

Capability of staff policy



Approved by:	Governing Body	Date: November 2023
--------------	----------------	---------------------

Last reviewed on:	November 2023
-------------------	---------------

Next review due by:	November 2025
---------------------	---------------

Contents

1. Aims.....	3
2. Legislation and guidance.....	3
3. Definitions.....	3
4. Roles and responsibilities.....	3
5. Timescales.....	3
6. Trade Union Representatives	4
7. Representation	4
8. Informal Support	4
9. Capability procedure.....	5
9.1 Formal Capability meeting.....	5
9.1.1 Possible outcomes	5
9.1.2 After the meeting	6
9.2 Monitoring and review period.....	6
9.3 Formal review meeting	6
9.4 Decision meeting	7
9.5 Dismissal.....	7
10. Right to appeal	7
11. Confidentiality.....	7
12. Consistency of treatment and fairness.....	7
13. Monitoring arrangements	8
10. Links with other policies.....	8
Appendix 1: Capability action plan template	9
Appendix 2 – Format for Capability Hearing	11
Appendix 3 – Format for a Capability Appeal Hearing.....	12
PHASE 1 OF TEACHER SUPPORT PROCESS: HOS/HOF	13
PHASE 2 OF TEACHER SUPPORT PROCESS: RAISING TEACHER STANDARDS INFORMAL SUPPORT	13
PHASE 3 OF TEACHER SUPPORT PROCESS: RAISING TEACHER STANDARDS FORMAL SUPPORT	14
FORMAL CAPABILITY PROCEDURES	15

Aims

The aim of our capability of staff policy is to set out a clear and consistent process for when a member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

1. Legislation and guidance

This policy is based on the [Department for Education's model policy and guidance](#), and the [Acas code of practice on disciplinary and grievance procedures](#).

When carrying out capability procedures, we will ensure we abide by the [Equality Act 2010](#).

This policy also complies with our funding agreement and articles of association.

2. Definitions

Lack of capability is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires

References to 'staff' include the Principal, teachers and support staff, unless indicated otherwise.

- 2.1. This procedure will not apply to employees who remain in their probationary period.
- 2.2. This procedure will not apply to teachers who are in their statutory induction period unless there are serious capability concerns, which require formal action outside of the process provided for in the regulations relating to teachers undergoing induction.
- 2.3. This procedure will not apply where the matter is related to conduct, as in these circumstances the separate Disciplinary Procedure should be used.
- 2.4. Where there are issues relating to ill health, the School's Sickness Absence Management Procedure and Guidance should be consulted to ensure that the most appropriate action/support is implemented.

3. Roles and responsibilities

- 3.1. The Principal or another senior member of staff in the school nominated by the Principal will take the lead at each stage. Where the member of staff subject to this procedure is the Principal, the Chair of the governing body or a governor nominated to act on the Chair's behalf will lead at each stage and all references in this procedure referring to Principal/senior manager will be taken to mean the Chair of the governing body or an alternative governor nominated to act on the Chair's behalf.
- 3.2. Other members of staff in the school or advisers external to the school may be requested to participate in providing support to the member of staff or participate in monitoring arrangements. The roles and responsibilities of all those involved will be made clear to the employee.
- 3.3. At any meeting under this procedure, the Principal/senior manager/governors may be accompanied/advised by a representative from Human Resources or other designated advisors.

4. Timescales

- 4.1. For teaching staff all timescales stated in this procedure will be working days and weeks (meaning Monday to Friday during term time and excluding school holidays, regardless of an individual's actual working pattern). For leadership group staff there may be exceptions to this according to contractual terms.

- 4.2. For non-teaching staff who work term-time only, all timescales stated in this procedure will be working days and weeks (meaning Monday to Friday during term time and excluding school holidays, regardless of an individual's actual working pattern).
- 4.3. For non-teaching staff who work 52 weeks per year, all timescales stated in this procedure will be working days and weeks (meaning Monday to Friday including school holidays, regardless of an individual's actual working pattern). For those people who are required to work only some time in the school holidays, only these periods will be counted as working days and weeks.
- 4.4. All timescales stated can be varied with mutual agreement between parties (see guidance on timescales and representation). Agreed changes to timescales should be confirmed in writing.

5. Trade Union Representatives

- 5.1. The term 'trade union representative' throughout this document means either a lay trade union official (i.e. a steward/representative or full time official) or a full-time official employed by a trade union.
- 6.1. Action under this procedure must not be taken against an accredited trade union representative until a full-time officer of the trade union concerned has been informed.

