



Windsor Academy Trust

Capability Policy for Teachers

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Responsible Committee:	Windsor Academy Trust, Board of Directors
Date revised by Board of Directors:	September 2016
Next review date:	September 2018

Capability Policy for Teachers

This document must be read in conjunction with the WAT policy on Appraising Teachers.

1. Application of the Policy

The Capability Policy will apply only to teachers (including Headteachers) about whose performance there are serious concerns that the appraisal process has been unable to address.

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about 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 the right to be accompanied by a companion who may be a colleague, a trade union official or a trade union representative who has been certified by their union as being competent.

2. Definitions

Chief Executive means the Chief Executive of WAT

Headteacher refers to all or any of the Headteachers of each school within WAT

Leadership Team refers to any member of the Leadership Group as defined by the School Teachers' Pay and Conditions Document and includes the Headteacher, Deputy Head and Assistant Head, or a senior member of staff with responsibility for support staff

Local Advisory Body (LAB) is a key mechanism for local accountability for each academy and community.

Board of Directors/Directors mean the Directors of WAT

3. Roles and Responsibilities

The following roles and responsibilities will usually apply during this policy but may be varied or adapted to meet the circumstances as determined by the Chair of Directors (or his deputy).

Capability Review officer means: either a member of the Leadership Team (for teachers), the Chief Executive (for the Leadership team) or a Director (for the Chief Executive).

Determining officer means: the Headteacher, the Chief Executive or a Director.

Appeals panel means: a Director or panel of up to three Directors.

4. Informal Capability

4.1 It is important that professional performance problems are clearly identified and given appropriate consideration and support at the earliest possible stage. The nature of the problem, its level of seriousness and cause(s), must be investigated and identified by structured information gathering and systematic recording.

4.2 In the first instance it is the responsibility of the Headteacher or delegated Line Manager to ensure that suitable informal help and advice is offered to employees where a lack of capability is alleged. The Headteacher or delegated Line Manager will meet the employee to establish the facts and seek ways of improving performance. Targets and objectives will be set for immediate and sustained improvement and a programme of action and support will be formulated.

4.3 The nature of the alleged shortcoming will determine the nature of the help to be provided. This could include one or more of the following:

- Counselling

- A review of commitments and responsibilities
- Availability of suitable resources / equipment
- Availability of training.
- Opportunities to see good practice within the school or other appropriate establishments
- Mentoring

4.4 Following a specified period of support, monitoring and evaluation, the next decision will be to assess the outcome. An assessment of Capability will be undertaken by the Headteacher or delegated Line Manager (the Assessment Report.)

4.5 Following the assessment, a decision must be made as to whether to drop the matter, give further informal support, or proceed to a Formal Capability Meeting thereby invoking the formal Capability Procedure. The date of the Capability Hearing will constitute "date of entry into the formal procedure.

4.6 In the event that the employee has failed to satisfy the targets and/or performance standards set consideration should be given to a different balance of duties or alternative post. Where this is not possible, the formal procedure will be followed.

5. Formal Capability Meeting

5.1 Where it is decided as a result of the informal assessment that there is a case to answer, the employee concerned shall be informed in writing, giving not less than 5 working days' notice, that he/she is being called to answer concerns at the Formal Capability Meeting with the Capability Review Officer. The letter convening the meeting shall be accompanied by a copy of the Assessment Report, and the concerns to be considered must be specified. He/she will also be informed of his/her right to be represented, and of the right to present his/her case, call relevant witnesses and give evidence.

5.2 This meeting is intended to establish the facts. It will be conducted by the Capability Review Officer. The meeting allows the teacher, accompanied by a companion 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.

5.3 The Capability Review Officer 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 Capability Review Officer 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.

5.4 In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the Capability Review Officer will;

- identify the professional concerns, 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 four and ten weeks.
- 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.

5.5 Notes will be taken of formal meetings and a copy sent to the member of staff. 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.

6. Monitoring and Review Period Following a Formal Capability Meeting

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 decision meeting (see below).

6.1 Formal Review Meeting

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 by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If the Capability Review Officer 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.

As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final written 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. The teacher will be invited to a decision meeting.

6.2 Decision Meeting

As with formal capability meetings and formal review 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 by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

- The Determining Officer may be accompanied by an HR officer.

If 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, a decision, may be made that the teacher should be dismissed or required to cease working at the school.

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.

6.3 Dismissal

Once the decision to dismiss has been taken, the Headteacher will dismiss the teacher with notice.

6.4 Appeal

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 ten working days of the decision, setting out at the same time 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 the formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the teacher.

The appeal will be dealt with impartially by the Appeals Panel.

The teacher will be informed in writing of the outcome of the appeal hearing as soon as possible.

7. 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.

8. Sickness

If long term absence appears to have been triggered by the commencement of monitoring or formal capability procedure, the case will be dealt with in accordance with the school's absence policy. In such cases a detailed referral to the Occupational Health Service will be made at the earliest opportunity, normally within the first three weeks of non attendance, to assess the teacher's health and fitness in regards to consideration of a return to work and continuation with the formal procedure.

9. Retention of Records

WAT will ensure that all documents referred to as part of the capability procedure are retained in a secure place for the appropriate period and then destroyed. For instance Appraisal records must be retained for six years, whilst a warning issued may be removed after the stipulated period. Where dismissal is the outcome it is advised that all documents relating to the process are retained for six years and then destroyed.

10. General Principles Underlying the Policy

ACAS Code of Practice on Discipline and Grievance Procedures

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

Confidentiality

The capability process will be treated with confidentiality. However, the desire for confidentiality does not override the need for WAT to quality-assure the operation and effectiveness of the appraisal system.

Consistency of Treatment and Fairness

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