



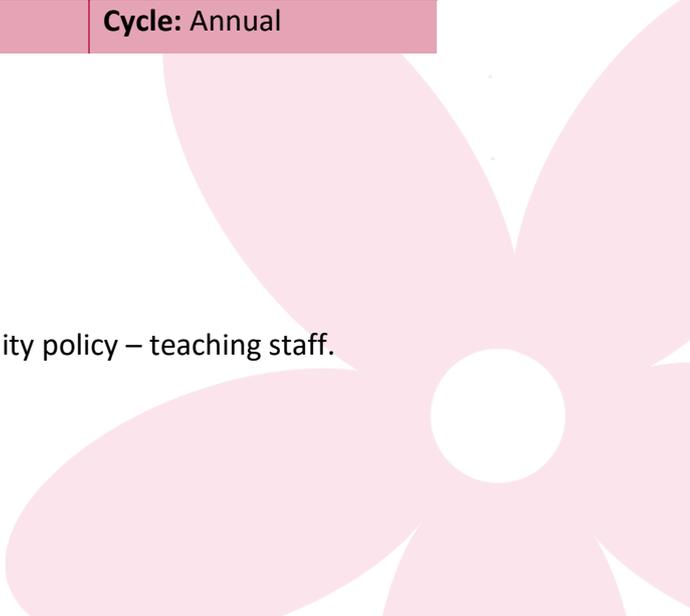
Fioretti Trust

Capability Policy – Teaching staff

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This policy supersedes all previous Capability policy – teaching staff.



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1. Purpose

1.1 In order to ensure that required professional standards of teaching are achieved and maintained and to comply with the requirements of the School Staffing Regulations for a capability procedure, the Fioretti Trust Board of trustees has adopted the following capability procedure. This procedure is to be implemented by the local governing body, in consultation with the CEO, only if a teacher fails, on a regular basis and despite appropriate additional support provided through the teacher appraisal process to address serious concerns previously notified to the teacher, to perform his or her duties to the required professional standards. This procedure will be implemented having regard to the most recent guidance issued.

2. Introduction

2.1 In these procedures:-

- 'teacher' means a teacher, including a head teacher, employed to work at the school.
- 2.2 As part of their acknowledged management responsibilities, and as part of the arrangements for the supervision, appraisal, support and training of teachers, head teachers or other staff designated by the head teacher may from time to time discuss aspects of capability with a teacher on a day-to-day basis. Such discussions should not be regarded as falling within the scope of the formal capability procedures but should ensure that teachers receive fair and honest feedback on their performance, a balanced assessment, and advice and support on how their performance may be improved.
- 2.3 For the purpose of these procedures, lack of capability is defined as a situation in which a teacher fails on a regular basis to perform his or her teaching and/or management duties to required professional standards. Regular is defined as an occurrence that happens often during a week or on a weekly basis.
- 2.4 The procedures are to be implemented with the intention of supporting the teacher in achieving the required standards. The teacher needs to be aware that failure to achieve the required standards may lead to termination of his or her employment in accordance with this procedure.
- 2.5 In order to facilitate the smooth implementation of these procedures the teacher should be advised to contact his/her Teacher Association for advice as soon as possible.
- 2.6 The procedure is distinct from the disciplinary procedure which is used in cases of misconduct or that for dealing with sickness and ill health and from the rights of teachers under the separate grievance procedure.
- 2.7 This procedure does not apply to newly qualified teachers whose appointment is subject to statutory induction.
- 2.8 Normal standards of capability and normal procedures should apply to employees who are school trade union representatives or local union officers, except that no action will be taken until the circumstances of the case have been discussed with a local or regional officer.

- 2.9 This procedure will be applied in accordance with the Instrument of Government of the School, any other statutory provisions which may apply from time to time, also the Advisory, Conciliation and Arbitration Service's Code of Practice.
- 2.10 The records of any case under this procedure will be confidential.
- 2.11 The Trust Board may decide, by formal resolution, to delegate to the Headteacher/Head of School the hearing of cases under section 5 of this procedure, provided that the Headteacher/Head of School has not been previously involved in managing the case