6. Representation

- 6.1. An employee who is the subject of this capability procedure may, if he/she so wishes, be advised and/or represented by a trade union representative or accompanied by a colleague who is an employee of the school at every stage of the formal procedure.
- 6.2. While there is no statutory right to be accompanied at informal meetings (eg informal review meetings) by a Trade Union representative or a colleague employed at the school, this will not be unreasonably refused if the employee requests it.
- 6.3. In cases where the employee has a statutory right of accompaniment, and his/her chosen companion cannot attend on the date proposed for a meeting, the employee can offer an alternative time and date. Any alternative time and date must be reasonable and fall within five working days, beginning with the first working day after the date originally proposed by management (see guidance on timescales and representation).

7. Informal Support

- 7.1. Where concerns about an employee's performance are identified, in the first instance it will be appropriate to deal with these issues informally, as part of normal day to day management/supervision arrangements or in accordance with normal ongoing performance management/performance management processes if these are applicable.
- 7.2. Application of the formal capability procedure would then only be necessary if informal focused support (under performance management arrangements) to address the concerns were not successful. (See guidance contained in the **Teaching and Learning in Action document – Appendix 1: Raising Teacher Standards Programme**)
- 7.3. However, if the concerns about performance are more serious it may be appropriate to implement the formal procedure without having addressed the issues informally, depending on the circumstances.

8. Capability procedure

Formal capability procedures will begin when line management support and the performance management process have been unable to bring about satisfactory performance or improvements in the staff member's work.

An informal period of support, put in place and monitored by the line manager, will have been in place before formal capability procedures are triggered (Raising Teacher Standards Programme). Evidence of this will be available before the process begins.

Where an early career teacher (ECT) is subject to capability procedures, we will continue the induction process in parallel with the capability procedure and inform the appropriate body.

At any stage of the formal procedure, as an alternative to appealing against a formal warning, an employee may request to have a statement placed on their personal file, indicating their views and comments regarding the formal action taken.

9. Formal Capability meeting

Where a Principal/senior manager determines that the formal capability procedure should be implemented, a Capability Interview will be convened.

At least **5** working days' notice will be given of the formal capability meeting, and will explain:

- The concerns about performance and possible consequences
- Any written evidence
- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

This meeting is intended to examine the evidence. It will be conducted by the Principal/senior manager. At the meeting the employee will be able to respond to the 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.

9.1.1 Possible outcomes

The Principal/senior manager 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 performance management process or other informal means. In such cases, the capability procedure will come to an end and this should be confirmed in writing.

The meeting may be adjourned if further investigation is needed, or if more time is needed to consider additional information presented.

If the meeting continues, the person conducting the meeting will:

- Explain the expected standards that are not being met based on the Teachers' Standards or other relevant standards, career stage expectations and/or job description
- give clear guidance on the improved standard of performance required to ensure that the employee 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 and discuss any support that will be available to help the employee improve their performance; (e.g. coaching, mentoring, training, structured observations)
- 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. It is for the school to determine the length of the period set however it should be reasonable and proportionate in the circumstances, a minimum of four weeks but not excessively long (usually no more than ten weeks), and should provide sufficient opportunity for an improvement to take place. Relevant factors to consider include the impact of the unsatisfactory performance on the school, the support being put in place and the seriousness of the shortcomings;
- The Principal/senior manager must inform the employee that they are being issued with a formal Written Warning and that failure to improve within the set period could lead to dismissal.

9.1.2 After the meeting

The staff member will be sent formal meeting notes. If a formal warning has been issued, the staff member will also receive:

- A written record of the bullet points above
- Information about the timing and handling of the review stage
- Information about the procedure and time limits for appealing against the warning

9.2 Monitoring and review period

A performance monitoring and review period will follow the formal capability interview. Formal monitoring, evaluation, guidance and support will continue during this period.

During the review period, informal monitoring meetings will take place at agreed intervals to review progress against the identified objectives/ improvements required and monitor the implementation of support plan. Feedback should be given promptly to the employee so they are aware of how well they are progressing and what (if any) concerns remain.

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 9.4 below).

9.3 Formal review meeting

At least 5 working days' notice will be given of the formal review meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

If the person conducting the meeting is satisfied that the staff member has made sufficient improvement, the capability procedure will cease and the performance management 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 staff member will receive a final written warning

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. They will be given information about the further monitoring and review period, the procedure and time limits for appealing against the final warning. The staff member will be invited to a decision meeting.

9.4 Decision meeting

At least 5 working days' notice will be given of the decision meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

If an acceptable standard of performance has now been achieved, the capability procedure will end and the performance management process will re-start.

