



School's Model Teacher Capability Policy

This Policy has been formally adopted by the Governing Body of The Westminster School on 3/12/2024.

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1 Introduction

The School Staffing (England) Regulations 2009 requires Governing Bodies to have a procedure for dealing with teachers or head teachers about whose performance there are serious concerns that the appraisal process has been unable to address. The procedure must have regard to the guidance produced in April 2012 by the Secretary of State for Education “Teacher appraisal and capability. The Education (School Teacher’s Appraisal) (England) Regulations 2012 came into force on 1 September 2012.

This procedure is designed in accordance with the guidance from the Secretary of State to deal with teacher or head teacher capability in a way that is fair, efficient and in accordance with good employment practice. Good management, clear expectations and appropriate support will go a long way towards addressing weakness in performance. The policy sets out the formal capability procedure and reflects the ACAS Code of Practice on disciplinary and grievance procedures.

This procedure will be implemented when the teacher appraisal arrangements have been exhausted. Advice from your HR Consultant should be sought before implementing this procedure. HR will discuss with you the circumstances of the teacher or head teacher appraisal prior to commencing this procedure. Early identification of problems and support through the teacher appraisal process may help avoid the need to commence this formal capability procedure.

Before commencing with this procedure teachers or head teachers who have been made aware of the concerns should be encouraged to seek support from their trade union representative at the earliest opportunity.

2.0 Scope of Policy

- 2.1 This policy applies to all teacher employees including head teachers.
- 2.2 The head teacher is subject to this policy, the contact point for implementation of this policy will be a nominated Governor (usually the Chair of Governors).
- 2.3 In PRUs the references in the procedure to Governing Body Committees will mean the Management Committees.

2.4 This policy also applies to Unattached Teachers who are employed in non-standard settings by Sandwell MBC. Teachers not working in Schools should substitute Head Teacher, Chair of Governors and Governing Body Committees for the appropriate delegated authority of line management.

2.5 For Early Career Teachers refer to statutory guidance for “Induction and Assessment”.

3.0 Exceptions

3.1 For purposes of clarity there are no exceptions; once adopted by the Governing Body, this policy applies to teaching staff at the School or unattached teachers employed by the council.

4.0 Definitions

(a) **Designated Person(s):** The Designated Person is the head teacher. However, unless otherwise stated, the head teacher may delegate certain responsibilities to an appropriate Line Manager/Senior Manager within the School to deal the appraisal.

If the appraisal concerns a head teacher, then the Designated Person will be the Chair of Governors.

(b) **Representative:** an employee is entitled to be accompanied at each Formal Stage by a recognised trade union representative or work colleague if they so wish.

(c) **The Committee:** means the Committee appointed by the Governing Body with delegated powers to undertake the functions prescribed for a Committee in this Policy and consists of a minimum of 3 members.

(d) **Appeals Committee:** means the Committee consisting of a minimum of 3, or equivalent to the number on the Committee. Members of the Appeals Committee should have had no prior involvement in the case.

(e) **Personal File:** means that file maintained by the school relating to the specific individual concerned.

5.0 Definition of Capability

Lack of capability covered by this procedure is defined as a situation in which a teacher or head teacher fails to perform his or her duties and responsibilities to a professionally acceptable standard – these duties/ responsibilities can be teaching and/or management. The Duties and responsibilities will be those as detailed in the Teacher's or Head Teacher's Job Description.

Misconduct will be covered by the School's Model Disciplinary Policy.

Capability due to ill health reasons will be covered by the School's Management of Absence Policy.

The aim of the procedure is to provide a structured framework for dealing with teachers or head teachers performance where there are serious concerns that the appraisal process has been unable to correct this performance. Therefore, the procedure is based on the clear identification of the problems, their cause and the professional performance of a teacher or head teacher. Formal support, guidance, monitoring and evaluation, will be given during this procedure.

