



# Fierté Multi Academy Trust

## CAPABILITY PROCEDURE FOR HEADTEACHERS 2018-19

At the heart of our Trust are both the UNICEF Rights Respecting values and articles and Learning Behaviours. Through these, we aim to put **children's rights** at the heart of our schools. We work together to embed children's rights in our ethos and culture; to improve well-being and develop every child's talents and abilities to their full potential. We aspire to give children a sense of pride and achievement in all that they undertake.

### SCOPE OF DOCUMENT

1. This procedure is designed within DfES guidelines to ensure that concerns about the standard of professional performance achieved by headteachers in schools are dealt with in a systematic and fair way. It is not intended to deal with the following matters:
  - (a) Discipline and conduct;
  - (b) Staffing reductions, school closures;
  - (c) Ill health;

Separate procedures exist for dealing with these matters.

2. This code provides a framework for dealing with performance issues. Its main aim is to allow any professional difficulties to be identified, addressed and resolved. These difficulties might relate to the teaching duties or to managerial/pastoral responsibilities. These issues tend to be complex and it is undesirable to lay down a rigid procedure for dealing with them, particularly in the early stages.
3. The over-riding requirements are fairness and reasonableness. This is just as much in the interests of the employer as it is in the interests of the headteacher, who is naturally entitled to expect fair treatment, including appropriate guidance and advice from a headteacher colleague and from the officers of the Authority. There can be a conflict of interest in the processes of monitoring the performance of a headteacher and supporting a headteacher in improving his/her performance. Wherever possible, the person who monitors the performance of the headteacher should not be the one who offers support. However, the procedure has to operate in the context of limited resources and of the nature and requirements of a headteacher's job.
4. **No formal action will be taken against an official of a professional association unless the Corporate Director (Education and Lifelong Learning) and a full time official of the association have been notified with an invitation to discuss the case first.**

### ROLE OF THE CHAIR OF GOVERNORS

5. Action under the capability procedure for teachers is co-ordinated by the headteacher. This procedure requires an alternative approach; action will be co-ordinated will be by the Chair of Governors, who has a general responsibility for monitoring performance in the school. The Chair must inform the Corporate Director (Education and Lifelong Learning) about his/her concerns before providing informal support or taking more formal action (see paragraph 6). The Corporate Director will assign at least one senior officer to support the Chair and, where agreed, to act on his/her behalf in implementing

this procedure. The Corporate Director may also use the County Council's intervention powers to advise the Chair of any perceived performance issues prior to being notified by the Chair of his/her concerns.

## **INFORMAL STAGE**

6. Where the Chair of Governors believes that a headteacher is under-performing, (s) he should investigate and collect evidence. The investigation will distinguish between issues relating to performance as a manager and issues relating to performance as a class/subject teacher. The Chair will consider the evidence (including the context within which it was collected) and pursue one of three options:

- (a) Drop the matter because there is little or no under-performance;
- (b) Provide informal support to improve performance where the under-performance is not serious
- (c) initiate the formal procedure where the under-performance is sufficiently serious

Options (b) and (c) must not be pursued unless the Chair has notified the Corporate Director (Education and Lifelong Learning) of the concerns and discussed the evidence with the officer assigned to support him/her.

7. Counselling or informal coaching aims to help the headteacher to improve his/her performance. The Chair of Governors (or senior County Council officer) will discuss the problem areas with the headteacher, who must be informed before the meeting that it is proposed to, implement the informal stage of the procedure and that (s) he has the right to be accompanied by a trade union or other representative.

8. The meeting will indicate:

- (a) What is required of the headteacher with clear, appropriate guidance?
- (b) What support will be provided (**Annex 1** contains examples of possible support).
- (c) How future performance will be reviewed and over what period;
- (d) That the formal procedure will be initiated if there is insufficient improvement;

This will be confirmed in a brief note to the headteacher.

9. The meeting should be supportive and avoid creating undue stress for the headteacher.

10. After a period of review (which will not normally be less than 6 weeks) the Chair will consult the assigned officer and decide whether to:

- (a) Drop the matter; or
- (b) Initiate the formal stage of this procedure.

