropriate, be made in the management report (see paragraph 17.1).

4.2 If difficulties continue the Principal/line manager may use some or all of the following options:

- lesson observations;

- in class advice and support;
- targeted coaching and/or mentoring; and
- consideration of any external support mechanisms available.

## **MANAGEMENT OF PROCEDURE**

5. The Principal, or other nominated member of the SLT, will decide whether to invoke this policy in consultation with, if appropriate, the line manager and the MAT's HR Manager. The Capability Policy may be invoked at any time if the teacher's lack of performance warrants it, as deemed appropriate by the Principal. Where a teacher's capability is in question and it is expected that this policy may be invoked, the teacher must be provided with a copy of this policy. The teacher will be given the opportunity to respond to the concerns about their performance at all stages of this process.

5.1 The teacher has the right to be accompanied by a Trade Union Representative or work colleague at all informal and formal stages of this policy. If the representative or colleague cannot attend on a proposed date the teacher can suggest an alternative time and date, so long as it is reasonable and it is not more than 5 working days after the original date. This limit may be extended by mutual agreement. Copies of the paperwork should be made available to the relevant union.

5.2 In the case of Principals, the Chair of the Local Governing Body will be responsible for deciding whether to invoke the capability procedure with professional advice from the MAT's HR Manager.

5.3 Line managers must ensure that written records of all informal and formal stages of this process are kept, and where necessary copies of such documents are provided to the MAT's HR Manager. Documents relating to this process will be kept on file in accordance with the MAT's Data Protection Policy.

## **DEALING WITH SICKNESS ABSENCE**

6. Sickness absences are dealt with under the MAT's Sickness Absence Policy. In the case of absences due to illness, where the capability procedure has been invoked, the sickness policy should be invoked at the appropriate stage and the capability procedure will be held in abeyance.

## DEALING WITH GRIEVANCES

6.1 Where a member of staff raises a grievance during the capability process, the capability process may be temporarily suspended in order to deal with the grievance claim. Where the grievance and capability cases are related, it may be appropriate to deal with both issues concurrently. The MAT's HR manager should be consulted.

**Once a decision has been made to enter the informal stage of the procedure the following shall apply.**

## MEETINGS/HEARINGS

7. The teacher shall be given a minimum of 5 working days' notice together with any relevant documentation (see paragraph 13.1) prior to any meetings associated with this policy.

7.1 If a teacher fails to attend an arranged meeting for reasons that are outside of their control and were unforeseeable when the meeting was arranged, the meeting will be rearranged in the first instance. If the reason for non-attendance was due to circumstances that the Principal/line manager decides were foreseeable or within the teacher's control, the meeting would continue in the teacher's absence.

## TIMESCALES & POSSIBLE SOLUTIONS

8. Normally the period given for improvement will be no more than 24 working weeks after entry into this procedure, which includes the informal stage of 7 working weeks. See Appendix 1.

8.1 In extreme cases, where the formal stage has been invoked, and where the education of pupils is at risk, the period given for improvement will be no longer than 4 working weeks at both formal stages of the procedure. In such cases it may be necessary to miss one or more stages of the capability procedure as appropriate. The MAT's HR Manager should be consulted in such cases.

8.2 If performance has not improved sufficiently to meet the targets set, yet the Principal considers that there has nonetheless been a significant improvement, consideration can be given to extending the time allowed to reach the desired standard.

8.3 Where the teacher has failed to satisfy targets and/or performance standards set, consideration may be given to a variation of role. This will take place in consultation with the employee and can take place at any stage of the procedure. Where the role is changed, consideration must be given to any impact on salary if the job weight is less than previously held. For example, the teacher may no longer be eligible to receive a Teaching and Learning Responsibility Allowance (TLR), if that part of their duties has been removed. A teacher may also decide to revert back to the main pay scale for teachers 'stepping down' from the Leadership Group. It should be noted that where the teacher requests such a 'stepping down' from any position in these circumstances rules regarding safeguarding would not apply.

## **EXPIRY OF FORMAL STAGES & RE-ENGAGEMENT OF PROCEDURE**

9. Any formal stages invoked under the capability procedure should be disregarded after a specified period of satisfactory performance. See Appendix 1. In the event of the process being lifted due to improved performance, the teacher should be advised that any formal stage remains active on file for a period in accordance with Appendix 1. If performance then falls below the desired level during this active period, then the capability process should be reengaged at the point at which it was lifted.