- (e) Where there are concerns of capability, the teacher or head teacher should be informed of their right to seek advice and be represented by their Trade Union.
- (f) The teacher or head teacher has the right to know in detail the nature of the concerns. The concerns will be confirmed in writing. The teacher or head teacher will have the opportunity to put his/her case during the course of the procedure.
- (g) For capability issues arising from ill health or personal traumatic circumstances, e.g. bereavement, guidance should be sought from your HR Consultant as to the appropriate course of action.
- (h) Where a teacher or head teacher, subject to these procedures, is absent from school, advice should be sought from the HR Consultant as to the appropriate procedures to follow.

If long term sickness absence appears to have been triggered by the commencement of monitoring or the formal capability procedure, the case will be dealt with in accordance with the school's model absence policy and the teacher/head teacher will be referred immediately to the occupational health service. If the employee's absence is short – term the school should not continue with the policy until the employee is fit to return to work. Consideration must be given to adjusting any monitoring periods.

- (j) The school should seek advice from the School Improvement Advisor regarding monitoring and assessment during this procedure.
- (k) The school's HR consultant should be present at evaluation, decision or all formal meetings.
- (l) Once the procedure has been started there must be a support programme clearly defined targets, a structure timetable and the method of monitoring and evaluation specified.
- (m) The aim of this procedure is to improve a teacher's or head teacher's professional performance. 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 the process will continue.
- (n) A timetable for improvement at each stage will depend on the individual case, in normal circumstances this could be between six – ten working weeks. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.
- (o) In extreme cases where there is evidence the teacher's or head teacher's professional performance seriously jeopardises the education of pupils the period of improvement will be no more than six weeks (written evidence must be produced).
- (p) Detailed formal written records of targets, support, monitoring and evaluation will be maintained by the head teacher or the chair of governors, copies of records of meetings, support and

evaluation will be provided to the teacher or head teacher concerned.

- (q) 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.
- (r) Where the teacher in question is the accredited representative of a recognised Trade Union, the Local Secretary (or if appropriate National Secretary) will be notified in writing by the LA, before the procedure commences.
- (s) While a teacher or head teacher is in capability procedures, pay progression should be withheld.

6. Roles and Responsibilities

It is essential that all those providing support must understand what is involved and their role in the procedure.

- (a) The Governing body has a duty, when asked to confirm whether or not a member of the teaching staff at that school has, within the last two years, been the subject of capability procedures and, if so, provide details of the capability concerns, the duration of the proceedings and the outcome. The Local Authority will adopt the same undertaking in respect of teachers who are employed in non-standard settings.

- (b) For Teachers:-

The responsibility for determining the professional performance of a teacher will rest with the head teacher. The head teacher may request the appropriate senior members of staff and/or School Improvement Advisor to assist in developing and implementing a support programme, monitor and evaluate progress.

- (c) For Head teachers:-

The responsibility for determining the professional performance of a head teacher will rest with the Chair of Governors, supported by a suitably skilled and/or experienced

external adviser who has been appointed by the Governing Body for that purpose, e.g. School Improvement Advisor. The Representative(s) and adviser may request additional appropriate support to assist in developing and implementing a support programme, monitor and evaluate progress.

The Chair of Governors, in consultation with the Local Authority will be responsible for the implementation of these procedures with regard to head teacher's capability.

7. Records and Monitoring

- The recording of all evidence, the implementation of monitoring and assessment and the evaluation of the support programme are key to the implementation of the procedures.
- The collection of evidence and monitoring must be distinct from the routine monitoring in the school.
- Teacher appraisal records should be used as part of these procedures.
- Evidence collected, including that from monitoring, must be shared with the Teacher including the provision of written copies.
- The School Improvement Advisor should be involved from the instigation of the procedure and will provide external monitoring to support the school, the Teacher and ensure consistency across the Authority.
- Time for monitoring, assessment and recording both for the Teacher and staff carrying out the monitoring, must be built into the procedure.