If the staff member's performance does not improve to a sufficient standard, a decision, or recommendation to the governing board, may be made that the staff member should be dismissed or required to cease working at the school.

The staff member 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
- Their right of appeal

9.5 Dismissal

The power to decide that members of staff should no longer work at this school has been delegated to the Principal.

10. Right to appeal

If a staff member feels that a decision to dismiss them is wrong or unjust, they may appeal in writing against the decision within 5 working days of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay and at an agreed time and place. The same arrangements for notification and statutory right to be accompanied will apply as with formal capability and review meetings. Notes will be taken and a copy sent to the staff member.

The appeal will be dealt with impartially and by senior leaders or governors who have not previously been involved in the case.

The staff member will be informed in writing of the results of the appeal hearing within 5 working days.

11. Confidentiality

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Principal and governing board to quality assure the operation and effectiveness of the system.

12. Consistency of treatment and fairness

The governing board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.

The governing board is aware of the guidance and provisions of the Equality Act 2010.

13. Monitoring arrangements

The effectiveness of this policy will be monitored by the Principal and governing board.

This policy will be reviewed every year, but can be revised as needed.

This policy will be approved by the Governing Body.

10. Links with other policies

This policy links to our policies on:

- Staff code of conduct
- Teachers' performance management
- Staff grievance procedures
- Staff disciplinary procedures
- Equality information and objectives
- Early career teacher induction
- Teaching and Learning in Action document – Appendix 1: Raising Teacher Standards Programme

Appendix 1: Capability action plan template

NAME OF STAFF MEMBER	NAME OF APPRAISER	DATE OF MEETING

OBJECTIVE 1:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date
OBJECTIVE 2:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

OBJECTIVE 3:

Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

Other support provided

MENTOR/COACH ALLOCATED	YES/NO (IF YES GIVE NAME)
Counselling to be provided	Yes/No
Occupational health referral to be made	Yes/No
[Insert any other support provided]	
Formal review date	

SIGNED BY MEMBER OF STAFF	SIGNED BY APPRAISER	DATE

Appendix 2 – Format for Capability Hearing

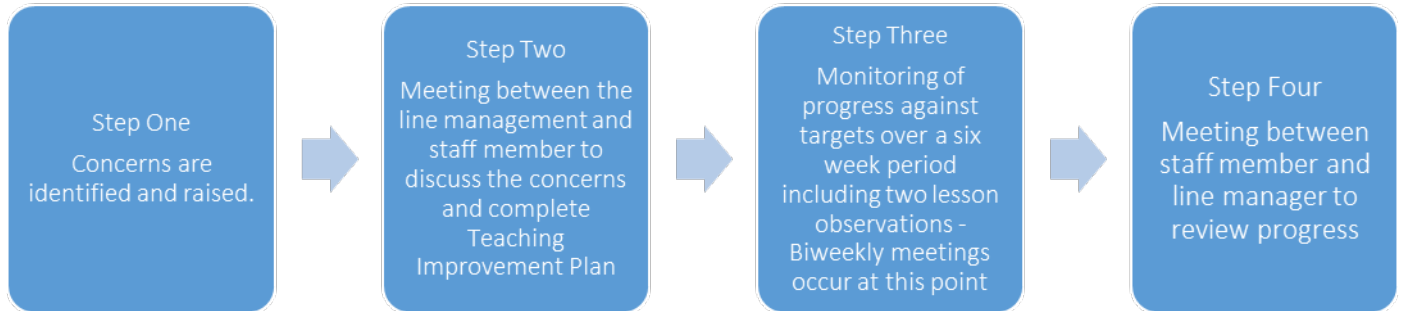
1. References in this appendix to Hearing Chair could mean either the Principal or the Chair of a panel of governors depending on the circumstances.
2. References in this appendix to presenting manager could mean the Principal or other senior manager of the school nominated by the Principal depending on the circumstances.
3. Where a panel of governors is hearing the case, the panel will first elect one member to be the Hearing Chair.
4. The Hearing Chair will explain the purpose of the hearing and ensure introductions are made and outline the format of the hearing.
5. The presenting manager to present the case in the presence of the employee and his/her representative including, as appropriate:-
 - a) referring to the written statements and other written evidence;
 - b) the calling of witnesses.
6. The employee (or his/her representative) to have the opportunity to ask questions on the evidence given by the presenting manager and any witnesses called, as they are called.
7. The Hearing Chair/panel members to have the opportunity to ask questions on the evidence given by the presenting manager and witnesses, as they are called.
8. The employee (or his/her representative) to put his/her case in the presence of the presenting manager including as appropriate:-
 - a) referring to the written statements and other written evidence;
 - b) the calling of witnesses.
9. The presenting manager to have the opportunity to ask questions on the evidence given by the employee and any witnesses called, as they are called.
10. The Hearing Chair/panel members to have the opportunity to ask questions on the evidence given by the employee and any witnesses called, as they are called.
11. The presenting manager and then the employee (or his/her representative) to have the opportunity to sum up their cases if they so wish.
12. The presenting manager and the employee (and his/her representative) and any witnesses to withdraw.
13. The person(s) hearing the case (with any adviser(s)) to deliberate in private and come to a decision, only recalling the presenting manager and the employee to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.
14. The decision will be notified to the employee and his/her representative at the meeting and confirmed in writing within five working days of the meeting.