9.1 In the event of the capability policy being reengaged, the Principal/line manager would again need to supply evidence to support claims that performance has slipped below a satisfactory standard. A meeting should be called, giving 5 working days' notice to the teacher, where it would be decided whether to reengage the capability policy.

## **RIGHT OF APPEAL**

10. The employee has the right of appeal against any formal action that may be issued under this policy. The appeal process will run concurrently with subsequent stages of the process. Appeals must be submitted within 10 working days of receipt of the letter confirming the formal action taken. Appeals should be made in writing to the Chair of the Local Governing Body, c/o of the school. See section 18 of this procedure.

## **REFERENCES**

11. Apart from the informal stage, where discretion may be used, references given for departing teachers, should include a reference to any active capability proceedings.

## **PERIOD OF NOTICE & TERMINATION OF CONTRACT**

12. The notice period given for the termination of a teacher's contract shall be as described in 'The Conditions of Service for School Teachers in England and Wales (the Burgundy Book)'.

## **PROCEDURE INFORMAL ACTION - STAGE 1 (7 working weeks)**

13. Where a problem in performance first becomes evident, it should be normal practice for the Principal/line manager, to deal with the matter by coaching, advice, guidance, appropriate training, example and best practice elsewhere – this being part of good performance management. It is hoped that this support will remedy the situation and there will be no need to invoke the capability process. It is not intended that the capability process should replace the normal interchange between teacher and Principal/line manager. Before moving to the informal stage of this policy, the Principal/line manager must have sound evidence to support claims of poor performance.

13.1 In the event of more serious or ongoing concerns relating to performance, the Principal/line manager will request a meeting with the teacher to discuss the matter informally, providing at least 5 working days' notice of the meeting (Meeting 1). A copy of the Capability Policy must be provided to the teacher prior to this meeting, along with evidence to support claims of unsatisfactory performance. The purpose of the meeting will be to:

- identify/discuss the areas of concern;
- ensure that the teacher is fully aware of the standards required;
- discuss the issues raised, giving the teacher the opportunity to respond to the concerns raised;

*an adjournment should be called here to allow the Principal/line manager to consider what has been discussed. Then as follows:*

- decide whether to invoke the informal stage (Stage 1) of the procedure or to allow further time to improve outside of the capability procedure;
- agree targets for improvement with success criteria;
- identify training needs;
- consider what additional support will be given to the teacher;
- clarify the timescale of the informal stage, which should not be less than 7 working weeks;
- produce a written action plan clearly identifying tasks to be reached and support to be provided – Appendix 3; and
- set a date for meeting 2 (stage 2).

13.2 It must be made clear to all those involved, that the procedure remains informal at this stage.

## FIRST FORMAL CAPABILITY ACTION - STAGE 2 (13 working weeks)

14. At the end of the informal stage, a meeting to review performance (Meeting 2) will take place between the Principal/line manager, the teacher and their representative. At least 5 working days' notice must be given to the teacher, along with documents/report covering the review period. It is good practice to try and agree a date of this meeting at the end of Stage 1 meeting. There are several possible outcomes:

- Performance has improved satisfactorily and targets have been met in which case no further action will be required. This must be confirmed in writing to the teacher.
- Where the Principal/line manager feels significant improvement has been made, the review period may be extended to allow the teacher additional time to meet all the targets set.
- Unsatisfactory improvement in which case the teacher will be advised that the **first formal stage of the procedure (Stage 2)** is now being invoked.

14.1 The Principal/line manager will consider whether the targets set need to be re-evaluated in discussion with the teacher and consider what additional forms of support may be available or needed, to achieve the required standard of performance.

14.2 A date will be set for the next review meeting (Meeting 3) and a letter sent to the teacher within 5 working days detailing the outcomes of the meeting.

14.3 In the case of unsatisfactory improvement, the teacher should be advised that if performance has not improved by meeting 3, the procedure will move to Stage 3. In this case a warning should be issued to the teacher at the review meeting stating that their performance is not to the necessary standard and if the areas of concern continue forward, then this could result in their dismissal on the grounds of incapability.

14.4 The teacher should also be advised that they have the right of appeal against any formal stage invoked under this procedure. See sections 10 and 18.

## FINAL FORMAL ACTION - STAGE 3 (4 working weeks)

15. At the end of stage 2, a meeting to review performance (Meeting 3) will take place between the Principal/line manager and the teacher and their representative. At least 5 working days' notice must be given to the teacher, along with documents/report covering the review period. It is good practice to try and agree a date of this meeting at the end of Stage 2. There are several possible outcomes:

- Performance has improved satisfactorily and targets have been met in which case no further action will be required. This must be confirmed in writing to the teacher.
- Where the Principal/line manager feels significant improvement has been made, the review period may be extended to allow the teacher additional time to meet all the targets set.
- Unsatisfactory improvement to performance in which case the teacher will be advised that the **final formal stage** of the procedure (**Stage 3**) is now being invoked.