8. Transition Meeting

Having exhausted the appraisal process whereby the appraiser is not satisfied with progress, the teacher or head teacher will have been notified that the appraisal system no longer applies and that their performance will be managed under the capability procedure.

9.0 Capability

9.1 Stage 1 - Formal Capability

This meeting is intended to establish the facts and be conducted by the head teacher or chair of governors (where the capability of the head teacher is in question). The meeting allows the teacher/head teacher to be accompanied by a trade union representative or work colleague 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.

The chair of governors/head teacher conducting the meeting may:

- conclude 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.
- 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.
- conclude that there are sufficient grounds for pursuing the capability issue the meeting will continue and at this meeting a formal warning could be issued; in very serious cases, this warning could be a final written warning.

A warning will remain live whilst the teacher/head teacher's capability is managed under the formal capability procedure. However if following a formal warning, the teacher/head teacher's performance improves and the appraisal system is resumed but their performance deteriorates/fail to meet objectives within 12 months of appraisal being resumed, the head teacher/chair of governors performance may revert back to capability at the stage previously reached. The head teacher/chair of governors managing the performance would not be expected to undertake the transition to capability review period for a second time.

Where there continues to be capability issues, the head teacher/chair of governors conducting the meeting will:

- identify the professional shortcomings, 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 individual case, in normal circumstances this could be between six – ten weeks. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place; and
- warn the teacher formally that failure to improve within the set period may ultimately lead to dismissal...

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.

Monitoring and review of stage 1

A performance monitoring and review period will follow the stage 1 formal capability meeting. Formal monitoring, guidance and support will continue during this period.

9.2 Evaluation of Stage 1 Meeting

EITHER

Where a formal warning was given at stage 1

Evaluation of Stage 1

The support, evidence and evaluation gathered at stage 1 will be considered. A meeting to evaluate stage 1 should be arranged to review the weakness in performance and consider the evidence to reflect that the appraisal should be restarted, and capability ceases or that the capability procedures continue.

At least five working days' notice will be given of the stage 1 evaluation meeting.

The employee, appraiser/line manager and head teacher or chair of governors (where the capability of the head teacher is in question) will be present at the Stage 1 evaluation meeting. As the outcome of the meeting may have serious consequences, the employee should be encouraged to be accompanied by a trade union representative or a colleague

The evaluation meeting does not form part of the formal capability procedure until that point the employee remains subject to stage 1, formal capability procedure.

The evaluation meeting will consider:

- the evidence which has given rise to specific concerns about the employee's performance;
- the seriousness of the concerns and their impact on the performance of the school;
- the support that has been provided to date;
- the time for which the concerns have persisted and over which the support has been provided;
- the degree of improvement that has been achieved and whether or not this has been sustained;
- the extent to which the employee has shown insight and engaged with the support provided through the appraisal process;
- any mitigating factors.

Once these matters have been considered, the head teacher/chair of governors may wish to adjourn the meeting for a brief period, to allow sufficient reflection, before reaching a decision. Following a brief adjournment all parties will be called back to the meeting and the decision will be relayed in person. The decision will be confirmed to the employee, in writing, normally within five days.

The decision will be either to continue with the appraisal procedures or continue with the capability procedure and progress to stage 2.

The transition through the capability procedure will not normally be made unless there is robust evidence that:

- specific underperformance, against identified standards, has existed for a significant period of time;
- the underperformance is either serious or has persisted despite the provision of appropriate support.

Progress to Stage 2

When a formal warning was given at stage 1 and following the stage 1 evaluation meeting notification will be sent to the teacher/head teacher to attend a formal meeting at stage 2 of the capability procedure.

At least five working days' notice will be given of the stage 2 formal capability meeting.

The letter 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.

(Please go to 10. Stage 2 - Formal Capability.)

OR

9.3 If a final warning was given at stage 1

Decision Meeting

The support, evidence and evaluation gathered at stage 1 will be considered. A decision meeting should be arranged to review the weakness in performance and consider the evidence to reflect that the appraisal should be restarted and capability ceases or that the capability procedures continue.