3. Preliminary consideration

- 3.1 This procedure is intended to highlight concerns in performance and provide an opportunity for a teacher to improve. **It is strongly recommended that this procedure is only implemented where the appraisal process and appropriate support provided have failed to improve the performance to the required standards. Only after sufficient, recorded evidence exists from triangulated sources should this capability procedure be implemented.**
- 3.2 As set out in the appraisal process examples of performance might be evidenced through pupil progress, observations, book scrutiny, impact of management, OFSTED assessments.
- 3.3 Being subject to a capability procedure should never be a surprise to a teacher. Any concerns should have been raised with the teacher in advance as part of the appraisal process. If it became apparent during or at the end of the appraisal period that the teacher's overall performance was below acceptable standards the head teacher or a member of the leadership team should have met with the teacher to discuss the nature and level of the concerns, confirmed the content of the discussion in writing and given the teacher the opportunity to reflect on it before another meeting, arranged with adequate notice, is held to determine what increased support would be given to the teacher, the kind of improvement required, the period for improvement, how improvement would be assessed and when the situation would be reviewed. The Headteacher/Head of School or other person in charge of the day to day running of the school should have explained to the teacher what would happen in the event of the teacher not meeting the required standards. During the appraisal process consideration should have been given to any known mitigating or personal circumstances (including a health condition) which might explain a dip in performance and similar consideration should continue to be given to such circumstances in relation to this procedure.

4. Capability meetings

- 4.1 The Headteacher/Head of School or other person in charge of the day to day running of the school shall review the facts and information gathered to date, adding to it where appropriate, and then write to the teacher setting out the area(s) of concern and the evidence supporting the concerns and inviting the teacher to a formal capability meeting. At this stage onwards the teacher may be accompanied by a trade union representative or fellow-employee. It shall be explained to the teacher that the meeting is being held in accordance with the provisions of this procedure. Copies of any documentation to be used at the meeting shall be sent with the written notice within a reasonable timescale before the meeting to ensure that the teacher has enough time to prepare his or her response to the concern(s). A copy should be included for the teacher's representative.

4.2 First Capability meeting

The purpose of the meeting shall be:-

- (a) define which of the required standards have not been met and the effect of this on pupils and the provision of education in the school;
- (b) to invite the teacher and/or the teacher's representative to comment and/or offer an explanation for the alleged shortfalls in performance;
- (c) for the Headteacher/Head of School or other person in charge of the day to day running of the school to decide, having regard to (a) and (b) above, whether his or her concern(s) remain and if no concern remains, for the head teacher, principal or other person in charge of the day to day running of the school to confirm in writing that no further action will be taken.
- (d) if concerns remain, for the Headteacher/Head of School or other person in charge of the day to day running of the school to inform the teacher of them and decide what reasonable targets are to be set, what programme of action, including a range of thorough, suitable support, is to be arranged, how long each part of that programme shall last, and how it shall be monitored and evaluated.
- (e) where (d) applies, to arrange for the programme of action to be reviewed in a second meeting, to be held 7-8 working weeks after the first meeting, and set the date and time for that meeting in discussion with the teacher and the teacher's representative.

4.3 Notes of the meeting, including the programme of action shall be sent to the teacher within two working days of the meeting together with a copy for the teacher's representative.

4.4 Second Capability meeting

At the second meeting progress will be reviewed against the targets, standards and programme of action. Copies of any evidence to be presented on the teacher's performance should be sent to the teacher in reasonable time beforehand, including a copy for the teacher's representative. The teacher and/or the teacher's representative will have the opportunity to comment upon his or her performance and make appropriate representations. At the conclusion of the meeting the head teacher, principal or other person in charge of the day to day running of the school will either

- (a) decide that the teacher now meets the required professional standards and that this procedure is terminated, which will be confirmed in writing; or
- (b) decide that the teacher's performance, or certain aspect(s) of it, remains a cause for concern, confirm the nature of that concern, note any improvements, decide whether to modify the targets, programme of action, support provided, and arrangements for monitoring and evaluation over a further period of 6-7 weeks. A third meeting will be arranged to review progress at the end of that period and the date for that meeting should be set in discussion with the teacher and the teacher's representative. The head teacher, principal or other person in charge of the day to day running of the school will explain to the teacher that if the improvement which is still required has

not been achieved by the date of the third meeting the matter will be referred for a hearing before a committee of governors (or, depending on the governing body's delegations, before the head teacher or principal if the head teacher or principal has not been involved previously in the management of the teacher's performance) which may lead to the termination of the teacher's employment in accordance with this procedure.

Notes of the meeting, including where applicable the programme of action, monitoring and evaluation and the explanation about the possibility of terminating the teacher's employment, shall be sent to the teacher within two working days of the meeting together with a copy for the teacher's representative.