Appendix 3 – Format for a Capability Appeal Hearing

1. References in this appendix to Hearing Chair could mean either the Principal or the Chair of a panel of governors depending on the circumstances.
2. References in this appendix to presenting manager could mean the Principal or other senior manager of the school nominated by the Principal depending on the circumstances.
3. Where a panel of governors is hearing the case, the panel will first elect one member to be the Hearing Chair.
4. The Hearing Chair will explain the purpose of the hearing and ensure introductions are made and outline the format of the hearing.
5. The employee (or his/her representative) to put his/her case for appeal in the presence of the presenting manager including as appropriate: -
 - a) referring to the written statements and other written evidence;
 - b) the calling of witnesses.
6. The presenting manager to have the opportunity to ask questions on the evidence given by the employee and any witnesses called, as they are called.
7. The Hearing Chair/panel members to have the opportunity to ask questions on the evidence given by the employee and any witnesses called, as they are called.
8. The presenting manager to present the case in response to the appeal in the presence of the employee and his/her representative including, as appropriate: -
 - a) referring to the written statements and other written evidence;
 - b) the calling of witnesses.
9. The employee (or his/her representative) to have the opportunity to ask questions on the evidence given by the presenting manager and any witnesses called, as they are called.
10. The Hearing Chair/panel members to have the opportunity to ask questions on the evidence given by the presenting manager and witnesses, as they are called.
11. The presenting manager and then the employee (or his/her representative) to have the opportunity to sum up their cases if they so wish.
12. The presenting manager and the employee (and his/her representative) and any witnesses to withdraw.
13. The person(s) hearing the appeal (with any adviser(s)) to deliberate in private and come to a decision, only recalling the presenting manager and the employee to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.
14. The decision will be notified to the employee and his/her representative at the meeting and confirmed in writing within five working days of the meeting.

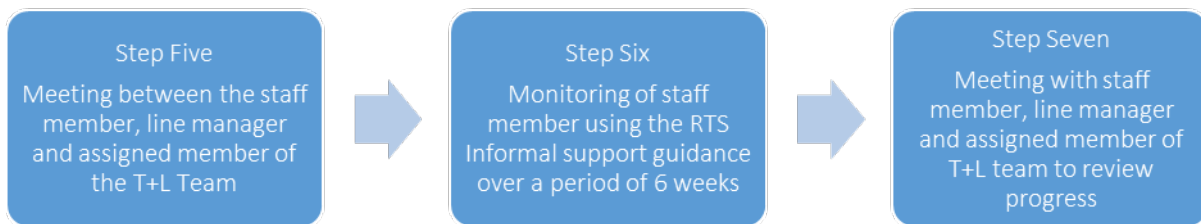
PHASE 1 OF TEACHER SUPPORT PROCESS: HOS/HOF

This first phase is led by the HOF/HOS and should look to address concerns raised during climate checks or workbook reviews.



PHASE 2 OF TEACHER SUPPORT PROCESS: RAISING TEACHER STANDARDS INFORMAL SUPPORT

This second phase is led by the Teaching and Learning Team at the APP/AP layer. Here additional support is put in place as outlined below:



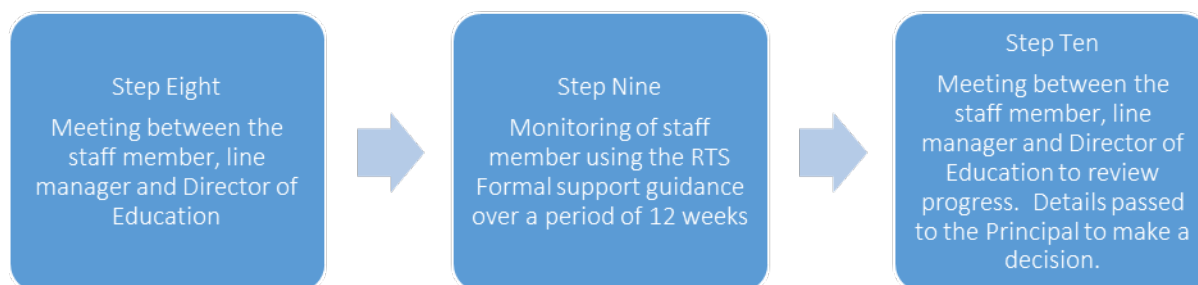
Teachers who are unable/unwilling to meet the expectations established by the Duston School and in line with the teaching standards are expected to participate in an intensive support system to raise their standards.