The employee, appraiser/line manager and head teacher or chair of governors (where the capability of the head teacher is in question) will be present at this decision meeting. As the outcome of the meeting may have serious consequences, the employee should be encouraged to be accompanied by a trade union representative or a colleague

The decision meeting does not form part of the formal capability procedure which would not result in dismissal; until that point the employee remains subject to stage 1, final written warning.

At least five working days' notice will be given of the **decision** meeting. The **evaluation** meeting will consider:

- the evidence which has given rise to specific concerns about the employee's performance;
- the seriousness of the concerns and their impact on the performance of the school;
- the support that has been provided to date;
- the time for which the concerns have persisted and over which the support has been provided;
- the degree of improvement that has been achieved and whether or not this has been sustained;
- the extent to which the employee has shown insight and engaged with the support provided through the appraisal process;
- any mitigating factors.

Once these matters have been considered, the head teacher/chair of governors may wish to adjourn the meeting for a brief period, to allow sufficient reflection, before reaching a decision. Following a brief adjournment all parties will be called back to the meeting and the decision will be relayed in person. The decision will be confirmed to the employee, in writing, normally within five days.

The decision will be either to continue with appraisal procedures or to continue with the capability process through the convening of a dismissal hearing.

The transition through the capability procedure will not normally be made unless there is robust evidence that:

- specific underperformance, against identified standards, has existed for a significant period of time;
- the underperformance is either serious or has persisted despite the provision of appropriate support.

Progress to Dismissal Hearing

When a final warning was given at stage 1 and the decision meeting concludes that no progress has been made, a notification will be sent to the teacher/head teacher to attend a formal dismissal hearing with the appropriate committee of the Governing Body.

The letter 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. The teacher or head teacher will be warned that the decision meeting may result in dismissal.

At least five working days' notice will be given of the dismissal hearing. (Please go to section 9 Stage 3 Dismissal Hearing.)

10. Stage 2 - Formal Capability

This meeting is intended to establish the facts and be conducted by the head teacher or chair of governors (where the capability of the head teacher is in question). The meeting allows the teacher, accompanied by a trade union representative or work colleague 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.

The head teacher/chair of governors 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 appraisal process. In such cases, the capability procedure will come to an end.
- 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.
- conclude that there are sufficient grounds for pursuing the capability issue. The meeting will continue and at this meeting a final warning could be issued.

A warning will remain live whilst the teacher/head teacher's capability is managed under the formal capability procedure. However, if following a final warning, the teacher/head teacher's performance improves and the appraisal system is resumed but their performance deteriorates/fail to meet objectives within 12 months of appraisal being resumed, the head teacher/chair of governors performance may revert back to capability at the stage previously reached. The head teacher/chair of governors will not be expected to undertake the transition to capability review or stage 1 for a second time.

Where there continues to be capability issues, the person conducting the meeting will:

- identify the professional shortcomings, 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 individual case, in normal circumstances this could be between six – ten weeks. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place); and
- warn the teacher formally that failure to improve within the set period could lead to dismissal.

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.

11.0 Monitoring and review of stage 2

A performance monitoring and review period will follow the stage 2 formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period.

11.1 Decision Meeting

The support, evidence and evaluation gathered at stage 2 will be considered. A decision meeting to evaluate stage 2 should be arranged to review the weakness in performance and consider the evidence to reflect that the appraisal should be restarted and capability ceases or that the capability procedures continue.

At least five working days' notice will be given of the decision meeting.

The employee, appraiser/line manager and head teacher or chair of governors (where the capability of the head teacher is in question) will be present at this decision meeting. As the outcome of the meeting may have serious consequences, the employee should be encouraged to be accompanied by a trade union representative or a colleague.

The decision meeting does not form part of the formal capability procedure which would not result in dismissal; until that point the employee remains subject to stage 2, final written warning.