4.5 Third Capability meeting

The third meeting will take place within the time set out in 4.4 (b) above. Progress will again be reviewed against the targets, standards and programme of action, subject to any modifications to these as a result of the second meeting. As with the previous meetings, copies of the evidence on the teacher's performance should be sent to the teacher in reasonable time beforehand, with a copy for the teacher's representative. The teacher may be accompanied by a trade union representative or fellow-employee and the teacher and/or the teacher's representative will have the opportunity to comment on his or her performance. At the conclusion of the meeting the Headteacher/Head of School or other person in charge of the day to day running of the school will either

- (a) decide that the teacher now meets the required professional standards and that this procedure is terminated, which will be confirmed in writing; or
- (b) extend the programme of action and support for a further reasonable period if there is a prospect of the teacher meeting the required standards within a further reasonable period; or
- (c) refer the matter to a committee of the Trust Board (or, depending on the Trust Board's delegations, before the Headteacher/Head of School if the Headteacher/Head of School have not been involved previously in the management of the teacher's performance) with a recommendation that the teacher's employment be terminated.

4.6 The third meeting shall be recorded in writing and a copy sent to the teacher within two working days of the meeting together with a copy for the teacher's representative.

5. Hearings

Hearing by a committee of the Trust Board (or by Headteacher / Head of School with formally delegated authority to hold the hearing)

5.1 When it has been decided to refer the teacher's capability to a committee of the Trust Board (or, depending on the Trust Board's delegations, before the Headteacher / Head of School if the Headteacher / Head of School have not been involved previously in the management of the teacher's performance) a hearing shall be arranged as set out below.

- 5.2 There may be cases in which an employee is simultaneously the subject of allegations being considered under one or more of the governing body's procedures for conduct, capability or redundancy.
- 5.3 A formal notice to a teacher to attend a hearing should be issued in writing (see model letter), with an explanation of the hearing's purpose and its place in the procedure. The letter should not only state the reasons for the hearing but should also attach copies of any documents to be used at the hearing. The letter must remind the teacher of the right to be accompanied/represented. The teacher should be asked to confirm that he/she will be attending the hearing, who will be accompanying or representing him or her (that person must be either a trade union/professional association representative or work-place colleague), and a list of any witnesses attending. The teacher should also be reminded to provide this information along with any documentation on which he or she wishes to rely at least five working days before the hearing.
- Names of any witnesses from both sides should be circulated in advance and all witnesses should be asked to provide a written statement for inclusion with the documents to be used at the hearing. A second set of papers should be enclosed for the teacher's representative.
- 5.4 In order to ensure that the teacher has enough time to prepare his or her response at least ten working days' notice of the hearing should be given.
- It is helpful to agree a date with the teacher's union/professional association before sending the formal notice to attend the hearing. The teacher may suggest an alternative time and date as long as it is reasonable and is not more than five working days after the original date. The committee or Headteacher / Head of School may reject this suggestion but will do so only if it is unreasonable, when they may proceed to hear the case in the absence of the teacher or the teacher's representative.
- 5.5 The teacher may provide documentation in his or her defence and give the names of witnesses whom he or she is asking to appear on his or her behalf. This information should be provided at least five working days before the hearing. Where the hearing is before a committee of the Trust Board the clerk to the Board is required to ensure that all parties to the hearing receive copies of all documents in good time before the hearing. Evidence submitted after the distribution of these documents may or may not be accepted as evidence; in such circumstances a decision will be made by the chair of the committee (or the Headteacher / Head of School if he or she is conducting the hearing) in the hearing itself, and not before. There is no requirement on the teacher to submit any documentation, other than a statement from any witness who may be called by the teacher. However, if the teacher does not intend to submit any documentation there should be a positive statement from the teacher and/or the teacher's representative to this effect. Neither side will be able to use at the hearing any evidence not previously provided.
- 5.6 The Headteacher / Head of School or other person in charge of the day to day running of the school should normally present the case to the committee, unless the Headteacher / Head of School is the subject of the hearing, in which event the chair of the committee should seek the advice on an appropriate person to present the case.
- 5.7 The hearing will follow the procedure set out in Appendix 1.

- 5.8 The committee (or the Headteacher / Head of School if he or she is conducting the hearing) has the following options and shall decide on one of them:
- take no action in relation to the teacher
 - determine that a further defined period for improvement should be allowed
 - determine that the teacher should cease to work at the school or may dismiss the employee.
- 5.9 The committee shall announce its decision to the parties in person or subsequently in writing as the committee shall determine. An oral announcement shall be confirmed in writing subsequently, including the right of appeal. The Headteacher / Head of School holding a hearing shall announce a decision in a similar way.