- 4-week programme
- Reduced timetable to 20 hours for a FT teacher
- Peer observations
- Lesson observation x2 (these are announced observations)
- CPD internal/external

The line manager and assigned T+L team member will then meet to decide whether the member of staff has made sufficient and sustained progress. If there is evidence of this, the member of staff will successfully complete the program. However, if there are still concerns the member of staff will move to Phase 3: formal support.

PHASE 3 OF TEACHER SUPPORT PROCESS: RAISING TEACHER STANDARDS FORMAL SUPPORT

The second phase is led by the Director of Education and involves teachers who have demonstrated insufficient or



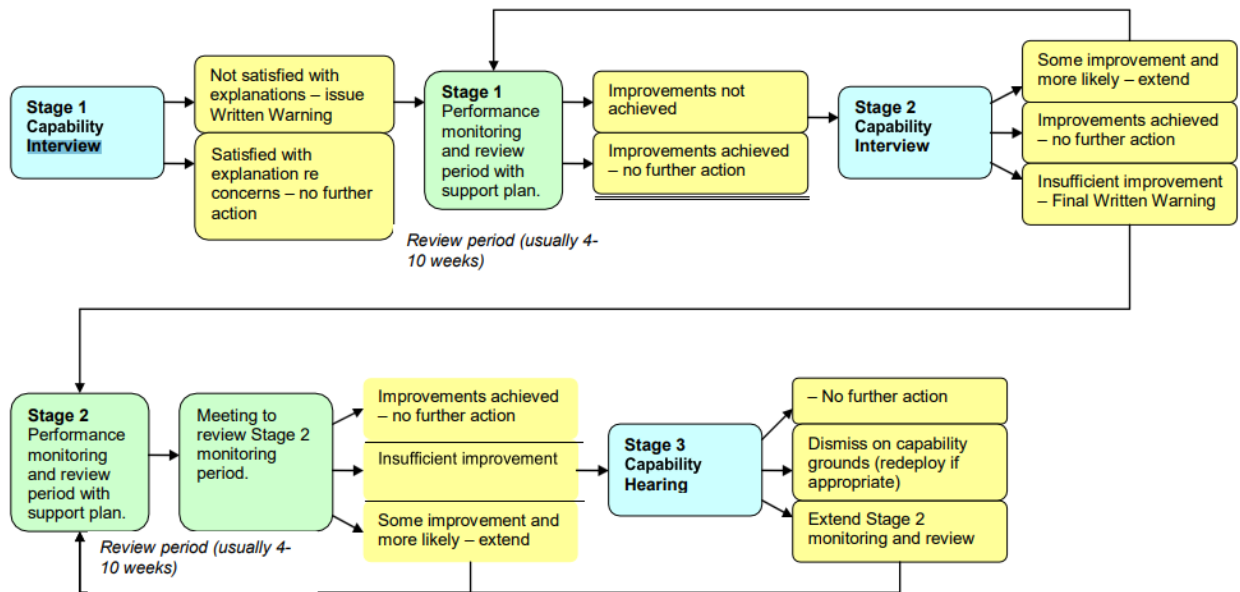
inconsistent progress over the course of the Phase 3: Informal support.

- 12-week programme
- Reduced timetable to 20 hours for a FT teacher
- Formal mentor assigned at the direction of the Director of Education
- Directed CPD sessions
- Lesson observations x 4 conducted by the Director of Education or a member of the Teaching and Learning team. (these are both announced and unannounced observations)

At the end of the 12-week program the Principal will decide regarding the progress of the member of staff over the course of the program. If satisfactory progress has been made, the member of staff will come off the program but will be informally monitored over the course of 4 weeks to ensure standards are maintained.

If the member of staff is deemed to have made unsatisfactory or inconsistent progress the outcomes of the formal programme will form the basis of a move towards capability procedures.

FORMAL CAPABILITY PROCEDURES



- Capability interviews and Hearing require 5 working days' notice in writing.
- The outcomes of Written Warning, Final Written Warning and dismissal are subject to a right of appeal