The evaluation meeting will consider:

- the evidence which has given rise to specific concerns about the employee's performance;
- the seriousness of the concerns and their impact on the performance of the school;
- the support that has been provided to date;
- the time for which the concerns have persisted and over which the support has been provided;
- the degree of improvement that has been achieved and whether or not this has been sustained;
- the extent to which the employee has shown insight and engaged with the support provided through the appraisal process;
- any mitigating factors.

Once these matters have been considered, the head teacher may wish to adjourn the meeting for a brief period, to allow sufficient reflection, before reaching a decision. Following a brief adjournment all parties will be called back to the meeting and the decision will be relayed in person. The decision will be confirmed to the employee, in writing, normally within five days.

The decision will be either to continue with appraisal procedures or to continue with the capability process through the convening of a dismissal hearing.

The transition through the capability procedure will not normally be made unless there is robust evidence that:

- specific underperformance, against identified standards, has existed for a significant period of time;
- the underperformance is either serious or has persisted despite the provision of appropriate support.

11.2 Progress to Dismissal Hearing

When a final warning was given at stage 2 and the decision meeting concludes that no progress has been made, a notification will be sent to the teacher/head teacher to attend a formal dismissal hearing with the appropriate committee of the Governing Body.

At least five working days' notice will be given of the dismissal hearing.

The letter 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. The teacher or head teacher will be warned that the decision meeting may result in dismissal.

12. Dismissal Hearing

Hearings must be held in accordance with the Schools Disciplinary Procedure. The power to decide that members of staff should no longer work at this school has been delegated to *the appropriate committee of the Governing Body*. A representative of the local authority should attend all proceedings relating to the dismissal of any teacher of a Community or Voluntary Controlled School.

The Committee 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 appraisal process. In such cases, the capability procedure will come to an end.

However, if following a final warning, the teacher/head teacher's performance improves and the appraisal system is resumed but their performance deteriorates/fail to meet

objectives within 12 months of appraisal being resumed, the head teacher/chair of governors performance may revert back to capability at the stage previously reached. The head teacher/chair of governors will not be expected to undertake the transition to capability review, stage 1 or stage 2 for a second time.

- 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.
- conclude that there are sufficient grounds for pursuing the capability issue. The meeting will continue and at this meeting a decision may be made to dismiss the teacher or head teacher.

Where the decision is made to dismiss a teacher or head teacher on the grounds of capability (subject to appeal) statutory and contractual periods of notice will apply. However, during the period of notice the teacher or head teacher will cease to work with children in the school.

Once the appropriate committee of the Governing Body has decided that the teacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it.

Where teachers work solely at this school, the Local Authority will communicate the decision of the governing body within fourteen days of the date of the notification. Where the teacher or head teacher work in more than one Community, Voluntary Controlled, Community Special or Maintained Nursery School, the local authority must require them to cease to work at this school.

13. Appeals

The teacher or head teacher will have the right to appeal against any formal stage of this procedure, if they feel it is wrong or unjust. If the teacher or head teacher wishes to appeal they must do so c/o the Clerk to Governors of the Appeals Committee of the Governing Body. The appeal must be made in writing within five days of the decision setting out the grounds for appeal.

The appeal should be heard without unreasonable delay and, where possible, at an agreed time and place. Appeals will normally be held within ten working days. Five days' notice of the appeal hearing will be given.

In cases of appeal against a formal or final warning, pending the appeal the period of support, targets and monitoring will continue.

Appeal hearings must be conducted in accordance with the Schools Disciplinary Procedure.

The teacher or head teacher should be informed of their right to seek advice and be represented by their Trade Union representative at any appeal meeting.

As with other formal meetings, notes will be taken and a copy sent to the teacher.

The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case.

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

Reviewed on	Reviewed by	Completed
June 2023	Darron Evans	June 2023
October 2024	Darron Evans	October 2024