NEW HEIGHTS SCHOOL
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Teacher Capability (Performance) Policy

Status	**Statutory**
Responsible Governors' Committee	**Full Governing Body**
Date last approved by GB	**November 2025**
Responsible Person	**Co-Headteachers**
Review Date	**November 2026**
Last Amended Date	**June 2022**

1. Purpose

1.1 School Staffing Regulations 2009 require Governing Bodies to have procedures for dealing with any lack of Capability of their Employees. This should now be linked with the Education (School Teachers' Appraisal) (England) Regulations 2012 which come into force 1st. September 2012.

1.2 This procedure applies only to teachers or head teachers about whose performance evidence has arisen of serious concerns. These concerns may be identified by the teachers appraiser under the School Appraisal Policy, and referred to the Headteacher following insufficient improvement being made under section 8 of that policy. If serious concerns are identified by other means, they must be referred to the teacher's appraiser, and managed in line with Section 8 of the School Policy for Appraising Teacher Performance.

1.3 Good management, clear expectations and appropriate support will often address weaknesses in performance. Early identification of concerns will help to avoid the need for recourse to the Capability [Performance] Policy and in most cases an improvement may be achieved with support and attention [see section 8 School Policy for Appraising Teacher Performance].

1.4 Before commencing the Capability [Performance] Policy, Head teachers, Governors or managers should examine at this stage the possibility that the member of staff's professional performance may be affected by ill health or some external influence or concern. If this is the case the matter should be dealt with under the appropriate procedure before any consideration is given to Capability [Performance] procedure. Management should also consider whether the issue is a matter of conduct and, if so, invoke the disciplinary procedure.

1.5 A member of staff has the right to be represented at any stage of the Capability [Performance] Procedure either by their professional association or trade union representative or a work colleague.

1.6 Members of staff have the right to appeal against any sanction issued at any stage of the procedure.

1.7 Where formal capability [performance] action is to be taken against an employee who is a recognised trade union official (including safety and learning representatives) no action will be taken until the circumstances of the case have been discussed with a full time officer of the trade union concerned.

2 Identification of Capability [performance] issues

2.1 Where performance issues have been identified via a route other than through the School Appraisal Policy, transition to the Capability [Performance] Policy, should only be considered following a Formal Review Meeting in line with section 8 and section 9 of the School Appraisal Policy.

2.2 Where performance issues have been identified via a route other than through the School Appraisal Policy, the Formal Review Meeting should be conducted by the Headteacher or other nominated senior leader [or in the case of Headteacher performance, the Chair of Governors]

2.3 All meetings in the School Capability [Performance] Policy will be conducted by the Head teacher or other nominated senior leader [or in the case of Headteacher performance, the Chair of Governors].

2.4 Where evidence has arisen of concerns in regards to a teachers' or Head teachers' performance, progression to the School Capability [Performance] Policy will only be made following a Formal Review meeting in line with section 8 of the School Policy for Appraising Teacher performance. This will be deemed an informal stage of the School Capability [Performance] Policy.

2.5 Where a Teacher 's performance has not improved following the review period agreed under section 8 of the School Policy for Appraising Teacher performance, they should be informed, in writing, that their performance will now be considered under the School Capability [Performance] Policy and that they will be invited to a Formal Capability Meeting to consider this.

3. Formal Capability Meeting – Stage 1

3.1 At least five working days' notice will be given of the Formal Capability meeting. The notification will contain sufficient information and evidence about the concerns about performance and their possible consequences to enable the Teacher to prepare to answer the case at a Formal Capability Meeting.

3.2 The Teacher must be given copies of any written evidence that will be referred to during the Capability [Performance] process.

3.3 The teacher may be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative.

3.4 This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for head teacher capability meetings) or head teacher /senior leader (for other teachers) who may be accompanied by a nominated LA or HR Advisor. The meeting allows the teacher, accompanied by a companion 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.

3.5 Once the facts and any additional information have been considered there are two initial options:

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

- The person conducting the meeting may 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.

3.6 During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the professional shortcomings, for example which of the standards expected of teachers are not being met, with reference to evidence eg appraisal reports, formal letters of complaint [this list is not exhaustive];
- 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
- identify 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 circumstances of the individual case and should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.
- consider issuing a formal warning to the teacher and indicate that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.
- advise the Teacher of their right to appeal the warning if issued

3.7 Notes will be taken of the capability meeting and a copy will be 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.

4. Monitoring and review period following a formal capability meeting

4.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the period, 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 below).

5. Formal Review Meeting – Stage 2

5.1 As with formal capability meetings, at least five working days' notice will be given of the meeting and the teacher will be advised of their right to be accompanied by a companion who may be a colleague, a trade union official. The person conducting the meeting may be accompanied by an LA or HR advisor.

5.2 If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.

5.3 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. The timetable will depend on the circumstances of the individual case.

- If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning and be given a final review period in which to improve performance. The timetable will depend on the circumstances of the individual case.

5.4 As before, 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 from the schools employment. The Teacher should also be given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.

6. Decision Meeting – Stage 3

6.1 If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the teacher should be dismissed or required to cease working at the school.1

6.2. As with Formal Capability meetings and Formal Review meetings, at least five working days' notice will be given to the Teacher of the Decision Meeting and the teacher will be advised of their right to be accompanied by a companion who may be a colleague or a trade union official representative.

6.3 The Decision Meeting will be before a Governors Committee consisting of at least three members of the School Governing Body. The Committee may be supported by an LA or HR advisor and will be held in accordance with the school hearing protocol.

6.4 Before any decision to dismiss is made, the school may wish to discuss the matter with the local authority.

6.5 In the event of a decision to dismiss the Teacher, they 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.

7. Decision to dismiss

7.1 Governors are required to establish who has the right to dismiss members of staff as follows[1];-

Foundation Schools, Voluntary Aided Schools and Foundation Special Schools).

The power to decide that members of staff should no longer work at this school rests with

the Governing Body OR
the head teacher OR
a committee of one or more governors OR
one or more governors acting with the head teacher

Community, Voluntary Controlled, Community Special, and Maintained Nursery schools,

The power to decide that members of staff should no longer work at this school rests with
the committee of Governors OR
the head teacher OR
one or more governors acting with the head teacher

8. Dismissal

8.1 Once 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. 2
Where teachers work solely at this school, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school *(Community, Voluntary Controlled, Community Special and Maintained Nursery Schools only).*

9. Appeal

9.1 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 days of receiving the decision, setting out at the same time the grounds for appeal.

9.2 Where monitoring of a Teachers performance would be continuing through a Review period or Final review period, this should not be halted whilst an appeal is pending.

9.3 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the teacher.

9.4 The appeal will be dealt with impartially and by governors who have not previously been involved in the case. The teacher will be informed in writing of the results of the appeal hearing within 5 working days.

10. Grievances

10.1 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.

11. Sickness

11.1 If 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 the school's absence policy.

11.2 Immediate consideration should be given to referral to Occupational Health to assess the member of staff's health and fitness for continued monitoring or formal procedures, and fitness to attend work. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

11.3 Sickness absence should not necessarily delay any part of the formal capability process and reasonable steps should be taken to enable the Teacher to attend meetings.

11.4 Where the Teacher is unable to attend, they should be informed that the meeting may progress in their absence and a full account of the meeting and its outcomes should be sent to the Teacher as soon as possible.

[1.] *In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated*
to the head teacher,
to one or more governors,
or to one or more governors acting with the head teacher.

In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).

For Voluntary Aided, Foundation and Foundation Special Schools the Governing Body (or person or people to whom the power to dismiss has been delegated) will dismiss the teacher with notice.