



The Kemnal Academies Trust

Capability Policy

Contents

1. Policy	<u>3</u>
2. General Principles	<u>3</u>
3. Responsibilities of Local Governing Bodies	<u>4</u>
4. Requirement of the LGB to Notify the TKAT Board	<u>5</u>
5. Procedure for Dealing with Capability Issues	<u>5</u>
6. Procedure – Formal Capability Meeting	<u>6</u>
7. Procedure – Formal Review Meeting	<u>8</u>
8. Procedure – Decision Meeting	<u>9</u>
9. Appeal	<u>10</u>
10. Flow Chart	<u>11</u>

1. Policy

- 1.1 This policy has been introduced following the revised appraisal arrangements and capability processes which come into force with effect from 1 September 2012. They are set out in the Education (School Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations) which replace the Education (School Teacher Performance Management) (England) Regulations 2006 (the 2006 Regulations). This Policy should be used in conjunction with the TKAT Performance Management Policy for Teaching Staff 2012.
- 1.2 This policy applies only to teaching staff, including headteachers. For all other employees, please see the TKAT Capability Policy 2012 for Support Staff.
- 1.3 This policy sets out the formal capability procedure for teachers and replaces the statutory guidance "Capability Procedures for Teachers" that was issued by the Department for Education in July 2000.
- 1.4 Capability procedures should only apply to teachers about whose performance there are serious concerns that have not been addressed through the performance management process.

2. General Principles

- 2.1 The capability process will be treated as confidential to the employee, attendees of the Capability meetings, and any other persons on a required basis only, at all times.
- 2.2 TKAT and the Local Governing Body are committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.
- 2.3 Unless indicated otherwise, all references to "teacher" include the head teacher.
- 2.4 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.
- 2.5 If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with TKAT's Sickness Absence policy. In some cases, it may be appropriate for investigation into capability matters to continue during a period of sickness absence.

3. Responsibilities of Local Governing Bodies

- 3.1 The Kemnal Academies Trust (TKAT, the Trust, the Company), Company Number 7348231, whose Registered Office is at Kemnal Technology College, Sevenoaks Way, Sidcup ,Kent DA14 5AA is the legal employer of all staff employed to work in the TKAT Academies and Operations Executive (OE).
- 3.2 References in this document to the LGB of an Academy shall be taken also as referring to the Chief Operations Officer of the TKAT OE.
- 3.3 In accordance with the School Standards and Framework Act 1998 and the Scheme of Delegation (the Scheme) between the TKAT Board of Directors and the Local Governing Body (LGB) of each Academy, the LGB has powers to appoint and dismiss staff. However, there are responsibilities associated with these powers and this procedure sets out these responsibilities with a recommended procedure for exercising them legally and fairly in respect of capability.

4. Requirement of the LGB to Notify the TKAT Board

- 4.1 As soon as the LGB has identified a possible Capability situation within the Academy, the LGB shall advise the HR Director of the TKAT Operations Executive.
- 4.2 The HR Director will appoint an HR advisor to assist with the procedure.
- 4.3 The TKAT Board may appoint a Governor (including the Head Teacher) of any Academy or a member of the TKAT OE staff to any Capability or Appeal Committee as it sees fit.

5. Procedure for Dealing with Capability Issues

- 5.1 This policy sets out the framework for a clear and consistent assessment of the overall performance of teachers against the standards expected of them, and for supporting their development within the context of both the Academy and TKAT's plan for improving educational provision and performance. It also sets out the arrangements that will apply when teachers fall below the levels of competence that are expected of them.
- 5.2 If the teacher is under-performing and not making satisfactory progress towards their performance objectives, the Performance Management (PMR) process will be used as the

informal step before transition to capability. Under-performance can and should be addressed at any point during the performance management cycle.

- 5.3 If the reviewer is not satisfied with progress made through the PMR process the teacher will be notified in writing that the PMR process will no longer apply and that their performance will be managed under the Capability Policy, and they will be invited to a formal Capability meeting.
- 5.4 Prior to a decision being taken to proceed to formal capability, the headteacher/Chair of Governors should contact the Director HR, Operations Executive, TKAT to discuss the situation.
- 5.5 This procedure applies only to teachers about whose performance there are serious concerns that the PMR process has been unable to address.

6. Procedure - Formal Capability Meeting

- 6.1 A letter, detailing the time and place of the Capability meeting, should be sent to the employee, giving at least 10 working days' notice of the formal capability meeting. It should contain detailed concerns about the teacher's performance to enable the teacher to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence, and will advise the teacher of their right to be accompanied by a Trade Union Representative or workplace colleague at the meeting
- 6.2 This meeting is intended to discuss the issues arising and to establish the facts and mitigating circumstances. The meeting will be conducted by the headteacher or the Chair of Governors, for headteacher capability meetings. The meeting allows the teacher, 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.
- 6.3 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 PMR process. In such cases, the capability procedure will come to an end. 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.
- 6.4 In other cases, the meeting will continue. During the meeting, the headteacher will:
 - 6.4.1 identify the professional shortcomings, for example which of the standards expected of teachers are not being met;

- 6.4.2 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);
- 6.4.3 explain the support that will be available to help the teacher improve their performance;
- 6.4.4 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 any event will not be less than four working weeks; and
- 6.4.5 issue a formal capability warning to the teacher stating that failure to improve within the set period could ultimately lead to dismissal.
- 6.4.6 Where a warning is issued, the teacher will be informed in writing of the matters covered in the points above and given information about the timing and handling of the review stage, as well as the procedure and time limits for appealing against the warning
- 6.4.7 The employee has the right to appeal against any formal capability warning, in writing, stating clearly the reasons for appeal, within 5 working days to the headteacher or the Clerk of the Governors
- 6.4.8 Notes will be taken during the meeting and a copy sent to the member of staff.

