Model Teachers' Capability Procedure (Schools)

Please note - this Model Capability Procedure is produced by the Council for Community, Voluntary Controlled, Community Special and Maintained Nursery Schools only as the Council has the responsibility of ensuring that the Governing Bodies of such schools are compliant with the required legislation.

For Academies, Foundations and Voluntary Aided Schools who wish to adopt/ apply this guidance, then it is the responsibility of the Governing Body or Trust Board (as the employer) to determine the suitability of this document for their employees and where necessary make any changes.

Please note that where an establishment wishes to amend any contents to this Procedure then further consultation must be held with the recognised trade union and ensures the amended document is legally compliant.

Adopted by the Governing Body - 10 - 06 – 2025
Signed:
Chair of Governors _____

Headteacher _____

Issued- September 2022

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1. Model Capability Procedure

The Governing Body of Fairburn View Primary School adopted this Procedure on 10.6.25.

It will review this Procedure annually in consultation with teaching staff and recognised trade unions as appropriate.

1.1 Purpose

This Procedure applies only to teachers or Head teachers about whose performance there are serious concerns that the appraisal process has been unable to address.

This Procedure should only be instigated following the implementation of an Improvement and Support Action Plan within the appraisal process and where following a review of that plan, a judgment has been made those improvements to performance can no longer be achieved within the framework of the appraisal process. This judgment must only be made following a Formal Feedback Review Meeting at which the teacher or Head teacher has been provided with the opportunity to make a representation about the conclusions being drawn from the plan and has had the opportunity to be accompanied by a companion, who may be a colleague, a trade union official or a trade union representative who has been certified by their union as being competent, when making such representations.

This Procedure aims to support teachers to improve and sustain performance to a satisfactory level and set out a clear and equitable process when a member of staff falls below the expected level of competence as set out in the relevant standards, job specification and overall performance expectations.

A Statement of Case (SOC) setting out the chronology of the case incorporating evidence and copies of documentation already obtained through the Appraisal process must be completed to present at the Formal Capability Meeting - **See SOC Form - Template 7.**
Also see Preparing to Apply the Capability Procedure Checklist, Formal Capability Meeting – Template 23 and Formal Capability Meeting Script – Template 24.

1.2 Application of this Procedure

This Procedure applies to the Head teacher and to all teachers employed by the School or Local Authority, except those on contracts of less than one term, those undergoing induction (i.e., Early Careers Teachers (ECTs)) as their performance will be managed through the ECT Induction Programme. It also will not apply to agency workers or self-employed workers.

1.3 Data Protection

The Council processes personal information/data collected in the application of this Model Procedure in accordance with its legal obligations set out in the UK General Data Regulation 2016 (UK GDPR) and the Protection Act 2018 (DPA), which are confirmed within the School's Retention and Disposal Schedule.

Information/ data specifically obtained to address issues raised under this Procedure is held securely and accessed by, and disclosed to, individuals only for the purposes of addressing these issues. Inappropriate access or disclosure of an employee's personal information/data constitutes an information security incident and should be reported in accordance with the School's Retention and Disposal Schedule immediately. It may also constitute a matter which will be considered in accordance with the School's Disciplinary Policy, located on the Wakefield Traded Services website, Resources tab, HR A – Z index

2. Formal Capability Meeting

At least five working days' notice will be given of the Formal Capability Meeting.

The notification 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; and will advise the teacher of their right to be accompanied by a companion, who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent Teachers are entitled to request an alternative date which is within five days of the original date proposed. **See Invite to Formal Capability Meeting - Template 8.**

The Formal Capability Meeting is intended to establish the facts.

The Chair of Governors will conduct the Formal Capability Meetings for the Head teacher unless the Chair of Governors is a member of the appraisal panel, in which case the meeting will be conducted by one or more governors. The Head teacher will conduct Formal Capability Meetings for other teachers unless the Head teacher is the appraiser, in which case the meeting will be conducted by one or more governors.

The Formal Capability 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.

The person conducting the Formal Capability 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 formal capability procedure will come to an end. **See Formal Capability Meeting Outcome – Return to Appraisal - Template 9**.

The person conducting the Formal Capability 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.