15.1 The teacher should also be advised that they have the right of appeal against any formal stage invoked under this procedure. See sections 10 and 18.

15.2 The Principal will consider whether the targets set need to be re-evaluated in discussion with the teacher and consider what additional forms of support may be available or needed to achieve the required standard of performance.

15.3 A date will be set for the next review meeting (Meeting 4) and a letter sent to the teacher within 5 working days detailing the outcomes of the meeting.

15.4 In the case of unsatisfactory improvement, the teacher should be advised that if performance does not improve by meeting 4, a Capability Hearing may be scheduled that could result in the teacher's dismissal. The teacher should also be given a final warning that their performance is not to the necessary standard.

## STAGE 4

16. At the end of stage 3, a meeting to review performance (Meeting 4) will take place between the Principal/line manager, the teacher and their representative. At least 5 working days' notice must be given to the teacher, along with documents/report covering the review period. It is good practice to try and agree a date of this meeting at the end of Stage 3. There are several outcomes as below:

- Performance has improved satisfactorily and targets have been met in which case no further action will be required. This must be confirmed in writing to the teacher.
- Where the Principal/line manager feels significant improvement has been made, the review period may be extended to allow the teacher additional time to meet all the targets set.
- Unsatisfactory improvement to performance. The teacher will be advised that as the **Final Formal Stage** has already been invoked, a formal Capability Hearing will now be convened. The procedure to be followed is set out in Section 17.

16.1 Evidence in connection with the teacher's capability, which has been collated during previous stages of the capability, will be admissible and presented at the Capability Hearing.

16.2 The Capability Hearing may be conducted by the Principal, if the earlier stages of this procedure have been conducted by another member of the SLT, or by a panel of three school governors.

16.3 The MAT's HR Manager will attend the hearing.

## CAPABILITY HEARING

17. The following outlines the procedure which should be used in the case of a Capability Hearing. See also Appendix 14.

17.1 Prior to the hearing the Principal (or the appropriate member of the SLT) needs to prepare a management report (see also paragraph 4.1) on the teacher which should include:

- Qualifications.
- Employment record.
- General conduct.
- Relevant written evidence.
- Relevant written statements.

17.2 **At least 10 working days before** the hearing the teacher and representative need to be:

- Notified in writing of time, date and location of the hearing.
- Given a further copy of the capability policy.
- Given a copy of the report mentioned in paragraph 17.1 above.
- Reminded of their right to call witnesses and submit written statements to the hearing panel prior to the meeting.
- Supplied with copies of all written evidence that is provided to the panel.

17.3 **At least 3 working days before** the date of the hearing the teacher will:

- Advise the Principal whether he/she intends to be present, and if so, the name of their representative.
- Advise whether they intend to call any witnesses.
- Supply the Principal with copies of any written statements or documents which the teacher wishes to refer to at the hearing.

17.4 The Principal\* or a panel of governors will, after following the procedure above, have the following options available:

- suggest a further period of monitoring; additional support and training; revised supervision arrangements or changes to role, or
- terminate the contract of the teacher on grounds of lack of capability.

\* The Principal may chair the Capability Hearing, if another member of the SLT

has managed the procedure.

## APPEALS

18. A teacher may appeal against any formal action, up to and including dismissal, under the Capability Policy. They must write, specifying the grounds for doing so, to the Chair of the Local Governing Body, within 10 working days of the date of the letter confirming any formal action. It is not sufficient for the employee to say they disagree with the decision to invoke the formal stages of the procedure. In order to appeal, the employee must specifically state in writing the reasons for the appeal, providing clear grounds of the basis of the appeal, and supply all documentation which they intend to rely on in the hearing. A copy of the appeal letter should be copied to the MAT's HR Manager. The appeal hearing is not intended to be a full rehearing – the basis of the hearing is to consider the specific grounds of appeal raised.

18.1 The Governing Body Appeals Committee will hear the appeal. The Principal or the Chair of the Capability Hearing, whoever made the original decision, will write to the employee within 10 working days, to arrange a hearing informing the teacher of the date, time and place of the meeting.

18.2 **At least 3 working days before** the date of the appeal hearing the employee will confirm:

- their attendance; and
- the name of the person they wish to accompany them.