## **FORMAL STAGE**

### **Formal Interview**

11. The formal procedure will be initiated following a decision by the Chair of Governors under paragraph 6 or paragraph 10. The Chair of Governors will prepare a report on his/her concerns with the headteacher's performance. (S) He will arrange a formal

interview to discuss this with the headteacher, who should be strongly advised to be accompanied by a trade union or other representative. The headteacher will be given notice of the interview and a copy of the performance report at least 5 working days beforehand.

12. The interview may provide new information or put a different interpretation on evidence collected. If it becomes clear that further investigation is needed the interview should be adjourned for an appropriate length of time to allow this to happen.
13. Having discussed the report with the headteacher, the Chair of Governors will adjourn the meeting to consider how to proceed. The options are:
  - Drop the matter;
  - Counselling (except where already undertaken without improvement);
  - Oral or written warning;
  - Final written warning.
14. The first two options are only relevant where new information, a different interpretation on the information collected, or further investigation suggests that the matter is not as serious as it first seemed. The third and fourth options are relevant to any exceptional case where the Chair of Governors remains seriously concerned about the standard of performance.
15. The decision on which level of warning to issue will depend on the seriousness of the problem. A written warning will normally be the next step and will invoke an assessment period of up to two terms. An oral warning should not normally be necessary in cases where counselling has already taken place. In cases of serious concern, where the health and safety or education of children is in particular jeopardy, it is possible to move directly to a final written warning. This will invoke an assessment period not exceeding 4 weeks.
16. Where a warning is issued, the Chair of Governors will use the remainder of the meeting to:
  - Identify areas of under-performance;
  - Give clear guidance on the improved standard of performance needed to end the capability procedure;
  - Explain the support that will be available, and how performance will be monitored over the assessment period;
  - Identify the timetable for improvement and agree a date for the next/final evaluation meeting; and
  - Make it clearly understood that failure to improve may lead to dismissal.
17. A letter will be sent to the headteacher immediately after the formal interview recording the result of the investigations, the main points discussed at the meeting, confirming the decision and (where a warning is issued) giving information about the handling of the assessment stages of the procedure. The letter will also indicate that the headteacher has a right of appeal against a written or final written warning to the appeal committee. To initiate this headteacher must make an appeal in writing within 5 working days and the appeal must be heard within 10 working days of notification of the appeal.

## First Assessment Stage

18. **Review Process (up to 20 weeks max.):** Guidance, training if necessary, and support to the headteacher will be offered. At the same time, monitoring and evaluations of performance will be undertaken, including classroom observation (in cases concerning teaching competence). If the period at this stage is more than 10 weeks, there will be an Initial Evaluation of progress within the first 10 weeks involving the Chair of Governors, the headteacher and his/her representative. This mid-stage evaluation gives an opportunity for the withdrawal of any additional support which has been provided in the first period, should the evaluation have shown satisfactory progress by the headteacher up to that point.
19. If, at any point during this stage, the circumstances suggest a more serious problem, the review period may be curtailed and the procedure will move to the initial evaluation.
20. **Initial Evaluation (following final week of reviews):** The headteacher will be given a written evaluation and notice of the meeting at least 5 working days beforehand. The headteacher may be accompanied by a trade union or other representative. If the level of performance has been satisfactory and there is confidence that it can be sustained, the capability procedure will cease and this will be confirmed in writing to the headteacher.
21. If performance continues to be unsatisfactory a **final written warning** should be issued. Formal monitoring, evaluation, guidance and support should continue for a second assessment stage. Arrangements for this should be explained at the meeting. The headteacher will be told explicitly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal. The decision and main points of the meeting should be recorded in a letter to the headteacher.
22. The headteacher may appeal to the appeal committee against a final warning. An appeal must be made within 5 working days of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

## Second Assessment Stage

23. **Review (up to 4 weeks):** This involves regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the headteacher.
24. **Final Evaluation:** The procedure will follow that for the initial evaluation. If performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure will cease and this will be confirmed in writing.
25. If performance is unsatisfactory, the headteacher should be informed that the matter will be referred to a committee of the governing body

## Dismissal Committee Stage

26. The governing body should set up the committee. This must hear the representations and recommendations brought by the Chair of Governors, or other line manager conducting the capability evaluation, and any representations that the headteacher may wish to make. The governing body should also set up an appeal committee to hear any appeal against a dismissal decision. None of the governors on the first committee should be on the appeal committee.
27. The Chair of Governors will prepare a report to the first committee summarising the concerns with the headteacher's performance and the outcomes during the assessment stage(s).