In other cases, the Formal Capability Meeting will continue. During the Formal Capability Meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- Reiterate and further review 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 identified and are needed 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 circumstances of the individual case but in straightforward cases could be between four and 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
- clearly explain to the teacher the formal outcomes of the Capability Procedure where failure to improve within the set period could lead e.g. a Written Warning, a Final Written Warning and or dismissal. In very serious cases, the initial warning could escalate straight to a Final Written Warning in the procedure.
- Set a time, date and venue for the Formal Capability Review Meeting to be held immediately following the expiry of the Capability Action Plan timeline.

Notes will be taken of Formal Capability Meetings and a copy will be sent to the teacher as soon as possible. Where either a Written Warning or a Final Written Warning is issued, the teacher will be provided with a completed copy of the Capability Action Plan Form and they will be informed in writing of the matters covered in the bullet points above and be given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

See Formal Capability Meeting Outcome – Issue of a Warning - Template 10 & Capability Action Plan – Template 11.

3. Monitoring and Review Period Following a Formal Capability Meeting

A performance monitoring and review period will follow the Formal Capability Meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a Formal Capability Review Meeting (**see Invite to Formal Capability Review Meeting – Template 12**), unless they were issued with a Final Written Warning, in which case they will be invited to a Decision Meeting (see below).

4. Formal Capability Review Meeting

As with Formal Capability Meetings, at least five working days' notice will be given, in writing, of a Formal Capability Review Meeting and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion, who may be a colleague, a trade union official or a trade union representative who has been certified by their union as being competent. If the companion is not available at the proposed meeting time and the teacher suggests another time that is reasonable and falls within five working days of the original time, the meeting will be postponed until the new time proposed by the teacher.

If the person conducting the Formal Capability Review Meeting is satisfied that the teacher has made sufficient improvement, the formal Capability Procedure will cease and the appraisal process will re-start. The outcome of which should be notified in writing – **See Return To Appraisal from Capability – Template 13.**

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 -
  See Outcome of Formal Capability Review Meeting – Extension of Monitoring & Review period – Template 14

- If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a Final Written Warning.

Notes will be taken of Formal Capability Review Meetings and a copy sent to the teacher. Any Final Written Warning will mirror any previous warnings that have been issued. Where a Final Written Warning is issued, the teacher will be informed in writing that failure to achieve an

acceptable standard of performance within the set timescale may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the Final Written Warning. Where the teacher fails to achieve an acceptable standard of performance within the set timescales, the teacher will be invited to a Decision Meeting. **See Outcome of Formal Capability Review Meeting – Final Written Warning – Template 15.**

5. Records

Full details of all warnings will be entered on the teacher's personal record.

It is not intended that warnings should remain active for an indefinite period: -

Written Warnings - the time limit will be 12 months, effective from the date it was given.

Final Written Warning - the time limit will be between 12 months and 2 years, effective from the date it was given.

6. Decision Meeting

As with Formal Capability Meetings and Formal Capability Review Meetings, at least five working days' notice, in writing, will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion, who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. If the companion is not available at the proposed meeting time and the teacher suggests another time that is reasonable and falls within five working days of the original time, the meeting will be postponed until the new time proposed by the teacher.
See Invite to Decision Meeting – Template 16.

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 (Template 13). 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]

Before the decision to dismiss is made, the school will discuss the matter with the Local Authority (N.B. this is not a legal requirement, but the school may find it helpful).

[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 teacher 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).*

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.

7. Decision to Dismiss

The power to decide that teachers should no longer work at this School has been delegated to the Head teacher unless the Head teacher is the reviewer, in which case the decision has been delegated to one or more Governors.

The power to decide that the Head teacher should no longer work at this School has been delegated to one or more Governors.
(NB: these two options are available only to Community, Voluntary Controlled, Community Special, and Maintained Nursery schools.)
See Outcome of Decision Meeting – Decision to Cease Working at the School (For Community, Voluntary Controlled, Community Special and Maintained Nursery Schools) – **Template 17))**

See Outcome of Decision Meeting – Notice of Dismissal (For Foundation (Trust), Voluntary Aided and Academies) – **Template 18))**

8. Dismissal

Once the Governing Body or Head teacher or one or more Governors has decided that the teacher should no longer work at the school, or where one or more Governors has decided the Head 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 must dismiss them within fourteen days of the date of the notification.
Where teachers 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).***

Notice of Dismissal Letter issued by the Local Authority (For Community, Voluntary Controlled, Community Special and Maintained Nursery Schools) – **Template 19))**

9. Appeal

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 ten 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 (five working days) and right to be accompanied by a companion will apply as with Formal Capability Meetings and Formal Capability Review Meetings and Decision Meeting. As with those other formal meetings, notes will be taken of the Appeal Hearing and a copy sent to the teacher. The appeal will be dealt with impartially and 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 within five working days of the Appeal Hearing. **See Acknowledgement of Appeal – Template 20, Invite to Appeal Hearing – Template 21 & Appeal Hearing Outcome – Template 22.**

10.1 ACAS Code of Practice on Disciplinary and Grievance Procedures
This Procedure will be implemented in accordance with the provisions of the ACAS Code of Practice.