18.3 At the Appeal Hearing, the employee will be given an opportunity to state their case and will be entitled to be accompanied by a work colleague or trade union representative (See Section 10). The Appeal Committee will hear the appeal and may:

- uphold the appeal;
- dismiss the appeal; or
- revert back to the formal stages of the procedure, thus allowing more time for performance to improve.

18.4 The Chair of the Appeals Committee will confirm the decision and reasons of the Appeals Committee to the employee in writing within 5 working days of the Appeal Hearing. Copies should be sent to the MAT's HR Manager, the Principal/line manager and a further copy will be placed on the teacher's personnel file.

18.5 If the Appeal Committee overturns a decision to dismiss the employee he or she will be reinstated with effect from the original date of dismissal. The date of the employee's return to work will be negotiated with the Principal/line

manager with support from the MAT's HR Manager.

18.6 The teacher may withdraw an appeal at any stage in writing. A copy of this letter should be sent to the MAT's HR Manager.

18.7 The Appeal Committee's decision is final.

### Timescales/Duration of Stages

Stage	Action	Review Timescale	Active on File
1	Informal Stage	7 working weeks	N/A
2	First Formal Stage *	13 working weeks	6 months †
3	Final Formal Stage *	4 working weeks	12 months †
4	Capability Hearing		

† If the capability procedure is lifted because it is deemed that the teacher has reached an acceptable level of performance, then any 'formal stage' remains active on file for the periods described above. If the performance of the teacher falls below the desired level during this active period, the capability process should be reengaged at the point at which it was stopped.

\* Apart from the informal stage, where discretion may be used, references given for departing teachers should include a reference to active capability proceedings.

Documents relating to this process will be kept on file in accordance with the Trust's Data Protection Policy.

Capability Policy for Teachers

**INFORMAL COUNSELLING DISCUSSIONS**

Between teacher and Principal where a problem in performance first occurs (performance management). Discuss concerns on how these can be addressed. Explore underlying causes and any support needed.

**STAGE 1 – INFORMAL STAGE**

**Meeting 1** takes place between Principal and teacher where there continues to be serious ongoing concerns relating to performance.

- Discuss concerns and how these can be addressed
- Explore underlying causes and any support needed
- Advise that informal stage is now being invoked
- Set targets for improvement
- Set review date – 7 working weeks
- Confirm agreed outcomes in writing

If at any stage significant improvement has been made but not all targets have been met then consideration can be given to extending the review period.



If at any stage performance improves to a satisfactory level, inform the teacher that the capability procedure is being lifted.

**Meeting 2 - Review Meeting**

Review performance and targets set at previous meeting. Discuss support given, mitigating circumstances, if performance is still unsatisfactory.

**STAGE 2 – FIRST FORMAL ACTION**

- Notify employee that now moving on to Stage 2
- Advise that first formal stage is now being invoked
- Set targets for improvement
- Set review date – 13 working weeks
- Confirm outcome in writing



**Meeting 3 – Review Meeting**

Review performance as in previous review meeting.

**STAGE 3 – FINAL FORMAL ACTION**

- Notify employee that now moving on to Stage 3
- Advise that final formal stage is now being invoked
- Set targets for improvement
- Set review date – 4 working weeks
- Confirm outcome in writing

If at any stage significant improvement has been made but not all targets have been met then consideration can be given to extending the review period.

See Appendix 1 for details of duration of action on file.



**Meeting 4 – Review Meeting**

Review performance as in previous review meeting. If performance is still unsatisfactory, notify employee that a Formal Capability Hearing will be scheduled – Stage 4.

**STAGE 4 – Capability Hearing**

If at any stage performance improves to a satisfactory level, inform the teacher that the capability procedure is being lifted.

**CAPABILITY HEARING**

Meeting convened with the Principal/Panel/Governing Body Hearings Committee. Principal presents case. On basis of case presented possible outcome could be termination of employment or redeployment. A period of at least 10 working days' notice must be given for this hearing.

**TEMPLATE  
ACTION PLAN**

<b>PROBLEM AREA/S</b>	<b>CURRENT PERFORMANCE</b>	<b>EXPECTATIONS</b>	<b>HOW TO ACHIEVE</b>	<b>HOW/WHO MONITORS</b>
Define the problem area/s.	Define the problem/s in greater detail – how does the problem present itself?	Set out what you would like to see in place. This should be in clear, measurable and achievable terms.	Indicate how you see the teacher reaching your expectations. Make arrangements for support clear.	Who will monitor progress and give feedback? Principal / Vice Principal / line manager and mentor (if appropriate) are key players in the process.