28. The headteacher will be given notice of the date of the meeting and a copy of the Chair of Governors' report at least 5 working days beforehand. The headteacher may be accompanied by a trade union or other representative. The procedure for the meeting is attached as **Annex 2**.
29. The Committee may decide:
- (a) To drop the matter because it is not satisfied that there is under-performance;
  - (b) To allow a further period for improvement;
  - (c) To dismiss the headteacher with notice;
- Its decision will be confirmed in writing. A model letter is attached as **Annex 3**.
30. If the decision is to dismiss, the headteacher will have the right of appeal to the appeals committee. An appeal must be made within 5 working days and heard within 10 working days of notification of appeal. The procedure for the meeting is attached as **Annex 2**

## **COMMENTARY**

### **1. Role of Governors**

The Chair of Governors will undertake the monitoring and evaluation of performance supported by County Council officers. Other Governors should not normally be involved with a capability procedure before the dismissal stage unless there is an appeal against a warning. It is important to be prepared for the possibility of dismissal. The use of governors to hear any grievances or appeals against warnings should be limited to ensure a sufficient number of impartial governors remain available for the first and appeal committees. Normally at least three governors are required for each committee.

### **2. Role of Advisers**

County Council advisers or other advisers with education and personnel experience should advise the school and where appropriate assist with the process, including classroom observation and providing support.

### **3. Representation at formal interview, evaluation meetings and Dismissal hearing**

A headteacher has a legal entitlement to be accompanied by a colleague or union representative. If the headteacher's chosen companion is not available at the time proposed for the interview, meeting or hearing, and the headteacher proposes an alternative that is reasonable and falls within 5 working days of the day proposed for the interview, the school must rearrange the event to the time proposed by the headteacher.

### **4. Notice**

Notice of 5 working days must be given for an initial formal capability interview. The date of successive evaluation meetings should be fixed at the preceding interview or meeting and notice should only be necessary if it is rearranged. Notice of at least 5 working days must be given for a first committee or appeal hearing.

## **5. Support for the headteacher**

Those monitoring the performance should offer feedback and instruction to help the headteacher improve performance. If training courses or assistance from colleagues would be helpful, these should be arranged as soon as possible but should not interrupt the timing of the procedure.

## **6. Monitoring arrangements**

Monitoring should include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

## **7. Written records**

A written record should be made of all interviews with the headteacher and any action taken following such an interview. Except in agreed circumstances any formal warnings should be disregarded for disciplinary purposes after a specified period of satisfactory performance. These periods are 2 terms for an oral or written warning and 6 terms for a final written warning.

## **8. Time Scales**

The time scales in this procedure are expressed in working days. These are days on which the school is open for teaching staff. It is not intended that if a headteacher works one day per week, a period of 5 working days means 5 calendar weeks.

The procedure should normally be dealt with during term time. If it is essential on educational grounds to deal with an issue during school closure the periods involved will be an equivalent period of consecutive days (i.e. 5 working days are equivalent to 7 consecutive days).

## **9. Staff who are absent through illness during the procedure**

Absence which is triggered by the capability procedure, and which management believe is likely to be long term, is covered in the key points above and should be referred immediately to the occupational health adviser to assess whether the headteacher is fit for continued employment. Short absences should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the headteacher to attend evaluation meetings, but where the headteacher is unable to attend, these may proceed if the absence is protracted and the operation of this procedure is a substantial factor in the illness. In such cases the failure to meet targets will not be discounted because of illness. If the headteacher is absent from such meetings a full account of the evaluation should be provided in the letter confirming the decision taken.

## **10. Decisions on continuing the procedure and recommending dismissal**

Normally the decision to continue a capability procedure or recommend dismissal should be taken by the head, or by the line manager with the head's agreement (except where the head's performance is being considered). If there is a difference of opinion, the head's decision should prevail (except where the head's performance is being considered).

## **11. Disputes about the procedure**

Any disagreements or grievances about the interpretation of this procedure, or the application of any related matters not covered in the procedure, must not delay the various

elements of the capability procedure or the overall timetable determined as appropriate for handling any particular case.

## **12. Grievances**

In exceptional circumstances a headteacher may raise a grievance about the behaviour of a head or other manager during the course of a capability procedure. Depending on the circumstances it may be appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the headteacher has been mistreated and consideration should be given to bringing in another manager to deal with the capability case. Any records should be passed to the new manager and, if appropriate, the case should be continued within the same timetable.