10.2 Confidentiality
The capability process will be always treated with strict confidentiality. However, the desire for confidentiality does not override the need for the Head teacher and Governing Body to quality-assure the operation and effectiveness of the system.

10.3 Consistency of Treatment and Fairness
The Governing Body is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled teachers. The Governing Body is aware of the guidance on the Equality Act 2010 issued by the Department for Education.

10.4 Definitions
Unless indicated otherwise, all references to "teacher" include the Head teacher.

10.5 Delegation
Normal rules apply in respect of the delegation of functions by Governing Bodies, Head teachers and Local Authorities.

10.6 Grievances
Where a teacher raises a grievance during the formal capability procedure, the 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.

10.7 Monitoring and Evaluation
The Governing Body and Head teacher will monitor the operations and effectiveness of the school's capability procedure and timelines.

10.8 Retention
The Governing Body and Head teacher will ensure that all written capability records and sanctions issued are retained and stored in a secure place in line with their Retention and Disposal Schedule for Schools.

Case notes to be retained for no longer than 6 months after warning period has elapsed.

All other documentation to be retained on the basis if current year + 6 years on the employee's personal file unless the issues relate to safeguarding when the documentation should be retained until the employee reaches 100 in age. All documentation listed to be destroyed should be undertaken with the strictest of confidentiality.

In the case of where this has led to a dismissal, all other documentation to be retained for 25 years for employee. If issues relate to safeguarding the documents should be retained until the employee reaches 100 in age.

10.9 Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring at any stage of the procedure or the formal capability procedure, the case will be dealt with in accordance with the School's Sickness Absence Policy and will be referred immediately to the Occupational Health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

11. Supporting Documentation located on the Wakefield Traded Services website, Resources tab, HR A – Z index - Teacher Capability.

Teacher Appraisal and Capability Process Flowchart
Statement of Case Document – **Template 7**
Preparing to Apply the Capability Procedure Checklist
Procedure to be followed at Formal Capability Meetings **(Template 23)**
Capability Meeting - Chair of Hearing Panel Script **(Template 24)**
Invite to Formal Capability Meeting Letter **(Template 8)**
Formal Capability Meeting Outcome – Return to Appraisal **(Template 9)**
Formal Capability Outcome – Issue of a Warning **(Template 10)**
Model Teacher Capability Action Plan **(Template 11)**
Invite to Formal Capability Review Meeting **(Template 12)**
Return to Appraisal from Capability procedure **(Template 13)**
Outcome of Formal Capability Review Meeting – Extension of Monitoring and Review period **(Template 14)**
Outcome of Formal Capability Review Meeting – Final Written Warning **(Template 15)**
Invite to Decision Meeting **(Template 16)**
Outcome of Decision Meeting – Decision to cease working at the school (for Community, Voluntary Controlled, Community Special and Maintained Nursery Schools – **(Template 17))**
Outcome of Decision Meeting – Decision to Dismiss (made by Foundation (Trust), Voluntary Aided Schools and Academies – **(Template 18))**
Notice to Dismissal (Local Authority to issue for Community, Voluntary Controlled, Community Special and Maintained Nursery Schools – **(Template 19))**
Acknowledgement of Appeal **(Template 20)**
Invite to Appeal Hearing **(Template 21)**
Appeal Hearing Outcome **(Template 22)**

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Author:

Date Approved: 2013

Approved by: Helen Grantham

Date Issued: 01/09/2013

Review Date: Please note this Procedure will be evaluated and reviewed on an annual basis, however a revised Policy will only be issued where changes are necessary, which the School's Governing Body will be informed of accordingly to be adopted.

Version Control (most recent first):

Version	Date Issued	Reason for Review	Key Amendments	Date Impact Assessment was Reviewed
2.0	September 2022	Legislative changes as @ April 2019	General wording throughout DfE document	19/07/2022

Details of Most Recent Impact Assessment	Date completed:	19/07/2022
	Issues (if any)	None