7. Procedure - Formal Review Meeting

- 7.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period, following which, the employee will be invited to a formal review meeting.
 - 7.1.1 As with the formal capability meetings, a letter, detailing the time and place of the meeting, should be sent to the employee giving at least five working days' notice of the formal review meeting. It will advise the teacher of their right to be accompanied by a Trade Union Representative or workplace colleague.
 - 7.1.2 If the headteacher is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the Performance Management process will re-start.

- 7.1.3 In other cases, where progress has not been satisfactory:
- 7.1.3.1 If some progress has been made and there is confidence that further progress is likely, it may be appropriate to extend the monitoring and review period;
 - 7.1.3.2 If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning.
- 7.1.4 The employee has the right to appeal against any formal capability warning, in writing, stating clearly the reasons for appeal, within 5 working days to the headteacher or the Clerk of the Governors.
- 7.2 As before, notes will be taken during the Review meeting and a copy sent to the member of staff.
- 7.3 Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (minimum four working weeks), may result in dismissal and given information about further monitoring, the review period, the procedure and time limits for appealing against the final warning, following which, the teacher will be invited to a Decision meeting.

8. Procedure - Decision Meeting

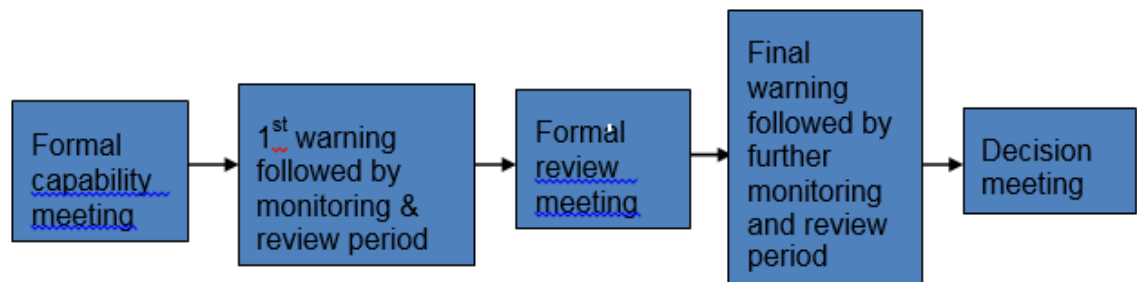
- 8.1 As with the formal capability meetings and formal review meetings, a letter, detailing the time and place of the meeting, should be sent to the employee giving at least five working days' notice of the formal review meeting. It will advise the teacher of their right to be accompanied by a Trade Union Representative or workplace colleague.
- 8.2 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the Performance Management process will re-start.
- 8.3 If performance remains unsatisfactory, a decision, or recommendation to the Local Governing Body, will be made that the teacher should be dismissed from the Academy.
- 8.4 The power to decide that members of staff should no longer work at the Academy rests with the Local Governing Body/TKAT Director. Once the recommendation to dismiss has been taken, the Local Governing Body will convene a meeting with a view to dismiss the teacher with notice.

- 8.5 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.
- 8.6 The employee has the right to appeal against any dismissal due to capability, in writing, stating clearly the reasons for appeal, within 5 working days to the headteacher or the Clerk of the Governors.

9. Appeal

- 9.1 An Appeals Committee shall be established comprising three Governors (not including any staff Governors) having no personal knowledge of the member of staff affected or previous involvement in the case. They shall then take no part in any discussion pertaining to the Capability procedure prior to the dismissal of staff so that appeals against dismissal can be heard without prejudice.
- 9.2 In the event that there are insufficient Governors to form the Appeal Committee, Governors from any other TKAT Academy may be co-opted.
- 9.3 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 working days, to the headteacher or Clerk of Governors, setting out their grounds for appeal. Appeals will be heard within 10 working days at an agreed time and place.
- 9.4 The same arrangements for notification and right to be accompanied by a Trade Union Representative or workplace colleague will apply as with formal capability and review meetings and, as with the other formal meetings, notes will be taken and a copy sent to the teacher.
- 9.5 The teacher will be informed, in writing, of the outcome of the appeal hearing within 5 working days.

Procedure for dismissing teachers under new capability procedures



10 days' notice + 4 weeks + 4 weeks = 9 weeks

Note: The timings given above are illustrative only and are offered as suggested periods, which will be appropriate only in straightforward cases. Schools will need to tailor the length of their monitoring and review periods to suit individual circumstances.