**Reviewed: September 2018**

**Next Review date: September 2019**

**EXAMPLES OF POSSIBLE SUPPORT**

- (1) Advice and encouragement from management, colleagues and for County Council staff;
- (2) Assigning a mutually agreed mentor to the headteacher;
- (3) Specific training or other opportunities for professional development or management;
- (4) Seeking appropriate medical advice where ill-health appears to be a contributory factor;
- (5) The possibility of modifying the school's organisation if this appears to be an obstacle to headteachers generally achieving a satisfactory standard of performance (e.g. poor timetabling, insufficient resources, lack of specialist knowledge, and unclear allocation of responsibilities);
- (6) Support of experienced staff / subject managers / headteacher advisers to lead lessons or team teach or to advise on management processes;
- (7) Opportunities to view practice in the headteacher's own or other schools and adapt accordingly;
- (8) Attendance at courses aimed at rectifying specific weaknesses;
- (9) In-school workshops on class management, pupil behaviour, school regulations on pupil movement;
- (10) Observation of particular, agreed issues within the classroom and appropriate supportive feedback;
- (11) Consideration of and adaptation of present commitments if at all practicable (e.g. by the voluntary relinquishing of additional responsibilities and associated responsibility points);
- (12) Opportunities to enhance the individual's status, e.g. specialist teaching in a primary school, leading sessions on areas of expertise, additional non-contact time to carry out specified responsibilities;
- (13) Advice on curriculum and lesson planning procedures;
- (14) Advice on teaching and learning styles.

**Note: the agreed support should indicate whether each item is intended to secure improvement as a manager or improvement as a class/subject teacher.**

**SUGGESTED PROCEDURE FOR GOVERNORS' COMMITTEE MEETING TO  
CONSIDER THE DISMISSAL OF A HEADTEACHER ON GROUNDS OF COMPETENCE**

1. Introduction by Chair of the Committee; explanation of procedure.
2. Chair of Governors should amplify the report prepared recommending the dismissal of the headteacher.
3. Headteacher (or representative) may ask questions of Chair of Governors and witnesses.
4. Headteacher (or representative) should put case against dismissal.
5. Chair of Governors may ask questions of headteacher and witnesses.
6. The Committee may ask questions of Chair of Governors and witnesses.
7. Chair of Governors to sum up case.
8. Headteacher (or representative) to sum up case.
9. Parties to retire. Corporate Director (Education and Lifelong Learning) representative may remain with the Committee to offer advice.)

The Committee will consider the case and notify the parties of their decision. This may be conveyed at the conclusion of the hearing and then confirmed in writing or confirmed in writing at a later date by the Committee.

This procedure may be varied by agreement of all the parties.

**NOTE:**

At Appeal Committee meetings, the role ascribed to the Chair of Governors may be undertaken by a representative of the original Committee. In this case the Chair of Governors does not have the right to attend the Appeal Committee meeting; he/she may only attend by invitation of the Committee and (s)he must withdraw at the same time as the headteacher (whether or not the she/he presents the case against the headteacher).

**MODEL LETTER CONFIRMING INITIAL DECISION TO DISMISS**

Dear .....,

I write to confirm the outcome of the meeting of the Governors' ... **[insert name]...** Committee on ... **[insert date]...** which you attended with your representative, **[insert name]...**

Having considered the report of the Chair of Governors and the representations made on your behalf, the Committee decided that your level of professional performance has been unacceptably low over a lengthy period and decided that you should be dismissed from your teaching post at the school with effect from ...**[insert date]...**

You have a right of appeal against this decision. If you wish to exercise this, you must notify the Clerk to the Governors in writing within two weeks, indicating:

- (a) The grounds of your appeal;
- (b) Whether you wish to be represented or accompanied at the meeting of the Appeal Committee and, if so, by whom;
- (c) Whether you propose to call witnesses at the meeting and, if so, who those witnesses are;
- (d) Whether you wish to introduce any additional documents not used at the ... **[insert name]...** Committee's meeting. If so, you should provide copies.

If you do not wish to appeal, it would be helpful if you would confirm this in writing. Appeals are normally held within 10 working days. A copy of the procedure is attached.