6. Appeals

- 6.1 An employee has the right of appeal against the decision of the committee or Headteacher / Head of School who has conducted the hearing. An appeal shall be to the appeal committee established by the Trust Board.
- 6.2 A teacher may appeal by giving written notice of the appeal and of all the grounds on which it is made to the clerk to the Trust Board within five working days of receiving written confirmation of the decision. The grounds for the appeal should be accompanied by any additional evidence to be presented in support of the appeal. There is no requirement to submit any documentation if the teacher does not wish to, other than a statement from any witness who may be called by the teacher. However, if the teacher does not intend to submit any documentation there should be a positive statement from the teacher and/or the teacher's representative to this effect and the teacher will not be able to use at the hearing any evidence not previously provided.
- 6.3 The clerk to the Trust Board will immediately notify the Headteacher / Head of School or the person representing the committee (whichever took the decision against which the teacher is appealing) of all the grounds of appeal and any additional evidence, with a request to submit any additional papers in response to the clerk within five working days.
- 6.4 The clerk to the Trust Board will then arrange an appeal committee hearing in reasonable time. The clerk shall give at least five working days' formal notice of the date, time and location of the appeal hearing to all the participants (see model letter). All documents relevant to an appeal hearing shall be enclosed with the letter. The employee may suggest an alternative time and date as long as it is reasonable and is not more than five working days after the original date. The committee may reject this suggestion if it is unreasonable and may proceed to hear the case in the absence of the teacher or the teacher's representative, but also has the discretion to defer the date of the hearing in order to reach mutual agreement on a convenient date.
- 6.5 The witnesses may include, as appropriate to the circumstances of the case, the Headteacher / Head of School and/or a member of the committee which took the decision against which the employee is appealing, or the person who presented the case if that person was not the Headteacher / Head of School.
- 6.6 The normal order of proceedings for an appeal hearing is set out in Appendix 2.

- 6.7 The appeal committee may dismiss the appeal, uphold the appeal, amend the period defined for further improvement, or substitute a defined period for further improvement for a determination that an employee should cease to work at the school or a dismissal from the school.
- 6.8 The appellant may choose whether to hear the appeal committee's decision in person or receive it subsequently in writing, but this choice shall not prevent the committee from choosing to adjourn and reconvene before making a decision. An oral announcement shall be confirmed in writing by the clerk to the Trust Board within five working days of the appeal hearing.

7. Headteacher / Head of school

- 7.1 When the member of staff subject to the procedure is the Headteacher/ Head of school, the CEO will liaise with the chair of the LGB and will be responsible for co-ordinating the procedure.
- 7.2 When the CEO is the subject of the procedure chair of trustees will be responsible for co-ordinating the procedure.

8. Exceptional circumstances

- 8.1 In extreme cases the Headteacher / Head of School shall write to the teacher explaining that he or she considers that this is an extreme case in which the education of pupils is seriously jeopardised, setting out the evidence supporting this allegation, and inviting the teacher to a meeting, at which the teacher may be accompanied by a trade union representative or fellow-employee. It shall be explained to the teacher that the meeting is being held in accordance with the provisions of this Section of the procedure. Copies of any documentation to be used at the meeting shall be sent with the written notice. In order to ensure that the teacher has enough time to prepare his or her response to the concern(s) reasonable notice of the meeting should be given. This should be at least five working days. It is advisable to agree a date with the teacher's union/professional association before sending the formal instruction to attend the meeting.
- 8.2 The purpose of the meeting shall be:-
- (a) to define the aspects of capability which lead the Headteacher / Head of School to allege that the education of pupils is jeopardised and why it is not appropriate to use or continue to use the procedure set out in Section 4;
 - (b) to allow the teacher and/or the teacher's representative to comment and/or offer an explanation;
 - (c) for the Headteacher / Head of School to decide, having regard to (a) and (b), above whether to confirm or withdraw the allegation(s) of lack of capability which seriously jeopardises the education of the pupils;

- (d) for the Headteacher / Head of School, in the light of (c) above, to take one of the following options
- take no further action under this section of the procedure;
 - start capability meetings at the second meeting, thereby omitting the first meeting under section 4. Under such circumstances the teacher must be informed of the reasons for taking such action.

Under (d) above the head teacher may decide to arrange for direct supervision of the teacher's work for a specified period during the review period.

- 8.3 A copy of the notes of the meeting shall be sent to the teacher within two working days of the meeting together with a copy for the teacher's representative.
- 8.4 The Headteacher / Head of School should arrange for a review meeting to be held weekly during the review period. The dates of these meetings should be set in discussion with the teacher and their representative.

9. Suspension

- 9.1 The Trust Board and the CEO have the power to suspend any person employed to work at the school where, in the opinion of the governing body, or the CEO, the exclusion of that person from the school is required. It is not expected that the CEO or Trust Board will exercise this power under the capability procedure, which is intended to support teachers in achieving the required standards and give them the opportunity to demonstrate the required improvement.

Appendix 1 - **DIAGRAM TO ILLUSTRATE CAPABILITY PROCEDURE**

